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Complaint.

IN CHANCERY OF NEW JERSEY

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

1. The Irving Iron Works Co., a corporation duly organized and existing under the laws of the State of New York and having its principal place of business in Long Island City, County of Queens, in the said State, brings this, its bill of complaint, against the Kerlow Steel Flooring Co., a corporation organized under and existing under and by virtue of the laws of the State of New Jersey and having its principal place of business in the City of Jersey City, in the County of Hudson, State of New Jersey; and Herbert H. Bunker, being a resident and inhabitant of the City of Jersey City in the County of Hudson, State of New Jersey; and Walter H. Lown, being a resident and inhabitant of the City of Jersey City, in the County of Hudson, State of New Jersey, and thereupon your orator complains and says:

2. Your orator is a corporation duly organized and existing under the laws of the State of New York and under its Charter powers, is engaged in the manufacture and sale of a fireproof ventilating flooring under the name of "Irving Subway" in the said Long Island City and is engaged in the sale and distribution of said flooring in commerce among the several States of the United States.

That among the objects for which your orator was incorporated and the powers which by its incorpora-

tion was authorized to exercise are the following, namely:

The manufacture, erection and sale of steel, iron, brass, bronze and other materials for buildings and all other structures in all of their branches.

That during the year 1912 it conceived the idea of manufacturing and selling a fireproof ventilating flooring and ever since has carried on the business of manufacturing and selling fireproof ventilating flooring and ever since the early part of the year 1916 it has been exclusively engaged (except for isolated transactions) in carrying on the business of manufacturing and selling said flooring. During all of this time it has been and now is actively and successfully engaged throughout the United States in buying the materials, machines, tools and supplies necessary to the operation of its business, and in selling its manufactured product and supplies to users thereof in Interstate Commerce throughout the United States; that your orator has carried on its said business with great success and is in high repute; that your orator is widely and favorably known to users of fireproof ventilating flooring and to prospective users thereof throughout the United States for the soundness of its business methods and management and the excellence and the high character of the goods manufactured and sold by it; that its said reputation is of great value to it in the prosecution of its said business.

3. Your orator further shows that at or about the time it conceived and started to carry on the business of manufacturing and selling a fireproof ventilating flooring, there was no business of like nature being carried on by others within the United States. That

while theretofore material of like nature had been manufactured by your orator and material of somewhat similar nature had been manufactured by others, the use of such material had been limited to the covering of area ways and to ventilating spaces over the Rapid Transit Subways in New York City and other places; that while theretofore there had been a limited use of a straight bar type of grating which had been made and sold as a grating and not as a flooring, the use of an open or ventilating flooring was unknown at the time your orator conceived of such use and began the manufacture and marketing of such flooring.

4. That great care, skill and judgment were at all times exercised by your orator in the manufacture of said product and that large sums of money and a great amount of time and labor have been expended by your orator in carrying on said business of manufacturing and marketing its said product throughout the United States and in making the said product and its uses known to architects, engineers, manufacturers and other possible prospective users thereof and that by reason of the excellent quality of said product as manufactured, marketed and sold by your orator, the care and skill and judgment exercised by it and the expenditure by it of time, labor, and money in carrying on the said business and advertising the same throughout the United States, not only by advertising in trade publications having a national circulation, but also by direct mail advertising and in advertising by personal missionary visits of its employees and agents for the purpose of explaining the advantages and uses of the said product, said product is now and has been for several years past widely and favorably known among users and prospective users thereof and said

product is now being sold in quantities in every State of the United States, and in large quantities in many states, and until the general business depression of the present year had been sold in constantly increasing quantities in every State of the United States.

5. That the method of transacting the business of marketing the ventilating flooring adopted by your orator, is as follows: Your orator sells its ventilating flooring direct to users thereof; your orator appoints sales agents or solicitors, hereinafter referred to as sales representatives, in certain prescribed territories to whom it gives the exclusive authorization to solicit, and send in to your orator's office in said Long Island City inquiries and orders for the gratings from such territories. It pays its sales representatives as compensation for their services either a salary or a salary and commission or a commission only; your orator at its said office receives and approves or rejects orders for its ventilating flooring whether the same be sent direct from the users thereof or through some individual sales representative regularly authorized by your orator to solicit, receive and send in orders, and no order is binding upon your orator or in any way in force or in effect until and unless it has been accepted by your orator at its said office. When an order is received and approved an acknowledgment thereof and notice of its entry is sent direct to the user and your orator then manufactures the flooring in the particular sizes, shapes and types called for by such order and delivers the same to a carrier for delivery direct to the customer in accordance with the customer's instructions. Your orator bills each shipment from its said office in the said Long Island City and there receives payment for the same. If, in any

instance, a sales representative is entitled to a commission upon any order, such commission is paid by your orator from its said office on or about the tenth day of the month following the receipt of payment for such shipment. Each of such sales representatives maintains an office either at his own expense or your orator or partly at his own expense and at the expense of your orator and at such office keeps such records as are required by your orator and as are hereinafter described. None of such sales agents or solicitors has or maintains any stock of flooring on hand or makes any deliveries of such flooring but each order after its receipt is specially manufactured by your orator as aforesaid, except that your orator has attempted (but without much success) to expedite deliveries by securing orders for certain standard sizes and types of its product and by maintaining a limited stock of such sizes and types at its factory in the said Long Island City and not elsewhere.

6. That at the time your orator first commenced the business of marketing and selling ventilating flooring, it did not conduct its business as hereinbefore set forth but conducted its business entirely out of its said Long Island City office. Your orator from the outset advertised its said flooring in one way and another and employed sales representatives whose duty was to perform missionary work by calling upon any one and every one who might have either then or in the future any use for said flooring. The duty of such sales representatives was not to sell or to solicit orders for the said flooring but was solely to make the said flooring known to prospective users thereof, to explain its advantages and its possible uses and to report to your

orator the result of each visit. According to the nature of the report of the sales representative, your orator would send descriptive literature from time to time to the prospective users of the said flooring in order that such prospective user would know of such ventilating flooring and its uses and its possible use in connection with his business so that when at some future time some alteration or addition to the prospective user's building or plant would render the use of the said ventilating flooring advisable or desirable, the prospective user would know thereof and would invite your orator to submit a price for the contemplated work. Such missionary work did not look for immediate results but was conducted over and throughout the entire period of years from the commencement of your orator's said business to the present time and is still being conducted with a view to the future sale and use of ventilating flooring in large quantities. The sales representatives employed by your orator were not at first permitted to solicit orders or to quote prices. In the course of time the advantages and possibilities of use of a ventilating flooring became so widely known through your orator's efforts that frequent requests were made by persons visited by your orator's sales representatives for a price quotation and it became embarrassing to such sales representatives not to be able to give complete information when it was called for. Accordingly, a change was then made in the method of transacting your orator's business so as to permit the sales representatives to quote prices, although the main function of their duties still continued to be that of missionary work for your orator's ventilating flooring. In or about the year 1919, your orator further altered its method of transacting business so as to have at the principal business producing

centers resident sales representatives as hereinbefore set forth in paragraph numbered "5" hereof. Whether or not in any instance, any such sales representative was being compensated wholly or partly by commissions on orders accepted, shipped and paid for, it still remained an important function of his duties to perform the missionary work as herein set forth and in all of the employment agreements made between your orator and such sales representatives such duty was clearly stated and all of such sales agents or solicitors have continued and still continue to perform such missionary work as a large and important function of their duties to your orator.

7. The sales representatives of your orator have been from the outset and are regularly required to send in reports to your orator of each and every visit made whether the same be made upon a customer or in connection with a prospective order or solely in accordance with the missionary duties of the sales representative. Such reports are required to be made upon a form furnished by your orator, a copy of which is hereto attached marked "Exhibit A." The sales representative, who sends in any such report retains a copy thereof for his use in the further prosecution of his duties as a representative of your orator. The report received by your orator is examined at your orator's office in the said Long Island City and such further action is taken by your orator in reference to the subject of the report as is indicated by the person who sends it in and as is deemed advisable by your orator. The information upon the report is then summarized upon a card bearing the name of the subject of the report, whether such subject be a customer or merely a possible future prospect. From the reports sent in

and the records made therefrom it is possible not only to ascertain the customers of your orator and the general requirements of such customers, but also the officers and other persons whom it is desirable to see in connection with future business of the customer. These matters are also to a certain extent within the memory of the representative of your orator who makes the visit, and in some instances through repeated dealings and transactions between certain customers and your orator, the representative of your orator become personally acquainted with the representatives of such customers through whom the business of purchasing ventilating flooring is transacted. In those cities in which your orator has maintained representatives, your orator's name has appeared in the Telephone Directory for such cities and many inquiries have reached your orator through its sales representatives in such places by reason thereof. In all of such places your orator has required that, whether or not the lease of the office was executed in the name of or on behalf of your orator, your orator's name should appear on the door of the office and each such office has become known as your orator's office to the customers of your orator and because of such knowledge your orator has there received many inquiries for your orator's said product.

8. That on or about the 8th day of March, 1919, one Joseph M. Madden, who at that time resided at Rockaway Park in the City and State of New York, was employed by your orator as a travelling sales representative with headquarters at the office of your orator in the said Long Island City, devoting the greater part of his time to the Philadelphia territory, comprising Eastern Pennsylvania, Southern New

Jersey and Delaware. The said Madden was to receive and did receive as full compensation for his services a salary and his travelling expenses. Such employment thereafter continued unchanged until on or about the first day of February, 1921, when your orator appointed said Madden your orator's sales representative with headquarters at Philadelphia, in the State of Pennsylvania. From and after the first day of February, 1921, your orator paid all of the expenses of the office occupied by the said Madden for your orator, except one-half of the office rent, and paid the said Madden a salary and a commission in the manner hereinbefore described. The office secured by the said Madden for your orator in the said City of Philadelphia consisted of desk space in Room No. 1039 in the Real Estate Trust Building in said City, which desk space was rented in the name of your orator from one John Ertel. The said Madden as your orator's representative in Philadelphia had a telephone connection in such office and such telephone connection appears in your orator's name in the telephone directory for the City of Philadelphia. On or about the 17th day of November, 1921, your orator received the written resignation, dated November 15, 1921, of the said Madden as such sales representative, to take effect November 30, 1921. On the same day your orator received a communication purporting to come from the said John Ertel notifying your orator to vacate the said desk space in the said building, to take effect November 30, 1921. In said communication your orator was also notified that the said John Ertel had notified the Telephone Company to discontinue the listing of your orator as of the above date.

9. That, on or about the first day of April, 1920,

your orator employed one John A. Moser, who then resided at #509 River Street, in the City of Hoboken, State of New Jersey, as a traveling sales representative with headquarters at your orator's office in the said Long Island City, and was to and did thereafter pay the said Moser as first compensation for his services a salary and his traveling expenses and this arrangement continued until on or about the 1st day of February, 1921, when your orator appointed said Moser its sales representative with headquarters at the City of Cleveland, in the State of Ohio. From and after the first day of February, 1921, your orator paid all of the office expenses of the office occupied by the said Moser at the said City of Cleveland, except one-half of the office rent and paid the said Moser as full compensation for his services to your orator a salary and a commission as hereinbefore described. The said office at the said City of Cleveland, consisted of space in Room 431 Engineers Building, in the said city, the lease of which was taken in your orator's name and your orator's said representative there had a telephone connection listed in your orator's name. On or about the 2nd day of November, 1921, your orator received a communication from the said Moser in which the said Moser tendered his resignation as said representative to become effective between the 10th and 15th of November, 1921, and appended to such communication was a notice from the said Moser that at the request of your orator's landlord the office space theretofore occupied by your orator's representative would no longer be available.

10. That on or about the 16th day of August, 1919, your orator employed one Albert S. Kennedy, who then resided at No. 247 Passaic Street, Hackensack,

New Jersey, as a traveling representative with headquarters at the said Long Island City and was to and did, thereafter, pay the said Kennedy as full compensation for his services a salary and his traveling expenses. This arrangement continued until on or about the 1st day of April, 1920, at which time the said Kennedy was appointed your orator's sales representative with headquarters at the City of Hartford, in the State of Connecticut. Your orator thereafter continued to pay the said Kennedy as full compensation for his services a salary and his expenses. On or about the 7th day of November, 1921, your orator received a communication from the said Kennedy, dated November 5, 1921, tendering his resignation to take effect November 20th, 1921. On or about the 14th day of November, 1921, the said Kennedy while at the office of your orator at the said Long Island City was discharged for cause.

11. That on or about the 19th day of March, 1920, your orator employed one Harry H. Schuldt, who then resided at Number 240 Twenty-eighth Street, in the Town of Woodcliff, in the State of New Jersey, as a sales representative with headquarters at your orator's office in the said Long Island City and was to and did thereafter pay the said Schuldt as full compensation for his services a salary and his expenses. The said Schuldt continued to be so employed by your orator as a sales representative in and about the Metropolitan district, until on or about the 28th day of November, 1921, when the said Schuldt voluntarily resigned.

12. That on or about the 1st day of April, 1921, your orator employed one John N. S. Skoning as sales representative with headquarters at the City of

Chicago, in the State of Illinois. Your orator was to and did thereafter pay all of the office expenses of the office space occupied by the said Skoning in the said City of Chicago, and leased in your orator's name by the said Skoning except one-half of the office rent, and was to and did thereafter pay the said Skoning full compensation for his services a salary and commission as hereinbefore described. In a communication received by your orator on or about the 24th day of October, 1921, the said Skoning tendered his resignation as such representative, which became effective on or about the 15th day of November, 1921.

13. That on or about the 9th day of May, 1921, your orator employed one Harold Scarth as your orator's sales representative at the City of Detroit, in the State of Michigan, and was to and did thereafter pay the said Scarth as full compensation for his services a commission as hereinbefore described. On or about the 17th day of November, 1921, your orator received a communication from the said Scarth in which he resigned as such representative. The said Scarth as your orator's representative secured an office in Room 401 Washington Arcade, in the said City of Detroit, upon which office your orator's name appeared and the said Scarth therein had a telephone connection which was and is listed in your orator's name.

14. That on or about the 11th day of April, 1912, your orator employed the defendant Herbert H. Bunker as a draftsman at your orator's factory in the said Long Island City and the said defendant was shortly thereafter appointed by your orator chief draftsman at your orator's said factory and continued

to occupy said position until about four years thereafter, when he was appointed by your orator, production manager at your orator's said factory. Subsequently the said defendant was given the additional title of assistant manager and was in charge of the operation of your orator's business at such time as both the president and the general manager of your orator were away. The said defendant Bunker continued apparently to be regularly engaged upon the performance of his duties to your orator until on or about the 25th day of June, 1921, when the said defendant Bunker complained of illness and your orator granted him a leave of absence with full pay. The said defendant Bunker was thereafter absent and did not perform the regular duties of his said employment until on or about the 22nd day of August, 1921, when the said defendant Bunker returned to work and continued apparently so to be engaged as theretofore until on or about the middle of September, 1921, when the said defendant Bunker tendered his resignation to your orator; and such resignation was accepted and became effective on or about the 30th day of September, 1921.

15. On or about the first day of September, 1919, your orator employed the defendant Walter H. Lown as assistant sales manager of your orator with headquarters at your orator's factory at the said Long Island City. The said defendant continued to be so employed by your orator until on or about the 20th day of May, 1921, when the said Lown tendered his resignation which became effective on or about the 4th day of June, 1921.

16. Your orator is informed and believes and therefore states:

That prior to the month of July, 1920, the defendants Bunker and Lown entered into and engaged upon a conspiracy, scheme, or plan whereby the said defendants would secure for their own benefit the fruits of the business created and built up by your orator as hereinbefore set forth; that as a result of such scheme the said defendants expected and intended to gain either absolute control of your orator or of your orator's business and the profits thereof; that the said defendants intended and expected, as a result of the said scheme to effect the retirement from all connection with your orator of your orator's president and principal stockholder, and of your orator's general manager, and that your orator's factory, organization, customers and business would devolve upon and become the property of the said defendants, and come under their management and control; that the details of the said conspiracy, scheme or plan may have been modified and altered by the said defendants from time to time but in the main comprehended the following:

The said defendants were to incorporate and organize a corporation for the ostensible purpose of competing with your orator;

The said defendants were to procure by one means or another, the severance of all connection with your orator, of your orator's sales representatives in all important territory, and of all other employees of your orator (except your orator's president who was also your orator's principal stockholder), who occupied positions of any importance in your orator's organization;

The said defendants were to employ, ostensibly the new competing company, as many of the aforesaid

sales representatives as possible and as many of the aforesaid other employees as possible, who could be kept subservient to the said defendants; that the said conspiracy, plan or scheme contemplated that the various sales representatives of your orator who should be won over to the defendants should take with them and use in the said defendants' business the knowledge which they had acquired when in your orator's employ of the customers and prospects of your orator as well as the office records of your orator in possession of such sales representatives, including the duplicate card index memoranda and the correspondence between such sales representatives and your orator's customers and prospects and the correspondence between such sales representatives and your orator in connection with the transaction of your orator's business; that such sales representatives were expected to retain for the benefit of the defendants the office formerly maintained by your orator and cripple the operations of your orator and to obtain additional unfair information concerning the future business of your orator by means of retaining for a period of several months the same telephone number that was listed in the name of your orator by such representatives for your orator;

The organization of the new company and the resignations of the sales representatives and other employees were to be kept secret from your orator until all details of the said conspiracy, scheme, or plan had been arranged, when the fact of such organization and of such resignations was to be made known to your orator at one time;

Your orator would then be without means of acquiring or securing orders for its product and without means of manufacturing its product if by chance

any such order should be secured and without the means of shipping or billing if by chance your orator should find the means of manufacturing;

The said conspiracy, plan, or scheme contemplated the entire paralyzation of your orator's business and that thereupon your orator would through necessity, be required either to re-employ the said defendants upon their own terms to re-establish the business of your orator, or to retire from such business and thereupon the said defendants, through their new competing company and its sales and factory organization made up entirely of the sales representatives and other employees of your orator, would capture such business and carry it forward for the benefit of the said defendants;

The aforesaid conspiracy, plan or scheme of the defendants Bunker and Lown did not aim to perfect a strong independent competing business to be conducted in a fair and honorable way, but did aim to secure the business of your orator through your orator's sales representatives and employees and to transact such business through an organization composed of your orator's employees and by and with your orator's customers and prospects and for the benefit of the said defendants; and did aim either to eliminate your orator from the said business or to accomplish a reorganization of your orator so as to eliminate its present management and controlling interests and to establish the said defendants in control of your orator, solely for their own benefit.

17. Your orator is informed and believes and therefore states:

That to effectuate such conspiracy, scheme or plan the defendants Bunker and Lown worked upon the

various members of the organization of your orator, except your orator's President, either directly or by innuendo, to cause dissatisfaction on the part of each individual employee of your orator with the treatment accorded such employee by your orator; that the method of creating such dissatisfaction in the minds of the different employees was calculated to be adapted in each instance to the character, and degree of intelligence of the employee and his friendliness to your orator and your orator's president; that to effectuate such conspiracy, plan or scheme, the defendant Lown took occasion when traveling upon your orator's business as well as after the said defendant Lown had left your orator's employ, to sound out the sales representatives of your orator at various important places and to create dissatisfaction on the part of such sales representatives with your orator's policies and methods and to create a willingness on the part of such sales representatives to sever their connection with your orator and to take up a new connection with the defendants; that to effectuate such conspiracy, plan or scheme, the defendant Bunker while employed by your orator, as well as thereafter, seized every opportunity to create dissatisfaction with the business methods and policies of your orator in the minds of the employees attached to your orator's plant at the said Long Island City and to create a willingness on the part of such employees to sever their connection with your orator and to take up a new connection with the defendants.

18. Your orator is informed and believes and therefore states:

That to effectuate the aforesaid conspiracy, plan or scheme and as a part thereof, the said defendants

Bunker and Lown, on or about the 17th day of March, 1921, did cause to be created and organized under the laws of the State of New Jersey, a corporation known as the Kerlow Steel Flooring Co., for the ostensible purpose of manufacturing and selling a ventilating steel flooring in competition with your orator, and the said corporation is the defendant Kerlow Steel Flooring Co. in this proceeding; that the word "Kerlow" in the name of the defendant Kerlow Steel Flooring Co., is a coined word made up of the last three letters of the name of the defendant Bunker, to wit, "Ker," and the first three letters of the name of the defendant Lown, to wit, "low"; that the defendant Bunker is President and Manager of the defendant Kerlow Steel Flooring Co., and the defendant Lown is Sales Manager thereof.

19. That the defendant Lown had acquired knowledge of your orator's customers and prospects while employed by your orator as assistant sales manager, as aforesaid, and that while so employed by your orator the defendant Lown caused to be made up from your orator's records in your orator's office a duplicate list of your orator's customers and prospects with their addresses for no proper purpose of your orator, but, as your orator is informed and believes and therefore states, for the sole and only purpose of taking the same with him when the defendant Lown should leave your orator's employ and of using the same in order to secure the business of your orator with your orator's customers and prospects.

20. That knowledge or information of your orator's customers and prospects or any substantial number thereof could not be obtained through any other source

than through your orator's employees and former employees and that there is in existence no available trade service or trade information which would permit an independent competing concern to acquire such information except in isolated instances other than by employing the same or similar methods as have been hereinbefore described as employed by your orator to obtain such information and the expenditure of a large amount of time and money in obtaining the same.

21. Your orator is informed and believes and therefore states:

That to effectuate the said conspiracy, plan or scheme and as a part thereof the defendants endeavored to and did induce and procure the resignation as sales representative of your orator: On or about the 17th day of November, 1921, of one Joseph M. Madden, then sales representative of your orator with headquarters at Philadelphia, Pennsylvania, and employed the said Madden as sales representative of the defendant Kerlow Steel Flooring Co., with headquarters at the same place; on or about the 2nd day of November, 1921, of one John A. Moser, then sales representative of your orator with headquarters at Cleveland, Ohio, and employed the said Moser as sales representative of the said defendant, with headquarters at the same place; on or about the 7th day of November, 1921, of one Albert S. Kennedy, then sales representative of your orator with headquarters at Hartford, Connecticut, and employed the said Kennedy as sales representative of the said defendant with headquarters at the same place; on or about the 20th day of November, 1921, of one Harry H. Schuldt then sales representative of your orator in

and about New York City, New York, and employed the said Schuldt as sales representative of the said defendant in and about the same place; on or about the 17th day of November, 1921, of one Harold Scarth, then sales representative of your orator with headquarters at Detroit, Michigan, and employed the said Scarth as sales representative of the said defendant with headquarters at the same place; on or about the 15th day of November, 1921, of one John H. S. Skoning, then sales representative of your orator with headquarters at Chicago, Illinois, and employed the said Skoning as sales representative of the said defendant with headquarters at the same place. That pursuant to the said plan or scheme the defendants attempted to procure the resignation as sales representative of your orator of various other sales representatives of your orator and attempted to employ them as sales representatives of the defendant Kerlow Steel Flooring Co., but so far as your orator is informed and believes, without success, except that while the defendants were not successful in procuring the resignation as sales representative of your orator with headquarters at Pittsburgh, Pennsylvania of one George M. Demorest, the defendants did induce and procure the resignation of the said Demorest's assistant, one Stuart, who had knowledge of your orator's customers and prospects in the district of which Pittsburgh, Pennsylvania, is the headquarters and did employ the said Stuart as sales representative with headquarters at said Pittsburgh of the defendant Kerlow Steel Flooring Co.

22. Your orator is informed and believes and therefore states:

That to effectuate the said conspiracy, plan and

scheme and as a part thereof, the defendants attempted to induce and procure the resignation as employees of your orator of various persons employed at your orator's plant in the said Long Island City, including among others, one Edward M. Kennard, formerly assistant production manager, and now shop supervisor of your orator; one Ernest Livingstone Tarof, formerly chief draftsman and now assistant production manager of your orator; one Paul Leon Price, general manager of your orator; one Clarence Howard Lewis, supervisor of materials and purchasing agent of your orator; one William J. Brown, accountant for your orator; one W. H. Roope, until recently assistant sales manager of your orator; one Louis N. Lumb, machine foreman for your orator; and Arthur J. Cooke, riveting foreman for your orator. Your orator is further informed and believes and therefore states that the defendants attempted to employ for the defendant Kerlow Steel Flooring Co. various persons employed at your orator's said plant, including among others the said Kennard, the said Tarof, the said Brown, the said Roope, the said Lumb and the said Cooke, and that further to effectuate the said conspiracy, scheme or plan, the defendants attempted to employ as advertising counsel for the defendant Kerlow Steel Flooring Co., one Lucius Irving Wightman, who is and has been for several years advertising counsel for your orator.

23. That to effectuate the said conspiracy, scheme or plan and as a part thereof, the defendants have appropriated and adopted a design for ventilating steel flooring which was originated by your orator during the year 1919 and known by the defendants to have been so originated, and which has been and

now is exclusively the property of your orator; that there is no substantial advantage in the said design as compared with the designs regularly manufactured and sold by your orator, although the said design does possess a theoretical or talking advantage in that its purpose was to eliminate the acute angles where bar meets bar and thus to prevent in a greater degree the accumulation of dirt at such angles, but in actual manufacture this advantage is only partially obtained and is practically negligible; that at the time the said design was originated by your orator, your orator made dies for the manufacture of said flooring in the said design and made a sample of the said flooring and has carefully preserved both such dies and such sample but has never manufactured or sold or offered for sale any of said flooring in the said design; that as your orator is informed and believes and therefore states, the defendants have represented to your orator's sales representatives and other employees that the said design is the creation and property of the defendants and that it possesses distinct advantages over the designs of said flooring regularly manufactured and sold by your orator and that by reason thereof your orator would be at a great disadvantage in competing with the defendants.

24. That to effectuate the said conspiracy, scheme or plan as your orator is informed and believes and therefore states, the defendants represented to your orator's sales representatives and other employees that the defendants were possessed of a certain form or kind of die for use in crimping the bars in the process of manufacturing the said flooring which the defendants represented would affect a substantial saving in the cost of manufacture and which the defendants represented could not be used by your orator, whereas,

the fact is that during the past three years your orator has employed a substantially similar die operating upon the identical principle of the defendant's alleged die and that the defendant Bunker, as production manager of your orator, observed the working of the said die and while the defendant Bunker was production manager of your orator, an improvement of the said die was evolved and was used by your orator and has since been continuously used by your orator and such improved die is the form or kind of die represented as hereinbefore stated by the defendants to be their exclusive property and further the fact is that the use of the said improved die does not effect a saving in the cost of manufacture of any appreciable amount per square feet of flooring, as compared with the die heretofore used by your orator.

25. Your orator is informed and believes and therefore states that the defendants, in order to effectuate the said conspiracy, scheme, or plan and as a part thereof, represented to the sales representatives and other employees of your orator, that the defendants were possessed of other improved methods of manufacturing the said flooring which the defendants represented would materially reduce the cost of manufacture. Your orator is not informed as to what any of such improved methods may be, but respectfully shows to this Honorable Court that the defendants are in the possession of no improved methods of manufacturing except those acquired by the defendant Bunker while employed by your orator and developed by the defendant Bunker in your orator's factory, and rightfully belonging to your orator, if any such improved methods indeed exist.

26. That the defendants have done all of the aforesaid acts fraudulently, wilfully and unlawfully and

with the intent to deceive the public and to injure and divert trade from your orator and to take advantage of and obtain the business established and built up by your orator.

27. That by reason of the premises and the fraudulent, wilful and unlawful acts of the defendant as aforesaid your orator has been prejudiced and irreparably injured in its business and will be further irreparably injured unless the defendants are restrained and enjoined from such unlawful acts and from enjoying the fruits thereof, that it has already sustained loss and damage, the amount whereof cannot be stated with accuracy by reason among other things of ignorance of the extent of the computed business carried on by the defendants, and ignorance of the extent of the business carried on by the defendants with your orator's customers and prospects. That your orator's sales have been reduced by the aforesaid acts of defendants and unless the defendants are restrained and enjoined from such unlawful acts and from the enjoyment of the fruits thereof, they will be further reduced.

28. That by reason of the premises your orator is rightfully and equitably entitled as against the defendants to the sole and exclusive use of all the trade information whether or not the same be reduced in writing obtained by your orator at your orator's expense as hereinbefore stated, and in equity and good conscience to protection against all manner and form of fraudulent use thereof.

29. Complainant is without adequate remedy in the Courts at law and therefore prays:

(a) That the Kerlow Steel Flooring Co., Herbert H. Bunker and Walter H. Lown, who are the defend-

ants to this suit may answer this bill of complaint, and each statement therein made.

(b) That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree, as this court may make in the premises.

(c) That the defendants and each of them and all of their associates, salesmen, servants, clerks, agents, workmen, employees, attorneys and each and every person claiming under, by or through the defendants or in any way connected with their business be perpetually enjoined and restrained.

1. From soliciting business from any former customer or customers of the complainant and from soliciting business for steel grating or flooring from any prospective customer with whom the complainant was in negotiation at the time of the termination of the employment of the defendants, Lown and Bunker or at the time of the termination of the employment of any of the former sales representatives of the complainant mentioned in this bill.

2. From making use of any lists of customers, advertising matter or any other information with respect to the business of the complainant and obtained by the defendants or any of their associates, servants, employees or representatives while in the employ of the complainant.

3. From making, selling, or offering to sell steel grating or flooring of any design now or heretofore employed by the complainant in his business and from representing to the public that the defendants or any of them, or any associate or employee of the defendants, possesses any right to manufacture or sell such steel grating or flooring.

4. From making any representation to the public or to any person whatever with respect to the business standing and prospects of the complainant, its business or its product.

5. From interviewing any present employee or agent of the complainant and endeavoring to make him dissatisfied with his employment and to entice him away from the service of the complainant.

6. From continuing to employ in the alleged business of the defendant Kerlow Steel Flooring Company, or any alleged business of any of the defendants, any person in the employ of the complainant at any time within the year preceding the filing of the bill of complaint in this case.

(d) That the damages sustained by the complainant from the activities of the defendants set forth in the bill of complaint may be ascertained and fixed and that the defendants may be decreed to pay the same to the complainant.

(e) That the defendants may be required to account for all profits made by them in their business by the use of any information obtained by them while in the employ of the complainant or by means of unfair competition on the part of the defendants against the complainant; that such profits may be ascertained and the defendants directed to pay the same to the complainant.

(f) That the complainant may have such other and further relief as may be equitable and just.

HAINES & CHANALIS,
Solicitors and Counsel with Complainant.

Arthur F. Egner,
Michael N. Chanalis,
Of Counsel with Complainant.

Complaint

Exhibit A.

Form No. 0-30-5m-4-20 F

IRVING IRON WORKS CO.

CARD INDEX MEMO.

For From Date
Source
Mark Title
Appearance
Firm Enter Under
" Address
Business Prospect For
Saw
See
Phoned
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BT - BY - FE - FR - BM - RN

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To Filing Clerk by Date
Entered by Date

Replication.

IN CHANCERY OF NEW JERSEY.

Between:

IRVING IRON WORKS CO.,
Complainant,

and

KERLOW STEEL FLOORING COMPANY, HERBERT H. BUNKER and WALTER H. LOWN,
Defendants.

} On Bill, etc.

The complainant joins issue on the answer of the defendants Kerlow Steel Flooring Company, Herbert H. Bunker and Walter H. Lown.

HAINES & CHANALIS,
Solicitors of Complainant.

Answer.

IN CHANCERY OF NEW JERSEY.

Between:

IRVING IRON WORKS CO.,
Complainant,
and
KERLOW STEEL FLOORING COMPANY, HERBERT H. BUNKER and WALTER H. LOWN,
Defendants.

On Bill, &c.

The answer of the defendants Kerlow Steel Flooring Co., Herbert H. Bunker and Walter H. Lown.

These defendants, answering the bill of complaint, say that:

1. Paragraphs 3, 16, 17, 20, 22, 26, 27, 28 and 29 are denied.

2. Paragraph 2 is admitted except that it is denied that since 1916, complainant has been exclusively engaged in carrying on the business of manufacturing and selling fire-proof ventilating flooring, except for isolated transactions, and defendant alleges that until 1919, complainant's business was largely in other lines; it is also denied that complainant is in high repute and it is also denied that it is favorably known to users and prospective users of its products or that its business methods are sound.

3. Paragraph 5 is admitted, except that it is denied that complainant pays commission due to its sales representatives on the tenth day of the month following receipt of payment for the shipment. On the contrary,

defendants show and allege that it is complainant's custom to hold up and delay such payments and to quibble and quarrel with its sales representatives over the amounts they claim to be due.

4. Paragraph 6 is admitted, except so much thereof as is contained within the words "from the outset" in the second sentence thereof and "over and throughout the entire period of years from the commencement of your orator's said business to the present time" in the fifth sentence thereof, which is denied.

5. Paragraph 18 is denied, except that it is admitted that on or about March 17, 1921, the defendants did cause to be organized under the laws of New Jersey a corporation known as Kerlow Steel Flooring Co., for the actual purpose of manufacturing a ventilating steel flooring in competition with complainant and with all other makers of flooring, whether steel or otherwise; that the word "Kerlow" was coined as alleged in said paragraph and that the defendants Bunker and Lown hold the offices in said corporation alleged in said paragraph.

6. So much of paragraph 19 as is contained within the words, "That the defendant Lown had acquired knowledge of your Orator's customers and prospects while employed by your Orator as Assistant Sales Manager as aforesaid and that while so employed by your Orator the defendant Lown caused to be made up from Orator's records in your Orator's office a duplicate list of your Orator's customers and prospects with their addresses" is admitted; the balance is denied.

7. Paragraph 21 is denied, except that it is admitted that Madden, Moser, Kennedy, Schuldt, Scarth and Stuart were employed by defendant Kerlow Steel

Flooring Co. as sales representatives at the places mentioned.

8. Paragraph 23 is denied except that defendants admit that they have adopted, manufactured and sold a steel flooring of a design far superior to that of complainants, that they have represented it as their creation and property and said defendants allege that said representations so made by them are true.

9. Paragraph 24 is denied, except that defendants admit that they have represented to divers persons that the Kerlow Steel Flooring Co. is possessed of a die for use in crimping bars in the process of manufacturing said flooring which does and will effect a substantial saving in the cost of manufacture, and that the said complainant could not use said die and said defendants allege that said representations so made by them are true.

10. Paragraph 25 is denied, except that defendants admit that they have represented to divers persons that the defendant Kerlow Steel Flooring Co. is possessed of many improved methods of manufacturing flooring, which do and will materially reduce the cost of manufacturing, and said defendants allege that said representations so made by them are true.

WM. HUCK, JR.,
Solicitor for Defendants.

Case.

IN CHANCERY OF NEW JERSEY.

Between:

IRVING IRON WORKS,
Complainant,

and

KERLOW STEEL FLOORING CO.,
Defendant.

Transcript of testimony taken in the above-entitled cause before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Tuesday, October 10, 1922, at 10 A. M.

Appearances:

Mr. Arthur F. Egner, Mr. Michael N. Chanalis, of Haines & Chanalis, and Mr. Stephen Bell (of the N. Y. Bar) for complainant.

Mr. William Huck, Jr., and Mr. Edgar R. Kraetzer for defendant.

WALTER E. IRVING sworn for complainant.

Direct-examination by Mr. Egner:

Q. Where do you reside? A. Glenbrook, Connecticut.

Q. What are you by profession? A. I am a civil engineer.

Q. What was your education? A. I graduated from the Rensselaer Polytechnic Institute, at Troy, New York.

Q. What year? A. 1896.

Q. You are president of the Irving Iron Works? A. I am.

Q. And also general sales manager of that company? A. Yes.

Q. By whom is the stock of that company owned? A. Very largely by myself.

Q. Who is the general manager of the concern? A. Paul Leon Price.

Q. When was that company formed? A. That company was formed in 1907.

Q. What was the business of the company during the first years of its existence? A. During the first years of its existence—I might state that company was formed in 1907, but I started in business in 1902. In 1907 we incorporated, and even at that time our business was the regular business of structural ornamental iron work.

Q. You say before 1907 you did business under your own name? A. Under my own name.

Q. How considerable was your business when you started? A. The first year it was about—the total volume of business was about $10,000.

Q. You started in a small way? A. Yes, and by 1907 it had reached, perhaps, sixty or seventy thousand dollars a year.

Q. When did you first begin to manufacture a grating similar to the grating which is known as the Irving subway, which I hold in my hand? A. We first began to manufacture a grating similar to that in about 1908, and then about 1910 we began to manufacture a grating similar to—in fact, almost identically the same thing; in about 1908 we were manufacturing a grating where the straight bars and the reticulated bars were all of the same depth. That grating was used through the Center Street subway ventilation chambers.

Q. New York City? A. New York City. And in about 1910 we manufactured a grating for use over the ventilation chambers of the subway, where the reticulated bars were of less depth than the straight bars, and that is in accordance with that sample that you have shown there.

Q. Did you secure a patent covering the structural features and the design of this type of subway which you have just described?

Mr. Huck: I object to the question; we do not admit that he has both a mechanical and a design of patent.

The Court: I will let the question be answered, subject to the patent or printed copy being produced.

A. Yes, sir.

The Court: Let it be noted that the witness is to produce at the next session, if he can, either the patents themselves or letters patent or printed copy of the same, and counsel consent that the printed copy may be used instead of the original.

Mr. Egner: I offer these two samples of the subway grating. I offer, first, Type E, one-inch grating.

Marked Exhibit C1.

And the other, Type G, three-quarters.

Marked Exhibit C2.

Q. The first use which you say was made of this type of grating was in connection with the ventilation chambers, or over the subway? A. Yes.

Q. At that time, Mr. Irving, what use, if any, was made of the type of grating of this character, other

than for ventilating purposes over such chambers? A. Absolutely no use; there wasn't any such thing before that time, before 1908.

The Court: You mean there was no grating of any design?

The Witness: Yes, plenty of grating, but of the parallel bar type.

The Court: Only?

The Witness: Only.

Q. At the time you evolved this design, Mr. Irving, what other kinds of grating, if any, were there on the market? A. There were the old-fashioned parallel bar type of grating, made of a set of parallel bars punched with a few holes and strung on a rod or some pipe separators in between. There was a type of grating that was also spoken of as the loose and rattling kind, which you could only wheel across in one direction, and slide across in either direction—a grating that baby carriages or buggies or wheelbarrows couldn't wheel across without going through and getting into trouble—the same type of grating that women would not walk on with their French heels, and so forth. There were, of course, at that time things called a grating, sometimes of cast iron, similar to grates in furnaces and so on, but they could not be used to any appreciable extent for flooring or anything of that sort.

Q. And these types of grating that you mentioned were used generally for what purposes? A. They were used generally for areaways, and in extreme cases for runways or walkways in certain boiler plants, and so forth, where it was absolutely necessary, where the most important thing of all was the ventilation, and where walking or rolling or wheeling on them

didn't amount to anything; they did rarely, however, use straight bar gratings.

Q. What additional advantage did your type of grating have over these types which were known at that time? A. The great advantage of our grating is that it really is more than a grating, it is a flooring, and that is the big idea that we discovered shortly after we began to put this grating into the subway.

Q. What is your definition of a flooring? A. I made a definition of flooring; my definition of a flooring is this—something over which you can walk and roll and wheel equally well in all directions; that is a definition of a floor. That is a good definition of a floor, and when you add the words, "without tripping" and "without danger of slipping," then you define a good floor, and that is exactly what Irving subway is. I had to think that out, of course, to put over this big idea of a ventilating flooring. Anybody could think of a ventilating flooring, because floors heretofore had always been something solid; every floor was solid, no matter what it was, if it was a floor; if it was a grating, it was a grating—a miserable thing; but if it was a floor, it had to be solid, so that engineers the world over got to thinking of floors as being something solid. There is no reason in the world why they should think of them as something that was solid.

Q. That was the general thought at that time? A. Yes, that it must be something solid.

The Court: In the engine room on steamboats they have these grate floors?

The Witness: They do now, but they didn't then.

Mr. Kraetzer: Before when?

The Witness: Before we got them out.

Mr. Huck: When was that, please?

The Court: 1907, didn't he say?

The Witness: In 1908, and we patented this (indicating) in 1912.

The Court: This type was first manufactured—this second type which has been marked in evidence—in 1910, and patented in 1912; but prior to that in 1908, some types somewhat resembling but not exactly like that was manufactured by this company?

The Witness: Yes.

The Court: Prior to 1908, no such grating as this was used for floor purposes?

The Witness: No. Prior to 1912, too.

The Court: But you conceived your idea as to the possibilities in the year 1908, did you not?

The Witness: No, I did not. I did not conceive the idea as to the great possibilities in 1908. This was when we were making these gratings for the Center Street subway.

The Court: They were for ventilating purposes rather than flooring?

The Witness: Yes.

The Court: That is the distinction you make?

The Witness: Yes. The gratings which have been put in for ventilating from time immemorial were in bulk, quite a little, but they didn't amount to a hill of beans to the amount they would have used for flooring. Take the greatest section you ever looked at, it has to be four feet wide by fifty to have 200 square feet. Take a small room 10 by 20, it will have 200 square feet. If you can get an order for all the floors of a building all the way up, in some sort of a building that requires ventilation for humidity, or for soap, tar and grease or turpentine to go through, you get an enormous quantity of them, so that the point is

that in flooring the amounts are tremendous, whereas in the ordinary type of grating, the ordinary grating uses are very small.

Q. Will you mention some of the uses to which this type of flooring can be put, to which the old kind of grating, ventilating grating which you described, could not be adapted? A. That flooring can be used in any place whatsoever where they want a perfectly smooth floor, that is, absolutely non-slipping, that is easy to walk upon, and to roll upon and to wheel upon, in all directions, and where there will be any advantage whatsoever in letting something up or something down. It doesn't make a particle of difference what it is, so long as there is a desire of the plant management to allow something to come up and something to go down; it is perhaps better understood by sticking to the word "ventilation" or "light" or "heat" or something like that, but our biggest uses, our very largest uses have been in cases where it wasn't to let ventilation out or to let light down, but where it was to let something else up and down. For instance, one of our recent jobs, a very large one, isn't for any of those things, but for humidity, for humidifying tobacco.

Q. Where is that? A. In Winston-Salem, North Carolina.

Q. What kind of a manufactory? A. Tobacco.

Q. How many feet of your flooring is there in there? A. In the neighborhood of 130,000 square feet.

Mr. Kraetzer: Is that in there now?

The Witness: Yes.

Q. Has that job been completed yet? A. No, we are working on it.

Q. How much is specified? A. About 130,000

feet; I might explain that where as I have been calling these floors down there in Winston-Salem, they are really not floors, they are shelves; the height is only seven feet, just a little bit more than the man and just a little bit more than the hogshead that they roll in. If they didn't use something of that sort, these things what we call floors now would be nothing but crevices.

Q. At the time that you conceived your idea, would any other engineer have designed or proposed a work such as the tobacco plant you just mentioned—would he have, with the then stage of knowledge of flooring and grating?

The Court: How does he know?

Q. Was anything of that kind known at that time?

The Court: Was it in use or on the market?

The Witness: About that time, in 1908, I think it was; there was a sweat house put up where they used the old type of grating; I have seen that thing; that was very unsatisfactory, for just the reasons I have stated.

Mr. Kraetzer: I think he has answered the question.

The Court: Yes.

Q. What effort did you make in the beginning, in the first years that you conceived this idea to make your idea known among manufacturers and architects and engineers generally in the United States? A. The very first effort—big effort, was a trip around the United States.

Q. In what year? A. That was in 1916; before that we had advertised somewhat in these trade pa-

pers that have been mentioned, such as "Sweet's Architectural Catalogue"; we had advertised in those, and we had sent out numberless circular letters, and a few little advertising cards, and so forth, and we had begun to develop quite a little business locally.

The Court: Did you continue and have you continued in the manufacture of these floors and gratings from 1900 on up to the present time?

The Witness: Yes.

The Court: And still so engaged?

The Witness: Yes, we did nothing else for quite a few years.

The Court: You have given up your other lines?

The Witness: Yes, absolutely.

Q. Did you keep a scrap book of those various advertising pictures of yours? A. Yes.

Q. And have you those scrap books here? A. Yes.

Mr. Egner: I would like to offer these in evidence in their chronological order.

Mr. Kraetzer: What is this, a chronology of his advertising campaign?

The Court: Yes, and of the management of his business and the use of this type.

Mr. Egner: This shows the amount of money we have spent in endeavoring to educate the country.

Q. What book does the first period cover?

The Court: Describe the book.

The Witness: That is a scrap book.

The Court: Containing what?

The Witness: Everything in the advertising line that I could think of in those days, when I was doing it pretty much.

The Court: Advertising issued and published by you or at your expense, I mean, or your company's expense?

The Witness: Yes.

The Court: Relating to these gratings and floorings?

The Witness: Yes, and in the early part relating to a few other things that we were attempting to put across, too.

The Court: And it runs from what period?

The Witness: It runs from approximately 1911 to —

The Court: To when?

The Witness: It runs back approximately to 1921.

Book marked Exhibit C3.

The Witness: I would like to correct that, to say until approximately in 1918, I did a few isolated things which have been slipped in there.

The next book runs from about January, 1919, to about July, 1920.

Marked Exhibit C4.

And the next book runs from July, 1920, to about December, 1921.

Marked Exhibit C5.

And the next one from January, 1922, to September, 1922—to date.

Marked Exhibit C6.

Q. That is your current scrap book? A. Yes.

Q. I show you a book containing a series of photographs; what are those photographs? A. These are photographs of different installations.

Q. Made by your company? A. Made by our company.

The Court: Between what dates?

The Witness: From the start of the thing—

The Court: To date?

The Witness: As a flooring proposition and manufacturing proposition.

The Court: Which would be some time after 1910?

The Witness: Yes, sir, that would be probably from about 1914 or 1915 to date, but it is not all installation—just a very, very few.

Q. It doesn't represent all? A. No.

Q. But it does represent installation? A. Yes.

Q. And each picture is an installation? A. Yes, and it is an album, too, that we give each one of the agents.

Q. Did you have those albums manufactured or put up in that form prior to 1921? A. Oh, yes, sir, for years.

Q. And in the hands of your agents? A. Every one of them.

Q. Including the agents in question in this suit? A. Every one of them.

Book of photographs offered in evidence and marked Exhibit C7.

Q. In addition to the advertising that you have mentioned, what other efforts did you make to acquaint the public with the possibilities of this type of flooring? A. Beginning in 1916 I started taking trips around the United States myself, touching the principal cities and principal engineers and principal industrial plants. I didn't know, but I thought the thing was as good, as it has since turned out to be, and I

found on the very first trip I ever took that you couldn't go right out and get orders; you couldn't go right out and find a list anywhere that would possibly result in orders; the only way to do it was to go and preach the gospel of that thing to the people who could use it at some time. They didn't conceive of anything like an open floor; they had walked over the subway, many of them, thousands of times, and they didn't realize that it was anything more than a grating, but by calling their attention to it in different ways—for instance, telling them, "This you see is a plate; it is a solid plate, only it is wide open. This, as you see, is an air cool plate—speaking in the parlance of the present time. This, you understand, is something over which you can walk, wheel or roll in either direction," and he would say to me, "Why, gracious, that is great; why wouldn't that be good stuff to use so and so, in our so and so rooms," mentioning terms where I didn't know what it meant, but he knew some place where he had theretofore used something solid, and he was tickled to death to find something that was perfectly smooth, and yet wide open for some purpose, to let something up and down. I returned from that trip, and there wasn't one single order that accrued from that trip, within a year and perhaps two years, but inside of two years if you put pins in the map where I got orders, you could plot that trip just as nice as anything. Then with that knowledge, I said, "We will have to have men, and call them missionaries, and put them out to preach the gospel of this thing; not to sell, because if they can only preach the gospel of it to the engineer, and he sees what it is, when he gets ready, when he makes an addition, when he builds a new plant, then he will use it." Of course, I realized, too, at that time, that in the interim, between the

preaching of the gospel to him—between his being converted to it and the time when he would use it, he would have to be kept alive to it, and that was the object in the meantime of starting these card indices, and getting these different agents to send in these card index memorandums, which were to be put onto the card index, so we would keep him alive with literature all the time between the time of his being converted and ordering.

Q. You say that in the beginning this so-called missionary work was done by you actually? A. Yes.

Q. When did you begin to have assistants in that line? A. I began to have assistants from the year 1916, and in fact, somehow or other, I think that I had one assistant in 1915, but I cannot say for sure; the first one was George Westerfield who came to our place, who saw the front page ad. in Exhibit C3. The first ad. we ever put in anything was in the "Engineering News Record"; he saw that and he came up from Houston, Texas.

Q. You hired him as an agent? A. Yes.

Q. Was he followed by others? A. Yes, he was followed by Mr. Demorest, who is here today from Pittsburgh.

Q. What was the original basis upon which you hired these agents? A. These two agents were hired on a strictly commission basis.

Q. Commission or salary? A. Commission, those first two.

Q. Were they followed by others? A. They were followed by others.

Q. And on what basis? A. There was a step in between that I would like to tell you.

The Court: Go on.

A. (Continuing.) Those agents were all right to locate in those particular cities, but this missionary work which had to be done in between—so we go to work and hire a number of young men to go out as free lances—or not exactly free lances, but to go out and preach that gospel wherever it was necessary to do it; we hired several men.

The Court: I suppose while they were preaching, they were incidentally seeking orders?

The Witness: No, sir; at that time the thing was so different from what ordinarily obtains, that we didn't even give them the prices. I knew that the thing to do was to preach the gospel, because nobody knew of it; any more than your Honor knew of it today.

The Court: I have seen it and walked on it.

The Witness: That is just exactly the way with the engineer; we hired these young men, and for a time we didn't give them any prices; Mr. Price is here to confirm that. We just had them preach the gospel.

Q. Did you pay them a salary? A. Yes, we paid them a salary and travelling expenses. Then after a while after Mr. Lown came here, we took some of these men and at his suggestion, put them into a contract on a salary basis.

The Court: You say when Mr. Lown came here; you mean when he entered the employ of your company?

The Witness: Yes.

The Court: When was that?

Mr. Egner: I am coming to that.

The Court: Then strike out my question.

Q. After Mr. Lown came, you put them on a salary and commission basis? A. Yes, some of them, and some more we took on all over the country at a straight ten per cent basis. You can get all of them you want.

The Court: Strike that out.

Q. What was the greatest number you ever had employed on a salary and commission? Salary, commission or any basis—missionary or whatever you called them. A. Counting Butte, Montana, and Birmingham, and places where they didn't get any business at all, we might have had as many as thirty-five or forty—Salt Lake City and places like that.

Mr. Huck: At what time was this?

The Witness: Just about the time that Lown left, in June, 1921.

Q. In June, 1921, however, Mr. Irving, how many agents were there in the territory from which you got the great bulk of your business? A. Just those agents that they went after.

Mr. Kraetzer: I move to strike that out.

The Court: It is not responsive to the question.

A. There were six or seven.

Q. Would those six or seven men have seventy-five per cent? A. Ninety-five per cent.

Q. Every endeavor in the field was represented by those six or seven men? A. Yes.

Q. And that was the situation in 1921, in June? A. Yes.

Q. Have you prepared a statement showing the amounts of money expended by your concern in the

last four years, in connection with the selling end of its business? A. Yes, sir.

Q. I show you two sheets of paper and ask you what those figures indicate? A. Those indicate the selling expenses from 1917 to the time that this thing happened in 1921.

The Court: Which thing happened?

The Witness: This conspiracy.

Q. From the time Mr. Lown left your employ? A. No, from the time they hired the first man.

The Court: That doesn't tell me anything. Give me the date.

The Witness: From January 1 to November 30, 1921.

The Court: Strike out everything that characterizes the period, and let the two dates stand.

Q. And also indicates the figures for the years 1917 to 1920, inclusive? A. Yes.

The Court: Figures for what? Selling expenses of your business?

The Witness: Yes.

The Court: Which was exclusively during that period, the sale of these floors and gratings, or this grating flooring?

The Witness: Yes, with possibly a slight exception in 1917 or 1918—isolated exceptions.

Mr. Egner: I have had this prepared from the books; it will be quite a job to offer the books.

Q. Who prepared this statement? A. Our auditor, Mr. W. J. Brown.

Q. From the books of the company? A. Yes.

Q. And the books are accessible to counsel, if desired? A. Yes.

Mr. Kraetzer: I think if we have any elucidation to make, we will bring out the condition.

The Court: They are admitted conditionally; that is, if you desire, to have access to the books and also to have the auditor produced here in order to examine them.

Mr. Kraetzer: That will be very satisfactory to us.

Mr. Egner: I offer, first, the statement for the years 1917 to 1920, inclusive.

Marked Exhibit C8.

I also offer statement for the year 1921, down to November 30, 1921.

Marked Exhibit C9.

The total for 1917 is $21,000.

The total for 1918 is $57,000.

The total for 1919 is $81,000.

The total for 1920 is $107,000.

And a part of 1921 is $91,000.

That consists of the items of salesmen's salaries; which in the year 1920, the last full year, was $37,000; commissions $20,000; miscellaneous salesmen's expenses, $14,000; advertising, $13,000; samples, $1,000; experiments &c., $3,000; freight and express, $13,000; postage and legal expenses making up the rest.

The Witness: Those are the first legal expenses we have ever had.

Q. You have now told us about employing these

agents; what was the method by which the agents communicated to the home office their activities? A. They communicated entirely, if they did what they were ordered, through these things that are known as C. I. M.'s, which means card index memorandums. Those card index memorandums had on them—

Q. I show you a series of card index memoranda; is that what you mean? A. That is.

Q. How were they termed, shortly; by what abbreviation? A. C. I. M.'s.

Q. The series which you hold in your hand are a series from what agent? A. They are very few of Mr. Joseph Madden's.

Q. Where was his agency? A. In Philadelphia.

The Court: I notice you have a number of these here, apparently bound in some form, which is a memorandum from each agency, separately bound?

The Witness: Until it gets too bulky, and then we made another one.

The Court: They are all kept separate from the other agency?

The Witness: Yes. This that you see before you and this one are the card index memoranda of Scarth only.

The Court: Where is Scarth?

The Witness: He is located in Detroit.

Mr. Egner: At this time, and as a sample, I should offer in evidence the series of C. I. M.'s from the agent Madden, of Philadelphia.

The Court: And reserve the right to offer the others, if necessary?

Mr. Egner: Yes.

Marked Exhibit C10.

Q. Mr. Madden is one of the agents who went with the Kerlow Company? A. Yes.

Q. When these C. I. M.'s were received at the home office what was done with them? A. A condensed copy of the C. I. M.'s was put onto one of the index cards of the company to which the C. I. M. referred.

Q. And what classification of cards did you have? A. We had classification arranged as follows: "Best," was the highest classification; "Bully," "Fine," "Fair"; "Bum" and "Rotten," for the two we did not care to keep.

The Court: Would that indicate that the prospect was good, or fair, or bully, as you described it?

The Witness: Yes, as a prospect; not financially.

The Court: Just as a prospect of making a sale?

The Witness: Yes.

Q. What, if any, classification did you observe as between customers and prospective customers? A. The prospect or prospective customers we kept entirely separate from the customer; when a prospect became a customer, then he went over into the customer file and remained no longer in the prospect file.

Q. It contains a report respecting a customer or prospective customer on the C. I. M.? A. Yes, and they gave the man the rating.

Q. That is this characterization that you speak of? A. We didn't start off that way, but we found out there was so much duplication of the same words.

The Court: And so you adopted that code?

The Witness: Yes; we had a "best," but "bully" was a little less worse than the "best," and the "fair" and the "fine." Some got just a little tickler every month, and some of them got it every week or so, depending on their prospect rating.

Q. Did you visit these agents' offices from time to time? A. Yes, many times.

Q. Do you know whether they kept copies of the C. I. M.'s?

Mr. Kraetzer: I object; he is not in a position to testify from his own knowledge about the practice maintained by those agents.

The Court: I will receive it.

A. Yes, I do know.

Q. Did they keep them, Mr. Irving? A. They did.

Q. And did you see them in those offices? A. Yes.

Q. On the occasions of your visits? A. Yes.

Q. And did you give any instructions with respect to retaining copies of the C. I. M.'s? A. To Mr. Lown.

Q. What were the instructions which you gave? A. That they must keep a carbon copy of it.

The Court: Did you see such copies on your visits?

The Witness: Yes, sir.

Q. Have you samples here of the cards with respect to customers and prospective customers, taken from your filing cabinet? A. Yes.

The Court: One of which would do, with the privilege of offering all on either side, if you need it.

Q. What kind of a cabinet did you keep these in? A. We kept them in a cabinet that had these drawers, some of them five or six or seven stories high.

Q. And approximately how many cards did each drawer hold? A. I made a diagram of the cabinet and I know about how many cards there are, and I could divide it.

Q. Give us an estimate as to how many of these cards there were in your filing system in 1921. A. In the neighborhood of twelve or fifteen thousand of the prospects, and three or four thousand customers.

Q. And they contained the information taken in condensed form from the C. I. M.'s? A. Yes, there were sixty-six drawers like that.

The Court: You have given approximately the total from the records; I don't care for the detail.

Q. I show you a series of cards and ask you are these some of the cards to which you refer? A. They are.

The Court: With respect to prospects and customers?

The Witness: Yes.

The Court: I should think one of each would be enough, unless you need them for some special purpose.

Mr. Egner: I would like to offer these—there are not many—merely to show your Honor how these C. I. M.'s came, and I offer them as one bunch, consisting of envelope containing same.

Marked Exhibit C11.

Mr. Kraetzer: Are they customers or prospects?

The Witness: These are all customers; they were prospects, but they have become customers.

Q. Do I understand that when a prospect becomes a customer, his card is taken out of the one drawer and put in the customers' series? A. Yes.

The Court: They are admitted in that form on the condition that if counsel on the other

side desire all of them to go in, they may be produced or offered, or any part of them.

Mr. Egner: The reason I am offering these is that they indicate the character of the work done. For instance, I pick out at random one here is the firm of Westinghouse, Church, Kerr & Co., indicating that in 1910 a sample wedge was sent and that some cards were sent; then sent a sample to Mr. Stolle—mentioning all these different names, and showing how during all this series of years continual effort was made with that concern.

The Court: As I gather it, then, the history of the Irving Company's relations with the customer or the prospect is disclosed on these cards?

The Witness: Yes, sir. It is incorrect, though, that we started in 1910. That was simply a wedge then. That didn't mean the entering wedge on this thing. That was before we had gotten entirely into this.

Mr. Kraetzer: Let us understand very clearly. Mr. Irving said that this card refers to wedges; what he said was, that the reference to wedge, under date of 1910, had nothing to do with this grating situation; it was another matter; he thinks that if Mr. Egner reads on to about 1910, he will come to the relation between the company.

The Court: From 1912 is the first reference on that card to the relation between your company and this concern relating to grating, is that right?

The Witness: Yes.

The Court: And the history of your relation since that date is carried on the card or cards?

The Witness: Yes.

The Court: And that is illustrative of all the other cards in your set?

The Witness: Yes, and the first order was received in—

The Court: I don't care about that; the cards speak for themselves.

Mr. Egner: It also shows the subsequent history; it shows when orders were taken and what was done about them.

Q. And that is true of each one of the cards? A. Yes.

Mr. Kraetzer: The suggestion was made at the time that the exhibit was offered, to the effect that upon request, access would be given, because these are merely samples.

The Court: They are not samples so much as illustrative or examples.

Mr. Kraetzer: That access would be given to the whole file?

The Court: If you need it for the purpose of this case; not for any other purpose, of course.

Mr. Kraetzer: We are going to take issue with the statement that the customers—so we may understand each other—I understand a customer is someone who has actually purchased grating.

The Court: Is that your meaning of the word?

The Witness: Yes.

The Court: A prospect is one who may likely become a purchaser of grating?

The Witness: Yes.

Mr. Kraetzer: We should like in some way, and we hold ourselves subject to your Honor's suggestion on this score—to make a check up, or audit of the sale with regard to the identity of the particular persons of these three or four thousand actual customers.

The Court: What is your purpose in that check-up?

Mr. Kraetzer: Because of the statement the witness has made that they consisted of three or four thousand, and our information is to the effect that they were considerably less than that.

The Court: How much less?

Mr. Kraetzer: To the extent of—I should say our figures approximate about ten per cent or a little more.

The Court: Three or four hundred as against three or four thousand. If there is any such discrepancy, I will direct Mr. Irving to produce the entire register of customers.

Mr. Egner: I don't think we should at this moment make any agreement as to showing our private records.

The Court: They will not have access to anything they are not entitled to, except for the use of this case. If it is necessary for the use of this case, that you should have that information, I will let you have access. If it is not, you will not get any information from their concern, any more than I intend that he shall have information from yours.

Mr. Kraetzer: When we come to our case, it may expedite matters, if we have that in-

formation in such form—I submit that that information may be obtained in any way that your Honor will suggest.

The Witness: I may be wrong on that. I said that there were four or five thousand customers. I guess that isn't right.

The Court: Don't guess; take your time. The question is, how many cards, such as have been shown to you, and have been offered as examples here, have you of customers who have purchased from your concern at any time these gratings?

The Witness: I think that there is about 1,300, if my memory serves me now; I don't know how I happen to have four or five thousand.

The Court: Do you wish now to let the matter stand?

The Witness: The prospects I think I am about right.

Q. They are estimates? A. They are both estimates.

The Court: You can count them by tomorrow morning.

Mr. Egner: We will supply that.

I offer in evidence the catalogue gotten out by the Irving Company in 1916, 1919 and 1921.

1916 catalogue marked Exhibit C12.

1919 catalogue marked Exhibit C12a.

1921 catalogue marked Exhibit C12b.

Q. Is the 1921 catalogue the last issue? A. Yes.

Q. Mr. Irving, coming back to the subject of the employment of Mr. Bunker, when did he first come

with you? A. He came with us, as I remember, in around about 1912 or 1913—the records will show that.

Q. I am asking for your general recollection. A. About nine years before he left.

Q. And in what capacity did he come in the beginning? A. He came as a draftsman.

Q. About how old was he at that time? A. He was about twenty-three or twenty-four years old, I should say.

Q. What positions did he fill from time to time? A. He filled the position of draftsman and finally became head draftsman; after that he became production manager, and then assistant to the manager.

Q. Assistant to the manager? A. Production manager also.

Q. And production manager? A. Yes.

Q. What was his function as production manager? A. He had entire charge of the production at the works; he was also over everybody except the manager and myself.

Q. Who was the manager? A. P. L. Price.

Q. To whom did he report? A. He reported to Mr. Price.

Q. And through whom were your instructions and those of Mr. Price communicated to the factory? A. Through Mr. Bunker.

Q. During the time of his employment with you, what were your personal relations with Mr. Bunker? A. The most pleasant relations.

Q. Did he ever visit at your home? A. He did, and went camping with me, and slept in the same tent and drank out of the same bottle; they were the most pleasant relations.

Q. What, if any, discussions did you have with him with respect to your business policies and the future of your business during this time? A. We discussed business a great deal of the time.

Q. Did you have any reserve in your discussions with him? A. Anything I done I took him into my confidence almost that I had, and trusted him.

Q. When did Mr. Lown come with you? A. He came about twenty-two months before he left in June, 1921.

Q. On what basis was Mr. Bunker compensated, salary or commission? A. He was compensated with a salary.

Q. How much was he receiving at the time he left? A. His salary was $70 a week.

Q. In addition to salary, was any other compensation ever paid? A. In addition to salary Mr. Bunker had a bonus, for four or five years before he left, a bonus that always increased, and started in, in the neighborhood of $200, and wound up with $2,300, which he received for the two years previous to the year he left.

Q. That much in each year? A. That much in each year; that is all, except Christmas presents.

Q. You say Mr. Lown came with you about twenty-two months before he left? A. Yes.

Q. In what capacity? A. He came as a sales manager, under me.

Q. You were the general sales manager? A. I was the general sales manager.

Q. About how old was Mr. Lown when he came with you? A. I don't know for sure, but I think he must have been in the neighborhood of twenty-five, twenty-four.

Q. He was a young man? A. Yes.

Q. What were your relations with him—your personal relations with him? A. Quite as friendly as with Mr. Bunker.

Q. And did he ever visit at your home? A. He certainly did; not only visited my home, but wanted to visit at my home, and wanted to do the things that I did, and he has hung onto one end of the plow and I hung onto the team, and he loved to plow and loved to do this. He had formerly been working for Davis, the tree man, and he loved to get back on the farm and do those things, so he would go out with me and do them.

The Court: On your farm?

The Witness: Yes, wore my overalls and underclothes and everything else; most friendly. There was never anyone that I thought more of than I did him, nor no one that I ever had higher regard for; no one whose ability I thought, if properly directed, would ever be any greater than his.

Q. What salary was he receiving when he left? A. He was receiving $2,500 a year, I think.

Q. Did he get any bonus? A. No, he hadn't any bonus up to that time; he hadn't been there long enough.

Q. When were you first informed by either Mr. Bunker or Mr. Lown that they expected to leave your employ; who went first? A. Mr. Lown went first.

Q. And when was it that he first informed you that he would leave you? A. He came into my office.

Q. When was it first? Fix the date approximately. A. I think late in April or May, around the first of May, early in the spring of 1921.

Q. Tell us what conversation you had with him at that time? A. Lown came into my office and said, "I

have got something I want to tell you about; I don't know how to get it out of my system. You know I think the world of you and I think the world of Mr. Price, and I think this business hasn't scratched the surface yet, and when I came here, I came here to make it my lifework, and intended to stay here all my life, but," he said, "I have had an offer, and the lure of much money is too much for me." He said, "I have been extravagant, too, and I needed money, and I have got used to using money, and I am not getting but about $2,500 a year here, and this offer is one where I get $7,500 a year at once to start on, and with a prospect of as much as $15,000 before the end of the year." I asked him where it was, and he said it was selling bonds; it was a bond house, and he was going to be the general manager of sales.

Q. Did he mention the name of the house? A. He did, he said the name was Rosevelt & Company. I said, "I have never heard of it," but I wasn't particularly familiar with bond houses, anyway; he said this was a house that had once been a dandy, but it had gone to seed, but the young folks who had the money that the old folks made, had become of age and were getting so they wanted to go back into business, and they were going to get into that business and were going to put it on its feet again and make it one of the leading bond houses in New York; and he said he knew some one down there that he had a pull with, and they had fixed it so he would get this offer of $7,500 a year for a starter. "Now," he said, "I hate to take it, and I don't know whether I ought to take it or not, and I have come to you for advice, what would you say?" I told him, of course, that it was entirely up to him, and then I told him what I had told him before, how much I thought of him and how

sorry I was to have him leave, and all that, and told him also of what happened to me when I was in a similar case, and finally wound up by saying if I were he, and the conditions were exactly as they are, I don't believe I would think of leaving the Irving Iron Works for the difference between $7,500 and $2,500, because his prospects were so bright. "Well," he said, he couldn't stand that strain of that difference in money, and he said, "I will quit." He said, "I am glad I have got that off my mind; I know I am making a fool of myself to do it, but I am going to do it."

Q. How long after that was it that he actually resigned? A. Shortly after that; I was going out on a trip to Detroit to put on a man there, and Mrs. Irving was very ill with pneumonia, and the very Sunday that I was to start, which was either the fourteenth or fifteenth or thirteenth, around about in there—it was a Sunday when she had her worst day, and terribly bad just before that, and I had called up Mr. Lown at his house and made arrangements for him to take my place to go.

Q. That was after he had told you he was going to resign? A. Yes.

Q. And for what purpose did he go? A. He went out there to appoint an agent. I came down from Glenbrook to New York and met him at the station, and his father was there, and that is where I first met his father and became acquainted with him, and I handed over my tickets and my reservation and my money, and he went out to go to Detroit.

Q. And at Detroit did he engage an agent? A. He engaged a man by the name of Scarth.

Q. And he is one of the agents who is now employed by the Kerlow Company? A. Yes.

Q. At that time did he say anything about his having begun his duties with Rosevelt & Company? A. You mean when he went out on the trip?

Q. Yes, at that time. A. No, I don't think he did, but he had prospectuses which he showed me, indicating that he was back and forth down there, and told me how this business was working and how it—

Q. That is the bond business? A. Yes, but I don't think I understood it, but how you could go down there without any money, and if you had a friend and there was some subscription being offered, that friend in that company would take a block for you, and if they went up, you clipped the difference, and if they didn't I don't know what happened. I told him I didn't think much of it; I never had done much down there myself.

Q. Did he, at that time, say anything about any profit he had made in that business? A. No, that was later.

Q. When he came back from Detroit, did he endeavor to get in touch with you? A. Oh, he came back from Detroit, he came right to the office. Before he went to Detroit he asked us if we would like to have him advertise and put on a man in his place. He said he would stay on and break the man in just as long as it was necessary. He acted, of course, like he always had acted, one of the very finest you could possibly imagine; he said although he was anxious to get to Rosevelt's and anxious to get into this $7,500 business, nevertheless he would stay there just as long as we wanted him, until he got a man that was better than he. He was just that character of man, and so I said we were tickled to death to have him do it, and he did; he advertised for a man and he told us that he had interviewed a lot of them, and finally

he introduced one of them that he had interviewed, and he said, "This man is a better man than I; he is a Harvard graduate," and this and that and the other "and he has got the idea right straight through, and I will stay here awhile with him, and I will go back, if necessary, and I will do whatever I can to make him fill this niche better than I did," and he introduced this man. This man's name was Roope.

Q. Do you know his first name? A. W. H., I think. I am not sure of that, though.

The Court: When he went to Detroit, had you selected Scarth to be your agent there?

The Witness: No, he selected Scarth.

Q. Did you know Scarth before he went on the trip? A. Yes, we knew of him through previous agents.

The Court: Had you sent him out to employ Scarth?

The Witness: Oh, no; he was to go out there and get an agent by different methods.

The Court: It was left entirely to his option?

The Witness: Yes.

Q. But at the time he went Scarth was a possibility to your knowledge? A. Yes.

Q. After he came back did you endeavor to get in touch with Mr. Lown at Rosevelt & Co.? A. After he came back from the trip, he came to the office and reported, as I said, on Scarth, and also gave this man who took his place some attention and time.

The Court: Who did take his place?

The Witness: Mr. Roope, the man named, whom he engaged.

Q. And that was when; that brings us to what

month? A. I think he engaged Roope before he went out to Detroit.

Q. When he came back, was what month? A. That was in May—the latter part of May.

Q. And was that when he severed his relations with your concern? A. He severed his relations about the first of June. To be exact, I think June 4th, around the first of June, but he told me about this, what he was going to do, perhaps the very first of May, or the very last of April.

The Court: Before he severed his relations with you, had he disclosed to you in any way that he had participated in the organization of a company in New Jersey in March, 1921?

The Witness: I should say not.

Q. After you saw him upon his return from Detroit did you endeavor to get in touch with him through Rosevelt's Company? A. Yes.

Q. And in what way?

Mr. Kraetzer: I object on the ground that it is incompetent, because of the fact that the witness is going to tell us something—

The Court: How do you know what he is going to tell you?

Mr. Kraetzer: Because I have his statement in an affidavit presented—

The Court: I will overrule it.

A. I called up Rosevelt & Co. on the telephone and asked for Mr. Lown.

Q. Did you get Mr. Lown at that time? A. I did not.

Q. Did you, thereafter, see him again? A. I did.

Q. Did you have any conversation with him with respect to your endeavor to get him at Rosevelt & Co.? A. Yes.

Q. What was that conversation? A. He said that I hadn't called up the right man; that if I wanted to get him there, I would have to call up a man by the name of Beaver.

Q. Did he say anything about the nature of his work at Rosevelt & Co.? A. No, I don't think at that time, but I saw him again—

Q. As to whether it was confidential or what? A. When I called up Beaver and couldn't get him there at all, then I took him to task for that again, and he laughingly said, "Well, I swear I forgot to tell you what I should have told you, that my work there is of a confidential nature, and the boys that know that I am there wouldn't tell you that I was there."

Q. Why did you want to get in communication with him at this time? A. The first time I called up, someone in the office wanted to get some real information from him.

Q. And the second time?

The Witness: I would like to ask Lown if he would like to have me tell why; if he does not—

The Court: You will answer the questions. Why did you call him the second time?

The Witness: Way previous to this, a prospect, not a customer, in the south, wanted something, and he couldn't get that at his club, I guess, and he wrote us and he wrote and asked me if I could get it.

The Court: What are you talking about; liquor? There is no need of being mysterious about it.

The Witness: Yes, and Lown saw the letter, and he could get it anywhere; he could get it here, and

there and elsewhere; he had someone who ran a cigar store that had thousands of cases of it, and it was so wonderful, and it was cheap, and we would have no trouble in getting it.

The Court: It was in connection with that, that you called him the second time?

The Witness: Yes.

The Court: It had nothing to do with your business?

The Witness: No, sir.

Q. Did you talk to him, when you had this conversation, about your inability to get him? A. Yes.

Q. At the time of that conversation did he tell you about what success he was having at Rosevelt & Company's? A. Yes, that was at a restaurant in New York, when I came over there to speak to him about what this man from Lynchburg had written up, and I wanted to get this thing cleaned up. I wasn't buying this stuff or delivering it.

Q. What did you say about what happened? A. He said everything was going fine. He told me, even, that the day before he had made $1,400 in one lump, and he also told me at that time, and that dinner in Mendel's, he said, "Mr. Irving, you met my father, you met him at the station; he has given me hell about—at least two or three times about my leaving you; he said I should stay with you, and you know pretty soon I am going to make a trip all around the United States, just about the same kind of a trip that you have been making, I am going to the same towns, I will probably hit all those towns that you hit, and if I do, I will see some of those agents." I said, "Go ahead and see them all, that will be fine; I would like to have you see them." He said, "Cer-

tainly, that will be all right, because it is kind of sealing the bond between us, so to speak, if I go there."

Q. And did he tell you why he was going out there to these towns? A. Yes, to see agents for Rosevelt & Company, of which he was to be the general manager, and these agencies were to be established somewhat the way ours were.

Q. On any of the occasions that you met Mr. Lown after he left you, was Mr. Bunker in the party? A. Yes, sir.

Q. When was that? A. At the time of the Chemical Exposition; I think it was in September of last year, when this same man from Lynchburg was up, and this same question hadn't been settled yet; this man from Lynchburg said, "Well, why can't you get Lown to come and meet me at the Engineers Club and have this out?" He said he delivered so many bottles here and so many bottles there, which amounts to so much, and, "if he will only give me the check for the difference, I will be through with the darn thing"; I called up Lown and found I could get him at his house; I said that was the only way I could get him, because he was around at banks all the time, and I got him anyway and made this arrangement at the Engineers Club. On the way from my office to the Engineers Club's office, I stumbled onto Bunker somewheres between our shop and 42nd Street—whether in the subway on this side or the other side, I don't recall.

Q. Was he still in your employ? A. Yes, and I said, "Hello, Bunker, where are you going?" I said, "I am going to lunch, you come along with me." He said, "Where are you going?" I said, "I am going over to the Engineers Club. Lown is going to be there." He said, "I don't want to meet that fellow,"

as though he hated him, and I was his boss, of course, and figuratively, dragged him on. I took him over to the Engineers Club, and Mr. Mount and Lown and Bunker and I sat at that table, and Bunker scolded Lown the whole meal, and Lown and Mount and I, of course, talked about this nefarious liquor business.

Q. When did Mr. Bunker first discuss the possibility of his leaving you? A. About the latter part of September.

Q. And did he talk to you or Mr. Price? A. He talked to Mr. Price first.

Q. And then to you? A. Then to me.

Q. And what talk did you have with him? A. I had very little talk and he left. Before he left, this Roope and one Taroff got up a farewell subscription —jade cigarette holder and silver cigarette box, for which I put up the balance.

Q. To be presented to whom? A. To Mr. Bunker, the partner of Taroff, who is still with me.

Q. Was he a partner? A. He is their new partner now.

The Court: Don't confuse me. You put your own comments too much on it. Let me have the information I want. To whom were you to present this holder?

The Witness: We presented this holder and this cigarette case to Mr. Bunker.

The Court: When?

The Witness: On the occasion of his leaving.

The Court: And that was when?

The Witness: About the first of October.

Q. Before he left, had anything been said about his being sick and needing a vacation? A. Oh, yes.

Q. And had he had a vacation? A. He had.

Q. For how long? A. He had been away about ten weeks.

Q. With pay or without pay? A. With pay.

The Court: You said to Mr. Egner the first time Bunker spoke of leaving was the latter part of September, when he spoke to Mr. Price.

Q. Who gave him the vacation, you or Mr. Price? A. Mr. Price gave him the vacation.

Q. So he didn't speak to you personally about leaving until— A. September, no.

Q. Don't tell what Mr. Price told you, but tell us what happened at the conversation you had with Mr. Bunker in September, just prior to his actually leaving.

The Court: I understood he said he had none prior to the leaving, but he had one after the leaving.

Q. But you didn't have any talk with him before he left, about his leaving? A. Not any considerable talk of any moment; I spoke to him about how nice it was that—of course, I was there at the presentation of these tokens of esteem and confidence, &c., and on the way down I told him how nice it was and how nice it must make him feel to have that presented from everybody.

The Court: Had he told you prior to the presentation of these gifts, why he was leaving?

The Witness: Yes, he had told me on account of his health; entirely on account of his health.

The Court: When did he first tell you that?

The Witness: He probably told me that ten days before he left.

Q. You say he left about October? A. Yes, October first.

Q. Was that conversation prior or subsequent to the luncheon at the Engineers' Club? A. That was after the luncheon at the Engineers' Club.

Q. Did he ever tell you that he was going to engage in some other business of any kind? A. No. Prior to leaving, you mean?

Q. Yes. A. No, sir.

Q. After he left did you meet him again? A. I did.

Q. How long after? A. Maybe two or three weeks after.

Q. Did you lunch with him? A. I did.

Q. And did you have any discussion about your own business? A. I did.

Q. What was said about that? A. Everything, just the same as on other occasions; he asked all about the business; he offered to come over and help if he possibly could; he would like to come over and help; he would do anything at all, just the same as he always had done, and willing to do anything, and one of the best in that respect that you could ask for. He asked me what jobs we were getting, what jobs we were having, and I told him.

Q. Did you ask him anything about what his future would be? A. I certainly did.

Q. What did you say about that? A. I asked him hadn't he thought of anything that he was going into, or what was he going into; my object was to get him, perhaps to take an interest in the concern called the W. Irving Forge, which is an artistic sort of a concern, in which he would work well, and in which he was very much interested.

Q. Did he have artistic ability? A. Very artistic, and I thought if we couldn't have him with us over there in the iron works, at least we could have him over at the W. Irving Forge, and that was a thing that he would like, and he wouldn't get nervous. His illness that he said he had was of a nervous nature, very nervous.

The Court: Did you suggest that he connect himself with the Forge Company?

The Witness: Nothing doing; the only thing that he would possibly do was to get his health. He had quite a little money he had saved up, as indeed, I knew he had, and that all he would do would be to just try to keep his health; he would rather have his health without money than ill health with all the money in the world.

Q. What was the first intimation of any character whatever that you had that Mr. Lown and Mr. Bunker had formed a new business—a grating business? A. The first intimation was the latter part of October, when this fellow Roope, who had taken Lown's place as sales manager, came back from Manhattan and said that he—

Mr. Kraetzer: I object to what Mr. Roope said.

The Court: You first learned from him about this company. Is that what you were going to tell me?

The Witness: No; I cannot say I learned about this company—the first intimation I had of anything like that—

Mr. Egner: I first asked him when was the first intimation he had from any source.

The Court: He said the latter part of October.

The Witness: Yes.

Mr. Egner: That was from Roope?

The Witness: I cannot say at this time what he said. I hadn't connected him up with the conspiracy.

Q. You say that was the latter part of October? A. Yes.

Q. When did you first have any information from either Bunker or Lown about the new company? A. About the middle of November.

Q. From which one? A. From Bunker.

Q. Where was that? A. That was in my office.

Q. Just tell us that conversation. A. Bunker came over to my office ostensibly to talk about an alleged invention of his, which I knew wasn't, and he knew wasn't, too, because he asked—

Q. Tell us the conversation. A. He wanted to know if I would agree not to interfere with this claim of his for this invention of this block die—a form of die.

Q. Did he tell you why he didn't want you to interfere? A. He wanted to get a patent on it himself, and he showed me that someone out in Jersey, some sheet metal man, had told him that it was perfectly wonderful for something; that he said he didn't know himself what it was, and he couldn't figure out why it was so valuable, but those things did happen, and inasmuch as if I wouldn't block it, he could get the patent on it.

The Court: Why did he fear that you would block it?

The Witness: Because it wasn't any invention of

his; it had been used in our shop for years when he was production manager.

Q. What I am driving at is, when he first told you that he and Lown were going into the grating business? A. It was at that time.

Q. What did he say on that? A. He said: "You know what business Lown and I are in?" And I said, "No." He said, "Yes, you do," and I said, "No, I don't," and he out with a card out of his pocket and laid it on the table, and there was the card, "Kerlow Steel Flooring Company."

Q. Is this the card (indicating)? A. No; it was a business card.

Q. You say that was the first intimation you had? A. No; I didn't say the first intimation.

The Court: The first knowledge from either Bunker or Lown; he had intimation from Roope in October, he said.

The Witness: Yes.

Q. What did you say about that when he gave you the card?

The Court: You may offer it later, if you want it.

A. I rang Mr. Price's buzzer and had him come in.

The Court: Do you recall what was said on the card?

The Witness: It was a regular business card, Peerless Steel Flooring Company, of the Church Street address.

Mr. Egner: We will offer that later.

Q. Did Mr. Price come in? A. Yes, Mr. Price came in while Mr. Bunker was there.

Q. What did you say? A. The substance of it was, "Look at that; just look at your friend; look at the man you made your assistant; just gaze on him; look at him; what do you think of him? He and Lown are in business together. That is the reason that Skoning has resigned; that is the reason that Moser has resigned," and he said, "I guess I am black; I might as well get out." I said, "Yes, get out."

The Court: You guessed he was black?

The Witness: He said, "I guess I am black; I might as well get out." I said, "Yes, get out."

Q. And that was all the conversation you had? A. Yes.

Q. You have just mentioned the resignation of several of your agents? A. Yes, sir.

The Court: He has mentioned two.

The Court: Where were they representing you, in what towns?

The Witness: The two I mentioned, Skoning was representing us in Chicago, and Moser was representing us in Cleveland.

Q. I show you four papers, Mr. Irving, and ask you, are these the contracts which were in existence in 1921, between you and Messrs Moser, Skoning, Scarth and Madden? A. Yes.

The Court: As representing your company in these different places?

The Witness: Yes.

Q. And they were representatives, respectively, Moser in Cleveland and vicinity; Madden, in Philadelphia and vicinity; Scarth, in Detroit, Michigan, and Skoning, in Chicago and vicinity? A. Yes.

Mr. Egner: I offer these contracts in evidence.

Skoning's contract, Chicago and vicinity, marked Exhibit C13.

TERRITORY: Chicago and vicinity.

OFFICE: You to maintain an office or desk room in our name in the City of Chicago, Ill., locality subject to our approval, and have our name on the door and in the telephone directory.

EXPENSES: All expenses to be paid by you with the exception of 50% of cost of maintaining the above-mentioned office, which will be paid by us.

CREDIT: You to receive credit as per terms under heading of COMMISSION as per the following:

FULL CREDIT: On all work brought in from the above territory through your individual efforts.

ALL OTHER CASES: Our judgment.

SALARY: You to receive a salary of $100 a month, payable semi-monthly.

COMMISSION: You to receive a commission of four per cent in addition to the above-mentioned salary, as per heading CREDIT. All commissions will be due and payable on the tenth of the month following month in which customer pays us.

DURATION: Contract for agency to be for one year from date and may be cancelled by written notice from one to the other. Credits to remain in force for sixty days from the time the contract is cancelled.

CREDIT CLAIMS: The standard record of the IRVING IRON WORKS CO. (The Card Index Memorandum Blank) to be the only basis in case of claims for credit in dispute, or in event of any other contingency arising, and the sole register of your activity in our behalf.

HANDLING PROSPECTS: We reserve the right to deal direct with any prospect in this territory no matter how, where or what the source, if you are handling or not handling the proposition in such a manner that we feel your chance of getting the business is being jeopardized. In event of our finding it necessary to deal direct with the above-mentioned prospects, no commission will be payable to you and the contract will be automatically cancelled.

ORDERS: All orders subject to our acceptance at Long Island City, N. Y.

CANCELLED ORDERS: You waive all claim to commissions on cancelled orders.

PROMOTION & MISSIONARY WORK: You agree to promote and thoroughly introduce IRVING-SUBWAY products throughout the allotted territory, to fill out our standard C. I. M. on all prospects interviewed and to abide by the policies of the company in dealing with prospects and customers.

CO-OPERATION: We will co-operate with you to the full in working up prospects and settling orders satisfactorily. After your capability for handling this line and worthiness of its representation has been proven, we will refer to you all inquiries and requests which we receive from your territory.

Satisfactory

JOHN H. S. SKONING.

J. M. Madden contract, Philadelphia and vicinity, marked Exhibit C13a.

(C13a same as C13.)

Harold Scarth contract, Detroit and vicinity, marked Exhibit C13b.

TERRITORY: City of Detroit, Mich., and vicinity.

OFFICE: You to maintain an office or desk room in the City of , locality subject to our approval, and have our name appear on the door and in the telephone directory.

EXPENSES: All travelling and other expenses to be paid by you.

COMMISSION: You to receive full commission on all work brought in from the above territory through your individual efforts.

In all other cases you to receive partial commission, full commission or no commission, as in our judgment you have earned.

Full commission is as follows: On all business during the contract period to the amount of forty thousand dollars' worth, ten per cent. On all amounts in excess of forty thousand up to and including one hundred thousand five per cent. On all amounts in excess of one hundred thousand, three per cent.

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All commissions will be payable and due on the tenth of the month following month in which customer pays account to us.

DURATION: Contract for agency to be for one year from date and may be cancelled by written notice from one to the other. Credits to remain in force for sixty days from the time contract is cancelled.

CREDIT CLAIMS: The standard record of the IRVING IRON WORKS CO. (The Card Index Memorandum) to be the only basis in case of claims for credit in dispute, or in event of any other contingency arising, and the sole register of your activity in our behalf.

HANDLING PROSPECTIVES: We reserve the right to deal direct with any prospect in this territory no matter how, where, or what the source, if you are handling, or are not handling, the prospect in such a manner that we feel that our chance of getting the business is being jeopardized. In event of our finding it necessary to deal direct with the above-mentioned prospects, no commission will be payable to you and contract will be automatically cancelled, credits and all.

ORDERS: (Same as C13.)

CANCELLED ORDERS: (Same as C13.)

PROMOTION & MISSIONARY WORK: (Same as C13.)

CO-OPERATION: (Same as C13.)

Satisfactory

HAROLD SCARTH

May 9th, 21.

J. A. Moser contract, Cleveland and vicinity, marked Exhibit C13c.

(C13c same as C13.)

Mr. Egner: These are the originals.

Q. In addition to these agents, whose contracts we have just offered, there were other agents with whom you had no written contracts, were there not? A. Yes.

Q. You have mentioned something about agents having resigned; what is your recollection as to the first of the agents from whom you received a resignation? A. The first one was Skoning, of Chicago.

Q. Was that in writing? A. In writing.

Q. Is this the letter you received tendering his resignation? A. Yes.

The Court: What is the date of it?

The Witness: Dated October 20, 1921.

Mr. Egner: Any objection to my offering it?

Mr. Kraetzer: No.

Mr. Egner: I offer it in evidence.

Marked Exhibit C14.

IRVING IRON WORKS CO.

STRUCTURAL STEEL AND ORNAMENTAL IRON

Third and Creek Streets, Long Island City, New York

518 Peoples Gas Bldg.
Chicago, Ill.
October 20, 1921.

Mr. W. E. Irving,
% Irving Iron Works Co.
3rd & Creek Sts.
Long Island City
New York

My dear Mr. Irving:

I wish to inform you that after long and due consideration I have decided to accept an offer, made to me, in the aeronautical business. I am therefore asking you to accept my resignation, to take effect as soon as it will be convenient for you to place another man in my place. I am eager to be able to start on my new undertaking by the first of this next month.

I do not want you to look upon me as a drifter and to feel that because business is coming in slowly and just a bit hard to get, that I am following the lines of least resistance. It has been very hard for me to make this decision, inasmuch as I have all the faith in the world in your product and organization, and suffice it to say, I have never met a man that I admire more than you.

As you undoubtedly know I have been fighting along for what business there has been here in Chicago, living in hopes of the break, and have found that this has cost me more than I have been making.

Inasmuch as business that I can do much better with my new connections, I know your advice would be to accept that which will personally benefit me.

If you wish I will locate the best man I can find for you and break him in, so that it will not necessitate sending anyone on from the east.

Trusting that I may hear from you at an early date, that I may act in accordance.

With kindest regards and best wishes, I am Sir,

Sincerely yours,

JOHN H. S. SKONING.

The Court: Is it offered for any other purpose than showing the date of the resignation?

Mr. Egner: Also his failure to disclose what he was expecting to do.

Mr. Kraetzer: As to the reason stated by counsel, that his purpose in offering this letter is for the purpose of showing that Mr. Skoning did not disclose, as counsel has stated, his real purpose in resigning, I must respectfully object to that, on the ground that it is not binding as against these defendants, no connection having been shown.

The Court: It may be connected; if it is not, your objection will be very well taken.

Mr. Egner: I suppose if the paper is in for any purpose, it is in for any proper purpose.

Q. Did you about that time, also your company, receive a letter from Mr. Moser, the agent at Cleveland? A. We did.

Q. Resigning? A. Yes, sir.

Q. Is this the letter of resignation? A. Yes.

Mr. Egner: I offer it in evidence.

Marked Exhibit C15.

The Court: What reason does he assign for resigning, if any?

Mr. Egner: This letter was written to Mr. Roope.

10

———

Cleveland, Ohio.
10/31/21

My Dear Mr. Roope:

Owing to circumstances, and conditions in general, all of which you, yourself, are no doubt familiar with, it has become necessary that I look to other fields for more profitable returns.

20

Therefore, although with sincere regret, I shall ask the Irving Iron Works Co. to accept my resignation effective between the tenth and fifteenth of November, 1921.

There are at the present time a couple of prospects for Irving Subway, in the finishing, which may some future time require attention, until completed. If satisfactory to you, I shall follow up and make reports as usual.

30

Awaiting your reply, along with disposition of equipment now in my possession, and with kindest personal regards to Mr. Irving, Mr. Price and yourself, I am

Cordially yours,

J. A. MOSER.

413 Engr's Bldg.

40

P. S. For your information, and at the request of Mr. L. L. Marshall, office space will be no longer available at 413 Engr's Bldg.

Q. Where was that office in Cleveland? A. That address you just read.

Q. Had you visited that office? A. I don't think I personally had been in the office up to that time.

Q. At the time that you received the Skoning letter, had you heard from Bunker as to his new business? A. Oh, no.

Q. And at the time you received this Moser letter, did you know what the new business was? A. No, sir.

The Court: It was about the middle of November that Bunker disclosed his relation?

The Witness: Yes.

Q. Can you fix that date any more definitely than that? A. It must have been around the middle of November, or a little ahead of it, perhaps.

Q. At any rate, are you positive that you received these two letters which I have just read, before you had that information? A. Yes; I am.

The Court: He said when he called Price in, he said, "That is the reason that you resign."

The Witness: Yes.

Q. I show you a letter from A. S. Kennedy, who is he? A. He was our Hartford, Connecticut, agent.

Q. Is that his letter of resignation? A. Yes.

Q. Bearing date November 5, 1921? A. Yes.

Mr. Egner: I offer it in evidence.

Marked Exhibit C16.

The Court: What reason does he give, if any?

Mr. Egner (reading):

"25 Gillett Street,
Hartford, Conn.
November 5th, 1921.

Mr. Walter E. Irving,
Irving Iron Works Company,
Long Island City, N. Y.

My dear Mr. Irving:

I hereby wish to tender my resignation from the Irving Iron Works Company to take effect November 20th.

I received an offer which promised better possibilities for the present as well as future, which I naturally accepted.

My association with the Company has always been a pleasant one and I am sorry that conditions are not such that I could continue to be part of the 'Subway' organization.

With best regards, I remain,

Yours very truly,

A. S. KENNEDY."

Q. Did you about the same time receive Mr. Scarth's resignation? A. I did.

Q. Is that it? A. It is.

Q. Under date of November 15th, 1921? A. Yes.

Mr. Egner: I offer that in evidence.

Marked Exhibit C17.

(Reading):

"Detroit, Mich., Nov. 15, 1921.

Irving Iron Works Co.,
3rd & Creek Sts.,
Long Island City, N. Y.

Gentlemen:

Our Contract dated February 15th, 1921, under the paragraph 'Duration' states, 'Contract for Agency to be for one year from date and may be cancelled by written notice from one or the other, credits to remain in force for sixty days from the time contract is cancelled.' Please accept this as such written notice and in full accordance with the above clause.

Yours faithfully,

H. SCARTH."

Q. Did you about the same time receive from Mr. Madden his resignation, under date of November 15? A. I did.

Q. Is this it? A. It is.

Q. There is some lead pencil writing on that; that was not there at the time you received the letter? A. No, sir.

Mr. Egner: I offer the typewritten part, not the lead pencil.

Marked Exhibit C18.

(Reading same):

"Philadelphia, Pa., November 15, 1921.

Irving Iron Works Company,
Long Island City, N. Y.

Gentlemen:

I am tendering herewith my resignation as Sales

Representative, in charge of the Philadelphia District, same to take effect November 30th, 1921. This is as per clause in contract between you and the writer.

I am to be given credit for all bookings for a period of sixty days after November 30th, as per contract. Payments of same are to be made on the 10th of month following the month payment is made by the customer, as also called for in the contract.

In reference to the desk and chair, in which we are both partners of ownership, I wish you would let me know what you would like to do in disposing of same —whether you wish to purchase my share, or whether you would care to sell your share of this equipment to me.

Kindly let me know what you would like to have me do with all other equipment I have belonging to you.

I am resigning from your organization owing to the fact that I have a better financial arrangement with another concern.

Trusting you will let me know about the desk and other equipment which I have at an early date, I remain.

Yours respectfully,

J. M. MADDEN."

Q. Did you at the same time receive a letter from John Ertel, the landlord of the Philadelphia office? A. I did.

Q. Is that it, dated November 15, 1921? A. Yes.

Mr. Egner: I offer it in evidence.

Marked Exhibit C19.

(Reading same):

"Received
Nov 17 1921
Irving Iron Works Co.
Constable

JOHN ERTEL

1039 Real Estate Trust Building

S. E. Cor. Broad and Chestnut Streets

Philadelphia, Nov. 15, 1921.

Irving Iron Works Company,
Long Island City, N. Y.

Dear Sirs:

You are hereby notified that it is my desire that you vacate desk space in Room No. 1039 Real Estate Trust Bldg., Philadelphia, Pa., for which room I am holder of lease, to take effect November 30th, 1921.

I have also notified the telephone company to discontinue the listing of your concern, as of the above date.

As no lease or agreement has been signed by you or Mr. Madden, I consider this sufficient notice.

Yours truly,

JOHN ERTEL
Per B. J. M."

Q. Do you know where the office of the Kerlow Company is in Philadelphia? A. That same office.

Q. The same suite of rooms? A. The same room.

Q. At the present time? A. Yes.

The Court: Do you know how long it has been there?

The Witness: It has always been there.

The Court: Since your lease was terminated they took possession?

The Witness: Yes.

Q. Who is their agent in Philadelphia? A. The same Joe Madden.

Q. In addition to these agents whose written resignations I have read, did any other agents resign about this time? A. Yes, sir.

Q. What agent? A. Mr. H. H. Schuldt, our New York agent, the Manhattan agent, and that is the only one I can think of just now.

Q. How did he resign, orally or in writing? A. He resigned orally; he resigned shortly after Thanksgiving, as I remember it, because I recollect that he came into the office the night before Thanksgiving which was on Thursday and asked—

> Mr. Kraetzer: I object to any statement of what the person Schuldt may have stated to the witness, on the ground that it would not be binding against the defendant.
>
> The Court: He is now resigning or is going to state the resignation; he may state his reason why he did it, if he gave any; I will receive it.

The Court: What did he say?

The Witness: He said he wanted to be off until the following Monday to take a trip up the river, and he was allowed to go, and on the following Monday when he came in, and his payment for that day was given him, he said he was through, that he was going to quit; by that time we knew that everyone that quit was going to Kerlow, and we asked him where he

was going, and he admitted that he was going with the Kerlow Company.

The Court: Do you know if he has since represented the Kerlow Company?

The Witness: Yes, sir.

Q. These agents whose names have been mentioned covered territory in which you received approximately what per cent of your total business? A. The agents who left, we received approximately seventy-five per cent of our total business through this big success.

Q. You have made that estimate from your books? A. Yes, sir, from our books.

Q. In addition to territories covered by these agents who have just been mentioned, what other important territories were there which your company served; what other localities that you consider of importance? A. In addition to these?

Q. Yes. A. The most important one was the Pittsburgh territory and Milwaukee territory.

Q. How about Boston? A. And Boston, too.

Q. Who was agent in Pittsburgh? A. Our agent in Pittsburgh was George M. Demorest.

Q. Is he at present your agent there? A. Yes; he is our agent there.

Q. And did he have an assistant at that time? A. He had an assistant by the name of Wallace Stewart.

Q. Do you know what Mr. Stewart is doing now? A. He is representing the Kerlow Steel Flooring Company.

Q. In Pittsburgh? A. Yes.

Q. Who is your agent in Boston? A. B. A. Prince.

Q. He is still with you? A. Yes.

Q. Who was your agent in Milwaukee? A. A. T. Vonier.

Q. Is he still with you? A. Yes.

Q. During the latter part of November was there any demonstration like a strike at your plant in Long Island?

Mr. Kraetzer: I object on the ground that it is not binding on the defendant.

The Court: It would be if you started it, wouldn't it?

Mr. Kraetzer: Yes.

The Court: I will receive it.

A. Yes; there was.

Q. What was it? A. This man Roope, whom Lown had put in his place, started in one day—so he told me; I did not hear it—

Mr. Kraetzer: I press my objection, on the ground that it is not relevant.

The Court: Go on and tell it; if it is not relevant, I will strike it out. Go on.

A. (Continuing.) In his office he had gathered together the men and he said, "Come on, boys, let us all go on a strike. If you are afraid to talk, I will talk; we will go out into the shop and we will take the whole damn crowd away." That was reported to me by Mr. Brown. I immediately called Roope in and confronted him with it. Mr. Brown was standing in my office, looking out of the window. Roope at first denied it absolutely, and Brown wheeled around and he said, "Roope, you know you lie; you know you did just that." Mr. Roope then admitted that he did.

The Court: What did he say?

The Witness: He admitted that he had tried to incite the bookkeeping department, the sales department,

and what little of the works was left there, to go out and leave the place, characterizing it by a filthy epithet.

Q. Did you then discharge him? A. Immediately.

Q. Do you know if he had any connection with this Kerlow Steel Flooring Company?

Mr. Egner: We will develop that a little later.

A. Why, certainly; he was planted there.

The Court: Strike it out, unless you know he was.

The Witness: I know it.

Q. How do you know he was? A. He told me that he knew of the Kerlow business from the time he got there; that he played cards at Bunker's house, or Lown's, a week or two after he was put in there.

Q. Entered your employ? A. Yes, and that word Kerlow was mentioned to him.

Q. When did he make that statement to you? A. Just before I bounced him.

Q. When did you discharge him? A. On the moment.

Q. When was it? A. I think about October 25th.

Q. Was it before or after you knew from Bunker about the formation of his new company? A. It is hard to keep them chronologically—no, that was after Bunker let me know definitely.

The Court: What was after? That Roope told you he knew all about it?

The Witness: Yes.

The Court: Within a week or two after he entered your employ, is that what you mean?

The Witness: Yes.

New Jersey State Library

Q. And he entered your employ when? A. He entered our employ about a week or two or three before Lown left; Lown broke him in.

The Court: June 4 he said he left.

The Witness: Yes.

Q. He entered your employ sometime in May? A. Yes.

Q. And I understand that this strike incident occurred about the middle of November? A. About the middle of November. All those things all came up at once.

Q. And at the time that you discharged him was when he told you that he played cards at Bunker's house? A. Yes, and he also told Mr. Bell that in my presence later, at a conference; he agreed to it, or admitted it.

Q. He is your lawyer? A. Yes.

Mr. Kraetzer: May I renew my motion to strike out the testimony of Roope's—

The Court: If it is not connected, it will have no significance in regard to the conspiracy. I will let it stand for the present. If it is not connected before the case closes, I will strike it out.

Q. I show you a card purporting to be issued by the Kerlow Company.

Mr. Egner: Will that be admitted as one of your cards?

Mr. Kraetzer: Yes.

Mr. Egner: I offer it in evidence.

The Court: It is admitted to be a card of the defendant company?

Mr. Kraetzer: Yes.

Marked Exhibit C19a.

Q. The grating which is indicated on that card is of this type which I hold in my hand? A. Yes, sir.

Mr. Egner: I offer that in evidence for identification.

Marked Exhibit C20 for identification.

Mr. Egner: May I in lieu of this offer a photostatic copy? This is an original which has been marked in the interference proceeding, and for convenience I would like to offer the photostatic copy.

Mr. Kraetzer: If the Court will permit me to state, because I now have confronting me the photostat, the fact that the photostat viewing down at right angles, or from a direction at right angles to the plane of the grating itself, or surface of the grating, does not adequately represent the fact that the bars in the sample submitted are of different depth.

Mr. Egner: That will be admitted that it is so.

The Court: And that is the fact?

Mr. Egner: Yes, no objection to that.

Photostatic copy marked Exhibit C20.

Mr. Kraetzer: It is quite important that we should know that there is now being presented before the Court the identical exhibit that was presented in the patent suit.

Mr. Egner: I so state, and it appears on the exhibit marked.

Q. Mr. Irving, did you ever see this before, the original exhibit in the interference proceeding, of

which photographic copy has just been marked Exhibit C20? A. Yes.

Q. And when? A. Since 1917.

The Court: That identical piece of metal?

The Witness: Yes, that identical piece of metal, just exactly as it is.

Q. Where was it made up in 1917? A. Made up in our shop.

The Court: Actually made in your shop?

The Witness: Actually made in our shop.

Q. And under whose direction was it made? A. Made under the direction of A. C. Davis, the production manager at that time, from a drawing made by H. H. Bunker, the head draftsman at that time, and made on these dies that are right there.

Q. And what is this piece of metal that I show you? A. That is what they call a templet, or form, or gauge from which the workman made one of those dies down there.

Q. Those are the dies here in court? A. Yes.

Q. I have here an original die and original templet, and they have been brought, have they, from the possession of the Irving Iron Works? A. Yes, sir; they have been in the possession of the Irving Iron Works ever since they were made in 1917.

Q. And were they used in connection with the making of the sample which has been marked Exhibit C20? A. The sample was made with them.

Mr. Egner: I offer, first, in lieu of the original, a photostat copy of the templet.

Marked Exhibit C21.

Mr. Egner: I also offer, next, a photostat copy of the die, in lieu of the original.

Marked Exhibit C22.

Mr. Egner: The original of both having been marked as exhibits in the interference proceedings.

Mr. Kraetzer: May it appear also on the record, that in so offering the photostatic copies the identical originals that have been referred to, are in the view of the Court, having been brought here from, I presume, the office of the Master in the interference proceedings in the patent case.

The Court: Let that appear upon the record.

Recess.

After recess.

Mr. Kraetzer: May I ask one thing? May I ask that these four books that are now on the table be impounded in the possession of the Court until such time as we reconvene?

Mr. Egner: I have two engineers here, who are here at some inconvenience, and in the interim, may I offer these two announcement cards as to the fact that Mr. Lown and Mr. Bunker are with the Kerlow Steel Flooring Company?

Mr. Kraetzer: No objection.

The Court: Do I understand you both (Huck and Kraetzer) represent all of the defendants?

Mr. Kraetzer: Yes.

Mr. Egner: I offer in evidence announcement card sent out by Mr. H. H. Bunker.

Marked Exhibit C22a.

The Kerlow Steel Flooring Company

50 Church Street
New York

Announce that
Mr. H. H. Bunker

formerly Assistant Manager of The Irving Iron Works Co. is now associated with them as General Manager.

Mr. Kraetzer: Sent out by the defendant company.

Mr. Egner: With respect to Mr. Bunker, and a similar card in connection with Mr. Lown. Marked Exhibit C23.

The Kerlow Steel Flooring Company

50 Church Street

New York

Announce that
Mr. W. H. Lown
formerly Sales Manager for The Irving Iron Works Co. is now associated with them as Sales Manager.

Q. Mr. Irving, there has been offered in evidence here a die, photostatic copy of which has been marked

Exhibit C22; that die consists of two parts, does it not? A. Yes.

Q. Was each part of that die of one solid piece? A. Yes.

Q. Did you in the Irving Iron Works make use of any modification of that kind of a die, or any improvement on it? A. Yes, sir, but not for this particular shape.

The Court: And the die you used, each part is of one piece, and there are two parts to it?

The Witness: Yes.

Q. Do you use a similar kind of die for your own type of grating which you manufacture and sell? A. Yes.

Q. Did you in that Irving Company make any improvement or any change in the kind of a die? A. Yes, sir.

The Court: In the kind shown on this exhibit which you have in your hand, Exhibit C22?

The Witness: Yes, sir.

Q. Or a similar one, which you used in connection with the Irving subway? A. Yes, sir.

Q. And what did that improvement consist of? A. That improvement consisted of—right at this point—

The Court: What point are you designating?

The Witness: At point marked A on the exhibit, and two points, each marked B. We found on our dies that we used to manufacture, the grating that we have sold and produced the most of—we found that they naturally wore at the corners of A, and also at the corners marked B, and we conceived the idea of inserting in here after that wear—

The Court: At these corners?

The Witness: No, right over the whole face of it, so that it would take up the corners, a little block.

Q. Inserted at A and B a little block? A. Yes, inserting at A a little block, and inserting at B and B a little block; milling the point A and the two points B for the insertion of that first little block; the idea being to bring back the sharp edge of the edges, and it developed naturally that that little block, when it wore out, could be turned completely around in the same seat and used again.

Q. And when was that put in use in your plant? A. That was put in use in our plant fully a year or two before Bunker left.

The Court: That would be 1919 or 1920?

The Witness: Yes, sir; in fact, that was made as far back as 1917.

Q. And by whom, do you know? A. By a man named Benson or Burson, in our employ, for experimental work.

Q. I show you two photographs and ask you whether they illustrate the mount in the die which you have just been discussing? A. They do.

The Court: Do they show the block?

The Witness: They show the little blocks, which I have spoken of.

Q. At the points A and B? A. Yes.

Two photographs shown witness offered in evidence and marked Exhibits C24 and C25.

The Court: Mark A and B on these exhibits.

(Witness does so.)

Complainant's Witness, Walter E. Irving, Cross

Q. You have marked on the new exhibits, A and B? A. Yes.

Q. Is Mr. Burson in your employ? A. No, sir.

Q. How long is it since he has been in your employ? A. That is on our records; I cannot tell you exactly when he left.

The Court: About?

The Witness: About 1918 or 1919.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. You, as I understand it, are president and vice president of the Irving Iron Works since its inception? A. Yes.

Q. And I believe you also stated that you were sales manager of the company? A. Yes; general sales manager.

Q. By that, and particularly by the word "general," are we to gather that you had rather a close contact and general charge of the sales campaign, sales policies and the actions of the salesmen of that company, is that right? A. No, I rather gathered that I had that over the sales manager, Mr. Lown.

Q. Was Mr. Bunker ever a stockholder in your company? A. No, sir.

Q. Was Mr. Lown ever a stockholder in your company? A. No, sir.

Q. You were interested in another business, were you not, or had been, for some time, the W. Irving Forge? A. Yes.

Q. When did you start that business? A. That business was started about—you mean the corporation or the business as a business?

Q. Either one; I presume the corporation was

started a short time before the business, or vice versa? A. No.

Q. What was it? A. The corporation was not started a short time before the business.

Q. When was the business of the W. Irving Forge Company started? A. As a corporation?

Q. I don't care as what?

The Court: As an entity.

A. Probably about ten years ago—about nine years ago.

Q. When was it incorporated? A. Perhaps five or six years ago.

Q. And was Mr. Bunker ever an officer of that company? A. He was.

Q. And was he a stockholder of that company? A. He was.

Q. To the extent of how many shares? A. Two shares, I believe.

Q. They were presented by you to him? A. They were given to him by the company.

Q. By what? A. They were presented to him by me.

Q. You were the largest stockholder, were you not, in Irving Forge? A. Yes.

Q. When I say "Forge," I mean W. Irving Forge; you were also the largest stockholder of the Iron Works, were you not? A. Yes.

Q. And substantially the sole owner of both of those businesses, were you not? A. Yes.

Q. And still are? A. Yes.

Q. By the way, did you have a man by the name of Ballard employed by you? A. No, sir.

Q. Did you have a man by the name of Bullard employed by you? A. Yes.

Complainant's Witness, Walter E. Irving, Cross

Q. He was employed in the Forge, or the other company? A. He was employed, first, at the Irving Iron Works Company, in charge of this W. Irving Forge work that we did over there at that time; afterwards he was employed at the W. Irving Forge, when it became incorporated and moved to this other place.

Q. Was he out of your employ between those two times, or was that continuous? A. He was.

Q. Continuous? A. No, he was out of my employ.

Q. Do you know by whom he was employed? A. Yes.

Q. By whom? A. Arthur Todd Hunter.

The Court: What is the address of the business of the Forge?

The Witness: 326 East 38th Street, New York City.

The Court: And your Irving Iron Works are where?

The Witness: Long Island City.

Q. Exhibit C20 is this exhibit of the grating; you say that (referring to the original, of which that is a photograph) was in your possession? A. Yes.

Q. Since when? A. 1917.

Q. Where did you keep it, Mr. Irving? A. In the middle drawer of my desk.

Q. Ever since that time? A. Ever since that time.

Q. It was handed to you sometime in 1917? A. Yes.

Q. And you put it in the middle drawer of your desk, is that right? A. Not when it was first handed to me.

Q. Didn't you get it in 1917? A. Yes.

Q. Whether or not it was handed to you, when you got it you put it in the middle drawer of your desk? A. No, sir; when it was handed to me, I did not at first.

The Court: When did you put it in the drawer?

The Witness: Shortly thereafter.

Q. 1917? A. About 1917.

Q. And it has been there ever since? A. Yes.

Q. Continuously? A. Continually.

Q. Were you rather interested in the original inception of this different form of grating in 1917 when it was made? A. I was rather interested.

Q. In other words, there had been quite a little discussion about some non-dirt-collecting corners, and things of that kind? A. It had been spoken of.

Q. And it was in connection with that, that this particular form of grating was devised, was it not? A. I think it was.

Q. That was at that time a matter that had been brought up by some rather serious competition that you were meeting, had it not? A. It depends upon your definition of "rather."

The Court: If you don't understand the question, say so, and I will have it put in a form where you can, but don't waste my time, or yours either.

The Witness: No, sir.

Q. At that time there was some competition from a concern by the name of Mitchell Tappan, was there not? A. Yes.

Q. And the particular competition that you designed—or whoever it was—designed this grating to meet, was in connection with the non-dirt-collecting and practicability of the Mitchell Tappan grating; was that not so? A. Yes.

Q. And you have known from the time that you put that piece of grating—the original of C20, in your desk, that it was there, haven't you? A. Yes.

Q. You recall verifying the petition in this case; do you recall swearing to the petition in this case and the affidavit? A. Yes.

Q. And in connection with that, you made a statement to the effect that this design (reading from page 19 of Mr. Irving's affidavit, annexed to the bill, Paragraph 23)—

Mr. Kraetzer: I would like to have it appear there is no question but what Mr. Irving verified the bill.

Mr. Egner: The general verification.

Q. (Continuing.) In Paragraph 23, page 19, of the bill, the statement is made that this design for ventilating steel flooring was originated by your orator during the year 1919; is that correct, or is that an error? A. I would have to look at it.

Q. Without looking at it, you know whether that statement is correct or an error? A. Yes.

Q. Is it correct or an error? A. It is correct.

Q. So that the design that you have been speaking of here was originated in 1919? A. Is that the date?

Mr. Egner: I think he is entitled to see the affidavit.

Q. What do you want to know? A. Is the question that it is an orator or some date?

The Court: You understand the word "orator" refers to—

The Witness: I thought it mean the Irving Iron Works Company.

The Court: Is that right or wrong?
The Witness: 1919 is wrong.

The Court: Strike out the question and reframe the next one.

Q. The statement made by you in your affidavit, Paragraph 21 of that affidavit, you repeat that the design is identically similar to the design originated by Paul L. Price, the manager of the Irving Iron Works Company, while in its employ in 1919. Is that correct, or is that not correct? A. Paul L. Price is correct.

Q. Is the year correct? A. 1919 is wrong.

Q. How did you come to make that error, Mr. Irving? A. At that time we had not then the shop order for the making of the dies or the making of the sample, and it is simply an error, that time flies so fast, that I figured that I had had it in my drawer just about that time, and that it was 1919, but it turns out to have been 1917.

The Court: This affidavit was made sometime in February of this year?

Mr. Kraetzer: This affidavit is verified January 30, 1922.

Q. At that time you did not have the data which you have since discovered relating to these matters? A. That we had to dig out for this patent interference case.

Q. So none of this data that you have been speaking of was in your possession at that time; that is, when I say "at that time," the thirtieth of January, 1922, the time when you verified the petition and swore to the affidavit? A. It was in the possession of the Irving Iron Works Company, but had been stored away.

Q. Did you have the information in your knowledge at the time you made that affidavit last January, that it was in 1917, and not 1919, that this design had been originated; that is the whole question?

Mr. Egner: He has already said so.

The Witness: I would like to have it reframed.

The Court: Did you know last January when this design had been originated; did you personally know?

The Witness: I don't remember that I did or not.

The Court: When did you find out it had been originated in 1917?

The Witness: Oh, just as soon as we got knowledge of what kind of a grating they were getting out.

The Court: I want dates.

The Witness: Yes, I had knowledge of that about —sometime around about December, 1921, I had knowledge of the fact that those dies had been made in 1917.

Q. And you had your shop orders, and so forth, and refreshed your recollection? A. Yes, shop orders had been found, I think, by that time.

Q. And then how, Mr. Irving, do you explain the fact that you swore to the statement that the dies were originated in 1919, if you had that information? A. Because I got mixed up at that time, I suppose. I had had it in my drawer for a long time, and I will explain it this way, perhaps, that the interrogation might have been down at the Equitable Building at that time, and the shop orders were over there at our place at Long Island City, and my position, you see, was one where all this thing had been going on for years and was thrown at me all at once, and I didn't know where I was at for the longest time.

Q. For how long a time? A. Where I knew where I was at for two months.

Q. So that your explanation of your inaccuracy there is, that you were confused at the time? A. Yes.

Q. How many prospective customers have you on your list? A. I said in the neighborhood of 15,000, this morning, didn't I?

Q. How many did you have in January, 1922; more or less than you have at the present time? A. We would have less all the time; all the way back we would have less.

The Court: You have more now than you had then?

The Witness: Yes.

Q. How many less than 15,000 did you have in January of this year? A. I cannot tell you, sir.

Q. Approximately? A. I cannot tell you that.

Q. Was it 10,000 less? A. That is too large a figure.

Q. Was it 5,000 less? A. I think that is too large a figure.

The Court: Give us your idea. Give me your best judgment.

The Witness: I should say, perhaps two or three thousand less.

The Court: And you had twelve or thirteen thousand a year ago, on January 1, against a possible fifteen today?

The Witness: Yes.

Q. So when you testified about twelve to thirteen thousand, what period were you referring to? A. I

was referring to about that time, January first, I should think.

Q. There is no question but what you had twelve to thirteen thousand? A. I wouldn't say that; I never counted them.

Q. You were very much interested in the count at that time, were you not? A. Yes, but I was more interested in saving my business.

Q. When did you make this drawing showing the layout of your file? A. Two or three days ago.

Q. And has there been any substantial change in the furniture or furnishings of that business—I don't mean chairs or desks, but I mean regarding filing cabinets? A. No, I don't think there has been any substantial change.

Q. You read the affidavit that you signed and swore to, didn't you, when you made it, back in January, 1922? A. Yes.

Q. The affidavit is sworn to on the twenty-seventh of February, 1922, as one of your affidavits; do you recall swearing to that affidavit then? A. I don't recall the date.

Q. Mr. Irving, I note in this affidavit, verified on the 27th day of February, 1922, in Paragraph 3 of that affidavit, you swear to the following, replying to Paragraph 18 thereof, which refers to another paragraph: "I deny that the list referred to contains practically the entire list of the more substantial customers of my company, and allege the truth to be, that our confidential list contains nearly four thousand names of customers and prospective customers." Which is correct, your statement here today, of your list containing twelve or thirteen thousand names, or your statement in this affidavit that your list contained four thousand?

Mr. Egner: I object, because the testimony here today is that the cards contained that.

Mr. Kraetzer: I withdraw the question.

Q. When you testified this morning to the cards, were you referring to the list of customers, or did you have something besides your cards that you were referring to? A. That big list was the list of prospects; we have a bigger list of prospects than customers.

The Court: What constitutes your list?

The Witness: Our card system.

Q. That is what you referred to? A. Yes.

Q. When you testified to twelve or thirteen thousand names— A. Pardon me, I said I could find that out definitely; I said approximately, and I referred to these cards.

Q. When you gave that approximation, you allowed for a variation of how many one way or the other? A. Apparently not a close approximation.

Q. How much allowance did you make one way or another when you approximated it? A. The difference is about—I suppose I allowed four or five thousand.

The Court: Either way?

The Witness: I think I gave you a big enough figure all right this morning.

The Court: I think so, too, if you allowed yourself a margin of four or five thousand.

The Witness: I said at that time that it was only approximate, I couldn't remember.

The Court: I notice the quotation from that affidavit uses the words "confidential list"; have you another list called a confidential list?

The Witness: There is a small list of customers in the catalogue; that, of course, is published.

The Court: What do you mean by the use of the word "confidential" in that affidavit?

The Witness: I mean a confidential list that we wouldn't expect anybody to ever divulge to anyone else by our employees.

The Court: It has not been divulged in any way by you?

The Witness: No.

Q. And that is a separate list? A. That is this complete list of prospects and customers, with the exception of the few names that are in that catalogue.

Q. How many names are in the catalogue, roughly, the last one; a couple of hundred; from one hundred to three hundred? A. I haven't counted them.

The Court: You said you had about twelve thousand prospects and about four thousand customers; when your attention was directed to the fact that you only had probably four or five thousand customers, you then said you had thirteen hundred customers—twelve hundred customers and twelve thousand prospects, making over thirteen thousand combined. Then counsel called your attention to the fact that your combined list amounts to about four thousand. Now, he asks you how do you explain the discrepancy between the two totals.

The Witness: I presume at that time that I thought that the four thousand was well within it, and I was willing to sign it. I am quite sure that we had at least four thousand then.

Q. Have you counted them since then? A. I have in my file of papers a list that has been gotten up by

the sales department, and it is all added up and kept tabulated.

Q. Showing prospects and customers? A. Yes, and the number; I could refer to it.

Q. In a table? A. Yes.

Q. When did you have that made? A. That was made about the time of the preliminary hearing.

Q. Do I understand that you had that, when you testified this morning to the fact that you had from twelve to thirteen thousand prospects and customers? A. That is there in my—

The Court: Had you consulted it when you testified?

The Witness: No, I haven't seen it for months, but I seem to recall that the customers is thirteen hundred.

The Court: Why waste time over this, if he has a list? He swears now it is a verified one, and can be produced.

Mr. Egner: Can you get it?

The Witness: There is the total customers, 1,342. I haven't got the prospects yet.

Q. I understood you had a list of names, haven't you? A. List of what names?

Q. List of customers, list of prospects? A. I thought I did; I have got as far as the customers.

Q. Are those customers (indicating)? A. Yes.

The Court: Produce them tomorrow if you find them, and go on with the examination.

Q. Mr. Irving, I show you Exhibit C12b, which consists of your catalogue for 1921, and direct your attention to pages 13, 15, 17 and 19 of that catalogue,

which purports to give a list of some representative users of Irving subway? A. Yes.

Q. The printing of that was in line with your policy shown in the other catalogues of printing names of users of Irving subway, is that not so? A. A certain number of them.

Q. Would you say that those representative users were the largest users, or without regard to the amount purchased by them? A. No, sir, these users were picked out so as to show in a general way the universal use of them; they were picked out, the big sounding names and names of concerns that were well known, as being distributed very thoroughly throughout the whole country, so anyone seeing that would get an idea that it was pretty thoroughly used.

Q. And all of the corporations and names on that list in that catalogue had actually purchased grating from you, had they? A. Yes.

Q. And did that list include those of your customers who had made the most substantial purchases? A. No, not necessarily, but a good many of them were.

Q. Were there others who had made large purchases, and by that we will say in excess of $5,000, whose names were on that list? A. I think there were.

Q. Well, you know? A. No, I don't know.

Q. Who made up that catalogue? A. Mr. Bunker, Mr. Lown and myself, and Mr. Lucius I. Wightman, the advertising man.

Q. Who selected the names to be placed on the list? A. Mr. Bunker and myself together.

Q. What was your criterion in selecting the names? A. Getting names that would sound well, and geo-

graphically located, so as not to make people think that it was something that was used in any one community entirely; and furthermore, we wanted names that we would not have to give away the addresses of them, so we took names that were well known.

Q. The names of concerns whose addresses would be easily determined? A. No, they were not names where the addresses would be easily determined.

Q. Isn't it a fact that anybody who had intelligence enough to read, could find out the location of, or the addresses of the concerns listed in this list in the catalogue? A. No, I don't think that everybody would know that the Chickasaw S. B. Co.—I don't know that they would know just where to find it. H. M. Hope Engineering Co., I don't think you would know where that is, and Oklahoma Pipe Line Co.

Mr. Kraetzer: We reserve a little more interrogation as to the list.

Q. In October and November, 1921, how many employees did you have in your office and shop? A. I cannot tell you; that would be a matter of record.

The Court: Approximately?

The Witness: I cannot tell you.

The Court: Did you have more than a hundred?

The Witness: I was not—

The Court: Did you have one hundred or five hundred men?

The Witness: The biggest quantity we ever had at any time was in 1920.

The Court: 1921 he is talking about.

The Witness: I don't think we had more than one hundred and twenty-five all told.

Q. 1921 was a pretty poor year, as far as business was concerned? A. As far as the bulk of the business, it was, but not as far as the profits were concerned.

Q. In 1920? A. It was just exactly the reverse; we had a huge volume of business, in the neighborhood of $800,000 worth of business, and made nothing.

Q. Who are your competitors in this line, in the grating line? A. We haven't had anything that we call competition until this started.

Q. You mean until this defendant company started? A. Yes.

Q. Do I understand, then, that you had a monopoly of this grating business? A. No, on the contrary—

The Court: He said what he called competition.

Q. What do you call competition? A. Competition that is hard and keeps you worrying on the job and keeps you worrying all the time.

Q. Wouldn't you say that if another concern took a job away from you, that they were competitors of yours? A. Yes, in the strict sense.

Q. And would you say that any concern in 1920—1919, 1920 and 1921, had succeeded in taking away any jobs from you? A. Yes, there were some jobs taken away from us.

Q. How many? A. I cannot tell you just how many, but certainly four or five, six or seven, eight or ten, maybe.

Q. Is that the greatest number? A. Before this company started?

Q. No, 1918, 1919, 1920 and 1921? A. Yes.

Q. Don't you recall any more than in the neighborhood of eight or ten at the outside in any one

year? A. That is jobs that were taken away from us, that we went after.

Q. You stated in this affidavit that you swore to on February 27, 1922, that you had, referring to two specific jobs that were mentioned, that they were two of probably only one-half dozen jobs my company—
10 referring, I presume, to the Irving Iron Works Company, has lost during its entire period of business? A. What jobs were those that I referred to?

Q. It doesn't make any difference what they are; were there only half a dozen jobs that you lost during your entire period of business? A. Up to this time I don't think there were many more.

Q. Do you know? A. I don't know.

Q. Have you made any effort to find out? A.
20 No.

Q. Did you make any effort to find out before you swore to the affidavit? A. I swore to what I thought at that time.

Q. Was it what you thought or what you knew, that you swore to? A. To my own knowledge, what I knew; so far as I knew, I knew.

Q. You made direct statement that only half a dozen jobs had been lost by you during your entire
30 period of business; is that statement true or not? A. That statement I think was true; I never said anything yet that I didn't think was true.

Q. And you know it to be true? A. I know it to be true.

Q. You do know that to be true? Do you know it to be true that you only lost six jobs during the entire period of business that you conducted? A. Yes.

40 Q. That is a fact? A. If that is what I said, then that is a fact.

Q. Have you any record of making a bid for the Chester Ship Company in Pennsylvania, for $4,700, in 1919? A. I suppose we have.

Q. Have you made any effort, sir, to look up this list of jobs that was appended to a replying affidavit by Mr. Lown during the preliminary motion in this case? A. No, sir, I didn't attempt to check that up at all.

Q. Have you any way of checking up that list? A. I could find a way if it was necessary.

Q. How long would it take you? A. I don't know.

Q. Have you any knowledge of the job? I am trying to get something recent. Do you recall the Commonwealth Edison Company job, of Chicago, Illinois, amounting to about $22,000? A. After this thing started, yes, sir.

Q. Did you get it? A. No, sir.

Q. Do you recall the Corn Products Refining job, of Chicago, Illinois, amounting to about $15,000? A. I don't recall that.

Q. Do you recall the International Paper Company job of New York City, amounting to about $5,000? A. No, I don't recall that.

Q. You don't recall getting any such job? A. No, we have had work from them.

Q. Do you recall that particular job? A. No.

Q. Do you recall the Southerland Construction Company, of St. Louis, Missouri, for about $9,000? A. I think I do.

Q. Did you get that? A. No.

Q. That is about three jobs, so far, that you stated you did not get?

Mr. Egner: That he doesn't recall.

The Court: I don't think the testimony is

very clear one way or the other. I don't know whether he bid on them.

Q. Did you bid on those jobs? A. I haven't seen that list you have; I have never seen the affidavit.

The Court: Do you remember bidding on any of these jobs that he has spoken about and losing the job?

The Witness: I remember the Southerland job.

Q. Did you make a bid for it? A. I think we did.

Q. Did you get it? A. No, I don't think we did.

Q. Do you remember back in 1920, a municipal grain elevator job, down in New Orleans? A. Yes.

Q. Did you make a bid for it? A. No, sir.

Q. You are sure of that? A. Positive.

Q. Do you remember a job for the American Woolen Company, at Lawrence, Massachusetts, about $6,000? A. I don't remember that.

Q. Aberthan Construction Company, Boston, Massachusetts, for $4,500? A. No.

Q. Will you between now and possibly tomorrow look over the list of jobs that are specified, and be prepared to report to us which of these jobs you made bids on and which you got and which you lost? I refer specifically to the list of jobs annexed to the affidavit of Mr. Walter H. Lown, sworn to March 4, 1922.

Mr. Egner: I object to that; you have been quoting from an affidavit sworn to in February.

Mr. Kraetzer: Not at this point.

The Court: You have led me to believe he said it. You quoted from an affidavit of Feb-

ruary, in which he said that he had not lost over half a dozen jobs in the history of his concern. You are attempting to contradict him by a list attached to an affidavit made sometime in March, which is clearly incompetent.

Mr. Egner: By them; it is their own affidavit.

The Court: I understood that, and he is attempting to contradict him, and now wants him to verify that affidavit.

Mr. Kraetzer: An affidavit was submitted in which a list of jobs was annexed. It is concerning that list that I have now been interrogating the witness.

The Court: You misled me, and I don't know whether you have the witness. It relates to an affidavit which Mr. Irving said he has not seen nor examined. You want him to go over the list and see whether he desires to contradict or correct the number of losses in competition.

Mr. Egner: I suppose, your Honor, that is up to us, as to whether we desire to do it.

The Court: If the witness does not correct it voluntarily, and you prove that his statement is false, he will have to take the consequences. Why do you give him the opportunity?

Mr. Kraetzer: I am rather confident of my position.

The Court: Then why not rest on it?

Q. How about the six jobs that you lost?

Mr. Egner: In order to be fair to Mr. Irving, he says probably it is a mere estimate.

The Court: Why is this so significant on an issue which you framed before me, that you have conspired to take this man's business away from him, and one of the steps in the conspiracy is that you intended to go in the bond business, and pretended to go in the bond business, and then these agents all resigned for causes entirely outside and terminated their relations with him; how is it material one way or the other? Suppose he had lost fifty instead of six; how will it affect the merits of this controversy? You might say, "Well, if this man can't tell the truth in one thing, he wouldn't tell it at all." That is all there is to it. I don't think we need to take a great deal of time to demonstrate that. If I am satisfied that he falsely swore to that affidavit, I shall not pay a particle of attention to anything he has told me today. You may develop it, in order to satisfy me, if you can, but I don't want you to go into it too much.

Q. Mr. Irving, during your management of the business of the Irving Iron Works Company, you were away for a considerable period of time, were you not? A. I have been away most every year since 1916.

Q. For a period of two and three and perhaps for five months? A. I have never been away as long as five nor three months; my longest trips have been two months.

Q. When was Mr. Price made an official of your company? A. Within the past year.

Q. Was it at the beginning of the year? A. He has been manager for a long time.

Q. An official of the company, I believe he is treasurer now? A. Yes, and he was acting treasurer before.

Q. When was he made treasurer? A. This year.

Q. When? A. About five or six months ago.

Q. I understood you got to be pretty friendly with Mr. Bunker during the period he was employed by you? A. I thought so.

Q. And your association with him was very close? A. Yes.

Q. He had been in your employ for nine or ten years? A. Yes.

Q. And your association with Mr. Lown became practically the same when he came with you? A. Very friendly.

Q. They came up to visit at your home? A. Yes.

Q. You got to know them, as you thought, very well? A. I thought so.

Q. You always found them truthful? A. I thought they were truthful.

Q. And honorable, so far as you know? A. Seemed so to me.

Q. You had given Mr. Bunker a great deal of authority in the plant there? A. Under Mr. Price he had authority; I hadn't given it to him.

Q. Was his authority limited? A. Oh, yes.

Q. In other words, he had to consult Mr. Price as to any activity that he wanted to engage in—company activity, I mean? A. No, not necessarily, company activity.

Q. You said that Mr. Lown was how old? A. I said I thought he was about twenty-three or twenty-four years old.

Q. At that time? A. When he came with the company.

Q. Didn't you know that he was twenty years old? A. No, I guess he is all of that.

Q. Do you own any bonds?

Mr. Enger: I object.

The Court: I will sustain the objection.

Q. When was it that you had this interview with Mr. Bunker in your office, at which you made your protestations in the presence of Mr. Price in regard to what had happened? A. I think that was around the first of November.

The Court: About the middle of November, didn't you say this morning?

The Witness: It was somewhere around from the first to the middle.

Q. I have a note that your testimony was that it was about the fifteenth of November.

The Court: About the middle of November, I have it.

The Witness: I think it was a little earlier than that.

The Court: He said later it might have been a little earlier.

Q. You don't think it was any later? A. No, I don't think so.

Q. Will you tell us again what that remark was that you made to Mr. Bunker or to Mr. Price at the time that you called him in, and made some statement to him at that time about this was the reason that certain things had happened?

The Court: The reason for the resignation?
Mr. Kraetzer: Yes.

A. I said, "There is the man that you have done everything for; look at him," and the reason I know it was about the first of November was that we had only heard from two of these agents, namely, Skoning and Moser, and I accused Bunker then, and I said, "You have got Skoning with you," and he said, "Yes," and I said, "You have got Moser," and he said, "I don't know as I want him, anyway," and we didn't have any others at that time, so it must have been early in November.

Q. In the course of your testimony today did you not say that you said, "There is the man who was responsible for Madden's resignation"; didn't you mention the name "Madden"? A. Yes, but I don't think I mentioned it in that connection.

The Court: I think he mentioned it and corrected himself to Moser, as I recall it.

Q. What was the names of the agents that you mentioned? A. In this connection, when Bunker was in the office?

Q. Yes. A. Skoning and Moser.

Q. Those are the only two? A. Those are the only two at that time, and I don't know that they were with the Kerlow Company, but I just began to sense it and accuse them of it.

Q. You say you hadn't heard up to that morning, or that day, when you got it from Bunker himself, that they had gone into the grating business, is that it?

The Court: That isn't what he said at all. He was first asked when he had the first in-

timation of this business, and he undertook to tell it, and you objected, and I stopped him. Later on, he was asked when he knew of it and he said when Bunker came in about the middle of November, and then it came out that this conversation with this other man Roope occurred in October; that that was when he received his first intimation of this business.

Q. You told us this morning that when you started sending these men out, I think you said Westerfield was your first agent and Demorest was your second agent, that they were sent out to do missionary work? A. No, I couldn't have said that, because that wasn't so.

Q. Wasn't the first man Westerfield, wasn't he the missionary trip? A. Yes, I think I made the very first trip.

The Court: Except he said there was someone in 1915, employed, but he wasn't sure of it.

The Witness: I am not sure.

Q. Wasn't the first man, Westerfield; wasn't he the first salesman? A. He was a sales agent in the Houston territory.

Q. Did he quote prices? A. He quoted prices. No, not at the start he didn't; I am wrong about that.

Q. When did he begin to quote prices? A. After he—and then these others that followed him—this was around about 1916, and when these others got out after that and they began to do some missionary work, and began to cover the ground, and he thought it would finally develop when they had to begin to quote prices; I said that at the very start we didn't even give them prices, because we realized that the

first thing was missionary work, and later on they began to get prices to qoute.

Q. Were these scrap books kept by you personally? A. The first one was.

Q. Has it been in your possession ever since? A. As far as I know.

Q. Has it been in any one else's possession recently? A. I never gave it to anyone else.

The Court: Did you keep it in your office?

The Witness: Yes, but it was not under lock and key, and I cannot tell.

Q. Will you tell me where you got that blueprint from that I found in that book, being a loose blueprint? A. I don't know; I think Nederhold.

Blueprint marked Exhibit D1 for identification.

The Court: Who is he?

The Witness: He is another agent that they tried to get and didn't get.

Q. An agent of yours? A. A man who had been our agent in China, and who was out there for us on a salary, and who made the trip and came back.

Q. In what year? A. He came back in 1921, the latter part of 1921—in September, I think.

Q. But he represented your company in China? A. He had represented us in China.

Q. For how many years? A. Only for that one trip.

Q. How long did the trip cover? A. About six months.

Q. And after Mr. Nederhold returned in September, 1921, did he continue to represent you? A. No, he came up to our office one day.

Q. He was connected with an export house, was he not? A. Yes.

Q. He carried other lines? A. He carried other lines.

Q. On Broad Street? A. 25 Broad Street.

Q. When did he give you Exhibit D1 for identification? A. I didn't put the date on—somewhere around the first of this year.

Q. Are all of the types of grating shown in the catalogue—we will take the most recent one, 1921 catalogue—manufactured by you, Mr. Irving? A. Those have all been manufactured by us, this type of grating, Exhibit C20.

The Court: Which it is?

Mr. Kraetzer: We consider it our type.

Q. Did you say that was evolved in 1919? A. Yes.

Q. Did you manufacture any of that? A. No; this sample.

Q. That one sample? A. Yes.

Q. And when was that made? A. That was made in 1917.

Q. So that you have never sold any of that grating? A. Up to the time the Kerlow Company started we had not sold any of that grating.

The Court: Have you sold any since?

The Witness: A little; we have offered it always, but we have not sold a great deal.

Q. Did you apply for a patent on that grating? A. Before this time, no, sir, we did not.

Q. When was the application for the patent made on that? A. The application for the patent was made on it after we saw Kerlow's advertising, in which they stated that it was patented.

The Court: Application made by your company?
The Witness: By our company.

Q. And that was when, approximately? A. I am wrong on dates.

Q. It was about January 9, 1922? A. You know it has been testified to in this interference suit exactly.

The Court: I am holding you responsible for everything you tell me; if you don't know, the proper answer is to say so. I don't want a guess.
The Witness: That was about the first of the year.

Q. Just to summarize it; the situation is, that although you had this sample of grating, C20, which is similar to the form of grating manufactured by the defendant company here, in your possession from 1917 until the present time, you did not apply for a patent, or give instructions to have application made for the patent, until after you had seen that the defendant Kerlow was manufacturing the grating? A. Yes, and marking it patented.

JOHN EDMUND TONNELIER, sworn for complainant.

Direct-examination by Mr. Egner:

Q. What is your profession? A. Civil engineer.
Q. Are you a graduate of any institution? A. I am a graduate of the Rensselaer Polytechnic Institute.
Q. How many years experience have you had? A. About twenty.

Complainant's Witness, John Edmund Tonnelier, Direct

Q. And with whom are you associated at the present time? A. I am with the National Bridge Works in Long Island City.

Q. You were at one time connected with J. G. White Company? A. I was until September of last year.

Q. September of 1921? A. Yes.

Q. Did you on or about January 14, receive a letter enclosed in this envelope which I now show you? A. I did.

Mr. Egner: I offer this envelope in evidence.

Marked Exhibit C26.

The Court: Addressed to you?

The Witness: It is addressed: "Mr. Tomclier, J. G. White Eng. Co., N. Y. City," with "512 West 188th St." written in red ink, and "J. G. White Eng. Co." is stricken out; postmarked "January 14, 1922, Hudson Terminal Station, 2:30 P. M."

The Court: That corrected address in red ink, is that your address?

The Witness: That is my home address; it was corrected at J. G. White's.

Q. Was it forwarded to you from J. G. White's? A. Yes.

Q. What was in the envelope? A. There was a letter and a printed circular; a letter addressed to me, signed by someone, I don't remember now.

Q. Have you the letter? A. I have not.

Mr. Egner: I am going to offer proof of the contents of the letter. It is not important in and of itself. We had the letter here at the

time of our preliminary argument, and it has disappeared; I cannot find it.

Q. Was it a circular letter of the Kerlow Steel Flooring Company? A. With their advertisement of some kind.

Q. Calling attention to their products? A. Yes.

Q. Are you familiar with the steel flooring known as Irving Subway? A. Yes, I am.

Q. When did you first become acquainted with that product? A. I cannot just remember; I think probably I became acquainted with it by using it on the street in the subway—over the subway air openings.

Q. When did you first become acquainted with it as a possibility for use as a flooring in structures of different kinds? A. While I was with the J. G. White Engineering Corporation.

Q. And through whom was your attention called to that product? A. I don't know that anyone called my attention to the product; I knew the product before. As I understand your question, you asked about its use as a flooring.

The Court: You said, as I understood, you left the White Company in September, 1921?

The Witness: Yes.

The Court: How long had you been with them?

The Witness: About a year and a half, from February, 1920.

The Court: And it was during that period, as I understand your answer to Mr. Egner's question, that you learned of this product as a flooring?

The Witness: Yes.

The Court: But had known it generally as a grating for a subway and other use?

The Witness: Yes.

Complainant's Witness, John Edmund Tonnelier, Cross

Q. I asked you how your attention was directed to it as a flooring. A. Through a talk with Mr. Irving about his grating, with the possibility of using it—I had use for something of that nature, and I questioned him about the use of his grating.

Q. Prior to that time had the use of a grating of this kind as a flooring ever occurred to you as an engineer? A. Not as a flooring, no.

Q. And as far as you know, was there any grating in use at that time, of that company, capable of being used as a flooring? A. There were others sold, but not so good; I didn't consider them so good, at any rate.

Q. Had you prior to that time ever used a grating of this kind as a flooring? A. No, I had not been directly responsible for its use.

Q. Have you since used it? A. No, not since that time.

Q. Have you ever specified it? A. Only on the one job I spoke of.

Q. And in that job you used the Irving subway? A. The Irving subway grating.

Q. And that was when? A. That was while I was with the J. G. White Engineering Corporation; the construction was a large chemical plant in which they required a great deal of ventilation. The business was dangerous and the floors had to be open as much as possible.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. Do I understand that you are a graduate of Rensselaer? A. Yes.

Complainant's Witness, John Edmund Tonnelier, Cross

Q. Were you a classmate of Mr. Irving? A. No, I was not.

Q. You had met him? A. I have known Mr. Irving for about eight or nine years, I think.

Q. And how about Mr. Price; was he a classmate of yours? A. I met Mr. Price through Mr. Irving, having been at the plant.

Q. Do you know a man by the name of Schuldt? A. I do not.

Q. Did anyone purporting to represent Irving Iron Works Company, call upon you at any time to solicit your business, or to show you samples? A. Yes, there was a man, but I don't remember his name; I don't even recall what he looked like.

Q. That was during your employment by the J. G. White Company? A. Yes, it was after I had called on Mr. Irving to ask him about his grating.

Q. And it was during 1920, you say, that you first learned of the availability of this type of grating as a floor? A. As a floor, yes, through Mr. Irving.

Q. You had never seen any installations of that as a flooring prior to that time? A. It depends upon what your definition is of that.

Q. Let us have your definition of a flooring and a grating, and what distinction do you make? A. I should say the ordinary grating covered a very small area, and was not necessarily used for support, but used for light and ventilation of some sort; while a flooring would be called upon to carry a load of some large weight.

Q. And had you seen any installation in New York City or elsewhere, of a grating or flooring of this particular type, according to your definition of a floor-

ing? A. You mean used as a flooring under the definition?

Q. Yes. A. No, I don't recall of any.

Q. You would say, wouldn't you, that the use of some support over a subway opening, albeit for ventilating purposes, would still constitute a flooring? A. If you define it that way, I should say so.

Q. And if people walked over it, you would consider that that was all the more evidence that it was a flooring? A. Yes.

Q. Had you seen any of the subway installations in New York City? A. Yes.

Q. Prior to 1920? A. Yes.

Q. How long before? A. Perhaps ten years before.

Q. And they were of considerable area? A. I wouldn't call them considerable area, no.

Q. As an engineer, you were interested in the construction of the subway in New York City? A. I was.

Q. And were you interested in their method of ventilating the subway structure underneath? A. I was, yes.

Q. And how did they do it? A. From the grating.

Q. By the use of a grating of this kind? A. Yes.

Q. It also constituted part of the sidewalk on which pedestrians walked? A. Yes.

Q. So that for a period of ten years before that, you had seen what you called grating of this kind used by pedestrians to walk upon? A. Yes.

Q. Do you still say that it was in 1920, that you first learned of the use of this kind of so-called grating as a flooring? A. I had never thought of it as

a flooring, it was just something to go over an opening.

Q. That was purely personal with you; it hadn't occurred to you that something that pedestrians walked upon could be used as a flooring? A. You might floor a whole building with it, but it hadn't occurred to me.

Q. Did you recognize in engineering circles the use of this material in a building as contrasted with its use on the sidewalk? A. Not at all; it just didn't occur to me.

Mr. Egner: I should like to offer in evidence now, the card of the Irving Iron Works referring to J. G. White Company. This is in connection with the envelope.

Mr. Kraetzer: Have you any original C. I. M.'s from which that card was made?

The Court: I think it is proper to have it offered; it is the foundation of the card record.

Mr. Egner: There are a great many enter into that; I will be glad to have them looked up. I cannot produce them at this moment. I say, as a matter of accommodation, I will try to find them. I don't think it is essential to my offer, because the significance of this is apparent on the face of the papers. I shall try to produce them.

The Court: Your conclusion, as I gather it from what you said at the opening, is that Mr. Lown had access to these card records?

Mr. Egner: Yes.

The Court: I will direct counsel in all these cases where it is required, and I don't expect

the defendants to ask for it, except where it is necessary, to furnish the C. I. M.'s in each case in connection with the card history that may be offered. I mean to do it at your convenience.

J. G. White Co. cards referred to, marked Exhibit C26a.

Mr. Egner: I call attention to this envelope, and your Honor will observe it is addressed: "Mr. Tomclier," which is erroneous; the gentleman's name is Tonneilier. The card, on the second page, on the fourth line from the bottom, has a reference to "J. E. Tonneilier, Ch. Dn. tall gr. hair," as the description of the gentleman. That is written so that it looks like "Tomclier," and the significance is, that this error has been followed on this envelope.

OLE SINGSTAD, sworn for complainant.

Direct-examination by Mr. Egner:

Q. What is your profession? A. Civil engineer.

Q. And have you any degrees in technical training? A. Yes, I have the degree of civil engineer from the Polytechnic Institute from Trondhiem, Norway.

Q. How long have you been practising your profession? A. For seventeen years.

Q. What is your present position? A. My present position is that of engineer of designs with the New Jersey Interstate Bridge and Tunnel Commission and the New York State Bridge and Tunnel Commission.

Q. Where is your office, Mr. Singstad? A. In the Hall of Records, New York City.

Q. Did you, during the month of January, 1922, receive through the mail, a letter and card which I now hand you? A. I did.

Q. What became of the envelope in which that letter was enclosed? A. In the waste basket, I guess.

Q. Do you recall the address on the envelope? A. Yes, I do.

Q. And what was the address on the envelope? A. Room 614, Hall of Records, New York City.

Q. And how is your name indicated thereon? A. Mr. Singstad.

Q. Mr. Singstad, are you familiar with the product known as Irving subway? A. I am.

Q. How long have you known them? A. I have known them for twelve years.

Q. How did it come to your attention? A. On the subway construction in New York City.

Q. How long have you known of the use of this product as a floor? A. As a floor in buildings it has been known to me only for the past two or three years.

Q. How did the use of it as a flooring become known to you? A. The first time that it was called to my attention as a suitable flooring in buildings, was by a fellow-engineer, who had used it as such, while I was with the Brayden Copper Company.

Q. About when was that? A. That was, I believe, in 1917 or 1918.

Q. And thereafter did you receive further information about it as a flooring? A. Yes, Mr. Irving showed me various photographs of various installations in buildings where it had been used as flooring

Q. Now, Mr. Singstad, had the possibility of using this product which you have seen in the subway, ever occur to you for a flooring—ever occur to you, prior

to the mention of it by this associate of yours? A. No, it had not.

Q. And at the time that you became aware of the use of Irving Subway as a flooring, do you know whether there were any other steel floorings of that character in use? A. Not to my knowledge.

Q. So that it was new in so far as you were concerned? A. Yes.

Q. That is, the use of it as a flooring? A. Yes.

Q. Have you seen it used as a floor since? A. I don't recall any actual installation of that character, no.

Q. Mr. Singstad, does your name appear in the engineering record of any of the publications having to do with your profession? A. My name appears in the Year Book of the American Society of Engineers.

Q. How does it appear? A. It is my full name and my title "Engineer of Designs," and the names of the Commissions by whom I am engaged.

Q. Did you ever give your name to any representative of the Irving Company? A. I did.

Q. How did you give it? A. Mr. Singstad, Room 614, Hall of Records, New York City.

The Court: To whom did you give it?

The Witness: I gave it to a man who had charge of the Irving Iron Works booth at an exposition at the Grand Central Palace.

The Court: When was your name given at that exposition?

The Witness: That was about two years ago.

Mr. Egner: I should like to have marked the circular and the card.

Circular marked Exhibit C27.

KERLOW STEEL FLOORING COMPANY

50 CHURCH STREET

New York City

(Trade Kerlow The Universal Grating Mark)

Subject: Kerlow Universal Grating.

(1/12/22 in pencil)

Mr. Singstad,
Hall of Records,
New York City, N. Y.

Dear Sir:

The enclosed cut will introduce to you "Kerlow Universal Grating," a product which is beginning to make a name for itself throughout the country.

Kerlow is the finest grating or steel flooring on the market today, embodying features not to be found in any other kindred product. It is reversible, non-dirt collecting and rust proof; affords perfect traction for walking, working and wheeling and embodies every attribute of the solid floor while allowing 78% open space for the passage of light and air.

Designed and built on proper engineering theory and practice, Kerlow grating is structurally correct. Its bar members are so trussed, formed and braced as to develop their full tensile strength and properly distribute load. In addition to these advantages Kerlow grating is less in price than any other grating, load for load. Prices range from $1.00 per sq. ft. for our lightest type, 3/4" deep to $1.50 per sq. ft. for our heaviest. The former will sustain a load of 250

pounds per sq. ft. on a three foot span, with less than one-fifth inch deflection. Our square foot price includes all cutouts, drawings for approval, rust proofing, finished gray and fitting guarantee.

We trust you will not hesitate to call on us for further information and quotations, which it will be our pleasure to furnish. Samples and catalogues await your requests.

Thanking you for your consideration, we remain,

Yours very truly,

KERLOW STEEL FLOORING COMPANY,

W. H. LOWN,

By WALTER H. LOWN,

Sales Manager.

Card referred to marked Exhibit C27a.

The Court: Do they purport to be from the Kerlow Company?

The Witness: Yes.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. Did I understand you to say that you are employed by the New Jersey Vehicular Tunnel Commission at the present time? A. That is correct.

Q. How long have you been connected with the organization? A. Since the engineering force was established on July 1, 1919.

Q. Prior to that time by whom were you employed? A. By Barclay, Parsons & Clapp, consulting engineers of New York City.

Q. For how long? A. About one year.

Q. About how long a time have you been in New York City? A. I have been in New York City since January 1, 1909.

Q. So you were here during the construction of the subway? A. Yes.

Q. That was about when? A. I was connected with the Subway Commission work myself from 1910 to 1917.

Q. Do you know Mr. Davis, who is connected with the Vehicular Tunnel Commission? A. Yes, he is my assistant.

Q. He was an employee of the Irving Iron Works Company? A. Yes.

Q. Do I understand that it was in 1917 that you first got the idea of the use of Irving Subway as a flooring? A. The first time it was called to my attention as a valuable flooring for buildings.

Q. That isn't quite my question?

The Court: That isn't what he said; you didn't quote him correctly.

Q. Had you heard of it, had you thought of it prior to that time? A. I had been using it on subway construction for ventilating purposes.

The Court: For the use as a flooring in interiors?

The Witness: No, I had not thought of it as such.

Q. When did you first get in touch with Mr. Irving, or his counsel, with regard to this present hearing? A. I didn't get in touch with him at all.

The Court: When did they get in touch with you, then?

The Witness: Mr. Irving called at my office last week, I think it must have been Wednesday.

The Court: Was that the first?
The Witness: Yes.

Q. Prior to that had you made a statement to any one or discussed the matter with any one?

The Court: Your knowledge of this suit?

Q. This question of familiarity with the Irving Subway and the situation with regard to your name in the circular which is referred to?

The Court: Had you talked to any of them prior to Wednesday about that?
The Witness: Yes.

Q. With whom? A. With Mr. Davis, my assistant.

Q. When? A. At the time I got the circular from the new company, the Kerlow Company.

Mr. Egner: This one that was offered in evidence?
The Witness: Yes; that was last January.

Q. And you told him about the circular, did you? A. I did; I called his attention to it.

Q. Did Mr. Davis tell you that what you had informed him was of any significance whatsoever?

The Court: How is it competent, what Mr. Davis said?

Mr. Kraetzer: Question withdrawn.

Mr. Egner: I now offer in evidence the card of the Irving Iron Works with respect to Mr. Singstad, and I also offer an impression of the addressograph plate of the Irving Iron Works with respect to Mr. Singstad.

Mr. Kraetzer: Counsel will recognize that we are accepting your statement as to these things.

The Court: The cross-examination has finished. On the re-direct you offer a card, with this address. Any objection?

Mr. Kraetzer: No.

Marked Exhibits C28 and C28a.

Mr. Egner: The lead pencil marks on Exhibit C28a are not offered, they being my own notations. The significance of this is, that the card bears the name "Mr. Singstad, Room 614, Hall of Records, N. Y. C.," and the addressograph bears the address "Mr. Singstad, Rm. 614, Hall of Records, New York City."

Q. Mr. Singstad, as I recall your testimony, you said that at some exposition you had given your name and address to someone who was in attendance at the booth of the Irving Iron Works in New York City? A. Yes, that is correct.

Q. And is that in the exact form as counsel has just read it, that you gave it? I show you Exhibit C28a, and direct your attention to the typewritten part of that exhibit, and ask you if that is in the exact form in which you gave your name and address to this person whom you saw at this exhibit? A. That is correct.

Q. And the same is true with regard to C28, which is the card, and shows your name and the same legend, so far as your address is concerned? A. Yes, that is correct.

Q. And is that all of the information that you gave to this representative? A. That is all of the information I gave to the representative.

Q. Can you recall when that happened? You said in general terms, I think, two or three years ago.

The Court: 1920 he said.

The Witness: I think it was 1920, about two years ago.

Q. Late in 1920? A. I think it was in the fall of 1920.

Q. You have produced here what has been offered and admitted as Exhibit C27, being the circular that you received in an envelope that you say you threw away? A. Yes.

Q. And do I understand that the envelope was addressed in the way that the letter was? A. The envelope was addressed in the same way as the address given on the card you just showed me.

Q. When was it that you received this? A. Last January.

Q. And at the time that you received this, you talked to Mr. Davis, did you not? A. I did.

Q. Of course, he told you that there was litigation pending then? A. No, he did not.

Mr. Egner: It wasn't pending; litigation began in February.

Mr. Kraetzer: I am in error; it was about the first of February.

Q. Did he say that this circular would be of any particular value? A. No, he did not.

Q. There was no discussion about the importance of this circular in any way, was there? A. Yes, there was this discussion when I got the circular.

The Court: He asked you if there was a discussion.

The Witness: Yes, there was.

Q. And that is what called your attention to it? A. Yes.

Q. And it was as a result of that, that you kept this circular? A. No, we keep all circulars similar to that, coming into our office.

Q. But there was nothing at the time that would attract your attention to the importance or significance of the fact that you had received a circular from the Kerlow Steel Flooring Company? A. I don't quite get that.

Q. (Last question repeated.) A. Yes, there was.

Q. So that the circular in your mind was of considerable importance? A. The—

The Court: Was it?

Q. Yes or no. A. It was of sufficient importance to attract my attention, and sufficiently to call it to Mr. Davis' attention.

Q. And did this significance have anything to do with the form of the address on the circular? A. Exactly.

Q. When was it that you called Mr. Davis's attention to the fact? A. The morning I got the letter through the mail on my desk.

Q. Do I understand that you have not retained the envelope? A. No, I haven't retained the envelope.

Q. Did you try to find it? A. No.

Q. Did you try to find it after your conversation with Mr. Davis? A. No.

The Court: What significance did you attach to this circular?

The Witness: When I received the communication on my desk and opened it, from the appearance of it, it struck me immediately that here is another Irving communication—Irving Iron Works communication, because of the similarity of the address. Upon opening the letter—

The Court: That is, similarity of your address?

The Witness: Yes, my name and my address. Upon opening the letter, I saw the picture of the grating on the cut which was enclosed, and that also to me appeared to be an Irving grating, and then the strange name on the card came to my attention, and I knew that Mr. Davis had been with Mr. Irving previously, and I called Mr. Davis in and asked him, "What does this strange name on the grating card mean?" And Mr. Davis explained to me that this was a new company—

The Court: No, I don't want that. But it was the various features that you mentioned that made the matter significant to you?

The Witness: The matter did not appear particularly significant, except that I recall them due to the conversation that took place between myself and Mr. Davis.

The Court: I understand that you retained that circular and the enclosed card as an ordinary matter of routine, the same as you retain all circulars?

The Witness: Yes.

RE-DIRECT EXAMINATION by Mr. Egner:

Q. What makes you remember that you gave your address in this particular way to the representative of the Irving Iron Works? A. The circumstances which led to that was this: Shortly after we had decided the plans for the vehicular tunnel, Mr. Irving called at our office one day and suggested that we use his type of grating by armoring the roadway of the tunnel. It is my duty as the head of the designing department, to get the best possible type of roadway, na-

turally, and I made up my mind I would investigate the matter and satisfy my own mind as to the advisability of doing so, and I happened to be at the Industrial Exposition at the Armory shortly after that, and I saw the Irving booth there and I looked at the exhibit, and the man in attendance, when I was ready to leave, asked me if I would like to have some of their literature. I said I would, and I didn't give him any connections, because when salesmen know that you are connected with important public work of construction, they sometimes bother you a little bit, so I simply gave him the name and address, "Mr. Singstad Room 614, Hall of Records."

RE-CROSS EXAMINATION by Mr. Kraetzer:

Q. The Hall of Records in New York City is a municipal building on Chambers Street, occupied primarily by the Surrogate and the records, and incidentally the New Jersey Vehicular Commission has offices there? A. That is not the municipal building.

Q. I said it is a municipal building. A. That is a county building.

Continuation of testimony in the above-entitled cause before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Tuesday, October 10, 1922, at 10 A. M.

Present: Counsel as before stated.

WALTER E. IRVING, recalled for further cross-examination.

Cross-examination by Mr. Kraetzer:

Q. Mr. Irving, I show you what purports to be one of your catalogues, and ask you if that is a catalogue issued by you? A. Yes, sir.

Q. Will you tell us the date on which it was issued, approximately? A. That was issued this year.

Q. Which month? A. I don't remember.

Q. Approximately how long ago, Mr. Irving? A. Approximately two or three months ago.

Q. At least that? A. I should think it was two months ago.

Mr. Kraetzer: I ask that it be marked for identification.

Marked Exhibit D2 for identification.

Q. I show you a number of letters, one dated November 14, 1921, addressed to Mr. J. M. Madden, and I ask you if that is your signature, and if you sent that letter to Mr. Madden? A. Yes, sir.

Mr. Kraetzer: I ask to have it marked for identification.

Marked Exhibit D3 for identification.

Q. I show you a letter dated February 3, 1922, addressed to Mr. J. M. Madden, and I ask you if you sent that letter, and if that is your signature? A. Yes.

Mr. Kraetzer: I offer that in evidence for identification.

Marked Exhibit D4 for identification.

Q. I show you a letter on two pages, dated May

24, 1921, addressed to Mr. Harold Scarth, and I ask you if that is your signature? A. Yes.

Q. Did you send that letter? A. Yes.

Mr. Kraetzer: I offer that letter in evidence for identification.

Marked Exhibit D5 for identification.

Q. I show you a letter dated November 17, 1921, addressed to Mr. Harold Scarth, and ask you if that is your signature and if you sent that letter? A. Yes.

Mr. Kraetzer: I offer that letter in evidence for identification.

Marked Exhibit D6 for identification.

Q. I show you a letter on three pages, dated November 22, 1921, addressed to Mr. Harold Scarth, and I ask you if that is your signature and if you sent that letter? A. Yes.

Mr. Kraetzer: I offer that letter in evidence for identification.

Marked Exhibit D7 for identification.

Q. And at the time that you signed it, was the postscript written? A. Yes.

Q. I show you a letter dated November 26, 1921, addressed to Mr. Harold Scarth, and ask you if that is your signature and if you sent that letter? A. Yes.

Q. And was the postscript written at the time you signed the letter? A. Yes.

Mr. Kraetzer: I offer that letter in evidence for identification.

Marked Exhibit D8 for identification.

Q. I show you an envelope, and ask you if that envelope, addressed to J. M. Madden, purporting to be

registered, came from your office? A. I think it did; it looks like it.

Mr. Kraetzer: I offer that letter in evidence for identification.

Marked Exhibit D9 for identification.

Mr. Egner: What is the date of the postmark?

Mr. Kraetzer: The date on the back is February 9 and February 10, 1922.

Q. I show you an envelope addressed to Mr. H. H. Schuldt, postmarked February 4, and ask you if you recognize that as having been sent by your office? A. It looks like it.

Q. Do you know that it was sent? A. No, I don't that it was sent.

Q. Look inside and see if that will refresh your recollection as having sent it? A. Yes, I think that must have been sent by myself—our office, because I know we sent it.

Q. Was it sent by your direction? A. Yes.

Mr. Kraetzer: I ask that it be marked for identification, including the newspaper clipping in it.

Marked Exhibit D10 for identification.

Q. I show you an envelope addressed to Mrs. K. E. McCurdey, dated February 4, 1922, and ask you if that was sent by your office? A. Yes.

Q. And look inside, and say as to the contents? A. Yes, sir, it contains the same clipping.

Mr. Kraetzer: I ask that the envelope and contents be marked for identification as one exhibit.

Marked Exhibit D11 for identification.

Q. And that letter and the newspaper clipping, D11 for identification, were sent at your direction? A. Yes, sir.

Q. And who is Mrs. McCurdey? A. Mrs. McCurdey is, I think, Bunker's mother-in-law.

Mr. Kraetzer: She is.

Q. I show you an envelope addressed to J. N. Madden, or J. M. Madden, bearing the postmark February 4, 1922, containing a newspaper clipping, and ask you if that was sent from your office, and by your direction, with the contents appearing in it? A. Yes.

Mr. Kraetzer: I offer that for identification.

Marked Exhibit D12 for identification.

Q. Approximately how many of those newspaper clippings similar to this Exhibit D10, 11 and 12 did you send out?

Mr. Egner: I object.

Mr. Kraetzer: I withdraw the question.

By the way, yesterday we were promised a copy of the expense account; is that ready for us now?

Mr. Egner: I think so.

Mr. Kraetzer: Has any effort been made to get the Tonnelier C. I. M.?

Mr. Egner: Yes, we have that. I produce all of the Schuldt's C. I. M.'s, and I have indicated one, referring to a conversation between Mr. Schuldt and Mr. Tonnelier.

The Court: Have you produced all that was demanded yesterday by counsel for the defendant?

Mr. Egner: Yes.

The Court: They will be in one package?

Mr. Egner: No, they are not, they are in several packages, which are here, subject to inspection of counsel.

Mr. Kraetzer: I ask that the C. I. M. dated 6/7/20, of Mr. Schuldt, referring to a visit at the J. G. White Engineering Company on the fourth day of June, 1920, be marked for identification.

Marked Exhibit D13 for identification.

Q. Mr. Irving, you were also going to dig up for us that list of customers and prospective customers; have you succeeded in doing that? A. We found the list of customers yesterday here, and the prospective customers we looked up during the night, and found that it was a list that was submitted in March or April to our counsel when this was up in a hearing here, and it contained about thirteen to fifteen thousand names.

Q. Have you the list with you? A. No, sir, I haven't the list with me.

The Court: Where is it?

Mr. Egner: We did not bring it. The list of customers is in Long Island City, and will be produced if your Honor thinks we should produce it. I may say, however, to your Honor, that we do not desire to produce the list unless your Honor directs it, because it contains the information as to all of our prospective customers. We prepared that list at the time of the argument before Vice Chancellor Backes, because at that time there was some talk about attaching the list to the preliminary restraint, that is, enjoining them from doing

business with these people; but of course if we had the restraint, we would have been willing to publish that list. I may say, for the information of counsel, that I have had the auditor go over this list, and he is willing to testify, under oath, how many names there are on that list.

The Court: I suppose the purpose of the inquiry, as I inferred yesterday, and I think counsel stated, was to show a discrepancy between the testimony of the witness and the testimony he gave in the affidavit sworn to by him last February.

Mr. Egner: That has been shown.

The Court: No, it has not altogether. Yesterday the witness said he thought it was twelve to fifteen thousand, approximately; he wasn't binding himself. He thought there were fifteen thousand today. Then he was asked how he could state in his affidavit on February last that there were only about 4,000 confidential customers and prospects, and then he said he allowed for the margin and it was an approximation, and he allowed a leeway of 5,000 on his approximation. Then he promised to produce the list. Have you examined the list since last night?

The Witness: No, I live up in Stamford.

Q. You are repeating now, then, from information given to you that the list contained from twelve to thirteen thousand names; that is the significant part with us; I don't want them to see the names nor the information, but they are entitled to know the number of names on the list.

The Court: I regard the request proper, and Mr. Irving said he could furnish the information desired, by producing the list. The witness will have to produce the list of prospective customers.

Mr. Egner: I understand your Honor now says that I must produce the list of names.

The Court: What I said was, that these gentlemen are entitled, inasmuch as Mr. Irving has seen fit to base this testimony on a list prepared, to see that list; and see not the information upon it alone, but see whether it does total thirteen thousand, or approximately thirteen thousand prospects.

Mr. Kraetzer: I should also like someone who is prepared to state that that list was taken from cards in the possession of the Irving Iron Works, so that we know definitely that we have that number of cards.

Mr. Egner: Perhaps I had better produce the witness.

The Court: I will let it appear on the record to this effect, in answer to the demand of counsel made yesterday before the close of the session, promise was made by Mr. Irving to produce the list of prospects or prospective customers today, showing the correct number of same. He has not been to his office, as I understand; he went to his home elsewhere. The list is in his office in Long Island City. And counsel states that he will produce the list for inspection, merely showing the total number of prospects. Counsel for complainant will also produce the auditor, who has either verified or prepared the list or checked it up in some way,

so that he may be cross-examined both by counsel for complainant and defendant on the entire record of this complainant company in relation to that list, except to disclose confidential information.

Mr. Kraetzer: That is entirely satisfactory.

Q. The list of customers was checked up by you? A. I get that information in the same way, from the sales department.

Q. You made no personal checking? A. No.

Mr. Kraetzer: You will produce someone to cover that?

Mr. Egner: The gentleman is here who checked both lists.

Q. In the latter part of 1921, did you put your force over in the Irving Iron Works on part time?

Mr. Egner: Is that material?

A. I think we did, but the production department would know that.

The Court: I think it may be material, in view of the statement of the opening of counsel, that the reason that Mr. Lown and Mr. Bunker left was that Mr. Irving was neglecting his business, it was running down; there was no prospect for them; he was devoting his time and attention to other matters, and they saw no hope of the future, and that was the reason they left, not to show primarily a conspiracy, but because they were forced out by his inactivities and inattention to it.

Mr. Egner: My point is this: We have no quarrel with their leaving us; they were inde-

pendent persons, they had a right to leave; that isn't what we are charging, that they committed any offense in leaving us; and therefore, what the reason may have been, whether for good reason or no reason, seems to me is unimportant. What we are charging is, that having left us, and having made up their mind to leave us, as they had a right to do, they have done these other things, which amounted to a conspiracy, to injure our business.

The Court: It all goes to the good faith of all the parties in this transaction. Mr. Irving has given us his version of what this man told him—the representations, the excuses they gave, and all sorts of things. They have indicated in the opening that they will give an entirely different version, and show almost that they were forced out by his neglect of business, to seek other employment. I think they are entitled to inquire into it.

Q. Don't you know it, Mr. Irving? A. I do not. The latter part of 1921 I may have been at times—

The Court Not what you may have been; if you don't remember, say so.

The Witness: I don't remember.

Q. Were you at the place of business over there in Long Island City from September on to the end of the year 1921? A. No, sir.

Q. Not at all during that period? A. Yes, sir.

Q. What proportion of the time were you there? A. I suppose at that time about half the time.

Q. During this half of the time that you were there, were you actively in charge of the business? A. As president.

Q. What does the qualification as president mean? Does it mean anything? A. Yes.

Q. What does it mean? A. It means that so far as the actual running of that shop and production of work is concerned, all my information—pretty much all of it, is second-hand; I get it through a manager. I have a manager under me.

Q. And for how long a time did you conduct your business in that way prior to 1921, getting all of your information through your manager? A. In the neighborhood of ten years.

Q. The production end of your business, of which he gave account, is the manufacture of the grating? A. Yes.

Q. Process of manufacturing? A. Yes.

Q. Methods of manufacture? A. Largely, yes.

Q. How about cost? A. Cost, I get that also from the manager, and from the auditing department.

Q. You have been getting that for a period of ten years? A. Yes, sir.

Q. How about engineering problems? A. I get that from the engineering department very largely.

Q. Through whom? A. Through the manager.

Q. Price? A. Yes.

Q. How about the financial end of the business? A. That end I took care of myself very largely.

Q. Since when? A. Since I started business in 1902.

Q. You mean to say that you personally signed checks, did you? A. I signed checks always.

Q. Always? A. Always.

Q. Were the checks made out at the time you signed them, or were they in blank? A. They were surely made out—oh, no, I get you; I often signed checks ahead of time with my name on—

Q. Go ahead; in blank? A. In blank.

Q. How about sales, did you engage in direct charge of the sales campaign? A. In direct charge of my assistant, who acts as manager of sales, Mr. Lown in that case, and Mr. Broadhead now.

Q. Would you say that the proportion of time that you gave to the business during the whole of 1921 was the same as you have stated, that is, one-half, for the months from September to the end of 1921? A. I didn't state I only gave one-half of my time to the business. When I started, I was away; my time, all my time, has been given to the business ever since I have been in it.

The Court: Which business?

The Witness: To this business, and to the W. Irving Forge, a subsidiary of this business. I have no other business.

Q. The W. Irving Forge you say was a subsidiary of this business? A. Yes.

Q. Was any of the product sold by the W. Irving Forge during 1921 manufactured in Long Island City? A. No.

Q. Where was it manufactured? A. 326 East 38th Street, New York City.

Q. Was any of the bookkeeping or accounting or anything of that kind, handled over at Long Island City? A. I think it was.

Q. Of the Forge Company? A. Some of it was; it is under our auditor's supervision at all times.

Q. But you didn't take personal charge of it, or personal inspection? A. No, sir.

Q. That you left to your subordinates? A. Yes.

Q. What proportion of your time, would you say, did you devote to the Forge and to the Iron Works;

how would you apportion your time, put it that way? A. Maybe ninety-nine per cent to the Iron Works and one per cent to the Forge.

Q. And was the Forge successful? A. No, the Forge hasn't been eminently successful.

Q. The Forge, by the way, was engaged in the business of making ornamental iron products, was it not? A. Yes.

Q. Such as andirons and door knobs? A. Yes.

Q. Artistic stuff? A. Yes.

Q. Did you discharge Kennedy for cause, or did he resign? A. Kennedy resigned.

The Court: Where was he located?

The Witness: Hartford, Connecticut.

Q. Do you recall, Mr. Irving, that you made the statement in your affidavit to the effect that Kennedy was discharged for cause? A. Yes.

Q. I ask you again, did Kennedy resign? A. He did resign, and he came into the office a few days before the date that he fixed for his resignation, and in the interim we had found that he had been travelling for the Kerlow Steel Flooring Company, and I told him he need not wait until the time that he put in his resignation, and I therefore discharged him.

Q. The reason for putting the force on part time—by the way, don't you know that part of the year the force was put on part time? A. No, sir.

Q. In the year 1921? A. No, I wouldn't know that. Sometimes I saw them going out of the gate three o'clock and there have been times when they worked all night, and I know that in a general way. but just when that is, I don't know. That would have to do with how the orders came down from the drafting room, whether they could keep the shop going or not.

Q. Didn't you know whether you had business enough to keep your place going at various periods? A. If the counsel will pardon me, that is what I was trying to explain.

The Court: I told you to answer his questions, and let Mr. Egner ask for an explanation.

Q. (Last question repeated.) Through 1921? A. No, sir.

Q. You had no idea at all of the jobs that were being figured on in 1921? A. Yes.

Q. Did you know what jobs were being figured on? A. I know at all times.

Q. Did you know what jobs were obtained by your company? A. Yes, sir.

Q. In detail? A. Not every one, no, sir.

Q. Would you know the square footage that was obtained? A. In a general way, yes, sir.

Q. Did you get any reports? A. Yes.

Q. Of jobs obtained? A. Yes.

Q. You were getting them at that time? A. Yes.

Q. And you couldn't tell from those reports whether you had work enough on hand?

The Court: He didn't say he couldn't.

Q. Could you tell from those reports whether or not you had work enough on hand to keep your place running at full blast? A. No, sir.

The Court: He said that is not what it is dependent upon, whether it is running at full blast or not; it depends on how the orders come down from the drafting room. He may have plenty of orders, but not the work in shape to keep men going.

Q. You had a drafting room and employees there who were required to make drawings, and so forth? A. Yes.

Q. And you had a regular routine whereby orders were placed with the drafting room, and they would prepare the drawings which were sent down to your shop to manufacture? A. No, sir, not at first.

The Court: In 1921?

The Witness: Well, I mean at any time; it isn't done that way.

Q. That isn't your system? A. No, sir.

Q. What was the system? A. The system is not just exactly as you said at that time, but instead of sending them out to that point, they sent them to Seattle or Honolulu, or wherever they go for approval, and if they come back, we might have a lot of work. Sometimes we don't have anything, whereas, right at that time we might have a lot of business.

Q. Did you get any reports to jobs, to use your own language, which had been in 1921? A. No, I didn't get that at any time.

Q. By the way, yesterday you told us that prior to the time when you had this interview with Mr. Bunker, in which you, as I understand it, for the first time learned definitely that Bunker and Lown had gone into business; that a man by the name of Roope, had reported to you that Bunker and Lown had gone into business? A. Yes, sir.

Q. And he told you they had gone into the grating business? A. Yes, sir.

Q. And how long before the interview with Bunker, did Roope tell you that Bunker and Lown had gone into the grating business? A. It must have been two or three weeks before.

Q. And at the time that Roope told you, did you believe him? A. No, I didn't.

Q. You did not believe him? A. I did not believe him.

Q. And on what do you fix the interview with Mr. Bunker at which time you, for the first time, learned and believed that Bunker and Lown had gone into the grating business?

The Court: Didn't you go all over that yesterday?

The Witness: Yes, it was in the neighborhood of the middle of the month.

The Court: I think we have that about a dozen times on the record.

Q. Was it on the day that you discharged Mr. Roope, that he confessed to you? A. No, sir.

Q. Was it after he confessed that you had discharged him?

Mr. Egner: You mean the conversation—

Mr. Kraetzer: No, I don't consider that a confession.

Q. You testified yesterday that at sometime or other, I believe, Roope was supposed to have started a strike, or attempted to start a strike? A. Yes.

Q. And then you called him into the office and confronted him with that fact and charged him with that fact? A. Yes, sir.

Q. And then he admitted it, what you charged him with? A. Yes.

Q. Was it on that day that you discharged him? A. The day that he admitted it, yes, sir.

Q. Right then and there? A. Yes.

Q. Did he tell you at that time that he had been planted there by Bunker and Lown? A. No, sir.

Q. When did he tell you that? Did he ever make that charge? A. He didn't tell me that he had been planted there by Bunker.

Q. He did not tell you that? A. No, sir.

Q. At the end of 1921, or near the beginning of 1922, did you increase the salaries in your establishment over there in Long Island City?

Mr. Egner: I object; is that material?

Mr. Kraetzer: The place was on part time, and yet salaries were increased, and I think it is inconsistent.

The Court: It might show poor generosity, or poor management, that is true, but how is that important?

Mr. Kraetzer: I withdraw it.

RE-DIRECT EXAMINATION by Mr. Egner:

Q. Now, Mr. Irving, on your cross-examination you were asked as to your affidavit, in which you swore that the so-called Type "M" grating, Exhibit C20, had been made in your plant in 1919? A. Yes, sir.

Q. Whereas in your testimony yesterday you said it was done in 1917? A. Yes, sir.

Q. And you mentioned some shop orders which had been found in your plant. I show you two papers, and ask you whether these are the papers that you had in mind at that time as the shop orders? A. They are.

Mr. Egner: I desire to offer these shop orders in evidence, and I should like to substitute for them, inasmuch as these are exhibits in the interference proceedings, photostatic copies.

Marked Exhibits C29 and C30.

The Court: The originals will be available, if desired.

Q. When were these shop orders, Exhibits C29 and C30, found? A. They were found during the summer, sometime before June.

The Court: This summer?

The Witness: This summer.

Q. Had you seen these shop orders prior to the time that you made your affidavit, in which you said that the grating had been made in 1919? A. I know now that I had not.

Q. When you said yesterday that you knew about these shop orders for dies at the time you made that affidavit, to what were you referring? A. I had reference to dies to which these shop orders referred, and I got it confused—the shop orders with the actual dies themselves. I knew the dies were found before Taroff left, which was January 14. I knew that date, and so I got them confused, and thought it was the shop orders that were found. It was the actual article that was found first, and when this patent interference came up, then we had to dig out from the old files in the old storeroom, all these things until we finally found these old shop orders that referred to the dies.

Q. In your testimony yesterday, in which you mentioned the year 1917, did you in part base that upon your refreshed recollection from the inspection of these shop orders? A. Yes, sir.

Q. You were interrogated somewhat upon the number of jobs which your company lost prior to the incorporation and activity of the Kerlow Iron Works,

and with particular reference to your affidavit in which you referred to probably a half a dozen jobs which you had lost, and your attention was called to a list of jobs alleged to have been lost by your company, attached to Mr. Lown's affidavit? A. Yes, sir.

Q. Had you, prior to your testimony yesterday, seen that list attached to Mr. Lown's affidavit personally? A. If I referred to it in my affidavit, I must have seen it.

The Court: You didn't refer to it; it was made in March, and your affidavit was sworn to on the twenty-seventh of February.

The Witness: Then, I had not seen it.

The Court: The question you were asked yesterday was, whether you had checked up that list; you stated you had.

The Witness: I had not seen it.

The Court: Now, your answer to Mr. Egner's question is that you had not seen it?

The Witness: No, sir; I had not seen it.

The Court: Have you seen it today?

The Witness: Yes, only in the hands of counsel yesterday—yes.

Q. You went over it last night? A. Yes.

Q. I show you this list, Mr. Irving, which purports to show jobs lost after competition, by your company during the years 1919, 1920 and 1921. I ask you how many of those jobs that were lost, you know to have been lost after competition between your flooring and other flooring of similar character? Frst, tell me how many, and then give me the name of the job. A. Those that I know of, the names are the Phoenix Utilities Company, New York, $1,000;

Henry L. Dougherty Company, New York City, $5,000. I don't recall these amounts exactly.

The Court: You are quoting from the list?

The Witness: Yes; I am quoting from this list.

Q. You don't mean to say that the amounts are correct? A. No, sir. The next is Richmond & Kemp, Philadelphia, Pennsylvania, a job at Lakehurst, Naval Hanger, $2,500; the next is Robert E. Lederle, Philadelphia, Pa., $100; the next is Southerland Construction Company, St. Louis, Missouri, and that says $9,000 here; I recall that one; the next is New York Edison Company, New York City, $2,000.

The Court: The list, Mr. Egner, to which you have directed the witness's attention, is found where in the record?

Mr. Egner: The list to which I have called the witness's attention, is annexed to the reply affidavit of Mr. Lown, filed on the application for preliminary restraint.

Q. Are there any jobs listed in the list, Mr. Irving, which appear to have been lost by your company on competition of different kinds of flooring, of which you were unaware when you testified yesterday and made your affidavit? A. You mean, unaware of the flooring?

Q. No, unaware that the job had been lost. A. Yes, two or three here.

The Court: Included in those you have given?

The Witness: No, sir.

Q. Which are those? A. There are others here, which it shows on the list, that I am not aware of.

Q. Which are those? A. Turner Construction Company.

Mr. Kraetzer: I don't see how that is material, whether he was aware of it; the question is whether he did actually lose them or not.

The Court: It is something more than that. You are asking him his knowledge on the subject. He said yesterday that he didn't recall over half a dozen. You attempted to contradict him by a reference to this list made after he had made his affidavit. I think he said his list was insignificant, and then he stated, in reply to my inquiry, that he had not had an opportunity to see the list, and had never seen it. Mr. Egner is asking him, after he has examined the list and he finds half a dozen on the list, which he has enumerated as representing the jobs lost through competition—I don't understand this last question myself. You ask him if in addition to those six that he has given, if there are others that he lost?

Mr. Egner: I asked him first if there are jobs listed that he lost, which he knew, at the time he testified yesterday and when he made his affidavit, had been lost by his company, and he said "Yes." Now, I want to also ask him whether there are other jobs shown on this list, which they show on the list, and of the losing of which he was unaware.

The Court: Are there any other jobs on the list which are lost?

Mr. Egner: He doesn't know now yet, but I want to specify which jobs appear to have been lost, on that list, and of which he knows nothing.

The significance is this, that the great majority of jobs mentioned on this list were

not cases of competition; they were cases where some other kinds of flooring, such as wooden planks, were taken, and it is not fair to consider that as competition.

The Court: I understand you now.

Mr. Egner: I will reframe the question.

Q. Mr. Irving, are there any other instances mentioned on this list of jobs lost by your company after competition between steel floorings of the same general character as yours, and of the loss of which jobs you had no knowledge, either yesterday or at the time you made your affidavit? A. Yes, sir.

Q. Which are those? A. One for Turner Construction Company, New York City, $3,500, and there is one for just Ornamental Iron Works Company, Akron, Ohio, $1,000; International Paper Company, New York City, $5,000; Corn Products Refining Company, Chicago, $1,500; and there is one Corn Products Refining Company, Chicago, $7,000. I don't recall any of them.

The Court: You don't recall bidding on any of those jobs?

The Witness: No; I don't recall bidding on any of them, or losing them, even.

Q. Mr. Irving, with respect to the other jobs, then, the six you know about, and these you have just mentioned, what does that list indicate as to the character of flooring which actually was in those jobs? A. Most of them, it wasn't flooring at all; it was just old-fashioned straight bar grating, but a number of them, it shows here, they used wood planks. Here is one, Notaseme Hosiery Company—they used wood planks. Here is another one, the Autocar Company used plate.

The Court: Is there any need of having him go through the list?

Mr. Egner: No; the paper speaks for itself.

Q. Is a contest between a straight bar flooring and your type of flooring competition? A. No, sir.

Mr. Kraetzer: I object and move to strike out the answer, that it is a conclusion.

Mr. Egner: I think the witness is entitled to give a reason for his statement.

The Court: I am going to strike it out, because I don't myself regard it as competition. I am treating competition of flooring grating of a similar construction, unless there is some special reason.

Q. You stated on your cross-examination that you made no effort after 1917 and prior to the incorporation of the Kerlow Company, to sell the type of grating shown on Exhibit C20, and also that you did not apply for a patent until January, 1922. Why didn't you offer that type of grating for sale? A. Because when that type of grating was designed and the idea being to try to get something that had bars at right angles, and yet conformed to the triangular element that the engineers like so well in this type of grating, twice a year conferences were held on that grating, and it was decided that that grating, while it was pretty and ornate and ornamental, and might do quite well with architects, would not invite the confidence of engineers, because of the fact that the bracing bar in it already had a buckle in it—two buckles; that no engineer would like a bracing bar that was already buckled. The function of the bracing bar in any truss is to brace. It forms a triangle, and the

triangle is the only geometrical figure that has got to break before it changes its shape; whereas, in this type of grating, the bracing bar which forms the triangle, is already buckled in two points; it is bent already, and in order for that to become a triangle, it would have to be straightened out. That is the reason that we thought at that time that we wouldn't put it out, because of the fact that these things of ours were doing so well that it would be very poor business to start another, when it wasn't necessary and not a bit better, and not quite so good. If our business developed in such a way we began to do some work for architects, then it would be time enough to take that up; so I carefully hid this one sample that I knew at that time existed—not exactly hid it, but put it in my desk, to which I alone only had a key. The rest of my desk could be gotten into by Mr. Price and others.

Q. I ask you why you didn't exploit that at that time. You have stated that your list of possible users of your type of grating was somewhere between twelve and fifteen thousand names, roughly speaking. A. Yes.

Q. Can you give us an estimate as to the number of individuals and concerns in the United States who are possible users of a flooring of this kind? A. Hundreds of times as many as we have on our list. We haven't scratched the surface yet.

The Court: Wouldn't it be a guess?

The Witness: Yes; I have traveled the country many times, and I know how vast it is, and how many industries there are. Every smoke stack is a possibility; every engineer is a possibility; every architect is a possibility; every plant of every kind is a possibility.

Q. Would you say that there are as many as a hundred thousand? A. More than a hundred thousand.

Q. You have been asked as to this talk you had with Roope in the latter part of October, 1921, when you had your first intimation that they had formed some kind of a grating business; just what did Roope say to you?

Mr. Kraetzer: I object; I don't see any connection between Mr. Roope and the defendant.

The Court: You developed it on cross-examination and brought it out. I will let Mr. Egner go into it.

A. Roope came in after lunch from New York, from Manhattan; he came in and said, "I had lunch today with Bunker and Lown," and he said, "Lown is working for Rosevelt & Company, and Bunker is with Lown, and they are both in the grating business, and they are going to make a grating called the 'Carlo,' " as I understood it at the time.

Q. How did you understand it was spelled at that time? A. He did not spell it; he said "Carlo," as I took it, and I immediately began to get out and find out if of the concerns I knew, there was anyone in the iron business by the name of Carlo might possibly be the one he was hooked up with.

Q. What did you say to him about that information? A. At that time, I simply had the information, and I told him, "That is all right, people have a right to go into business, if they want to; competition isn't such a terrible thing; in fact, it is good; I rather like competition." For years we had been hampered—I told him all this.

The Court: Tell us everything you told him and he told you.

The Witness: I told him we had been greatly hampered by that continual sneer "monopolist, monopolist," although we had never fought an infringement in our lives, or anything of that sort, but wherever we went, we went whether losing money or not, and I said, "If you could only get this competition to come along and do their share of the advertising and do their share of the missionizing, it wouldn't be half so bad." Our biggest expense has been the missionizing of this thing and the advertising of it, and if some other concern would come along and put as much time and money as we did into missionizing, proselyting and advertising, there would be just that more business developed, due to the fact that we hadn't scratched the surface, and all we would have to do would be to sell, and it was a cinch to sell, as against missionizing.

Q. Did you say anything to Roope at that time as to whether you believed this? A. No; I told him that I didn't believe it.

Q. But you already said that it is a fact that you did not believe it? A. I hadn't the faintest idea of it; I gave it due consideration; I wanted to look it up.

Q. Between that date and the time of your conversation with Mr. Bunker, did you receive any other information from any source whatsoever, indicating that they had gone in business? A. None whatsoever.

Q. When you made your affidavit, in which you stated in effect that the list of your prospective customers was about four thousand, what information did you have of any kind on that subject? A. Of course,

at that time I had only, to the best of my knowledge, an estimate of it. I was amazed later on when I found it was more.

Q. What did you know at that time? A. That was my estimate of it at that time.

The Court: Did you have any knowledge or merely make an estimate?

The Witness: I made the estimate and was assisted in making the estimate by someone else.

Q. When was the comparison, checking off, made, upon which you base your present estimate? A. That was made at the time of this answer that was returned over here.

The Court: Sometime in March?

The Witness: Sometime in April or March.

RE-CROSS EXAMINATION by Mr. Kraetzer:

Q. Taking these jobs that are annexed to the Lown affidavit that you checked over just now with Mr. Egner, how many of these jobs did you bid on? A. I don't know.

Q. Do you recall your definition of "competition" yesterday, in which you agreed with me, that where you bid on a job and lost it, that was competition? A. I don't recall it. I asked what he meant by "competition," and it was objected to.

The Court: I think we have better standards than either one of you as to the meaning of the word "competition," and will take the Century, and Standard, and Webster, in preference.

Q. At the time that you say you hid the sample in your drawer, did you also hide the die that is now an exhibit here, from which that sample was made, and I refer to Exhibit C22 as a photograph of the die? A. No, sir.

Q. You knew that there was such a die in existence, did you not? A. No, sir.

The Court: Was there such a die in existence?

The Witness: Yes, sir.

Q. When did you learn of its existence first? A. When I got a shop order for it; that was after March, of this year.

Q. You advertised the form of grating as shown in Exhibit C20 by what designation? A. Type "M."

Q. Will you tell us how it is that this shop order, Exhibit C29, and shop order, Exhibit C30, call for Type "K"? A. Yes, sir.

Q. All right, tell us. A. In 1916, when we made our first printed catalogue, we had in it gratings that were given type numbers up to J. This was something new after that. This was a little different, and when this shop order was made out, the man who made it had characterized it as something, and wanted to characterize it as something. It was a new type of grating, and he took it upon himself to call it the next letter, "K." He identified that on a card which is in the interference suit, by showing the outline of his tickler card.

Q. Are you testifying from your own knowledge? A. You asked how I knew, and that is the only way I knew.

Q. And having it typed as Type "K," and called it so, why didn't you continue it in the catalogue, instead of calling it "M"? A. That was in 1917. The

thing had been largely forgotten; the dies had been largely forgotten. The diagram wasn't forgotten, but put aside, and along a little later comes the necessity of making up a type mesh grating for car steps, that we were going ahead on, and are on it now, and that was called "K" finally by the management.

The Court: Then after "K," did you have "L"?

The Witness: Yes, "L," and now comes "M."

The Court: Did you have "L" before you had "M"?

The Witness: Yes.

The Court: What was "L"?

The Witness: "L" was a big mesh.

The Court: Is it included in your 1916 catalogue?

The Witness: No; it was done after any catalogue.

Q. The fact then is, that the Type "K" that you made—that is, your car step which was devised after the Type "M," is similar to the Kerlow grating? A. Yes.

Q. How long after? A. I cannot tell you.

Q. Months or years? A. That is all in the interference.

The Court: Have you any recollection? If not, say so.

The Witness: I don't recall.

Q. You never advertised Type "M" in your catalogue up to the circular marked Exhibit D2 for identification? A. Never until then. Pardon me, with the exception of some cards that we got up in a hurry, as quick as the company started, to get out to do something.

Q. Are you referring to that card which I showed you? A. One ahead of that, something similar to

that. That came after D2. The card D13 I have came after D2. Just as soon as we heard of it, we got out a little card.

Q. Showing a cut? A. Showing this Type "M."

Mr. Egner: Is this it (indicating)?

The Witness: That is the very first.

The Court: The witness produces a card which he says is the card issued before the one marked D13.

Mr. Egner: I offer that card produced, in evidence.

Marked Exhibit C31.

Q. Do you manufacture the egg-crate type of grating? A. We are prepared to manufacture it, and we have had this manufactured, but I hardly would say we are manufacturers of it, because we don't get enough orders for it.

Q. You don't press the sale of it, do you? A. No.

Q. You don't approve of that type of grating, do you? A. Only for certain things.

Q. You advertise it, however, in the catalogue? A. For certain purposes, yes, sir.

Q. At the time that this Type "M" grating was designed, and I refer to the type as shown by C20, did you have any safe load tests made? A. No, sir.

The Court: Who was your designer when Type "M" was designed?

The Witness: Mr. P. L. Price.

The Court: And the shop sheet you identify, was that prepared by him?

The Witness: No; that was prepared by a man by the name of Davis, but it has Mr. Price's O K on it, or initials.

The Court: Is that Mr. Price the same man you referred to as your general manager?

The Witness: Yes.

GEORGE M. DEMOREST sworn for complainant.

Direct-examination by Mr. Egner:

Q. Where do you live, Mr. Demorest? A. Pittsburgh, Pennsylvania.

Q. What is your profession? A. Civil engineer by training and experience.

Q. How much experience have you had? A. About twenty years combined.

Q. Are you the personal sales agent for the Pittsburgh territory of the Irving Iron Works? A. Yes.

Q. Just what does that take in, what territory? A. Generally speaking, north and south line through Altoona to the central part of western Pennsylvania, that is, west of that, the western peninsula of Maryland, west of Cumberland, almost all of the State of West Virginia, except the extreme southern part, and the counties in Ohio bordering on Pennsylvania.

Q. In addition to representing the Irving Iron Works, do you handle the products of any other concern? A. Yes.

Q. How many concerns do you look after? A. One other.

Q. How long have you been acting as sales agent for the Irving Iron Works? A. To the best of my knowledge, since the early part of 1917.

Q. When did you first become acquainted with the

use of this Irving Subway as a flooring? A. I cannot give you an approximate date when it was.

Q. I don't mean very accurate, but how much—you, of course, knew it in 1917 when you started to work as sales agent? A. Yes.

Q. How long before that had you known of its use as a flooring? A. About two years.

Q. How did you become acquainted with that use, through what source? A. I learned of it as an engineer in estimating some structural work in one of the New York subways, where it was specified and delineated, and it impressed me then as being a standard product as a grating, not as a flooring.

Q. When did the significance of it as a flooring drawn on your mind?

Mr. Kraetzer: Is that material?

The Court: I will allow the question.

A. About three to six months, at the outside, after I arranged to represent the Irving Iron Works Company in the Pittsburgh territory.

Q. Did you at that time know of any other type of steel grating available for use as a flooring? A. No.

Q. Prior to the first of October, 1921, were you acquainted with Walter H. Lown? A. Yes.

Q. How well acquainted were you? A. Rather slightly acquainted.

Q. How had you happened to know him? A. Through his work with the Irving Iron Works Company, in correspondence mostly, having met him, I think, but twice in person before that time.

Q. At the same time did you have any assistant in your office at Pittsburgh? A. Yes.

Q. What was his name? A. Wallace A. Stewart.

Q. What is Mr. Stewart doing now? A. He is the Pittsburgh representative for the Kerlow Steel Flooring Company.

Q. And did he leave you to go with the Kerlow Steel Flooring Company? A. Yes, sir.

Q. And when? A. December 3, to the best of my knowledge, 1921.

Q. In the beginning of your employment by the Irving Company what did you find as to the knowledge of the profession and trade generally, of the use of this Irving Subway as a flooring?

Mr. Kraetzer: I object on the ground that it is immaterial.

The Court: I will receive it.

A. There was very little knowledge in the Pittsburgh district about it at all. Most of them regarded it as a support grating, which it is, and I can recall but two or three who regarded it as a flooring. I don't think they even called it a flooring, but they recognized its inherent method, and thereafter automatically used it as a flooring as well as a grating.

Q. During the course of your agency, can you give us any estimate as to approximately how much of your time has been spent on so-called missionary work, preaching the gospel of Irving Subway?

The Court: That is, to show its possibility for flooring purposes.

A. In that period I should say it would average from forty to forty-five per cent.

Mr. Kraetzer: What period was this?

The Court: His entire period, from 1917 down.

Q. And how did that proportion vary; was it more at the beginning, and did it afterwards become less? A. Yes; it was almost one hundred per cent in the beginning.

The Court: You mean trade became better educated to use and possibility for flooring, which lessened your work?

The Witness: It lessened my missionary work and put me on direct sales.

Q. How long was it before you got your first order after you entered the employ of the Irving Iron Works? A. Approximately three months, to the best of my knowledge.

Q. And on what basis, at that time, were you compensated?

The Court: Salary and commission?

The Witness: It was only a commission. That was the legal arrangement, as I might call it, a straight commission.

Q. What was it actually? A. Actually there was a guarantee. I don't believe it was called a salary. It wasn't, but it was called a guarantee, a drawing account.

Q. You did have a guaranteed drawing account? A. I did.

Q. In the early part of October, 1921, did you have any conversation with Mr. Stewart with respect to a visit made at the office by Mr. Lown?

Mr. Kraetzer: That calls for a yes or no answer, I presume?

A. Yes.

Q. What did Mr. Stewart say to you?

Mr. Kraetzer: I object.

Mr. Egner: He is one of the agents. This is not a jury. If your Honor does not find he is part of the conspiracy, you can disregard it.

The Court: How can it be binding on this defendant? Suppose Mr. Stewart made all sorts of ridiculous assertions, how can that bind the defendant? You have to show me that he is a conspirator first.

Mr. Egner: We must show one thing at a time, but I will withdraw it at this time; it is not important enough now.

Q. You say that early in October, 1921, you had a conversation with Mr. Stewart? A. Yes.

Q. And at that time did you see Mr. Lown in Pittsburgh? A. Not before the conversation with Mr. Stewart.

Q. When did you first see Mr. Lown after you had talked with Mr. Stewart; when did you see him and where did you see him? A. In Pittsburgh, and near October 25.

Q. I didn't mean in Pittsburgh; where did you first see Lown after the talk with Stewart and when? A. In Pittsburgh, and near about October 25.

Q. Had you seen him during the month of October at any other place? A. Yes.

Q. Prior to your talk with Mr. Stewart? A. Yes.

Q. Where was that? A. In Chicago.

Q. Tell us when you first saw Lown and where? A. In Chicago, October 8th or 9th.

Q. Where did you see him, at what place? A. At the LaSalle Hotel.

Q. Tell us what conversation you had with Lown

at that time. A. Lown stated that he had called at Pittsburgh to see me about the business they had organized; of course, I knew that both he and Mr. Bunker had left the Irving Iron Works Company.

Q. How did you know that? A. Through official announcement or some other correspondence from the Irving Iron Works Company in the regular course of business, and that he and Bunker were going to form a company known as the Kerlow Steel Flooring Company to manufacture a grating.

Q. Prior to that statement had you known from this official announcement, or any other source, what business they had gone into, or that they had gone into business together? A. I did not know that they had gone into business together. I did not know what business Bunker expected to engage in. I did know that Lown had expected to go with an investment banking house or bond house; it wasn't very clearly defined.

Q. How did you know that? A. That was mentioned by him, and I believe Mr. Irving, when I was in New York, in May, about the time Lown's resignation from the Irving Iron Works Company was announced.

Q. That is when you knew that? A. Yes.

Q. Now, continue with your conversation with Lown at Chicago. A. After he announced about going into the grating business, he gave reasons.

The Court: Tell us all he said, as near as you recall it, or the substance of it. State everything that you remember that was said.

A. (Continuing.) He said that they were going into the grating business, to get both, that which was grating and that which was grating flooring; that

the Irving Iron Works Company had not developed the possibilities of the business, and they saw a great future in it; that they had not been able to establish their own ideas regarding the formation of markets, and that they had decided to organize this company and market this product, whereby their own ideas and methods would have full sway. He showed me a sample—

The Court: Sample of grating?

The Witness: A sample of their product. He also showed me a photograph of a machine which he called a brake, which was expected would produce this product at very low cost, lower than ever it had been produced before; that the machine or the process which it would involve was Bunker's idea, and it was patented; that the product itself was patented, and that he was the patentee of the product; that he had originated it; that they had bought out several other minor patents which might be infringements or make trouble for them; that they had analyzed all the Patent Office records for the purpose of learning of the validity of existing patents; that they had a large sales organization under way, work had started; they had a factory in Long Island City, and they inferred they had another one also, but the big factory would later be constructed and operated in Jersey City, and to the best of my knowledge, that the one in Long Island City was small, and was a sort of smoke screen to blind the Irving Iron Works Company as to their real operations. He further stated that they would want to get eventually a representative in Pittsburgh. I inquired about his relations with the Irving Iron Works Company and Mr. Irving. I referred very early in the conversation to the solicitous attitude—

Mr. Kraetzer: I think we are entitled to the conversation.

The Court: Instead of saying you "referred," state what was said.

The Witness: It is very difficult to refer to many things I said.

The Court: You are not expected, after all this time, to recall the exact words, but give us the substance; don't use the general expression you "referred." State what you said, as near as you recall.

The Witness: I said that Mr. Irving had always maintained a very solicitous attitude toward him while he was in his employ; that Mr. Irving, when his resignation was announced, expressed his regret to me; that I trusted that relations were friendly; that regardless of how he might establish himself as a competitor, that it would be better to maintain friendly relations; he agreed with me—

The Court: What did he say?

The Witness: He stated that I was correct, and that it was his intention to be fair and friendly, but that their own necessities would, of course, require them to do certain things, which they couldn't accomplish while in his employ, and perhaps not meet with his approval in every way; they would have to look out for themselves.

Q. Did he say anything about having seen any other agents of the Irving Company? A. He had seen Moser, in Cleveland; was to see Skoning, in Chicago, and wanted to see Vonier, of Milwaukee, and had seen Madden, in Philadelphia. Kennedy, I think, was going to see Scarth, in Detroit. These are all the names he mentioned, to my best knowledge.

Q. Did he say whether he had progressed to any extent with it?

Mr. Kraetzer: Objected to as leading.
The Court: Objection sustained.

The Court: Did he tell you why he was calling on these agents, or why he was giving you this information?

The Witness: He didn't give any reasons why.

The Court: Did he say why he called on these agents; what his object was in calling on them, or intending to call on them?

The Witness: To get them lined up as possible representatives.

The Court: Did he use that expression?

The Witness: Of the Kerlow.

The Court: Representatives of whom?

The Witness: Of the Kerlow Steel Flooring Company; they were dissatisfied, and I think he stated that they had some conversation whereby there was somewhat of an understanding.

The Court: These agents had some conversation with him whereby there was such an understanding; is that what you mean?

The Witness: Yes.

Q. Can you recall anything else that was said at that conversation? A. Yes, he expected to put the Irving Iron Works out of business; their wonderful methods, not only of manufacturing, but of distribution, whereby they were going to eventually have a warehouse in Chicago, Denver and San Francisco, and they were going to establish a preferential price for many of the small manufacturing concerns, known as ornamental iron fabricators and other general contractors in all the cities in the country, whereby they could sell them grating—simply as a grating, without its application as a flooring, of which there was a

great volume in the United States at a lower price —that is, these ornamental iron fabricators could sell the Kerlow product at a lower price than they could manufacture their own straight iron grating and sell it for.

The Court: Did he say anything to you about going into his employ?

The Witness: He did not ask me; he stated that all the others who were considered, had applied or would apply to them.

Q. Apply for what? A. For a position as district sales representative.

Q. Of his company? A. Of his company in any one of these cities.

Q. Did he at that conversation say anything about the commission arrangement then existing between you and the Irving Iron Works? A. He did.

Q. What did he say on that subject? A. He said it was not sufficient and that theirs would be more; that they would pay—do you wish me to continue?

The Court: Yes, tell everything that was said.

A. (Continuing.) That they would pay ten per cent on sixty thousand, to the best of my knowledge, as the limit, and from sixty to eighty thousand, to the best of my knowledge, twelve and a half per cent; and from then up, fifteen per cent.

The Court: When you say sixty to eighty thousand, what do you mean, dollars?

The Witness: Yes.

The Court: Dollars or amount of work produced by the agent?

The Witness: Yes, in one year's time.

The Court: What were your commissions then from the Irving Iron Works at that time?

The Witness: That year they were ten per cent on, I believe, $40,000, and a small amount for any volume of business over that.

The Court: Then the rates he suggested or mentioned, would be greater than those paid by the Irving Company?

The Witness: Yes, sir.

Q. At that conversation did he say anything about what they might do with respect to Mr. Irving's plant and business at Long Island City?

Mr. Kraetzer: I object; counsel is leading the witness.

The Court: It is not a leading question; it is capable of being answered yes or no.

A. Yes.

Q. What did he say on that subject? A. Mr. Irving, so he stated, had planned to discontinue his business, if competition in something very much like his product would arise. He was supposed to have stated this to Lown. To the best of my knowledge, it was one time when Lown questioned him as to what he would do if competition would arise of an organized character. He said he would prepare to liquidate his business. Lown expected that they would put him out of business, which he regretted very much, on account of his personal feeling for Mr. Irving, but if they didn't put him out, he thought that he would automatically get out, as he stated to Lown at one time previously; but if neither took place, they had a plan prepared for him, in which they would offer him $100,000 for his business as it stands, feeling that he would like to retire to his country place.

Q. Did he say anything about any jobs which the Kerlow Company had recently gotten and the Irving Iron Works lost? A. Yes, he did.

Q. What did he say as to that? A. He stated they had received a job, approximately $40,000 in amount, from the Johns-Manville Company, Milwaukee.

Q. Any others? A. I cannot recall any at that time he claimed they had received.

Q. What else did he say about that job? A. He said that the Irving Iron Works Company had been figuring on it, and they, of course, had lost it, through not being able to meet competition, and he had a very deep feeling and much sympathy for Vonier, their Milwaukee representative, who had done much hard work on the job, and out of consideration for his hard work and his appreciation of Vonier's ability, he thought that he would feel better when they sent him a check for $4,000, which would be his commission he would receive had the Irving Iron Works procured the order.

Q. He was the agent of the Irving Company? A. Yes.

The Court: This $4,000 was to be a gratuity, merely out of sympathy, as you were told?

The Witness: Yes, sir, that was my understanding.

Q. Did he say anything about what advertising campaign they would enter upon? A. They were to launch a great advertising campaign, beginning November 1, naming the "Engineering News Record," "Iron Age," "Iron Trade Review," as the media for this campaign.

Q. Did he say anything about what would happen to the representatives of the Irving Company who might remain with that company? A. Inasmuch as,

he said, Mr. Irving was looking out for himself and his family and for their welfare, that in the event of his business ceasing to exist by any means whatever, which he anticipated, that the agents would be left without the representation of the Irving Iron Works Company, whereby their previous work—missionary work, if you please, would not be realized upon, and they would lose the benefit of all that effort, which we considered the same as invested capital.

The Court: Whose expression is that?

The Witness: That is my expression.

Q. You say he didn't ask you definitely to become their agent? A. No, not at that time.

Q. Did he say anything on the subject of whether you might become their agent? A. Yes, sir.

Q. What did he say on that score? A. He stated that he would like to give me the first opportunity; that I had had the Irving Iron Works Company account for a long period, and having devoted much time to it, I had so much in it, that in justice to me, as a loyal representative of the Irving Iron Works, he would like to see me realize on that effort, and he would not place a representative until I told him that I didn't want it. His exact words were, it would be held open until I wanted it.

Q. You have given us approximately everything that was said in that conversation? A. To the best of my recollection, in Chicago, I am giving you the main words.

Q. After that, when and where did you next see Mr. Lown? A. About October 25th, to the best of my knowledge, in Pittsburgh.

Q. Previous to that time had you received any letter from him? A. I received a letter from him upon my return to my office from a trip on October 19th.

Q. Was this the letter which you received, being a letter on the Kerlow Steel Floor Company letterhead, dated October 17, 1921? A. That is the letter I received on the nineteenth.

Mr. Egner: I offer that in evidence.
Marked Exhibit C32.

KERLOW STEEL FLOOR COMPANY.

15 Exchange Place

Jersey City, N. J.

EXECUTIVE OFFICES.

Room 391—50 Church St.,

New York, N. Y.

October 17th, 1921.

Mr. George H. Demorest,
Union Arcade Bldg.,
Pittsburgh, Pa.

My dear Mr. Demorest:

I arrived safely back in New York with as you know a great deal of business lined up. Found things in mighty good shape here and we seem to be all set for a very successful and profitable career.

The tests which I spoke to you about have turned out more favorably than we anticipated and I am sure you will be surprised at the strength we are able to develop, although I do not recall your saying that the angle gave added strength.

You will remember our discussion regarding technical information for the Engineer to be embodied in our catalogue and also strong proof of our ability to simplify and make less costly construction for platform and in other places where concrete has habitually been used. You agreed to let us have your ideas on this subject and at your convenience would appreciate this information.

You will recall our discussing the policy of the company to have as much stock as possible contained among the agents and employees. We are now making allottments of the Treasury stock toward this end and would be pleased to have your advice as to the amount which you would like to receive, also, as to your desires in making payment for same. Some of the men are taking amounts outright now, and are placing subscriptions and options for further amounts to be paid for from salary and commissions. The price at present is $50.00 per share.

Think it might also be well to advise you that as this Treasury stock is limited, it is very possible you will not receive the full amount of your subscription, however, we would like to keep the company as closed as possible and will allot all we possibly can to you men with whose welfare we are definitely concerned.

With kindest regards to Mrs. Demorest, Stuart and yourself I remain,

Cordially yours,

W. H. LOWN,

WALTER H. LOWN,

Sales Manager

Kerlow Steel Floor Company.

P. S.—Thought it might be well to advise that I have not as yet received the order for the treads which you obtained while in Chicago.

Q. Does the reading of this letter refresh your recollection as to any other subjects which were discussed at your meeting in Chicago? A. Yes; the matter of the financial end of the business was not dilated upon as much by Lown as might be inferred by this letter. Some of the things, I thought, were rather previous in here. It is very important to state, though, that he had given me an approximate price on two sizes of their product, which I recognized as being lower than our then existing prices. He also gave me approximate prices on steps.

Q. Treads? A. Treads, yes; I realized immediately, being in business as an independent sales agent, that we had lost an order on account of price, which my company could not meet, and which was offered as a subcontract by another interest, who had a very low price contract on its hands and could not be beyond a certain amount, which would involve this profit, and regardless of their recognizing the merit of our product, they had to sit tight on the price they could pay.

Q. Was that an order for treads? A. Yes, on Heyl & Patterson Company, Pittsburgh.

Q. Did you mention that name? A. When he told me the price, I immediately saw I could get an order for my own account, and save the effort that I had put in, and money, and at the same time, convert a possible prospect to this kind of a product, rather than let them use something they had used for the last hundred years, and so I considered the mutual advertising benefit of having such an installation go in there; at the same time I realized the commercial and economical possibility, and I voluntarily brought them up, and the job was very warm then and was ready to close, and we had practically lost it anyway.

Q. The Irving Iron Works? A. Yes, at the price we quoted.

The Court: So you placed it for Kerlow then?
The Witness: No, sir, I did not.
The Court: He makes a reference to some order that you placed.

Q. Is that the order that is referred to in the post-script to your letter, C32? A. That is the order he refers to.

Q. Then you told him there was a possibility of your getting an order for him for those treads? A. Yes.

The Court: And did you get the order for him?
The Witness: No, sir, I got the order.
The Court: You didn't turn it over to him?
The Witness: No, sir.

Q. When did you get the order? A. Eight weeks later, to the best of my knowledge.

Q. Who filled it, the Irving Iron Company? A. Yes, sir.

Q. And did you get the order before or after Stuart left you? A. After Stuart left me.

Q. After your return to Pittsburgh, did you again see Mr. Lown? A. Yes, sir.

Q. When was that?

The Court: October 25th, he said.

A. To the best of my knowledge—I am confused on those dates.

Q. Before you saw him again, did you receive this letter, on the Kerlow letterhead, dated October 21, 1921? A. Yes, sir.

Mr. Egner: I offer that in evidence.
Marked Exhibit C33.

KERLOW STEEL FLOOR COMPANY

15 Exchange Place

Jersey City, N. J.

Executive Offices,
#50 Church Street,
New York City.

October 21st, 1921.

Mr. G. M. Demorest,
Union Arcade Bldg.,
Pittsburgh, Pa.

My dear Mr. Demorest:

Your letter of the twentieth has been received, and the contents duly noted. We appreciate your attitude, and as the writer agreed while in Chicago, your case must be given special consideration owing to conditions with which we were familiar. Letters were sent to all the men in order to formulate a special block of treasury stock which must, necessarily be placed aside at the present time, and one was sent to you with the thought you might not consider the time immature to give us your ideas and desires.

However, as promised in Chicago, the writer will look out for your interests and see that you are given every consideration. There are many things to be gone over, and I will probably be in Pittsburgh during the next two weeks as I contemplate a trip to Wheel-

ing. If you have any special information you think will be valuable on that job, would appreciate same at your earliest convenience. Needless to say, you will receive full credit if we are successful, and from all indications at this time, we will be.

We have all the business that can be desired and the future looks more promising than we had ever hoped. Mr. Bunker sends regards to Mrs. Demorest and yourself, as does the writer, remaining

Cordially Yours,
KERLOW STEEL FLOOR COMPANY,
W. H. Lown,
By W. H. Lown,
Sales Manager.

Exhibit C34 offered, page 193:

GEORGE M. DEMOREST
Union Arcade
Pittsburgh

October 20, 1921.

Mr. W. H. Lown, Sales Mgr.
Kerlow Steel Floor Company,
Room 391, No. 50 Church St.,
New York, N. Y.

My dear Mr. Lown:

I only arrived yesterday morning from my trip and must defer some of the discussions in your letter of the 17th instant until a later date. That step

order will be through in the near future. The Heyl & Patterson Company will order when they have their details developed so they will know exactly how many will be required.

I would prefer to take up the matter of stock subscription and other matters of policy when I am able to meet with you in New York. I am not at present in a financial position to subscribe for stock on a cash payment basis, even though I would be able to do so it would hardly be the thing to do until certain other affairs are out of the way, which we discussed.

I believe you will understand the case and, at the proper time, no doubt, I shall subscribe for a block of stock to be paid for out of accrued income.

Thanking you for your kind consideration and with best regards to Mr. Bunker and Tarof, I remain.

Yours truly,

GEO. M. DEMOREST,

GEORGE M. DEMOREST.

The Court: What job does he refer to there; this step you are speaking of?

Mr. Egner: The job in Wheeling.

Mr. Kraetzer: I certainly must protest against that. I just heard counsel suggest—

The Court: The job in Wheeling, he said; I don't think that was proper. Do you remember what job that refers to in the latter?

The Witness: I am not certain.

Q. Was there a job at that time in Wheeling? A. Not to my knowledge.

By Mr. Egner:

Q. Have you the letter of Mr. Demorest, referred to in the letter of October 21?

Mr. Kraetzer: Yes (producing same).
Mr. Egner: I offer it in evidence.
(Reading same.)
Marked Exhibit C34.

Q. Mr. Demorest, who was Tarof mentioned in this letter? A. He was employed by the Irving Iron Works Company and was mentioned during our first interview in Chicago which I had forgotten, but as being one who was coming with them.

Q. Do you know in what capacity he was employed by the Irving Company? A. I did not know at that time, but when I met Tarof he was in charge of the drafting room.

Q. Do you happen to know when Mr. Tarof left the Irving Iron Works? A. No, I do not.

Q. I show you a letter on your letterhead, dated October 26, 1921, and ask you whether that was your reply to the letter of Lown's of October 21, which I read a few moments ago? A. Yes, sir.

Mr. Egner: I offer that in evidence, which has been produced by the other side (reading same).
Marked Exhibit C35.
(Exhibit C35 offered, page 193.)

GEORGE M. DEMOREST

UNION ARCADE

Pittsburgh

October 26, 1921.

Mr. W. H. Lown, Sales Mgr.
Kerlow Steel Floor Company,
No. 50 Church Street,
New York, N. Y.

My dear Mr. Lown:

Replying to your letter of the 21st instant in which you discuss the investment in your stock, it is most likely that we shall desire to take as much of this as possible at the proper time. The amount would depend largely upon the volume of business that would be booked in your behalf. This, of course, depends upon the energy put into sales operation, but after all it is mostly dependent upon general industrial conditions.

To ask you to reserve a block of the Treasury stock now would be purely speculation. When you arrive in Pittsburgh we can perhaps come to a tentative understanding.

There is another job coming through for about 3,000 sq. ft. wherein the price had to be down to rock bottom, as well as some protection for the fabricator. I practically received the assurance of getting this order yesterday, over the phone.

Regarding the Wheeling job, I learned from one of the fabricators that they are asking for bids on the buildings. I have no knowledge of the chances of putting in your armored construction in the floors, but if the work is sufficiently active on their part as

to justify them asking for bids, it would seem like the most favorable time to do some creative sales work on the case with the idea in mind that the price will have a great influence on such a large area of flooring.

Thanking you for your consideration and trusting that arrangements can be worked out satisfactorily, I am,

Very truly yours,
GEO. M. DEMOREST.
GEORGE M. DEMOREST.

Q. Does this letter refresh your recollection as to the Wheeling job? A. Yes, sir, it does.

Q. What have you to say as to that? A. It was in connection with a group of buildings for the Wheeling Steel Corporation, which we discussed in Chicago, and which he knew, too, through general sources of trade information, which a certain engineer, one Walter E. Rott, in Pittsburgh, had written him about, I believe he stated, and naturally was generally interested in it as a possible prospect.

Q. Were you after it also as the agent of the Irving Company? A. Yes, sir. It was not so active as he thought; I might say that it is just now getting active, some of it.

Q. It hasn't materialized yet? A. No, sir.

The Court: In view of the date of that letter, did you have your interview with him on October 25, as you think, or later, after the receipt of that letter?

The Witness: I want to correct myself, as the next interview was November fifth.

The Court: Instead of October 25th?

The Witness: Yes, sir; my recollection was wrong.

Q. Up to this time had you made any application for a job with the Kerlow Company, or was it still open? A. I had not applied; it was still open, to my knowledge.

Q. On or about November 5th did you receive this telegram from the Kerlow Company, which I show you? A. Yes.

Mr. Egner: I offer that in evidence.

Marked Exhibit C36.

C79NY 14 1921 Nov 5, PM 12

CH New York 111OA-5

George M. Demorest
Union Arcade Pittsburgh Penn

Must make arrangements regarding known business there have you objection our placing temporary representative

KERLOW COMPANY.

Q. Did you reply to that telegram? A. Yes, sir.

Q. How; by letter or telegram? A. I don't remember.

Q. What was your reply? A. I replied that I did not object to placing a temporary representative in Pittsburgh.

Q. You just said that you saw Mr. Lown again on November 5? A. To the best of my knowledge.

The Court: Isn't that the date of the telegram? Did you see him on the date of the telegram, or after the date of the telegram?

The Witness: It must have been the day after; it might have been the day.

Q. At any rate you saw him? A. Yes.

Q. And where? A. In Pittsburgh.

Q. What conversation did you have then? A. At that time I asked him many leading questions and we went into detail.

Mr. Kraetzer: I move to strike that out.

The Court: He can state that. Now, you can tell all you said and did, and all he said. Anyone present at the interview between you and Mr. Lown?

The Witness: Mr. Stuart was present, my assistant.

Q. Where was it held? A. In my office, in the Union Arcade Building, Pittsburgh.

The Court: Was there an appointment made for it, or did he just call on you?

The Witness: There was no definite date set. I remember being surprised to find him in Pittsburgh.

The Court: When he called there what did you have to say to each other?

The Witness: He first came in and stated that there was going to be in Pittsburgh large amounts of work in prospect, and that they had to get it if they could. I stated I didn't think he knew of anything I didn't know about, and that conditions were such that there was nothing very big on the way or very important. He then went into their plans in a general way, and also related that the

Irving Iron Works Company was weakening, they were not doing much work—I don't remember whether it was at that time he stated, but he did state at one time that they were shut down; so the discussion then, as my interest was aroused, was brought about by a number of questions that I had advanced. I wanted to know something about their shop costs in a general way; he wasn't very well equipped to inform me, but I overlooked it at the time, because I believed most everything he said. In fact, I don't remember doubting anything. He had the sanction of Mr. Irving as to character and ability before, and I never knew him to be anything but a man of honor and of ability in his chosen field, and therefore I believed him. He then referred again more to the method of organizing; that they had issued, or authorized $250,000 capital stock, par value $50 a share; there had already been sold or subscribed $190,000 of that; that only $60,000 remained, which would be distributed among agents and direct employees, to be paid for out of their accrued earnings, or their dividends. He stated that they had engaged offices in the Hudson Terminal, which I believe I knew before; that they had received some more new orders; that they had now engaged several agents since he last saw me, and I believe he mentioned specifically Madden, Kennedy, Scarth, Skoning and Moser again, and that Schuldt was going to be with them. When I asked him about Tarof specifically, he denied that Tarof was with him, that he had changed his mind, or something to that effect.

Q. Did he say anything about any other agents than those you have mentioned? A. I asked him about Mr. Prince, the Boston representative, in order

to know how he would be lined up to help thereby my own ideas and opinions, and he didn't deny, nor he didn't directly affirm, but he stated he had been seen and progress was made—was about the substance of his statement.

Q. Did he say anything about the financial condition of the Irving Company? A. He stated that they were not in sound financial condition; that they had lost money on their previous year's operations; that they were behind in their—I am ahead of that part, I don't believe he mentioned about being behind in their payments to the agents at that time.

Q. Did he mention that at any subsequent time? A. Yes.

Q. When was that? A. About November 15, when he was in Pittsburgh.

Q. What did he say in that connection? A. After I had commenced to show some resistance and things did not seem to be working out so well, he became rather severe, and showed a vindictive attitude.

Q. Tell us what he said.

The Court: Don't characterize it; tell what he said.

Q. Go on? A. At that time he stated that the company owed Scarth, their Detroit representative, $1,300 on commissions; that they had never paid him anything since he was engaged in May, and that he was in a bad way for funds, and his wife had to assist in commercial work to sustain them until he could collect his income. He also stated that Bunker would have to sue for his salary.

The Court: Sue the Irving Company?

The Witness: Sue the Irving Iron Works Company for his salary.

The Court: Have you finished all that was said at the conference on November 5th or 6th?

The Witness: The conference was rather lengthy.

The Court: Have you given us the substance of it?

The Witness: I believe I have given the substance of it.

Q. Did he say anything more at the conference on the twenty-fifth? A. Yes, sir.

Q. What else did he say? A. That was the time he mentioned about the Detroit representative, Mr. Scarth, having to sue for his salary.

Q. Did he say anything about Mr. Irving's personal finances? A. He stated that he was withdrawing all the money he could from the company and putting it into safe securities; that at one time he had gone to a safe deposit box and helped him clip coupons; that his wife and children were on the pay roll—

Q. Mr. Irving's wife and children? A. Yes.

The Court: Did he state how he knew so much about the Irving Company's affairs; where he got his information from?

The Witness: He didn't state how, but I inquired how he could learn so much, and he said they had ways, I believe, or something to that effect, of getting information; and I didn't exhibit so much curiosity, because I knew that he had rather recently been with the company, and Bunker had just recently resigned, and if he was so friendly with Mr. Irving, and both of them having more or less confidential positions, and having been there quite a while, that this was self-explanable, that they would know quite a bit about their affairs.

Q. During the November 15th conference did he call up anybody from your office? A. Either on November 5th or 15th, he called up Bunker in his office or in his home, late in the afternoon.

Q. Did he tell you what the substance of his conversation was? A. He stated that things were going all right; that they had secured a contract for the Electric Company's Fort Worth, Texas, power plant, which I knew amounted to several thousand dollars. I asked him from whom he received it, because we had bid on it in Pittsburgh, and he said from the Belmont Iron Works Company.

Q. Do you know who finally got that job; whether that was correct or not? A. I saw later—

Q. Do you know of your own knowledge? A. To the best of my knowledge, the Irving Iron Works Company received that job.

Q. On that date did he tell you anything more about the finances of the Kerlow Company? A. He said they had good picking in the form of a bank in some city—I believe Jersey City it was—which had on its Board of Directors the president or vice president of the Lehigh Valley Railroad Company—I don't remember that at all clearly; that he was a director and a big stockholder in the bank and was also a big stockholder in the Kerlow Steel Flooring Company. They had some others in whose names meant nothing to me, but he stated them, but he referred to K————, N——— & Kuhn, of New York, who I knew to be big international investment bankers, as being interested in their company, which I inferred to mean with them—

Mr. Kraetzer: I object.

Q. He did refer to that? A. Yes, I cannot re-

member the direct connection between his statement and the company.

Q. At that time was anything said about a plant in Pittsburgh? A. Yes, sir.

Q. What was said on that subject? A. I originated that discussion by the fact that transportation costs were running up since the freight rates had just recently been advanced, and dwelt upon the economical features of a plant in Pittsburgh as a result of saving in transportation cost; being responsible for mentioning that idea, I feel that he was—

The Court: Tell what he said.

The Witness: He immediately took up the statement.

Q. What did he say? A. By saying it would be a good thing; it would be very simple, and would not create much of an investment to establish a plant there; that one of these marvelous machines would only cost eight or ten thousand dollars, and all it needed was a roof over it, and it could be done in a very short time.

The Court: The machine that he had to make his gratings with?

The Witness: Yes.

Q. Did he say anything about who would be in charge of that plant in Pittsburg? A. Yes, on account of being the same sales representative being located there, I would be manager in that district.

The Court: And in charge of that plant?

The Witness: In charge of that plant, but not as a production man; that I would also be considered as being on the Board of Directors. He inquired also

how my own commission payments were coming along from the Irving Iron Works Company.

Q. What did you tell him? A. I told him they were paying right along; sometimes they slipped a week or so, but I wasn't worrying about that; the intention was, of course, not to.

The Court: Strike that out.

Q. About that time did you take a trip to New York? A. I left Pittsburgh for New York on November 24th, Thanksgiving eve.

Q. And while in New York did you receive this telegram from Mr. Stuart? A. Yes, sir.

Mr. Egner: Any objection to my offering it?

Mr. Kraetzer: Yes.

Mr. Egner: I will have it marked for identification.

Marked Exhibit C36a for identification.

Received at PH Pennsylvania Hotel
215NY ANJ 48 7 EXTRA BLUE

UK Pittsburg Penn 41OP Nov. 25 1921

George M Demorest

Deliver to no one but addressee personally
Hotel Pennsylvania New York NY

Received letter from Lown stating that as far as they can learn the other crowd are about to omit their last gasp period advises you better make arrangements as to financial matters now to avoid misunderstanding and trouble in the future

WALLACE A STUART

444P

Q. Did you again see Mr. Lown after the occasion of November 15th? A. Yes, sir.

Q. When? A. On November 26th.

Q. What happened then? A. I saw him in New York and stated I had come down to see the Irving Iron Works Company and gave him nothing specific, and he gave me very little of a specific nature; nothing stands out prominently in that interview, and was very short, on Saturday morning, November 26.

Q. Then you came to New York and you saw Mr. Irving? A. Yes.

Q. And you returned to Pittsburg? A. Yes.

Q. When, if ever, did you tell Mr. Lown that you would not go with him? A. On December 2nd, to the best of my recollection.

Q. Did you tell him that at an interview? A. Yes.

Q. What was said at that interview?

The Court: Where did it take place; in Pittsburg?

The Witness: At my office, in Pittsburg. Mr. Lown came in the office, unannounced, stating that he had come over from New York, that one Walter E. Rott, the Pittsburg engineer, who he had previously stated he was considering for the sales representative of the Pittsburg territory, and I knew that—

The Court: What was said at this conference?

The Witness: He also stated to me previously—

The Court: What was said at this conference between you and Mr. Lown? That is all you can tell us.

The Witness: He sat down, stating that business was very good; he had just bought 500 tons of steel for manufacturing purposes from Newbar, one of the Carnegie Steel Company, in their New York office. I remarked that business must be fine to be able to buy 500 tons of steel these days. He said, yes, it was

very good. I said, "Your credit must be building up, to be able to get on the Carnegie Steel Company's books for 500 tons," which would amount to upwards of $30,000, at the then prevailing market prices, New York. He said, "Oh, we don't need any credit, we paid cash for it, which is much better yet." I said, "Yes, that is better, but," I said, "Why waste that money? If you have got the cash to pay, why not get credit and use your money otherwise?" I didn't believe it, but I—

The Court: What was said?

The Witness: I then proceeded to ask him about their operating costs more in detail. He exhibited a much less knowledge than he had the first time.

Mr. Kraetzer: I object.

The Court: Strike it out. Give your recollection of what was said. I don't want your comment or your belief or anything of that kind.

The Witness: I asked him first the price he was paying for material, and he said, "$1.70 a hundred." I immediately checked up, I said, "Why, the market price is around $2.35 or thereabouts, Pittsburg"; he wasn't able to make a direct reply to this.

The Court: Strike that out; what did he say? If he didn't reply at all, say so.

The Witness: I cannot recall that he did reply direct to it.

Q. Did you at this conversation say to him whether you would accept a position with him? A. I refused it.

The Court: What did you say about it to him?

The Witness: I stated that I was sorry, but I was going to stick to Mr. Irving; that I had found that he

was square, and their business was straight, and they were active, and going to stick, and that I was going to stick, too.

Q. What did he say to that? A. He regretted it very keenly and said that I would regret it, not going with them, and left my office.

Q. Had your associate left you and joined his staff at that time? A. No, sir, that was on December 2nd, I think.

Q. This interview was December when? A. December 2nd.

Q. That you had this interview? A. Yes.

Q. And when did your associate leave you? A. On December 3rd.

Recess.

Q. You told us several things that were said about the financial affairs of the Kerlow Company; is there anything else that you can recall that was said along that line, and calling your attention particularly to the subject of the insurance on the offices of the company? A. I inquired how the stock was held, and who held the stock—who held the controlling interest, and Lown stated that it was held between him and Bunker, which represented the good will and value of patents they had in it. He further volunteered the information, according to my recollection, that the total issue of stock was protected in the form of life insurance, in the sum of $125,000, taken out by their company on the life of Bunker and himself. He also volunteered that they had paid this premium in ad-

vance. He didn't state the amount, but they paid in advance, and borrowed money on their premium, and then reinvested it in some good bonds that paid about eight per cent, taking advantage of a bargain bond market which existed at that time.

Q. On any of these occasions of your talks with Mr. Lown did he say anything about your signing a formal application for appointment as agent? A. Yes.

Q. Tell us what he said on that subject?

The Court: When was it; at which interview?

Q. Can you recall upon which conversation it was? A. As I recollect, it was the second interview, sometime following the telegram previously referred to, of November 5th.

Q. And that was the interview in Pittsburg? A. Yes, sir.

Q. What did he say on that subject? A. As a matter of policy, all would-be agents who were considered should apply promptly for the representation or position, in writing.

Q. Did he say why that was a matter of policy? A. I don't remember that he did.

Q. Do you recall anything else that he said about the application, the reason for signing the application? A. I cannot remember his words.

Q. Give us the substance of it. A. The substance, as impressed upon me—

Q. Just the substance of what he said.

The Court: Not your impression; your recollection of the substance.

A. That it was a protection to them, so that there would be no come-back on the part of the Irving Iron

Works Company that they had directly solicited them; it would then stand as evidence of the agent's willingness to have the position—that is, the desire to have it; that is about the substance of it.

Q. You stated that on one occasion, namely, the first occasion, Mr. Lown told you that Tarlo would be with him? A. Yes.

Q. And you have also named various agents who would be with them, he told you; did he at any time tell you that any of the men at the plant would be with him, and if so, who? A. I can remember a man named Roope and Kennard, that he had them; that they were with them, and that they also questioned the validity of the patent under which the Irving Iron Works Company had been manufacturing, all these things, and that they had in their employ the originator of the idea.

The Court: Did he say who he was?

The Witness: I don't remember.

Q. At the time did you know who Kennard and Roope were? A. I had met Roope during one of my visits, but I had not met Kennard, to my knowledge.

Q. Do you know what positions they held? A. To the best of my knowledge—

Q. Did you know? A. I did know; I have been told that Roope was the shop superintendent, but I don't know what position Kennard had.

Mr. Egner: I find there is a letter which I neglected to offer.

Q. Did you on or about December 8, Mr. Demorest, receive this letter from Mr. Lown, which I hand you, being a letter on the letterhead of the Kerlow Company, dated December 8, 1921?

Mr. Kraetzer: We will concede that.

A. Yes, sir.

Mr. Egner: I offer that letter in evidence. Marked Exhibit C38.

KERLOW STEEL FLOORING COMPANY

50 CHURCH STREET

New York City.

December Eighth, 1921.

Mr. George M. Demorest,
Union Arcade Bldg.,
Pittsburg, Pa.

My dear George:

Needless to say, the writer was very much chagrined, and keenly disappointed, when he received a report on the Heyl-Patterson step job, which from all appearances, you are going to give to our former associates. I cannot help but feel, that, after my consideration of you, this action on your part is not only inconsiderate, but hardly in keeping with the fair minded ideals of competition which you expressed to me.

Always prompted by unselfish motives on the part of the company, as well as myself, ever appreciative of the necessity for keeping inviolate your interests, I undertook to inform you in confidences which I was led to hope would be preserved in the same spirit in which they were given. Little did I realize, little

was I afraid, as far as you were concerned that those confidences would be used against my interests, or that utmost consideration or decent treatment would receive their opposites in repayment. I am sorry, deeply sorry, that I cannot help but feel they were misplaced

You took this order for the Kerlow Company in your own name, which we allowed because of your circumstances. Without our stepping into the breech at that time with a fair price, the order would have been lost to you, and our action saved the commission which you would have lost. What was denied you from your own company, was accorded you by ours. Do you not, in view of these facts, appreciate my feelings in the matter?

I have begun to see, since my return to New York, the reasons for your attitude. For you, I regret sincerely, that you did not put your interrogations point blank up to Mr. Bunker and myself. They would have been answered, and you would have been "shown," beyond your most exacting satisfaction. Instead, you took the other party at his word, neither expressed your doubts, your fears or your confidence, in us, and resolved on a course which was the offspring of haphazard handling of the truth, and based on inaccurate information. I cannot bring myself to enter any further discussion and feel that the company and myself have been liberal to the extreme. Therefore, I will only say that if you have not already done so, you will receive, in the course of a few days, a complete repudiation of the very erroneous information you received thru the Carnegie Steel Company. They have fallen all over themselves in expressing regret here in New York, and it is only our desire to remain the regular fellows that we are, which saves a might-

hot situation from embroiling certain parties down in Pittsburgh. You need not worry, for here again, you will find us liberal and considerate in both action and attitude.

But the thing that I cannot shake, is this. Why did you not ask me for this information when you were here in New York? I could have taken you to our banking connections, shown you statements, and even introduced you to some of the biggest men in New York for opinion. Is not meeting the issue squarely more desirable than back door methods?

Mr. Scarth, of Detroit, had the same experience. He was filled with the same poison, and he came to us to be shown. He was referred to men whose authority and word are magnets in this city, he got opinions and facts on the organization, financing and general condition. Am I presuming, when I say that his opinion and knowledge of us is now of the highest order. And this, after Mr. Irving took the trouble to bring him in from Detroit, spend money on him and even entertain him at his home for two days. The result is that Scarth is now back in Detroit, a better and bigger Kerlow man than ever. Incidentally, he went up to K. N. & K., where he and myself were well received. He will write Mr. Stuart a full report on his investigation, and I hope you are able to see it. My only regret is that you did not avail yourself of the same privilege.

Everything comes out after the test of time. That is all I can say now, beside the fact that the Kerlow Company is going ahead, growing each day, and is the inevitable power in this field. My only regret, and it is a personal one, is that you will not be with us, for as men are my hobby, I find the greatest pleasure

in doing for those I like, and enjoy the continuation of pleasant relationship.

Cordially yours,

WALTER H. LOWN.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. Do you remember a job in 1920, Mr. Demorest, for the Kelly Springfield Tire Company, of Cumberland, Maryland, some $19,000 worth of flooring? A. Yes, sir.

Q. Was any particular form of flooring specified on that job? A. No, sir.

Q. It just called for a flooring, did it? A. No, sir.

Q. Grating flooring? A. It called for grating of the straight bar type; it is very common.

Q. What was it to be used for?

Mr. Egner: I object; I don't see how this is cross-examination.

The Court: I presume there is some connection between it.

Mr. Kraetzer: I think the connection will be apparent in a moment.

The Court: All right.

Q. What part of the plant was it to be used for? A. Nearly all for the boiler room.

Q. What part of the boiler room? A. Walked around in front and behind the boiler.

Q. The floor? A. Yes.

Q. A straight bar grating was specified for the floor there? A. Yes, sir.

Q. Did you make a bid on that job? A. Yes, sir

Q. Did you get the job? A. No, sir.
Q. Do you know who got it?

Mr. Egner: I don't see how this is cross-examination.

The Court: I don't see it, either, but I will receive it.

A. Yes.
Q. Who? A. Taylor & Dean, Pittsburgh.
Q. What kind of flooring was put in? A. Straight bar grating.

Mr. Egner: I ask to have this stricken out of the record; it has not been connected apparently; counsel is going over to some other subject.

The Court: Did you put in a bid for the Irving Company?
The Witness: Yes.

The Court: Is the purpose to show that this is one of the bids that was lost?

Mr. Kraetzer: Not only that, but also as bearing on the Court's statement today, as I recall it—I quote merely from memory, to the effect that a straight bar would not be considered a competitive product as a flooring.

The Court: That is what my thought has been, that Mr. Irving has stressed his product on this patented flooring, along with another one, which they claim is just as good, or better, and it is such type of flooring as that that I have in mind as being competitive. The whole purpose of it is to show me whether he is telling the truth, or whether he didn't lose

a lot more business than he stated. What other purpose has it?

Mr. Kraetzer: Also the suggestion that it is outside. The statement has been made—I differ from your Honor's statement—if I may —that is, that straight bar flooring—I am calling it a flooring—is just as much a flooring, and just as much competition, as the analogous products of the—

The Court: We don't differ about that; I was trying to show the distinction between a wooden, concrete and other floorings that Mr. Egner pointed out was in the list attached to your affidavit of March, and I didn't consider them competitive floorings in the sense that Mr. Irving had not told the truth, when he said he only lost those six cases against competitors. I think that is the fact as the situation is disclosed before me now. I will tell you now, that in this case I do not consider this competitive as against the type of flooring that is now involved in this controversy.

Q. How many other concerns did you represent in 1921? A. Two other concerns.

The Court: Two others beside the Irving?
The Witness: Yes.

Q. What are the names of these concerns? A. W. A. Jones Foundry & Machine Company, in Chicago, and the other was the Uniflex Coupling.

Q. Did you handle Baler as well? A. Arrangements were made for that, but never became active.

The Court: Never completed?
The Witness: No.

Q. How about safety switches; did you handle those? A. No, sir.

Q. I don't think I got an answer from you as to the amount of your commissions in 1920 from the Irving Company.

Mr. Egner: The total or the rate?

Mr. Kraetzer: Total amount of commission; whether they paid him or not; how much did you earn in commissions from the Irving Company?

Mr. Egner: Is that important?

The Court: They may insist that that is influencing his testimony. Give it as close as you can.

The Witness: Approximately $9,000.

Q. And in 1921? A. Approximately $4,800; I am pretty close on that.

Q. At the time that you had your first interview with Mr. Lown, which I understand was in Chicago, what was owing to you for commissions by Mr. Irving? A. I don't know.

Q. What is your guess?

The Court: I don't want his guess; I want information.

Q. What is your best recollection? A. Approximately $1,500, $1,800.

Q. No more? A. Maybe less; I think it would be less than that.

Q. Would you say that it was no more? A. I would say that it was no more.

Q. And how long had that been owing to you? A. I don't know that.

Q. What is your best recollection, approximately? A. The amount would vary, according to my credits and their payments; it would vary possibly every day, on that basis.

Q. I notice in the course of your testimony, as I recall it, this morning, you used the word, in describing yourself, "independent sales agent"; do you recall using that expression? A. Something approximating it.

Q. You were on a commission basis absolutely? A. Yes.

Q. And you so considered yourself at the time that you had your first interview with Mr. Lown; you considered yourself an independent sales agent? A. Yes.

Mr. Egner: I object as to what the witness may have considered himself.

The Court: He has so characterized himself, hasn't he?

Mr. Egner: The question is what he was, I suppose.

The Court: I can only take it as he has described himself. He admits the description quoted by counsel is correct. I don't know anything about his relation except as he tells me.

Q. You considered yourself free to handle other lines besides the Irving line? A. Yes.

The Court: That is of grating flooring?

Mr. Kraetzer: That is my next question.

Q. You did? A. Yes.

Q. You also considered yourself free to handle a competitive line of grating flooring? A. No, sir; not morally free.

Q. What do you mean by that distinction, sir, that you didn't consider yourself morally free to handle another line? A. Because there was no legal obligation placed upon me not to.

Q. Did you have a contract with Irving? A. Yes.

Q. I think it is in evidence, isn't it?

Mr. Egner: Not his, but the same form.

The Court: It is admitted to be in the same form as the others you offered?

Mr. Egner: The same form; yes, sir.

Q. Did you tell Lown, at the first interview, when anything was said about handling the Kerlow products, that you felt that you couldn't morally do so? A. Yes, sir; to the best of my knowledge I did.

Q. Did you telegraph to Mr. Lown at Chicago, or rather from Chicago? A. Yes, sir; it is my recollection that I did.

Q. Is this telegram which bears date October 7, 1921, at 8 P. M., and addressed to "W. H. Lown, care Statler Hotel, Cleveland, Ohio," the telegram which you sent to him? A. Yes, sir.

Mr. Kraetzer: I will offer it for identification.

Mr. Egner: It may be offered in evidence.

Mr. Kraetzer: Then I offer it.

Marked Exhibit D5a.

1921 Oct 7 PM 8 08

A 783 CH 8
LH Chicago Ill 7

W. H. Lown
Care Statler Hotel Cleveland Ohio

Wait here until you arrive Leave your address
GEO M DEMNEST

Q. That telegram was sent by you from Chicago to Mr. Lown, at Cleveland, is that right? A. Yes, sir.

Q. That was in accordance with some information that had been given to you, or that you had gotten, that Lown had called at your office, wasn't it? A. Yes.

Q. And did you know what he wanted to see you about? A. No, sir.

Q. Had no knowledge at all? A. No, sir.

Q. When Lown got to Chicago, did he come to see you or did you go to see him? A. I don't remember the circumstances of the first meeting.

The Court: You met at the LaSalle Hotel?
The Witness: Yes.
The Court: Were you stopping there?
The Witness: Yes.
The Court: Was he?
The Witness: Yes.

Q. Do you recall swearing to an affidavit in connection with this proceeding, verified January 16, 1922? A. Yes, sir.

Q. And do you recall stating that on October 9

"While I was in Chicago, the said Lown sought me out, and on that day we held a conference"; do you recall making that statement? A. Yes.

Q. Was that strictly true, that he sought you out?

Mr. Egner: I suppose that is a conclusion.

The Court: He is asking if it is true; he made the statement in the affidavit.

A. I was at the LaSalle Hotel and he came there.

The Court: The question is, did he seek you out?

Q. As a matter of fact do you recall putting in a telephone call for Mr. Lown about ten minutes of ten, on the night of October 9th?

The Court: In the hotel for him; did you put in such a call?

The Witness: In the hotel, for him.

Q. You did? A. Yes, to the best of my recollection, I did.

Q. Leaving a message for Mr. Lown to call you in the morning, isn't that right; to call upon you in the morning, isn't that the message you left? A. I am not certain. The detail I don't recollect clearly.

Q. At that interview with Mr. Lown was this Heyl & Patterson step job first mentioned? A. I don't recall.

Q. Was it at the Chicago interview? A. Yes, one of them.

Q. At one of the Chicago interviews? A. Yes; there were several in Chicago.

Q. Was there more than one interview? A. I recollect we met twice.

The Court: In Chicago?

The Witness: Yes, he was there two days.

Q. What days were you there? A. I was there from the fifth of October until—ten days. I became ill and I had to tie up for a while with a cold until about the fifteenth of October.

Q. About how long was Mr. Lown there at that time, if you know? A. Monday I was informed that he received a wire to return to New York and said that he was leaving on Monday; we had breakfast on Monday morning.

Q. According to your telegram message, you got there on the night of the ninth of October, or rather Lown got there at that time; does that refresh your recollection as to the date on which Lown was there?

The Court: That is the second conference?

Mr. Kraetzer: Yes.

The Witness: I don't understand the question.

The Court: In view of the telephone conversation you spoke of, or the message, does that refresh your memory as to the two days on which you had your conferences with Mr. Lown in Chicago?

The Witness: Yes, ninth and tenth, to the best of my knowledge.

Q. Did you see him on the eleventh? A. No, I did not.

Q. When did you discuss the Wheeling job? A. First with Mr. Lown.

Q. Was that at Chicago? A. I cannot recall that now; to the best of my knowledge, the discussion was brought up there.

Q. You remember that you did discuss that job with him, do you; your recollection is that the subject was brought up there? A. I cannot recollect, so I cannot be specific.

Q. Was that a bid on a job for Irving? A. No, sir.

Q. Did you intend to make a bid for Irving? A. We had no definite inquiry, nothing specific to talk about.

Q. So you didn't know what the character of the job was? A. No, it was rumored they were putting in some mills and other buildings.

Q. And it was possible that there might be a necessity for some flooring, some ventilating flooring there? A. Yes.

Q. You didn't know whether Irving would be specified or would be admissible there or not, at the time of this conference? A. No, sir.

Q. Didn't know the character of the job at all? A. No, no specific job, that I remember.

Q. And still you told Mr. Lown about this job that might require flooring? A. I don't remember whether I brought it up or whether he brought it up.

Q. But you told him you would give him some information about it, didn't you? A. I don't recall that, if I did.

Q. Do you recall giving him some information about it? A. At this conference or later?

Q. At any time? A. We had a discussion about it.

Q. Yes or no, do you recall giving him any information at any time about that Wheeling job? A. I don't.

Q. Look at this letter, Exhibit C35; I direct your attention to the next to the last paragraph: "Regarding the Wheeling job, I learned from one of the fabricators that they are asking for bids on the buildings. I have no knowledge of the chances of putting in your armored construction in the floors, but if the

work is sufficiently active on their part as to justify them asking for bids, it would seem like the most favorable time to do some creative sales work on the case with the idea in mind that the price will have a great influence on such a large area of flooring." A. Yes, sir, that refreshes my mind.

The Court: Did you give him any information at any time regarding the Wheeling job, is the question.

The Witness: No, sir, nothing was given him.

Q. Don't you recall this information in this letter, C35, which I have just read?

The Court: You didn't regard that as information about the job; that is the question.

The Witness: I regard that as information, but there is no other information.

Q. Did you consider that that was morally proper, to furnish information of that kind to the Kerlow Steel Flooring Company? A. Yes, sir.

Q. You told us you had a young man by the name of Stuart employed by you, did you not? A. Yes, sir.

Q. Where is your office? I find on this letterhead, it is Union Arcade, Pittsburgh; is that correct? A. Yes.

Q. And it was in the Union Arcade, Pittsburgh, Pennsylvania, in October of 1921? A. Yes, sir.

The Court: Do you occupy the same office now that you did then?

The Witness: Yes, sir.

Q. You occupied that office all through 1921? A. Yes.

Q. Was Mr. Stuart located in that office with you? A. Yes.

Q. He was one of your employees, was he not? A. Yes.

Q. Did he work on a commission or salary? A. Both.

Q. And he handled your line exclusively, did he not? A. Yes.

The Court: I don't think it appears when Stuart left your employ.

Mr. Egner: Third of December.

The Witness: Yes, the date was given.

Q. For the two weeks prior to the third of December, where was Mr. Stuart's office located? A. In mine.

Q. Did he have another office in the Besserman Building, so far as you know? A. No, sir.

Q. Do you know that he did not? A. I don't know that he did not.

The Court: You do not know that he had such an office during those two weeks?

The Witness: I do not.

Q. You have absolutely no information as to that? A. No, sir.

Q. What was he doing during the two weeks prior to the time he left you? A. He was working for me.

Q. Selling what? A. My products.

Q. What? A. Mostly subway gratings; occasionally he would handle—

Q. Whose subway, Irving? A. Yes.

Q. Will you state positively that he was not engaged in the sale of Kerlow Steel Flooring at that time? A. No, sir.

The Court: With the knowledge of Mr. Demorest?

Q. Yes, with your knowledge?

The Court: Was he engaged in selling the Kerlow steel floor grating during those two weeks, with your knowledge?

The Witness: He was not.

Q. Was he doing anything in connection with the Kerlow Steel Flooring Company during those two weeks, with your knowledge? A. Yes.

Q. What was he doing? A. He made some calls.

Q. He was trying to sell it, wasn't he? A. I don't know.

The Court: Made calls on prospective customers?

The Witness: Yes.

The Court: What did he call on them for, if not to try to sell them; what object had he in calling, do you know?

The Witness: I don't know definitely.

Q. In other words, your hesitation and your response to that question that I asked you just a moment ago, and your answer no, was because I said, "Was he making sales during those two weeks," was it not? A. He was not making sales.

Q. And that is why you answered that question no? A. Yes.

Q. But you didn't tell us that he was working on Kerlow steel flooring, did you? A. No, I didn't.

Q. Which is a fact, is it not? A. I don't know that.

Q. That was with your knowledge, too, wasn't it?

The Court: I don't understand you; you say you

don't know that during those two weeks he was working to sell the Kerlow steel flooring?

The Witness: I don't know that.

The Court: I understood you to say a moment ago that you did know that he was during those two weeks trying to sell other products?

The Witness: He was doing some work of a special nature, of which I was cognizant, under my general instructions, for a special reason.

The Court: For the Kerlow Company?

The Witness: But nothing was sold.

The Court: For the Kerlow Company?

The Witness: In the interest of the Kerlow Company.

Q. And what was that special work? A. I don't know exactly.

Q. What instructions did you give him? A. The fact is, that being crowded by Lown—

Q. I want a definite answer.

> The Court: They are entitled to a responsive answer. Mr. Egner will ask for all the explanation he deems necessary. Just give counsel now a responsive answer to his question.

Q. What instruction did you give to Stuart in regard to the special work he was to do for the Kerlow Steel Flooring Company? A. That we had to protect our own interests, personal and business, because the Kerlow Company was soliciting, and being known through its advertising announcement, and we had to know what was going on, and we had our own economic interest to protect.

Q. I am still waiting for the instruction, that is the reason, whatever that may mean.

The Court: What did you tell him to do?

The Witness: The negotiations were on; presumably I was paying for it.

Q. What did you tell Stuart to do during those two weeks with regard to the work of the Kerlow Steel Flooring Company? You say you gave him instructions; that he acted under such instructions. A. He acted on those general instructions; I gave him no specific instructions.

Q. What general instructions did you give him? A. I believe I explained that.

The Court: You explained your reason for having him do so, but you haven't told how you instructed him. What did you tell him to do, or tell him not to do? Didn't you tell him to go out and visit prospects? Yes or no?

The Witness: No, I didn't.

Q. Didn't you tell him to go out, in fact, and see if he could get some business for the Kerlow Steel Flooring Company? A. No, I did not.

The Court: What did you tell him to do? Counsel is entitled to an answer from you on that.

The Witness: I cannot recollect definitely something that will answer counsel's question.

The Court: I want you to tell me the fact. You say you gave this gentleman instructions during those two weeks. What did you tell him to do, or tell him not to do?

The Witness: I told him we had to protect our interests; I had taken him fully into our confidence.

Q. How did you want him to "protect our interests"? A. To make sure that the Kerlow Company

didn't appoint someone over our heads, until we had opportunity to come to a decision.

Q. That is another reason. What did you tell him to do, in order to carry out that? A. To look around and see what was going on.

Q. Visit prospects? A. No, I gave him no general order to visit prospects.

Q. What did you expect him to do? A. I expected him to work for me.

The Court: What did he report that he had done, if he made any specific reports?

The Witness: I can recall no specific reports.

Q. Coming back to that answer of yours, to my previous question; did you know that Mr. Stuart had an office in the Besserman Building for those two weeks prior to December 3? A. No, sir, I did not.

Q. Did you know that he had an office somewhere else outside of your office? A. No, sir, I did not.

Q. You didn't know that? A. No, sir.

Q. During those two weeks did he report to you at your office? A. Yes, he came in my office.

Q. Did he ever tell you that he had an office elsewhere? A. He told me—let me see.

Q. Yes or no. A. To the best of my recollection, he did go to the office of a friend of his, the American Blue Print Company, in the Besserman Building.

The Court: When; during these two weeks.

The Witness: Yes.

Q. What do you mean, he did go; you mean he had an office or headquarters there? A. He had some kind of an arrangement there; he had no office.

Q. Did you tell him to make an arrangement elsewhere outside of your office? A. I told him that we could not—

Q. Yes or no, did you tell him to make arrangement somewhere outside of your office? A. No, sir

Q. Did you suggest that to him in any way, in effect? A. In effect, during the discussion—

The Court: In those two weeks.

The Witness: I am not certain. I don't want to deny it without I am certain.

Q. Who is Mr. Gibson? A. He is a personal friend of mine, an engineer.

Q. You have known him for a long time, haven't you? A. Yes.

Q. Mr. Gibson was in on some of these conferences, wasn't he? A. Yes.

Q. Did you have any idea of going into the grating business before you saw Mr. Lown for the first time in Chicago? A. No, sir.

Q. Hadn't you made plans to go into the grating business before that time? A. No, sir.

Q. Do you know Mr. Stuart's cousin, who is employed by the Westinghouse Electric Company? A. Yes, I do.

Q. Had you instructed him to make any plans for machinery to manufacture grating? A. No, sir.

Q. Hadn't discussed it at all? A. No, sir.

Q. At the time that you had your discussion with Lown, you proposed the proposition of starting a factory in Pittsburgh, didn't you? A. Yes, sir.

Q. Didn't you tell him that you had that in mind before? A. No, sir.

Q. For what purpose did you introduce Mr. Gibson to Mr. Lown? A. I want to answer your question.

Mr. Kraetzer: We want an answer, too.

The Court: For what purpose did you introduce him?

The Witness: We were interested in something that was a crisis with us; Mr. Gibson has always advised me, and he was introduced because he wanted to meet the young man.

The Court: He wanted to hear what Lown had to say?

The Witness: Yes.

Q. What was the crisis with you; what occasioned the crisis? A. As this was represented to me, if I didn't take the other, I wouldn't have anything, because the Irving Iron Works was to be put out or go out of business, or to sell out.

Mr. Kraetzer: Oh, I see, that is the point.

Q. Did you always find the Irving Iron Works prompt in its payment of commission? A. No, sir.

Q. Had you any cause for dissatisfaction on account of the payment of commissions? A. No, sir.

Q. Or failure to pay commissions? A. No, sir.

Q. Did you ever because of the failure of the Irving Iron Works Company to send you your commission in time, have occasion to borrow money? A. Yes, sir.

Q. From Mr. Gibson?

Mr. Kraetzer: I withdraw that. It doesn't make any difference.

Q. Didn't you have occasion at one time to have Mrs. Demorest come to New York City, in order to get your back commissions that were due you? A. No, sir.

Q. Didn't she come to New York City for that purpose? A. Not entirely, she came here to—

Q. As one of her purposes, didn't she come to New York City on one occasion in order to get the Irving Company to pay your back commissions? A. She came here to—

Q. Yes or no, was that one of her purposes? A. Yes.

Q. And did she come back with the commissions? A. No, sir, she didn't bring them with her.

Q. When was that? A. About September, 1920.

Q. Didn't you tell Mr. Lown that you were dissatisfied with the way the Irving Iron Works had treated you? A. I don't recollect it.

Q. When Lown was sales manager with the Irving Iron Company you had occasion to correspond with him about commissions? A. Yes.

Q. You had frequent occasion to correspond with him about back commissions? A. I don't answer "frequent"; I had occasion to do so.

Q. Do you think, Mr. Demorest, that this arrangement that you had with Mr. Stuart, who opened this other office to represent the interests of the Kerlow Steel Flooring Company, is in accord with your sense of what is moral? A. I don't understand your statement.

The Court: I think the question includes a whole lot of assumption, and there is nothing to support it.

Q. Did you think you were doing right when you instructed Stuart to arrange for an office elsewhere and work for the interest of the Kerlow Steel Flooring Company, a competitor of the man who was paying you a commission?

Mr. Egner: I object.

The Court: I sustain the objection. I pre-

sume you are attempting to quote the testimony, and there is no such testimony to support you. There isn't anything yet to show that he ever gave Stuart any such instruction.

Q. Didn't I understand, Mr. Demorest, in your previous testimony, that you stated that what Mr. Stuart was doing was under your directions?

The Court: During these two weeks? He said he was acting under his direction. Was it under your direction that Mr. Stuart did that?

The Witness: It was—

Q. Yes or no. A. He was on my pay roll.

Q. Was it by your direction that Mr. Stuart made these outside arrangements that you have spoken of? Yes or no. A. No.

Q. Was it at your suggestion? A. I cannot answer that question in the way you want it.

Q. Why not? A. Because suggestions were made, but I didn't suggest specific things.

Q. It was with your knowledge, wasn't it? A. I had some general knowledge.

The Court: Was it against your wish that it was done?

The Witness: It was against my desires, but it was done to protect our economic interests at the time.

The Court: I understand. I think it is quite apparent that he didn't want to let go of Irving and take up with Kerlow, unless he was sure of his ground. If Kerlow's statements were right, according to Mr. Lown's representation to him, why then he wanted to look out for himself, and tie up with the new concern:

that is apparently what he was doing. He was putting an anchor to windward.

Q. You say that the Heyl & Patterson step job was practically closed, so far as the Irving Iron Works Company was concerned, at the time that you talked to Lown about it? A. Kerlow closed—

Q. You were eliminated, were you? A. Yes.

Q. On account of price? A. Yes.

Q. And for that reason you feel free to go after it for the Kerlow Steel Flooring Company? A. Yes, sir.

Q. And you got a price for Mr. Lown, did you? A. Yes, sir.

Q. And you bid it and quoted that price? A. I don't remember that I quoted that price exactly.

Q. Did you quote a price? A. Yes.

Q. And did you get the order? A. Not then.

Q. There was absolutely no limitation to my question. Did you get the order, Mr. Demorest? A. Yes.

Q. When did you get the order? A. I should say early in December, 1921.

Q. How did you submit the bid; in whose name did you make the bid? A. My own name.

The Court: Representing whom?

The Witness: Nobody, an independent agent.

Q. Is that the first bid that you put in? A. No, sir.

Q. You had put in a previous bid? A. Yes, sir.

Q. In your own name? A. No, sir.

Q. In whose name? A. Irving Iron Works Company.

Q. And by that time had the contract been awarded when you put in the second bid? A. No, sir.

Q. Then how did you know that the Irving Iron Works Company wasn't going to get that job on its original bid? A. Do you wish a full explanation of that?

The Court: He wants an answer.

The Witness: The Heyl & Patterson Company—

Q. How did you know that the Irving Company wasn't going to get the contract on the bid you submitted for it? A. They told us they only allowed approximately two dollars, to the best of my recollection, each for these steps, and that they could not pay any more.

The Court: How much did you bid?

The Witness: Two dollars and forty cents or fifty cents.

Q. And that was for Irving? A. Yes.

Q. Did you communicate with Irving in an attempt to reduce the price? A. Yes.

Q. And what was the answer?

The Court: Did you get the reduction?

The Witness: No, sir; I didn't get the necessary reduction, anyway, at that time.

Q. Did you get any kind of a reduction? A. Two months later.

Q. After you had been back and had seen Mr. Irving and had told him about the Kerlow? A. Yes.

Q. Then he consented to reduce the price? A. No, sir, not entirely. I took it upon my own account to reduce the price, and modified the specifications slightly, subject to their approval, and did accept the business after I had taken it upon myself to go and book the order.

Q. What bid did you put in for the Kerlow?

Mr. Egner: I object to this. It is quite apparent that he put in a bid for himself.

The Court: Yes, that is apparent.

Q. For yourself? A. Two dollars I bid.

Q. Where did you get that price from? A. It was based upon the price Lown gave me in Chicago.

Q. You figured it yourself? A. I don't recall that.

Q. When did you get that job; when was the contract awarded to you? A. About the tenth or twelfth of December, to the best of my recollection.

Q. Is this card in your handwriting (indicating)? I am showing you a card which bears the figure date, "10/11/21" and the initials "G. M. D.," at the bottom Yes or no, Mr. Demorest, is it in your handwriting? A. That is mine.

The Court: Is it in your handwriting?

The Witness: Yes, that is mine.

Q. Altogether in your handwriting? A. Yes.

Mr. Kraetzer: I offer that in evidence.

Marked Exhibit D7a.

W. H. L.

Must be here tomorrow; landed that step order for over 500 see you in the morning, at 8:30 A. M.

10/11/21 G. M. D.

Q. So that on the eleventh day of October, 1921, you had landed that step order, had you? Yes or no. A. No, we didn't receive it.

Q. So that this statement to Mr. Lown was incorrect? A. That was to the best of my knowledge and belief at the time made.

Q. Do you know what you did with this card; how you got it to Lown? A. No, sir, I don't remember.

Q. Did you stick it under Lown's door at the hotel? A. I don't remember.

Q. Here is another card; I show you a card beginning with the words, "My dear Lown," and with the initials "G. M. D.," and ask you if that is in your handwriting? A. Yes, sir.

Mr. Kraetzer: I offer that in evidence.
Marked Exhibit D8a.

My dear Lown:

I must rest as late tomorrow as possible; very tired and a cold. Give me a ring about 9:30 A. M.

G. M. D.

Q. Was that a card sent to Mr. Lown before or after that other card, and when I say "other card," I mean Exhibit D7a? A. I don't remember.

Q. Do you know what it is about, or the occasion for it; was there any specific occasion for it? A. No, sir, not to my recollection.

Q. Did you talk to Mr. Lown at all about having Stuart handle the Kerlow account? A. Yes, sir.

The Court: You told him about that?

The Witness: Yes.

Q. Did you tell him you had ever done that before with regard to any other business of yours? A. Yes, sir.

Q. So that that was a practice on your part to have someone outside in your employ handle a competing line? A. No, sir.

Q. You had done it before? A. Yes, sir, when—

Q. On how many occasions? A. I cannot recollect; once or twice, probably.

The Court: When did you tell Stuart to handle the Kerlow account?

The Witness: I did not instruct him to do that.

The Court: I don't care whether you instructed him or not; I asked you when did you tell him to, or permit him to?

The Witness: Perhaps about the middle of November.

The Court: And why did you do that?

The Witness: For the purpose of keeping another representative from being appointed, until we could complete our investigation of the Kerlow Company, and thereby protect our economic interests.

The Court: Did Stuart finally join the Kerlow Company with your consent?

The Witness: No, sir.

The Court: Against your wish?

The Witness: Yes, sir, very much.

Mr. Kraetzer: I want to be sure of the date.

The Court: I am referring to December 3rd. I want to understand that the witness was dealing with the same time.

Q. Do I understand, then, that you didn't believe what you heard from Mr. Lown at that time that he was making the statements that you have testified to? A. I didn't believe—I don't understand your question.

The Court (question repeated): At the various times, these different conferences you had with him, in Chicago, Pittsburg and elsewhere.

The Witness: Early in the interviews I believed him.

The Court: When did you change your belief, if you ever did?

The Witness: After I saw Mr. Irving in New York on November 25th.

The Court: And then what was your mind with respect to belief; did you then believe anything Mr. Lown had told you, or did you disbelieve everything he told you?

The Witness: I didn't disbelieve everything, because he stated some facts.

Q. Isn't it a fact that Mr. Gibson went back looking for railroad sites, or sites for a factory in Pittsburg, for the purpose of establishing a factory in Pittsburg to manufacture this Kerlow grating? A. He suggested a possible location within his knowledge.

Q. And wasn't Mr. Gibson—who, by the way, is a rather wealthy man, is he not? A. Moderately so.

Q. Wasn't it the idea that Mr. Gibson was to go into this proposition financially? A. Such was discussed.

Q. Was any specific figure mentioned as to what Mr. Gibson would invest in the company? A. Mr. Gibson mentioned, in the presence of Mr. Stuart, that

he might come along for $5,000, and something, if it was proved good and safe, if we were interested, and the like.

Q. Do you recall swearing to an affilavit in the preliminary hearing, on February 27, 1922; do you recall the second affidavit that you swore to? A. Yes.

Q. And do you recall swearing to this statement—referring to a statement that had previously been made by Mr. Lown in an affidavit, "Nor, is the statement true which appears in paragraph 35, as to the effect that I offered to help finance the Kerlow Steel Flooring Company in the erection of a factory, or that Mr. George Gibson was ready to invest $15,000 in said enterprise." Do you recall swearing to that? A. Yes, sir.

Q. And did you deny the truth of that statement, because of the fact that $15,000 was mentioned instead of five?

Mr. Egner: I object to that; he hasn't testified he knew that Mr. Gibson was willing to.

The Court: He asks him if the reason for his denial contained in the affidavit is due to the fact that while Mr. Gibson under the condition mentioned might have been willing to invest $5,000; he was not ready to invest $15,000. That is what he is asking. I think it is proper.

Q. Was that your reason for making that denial? A. Partly.

Q. What was the other reason? A. The fact that I didn't know that he was ready to put anything in.

Q. Did you discuss with Mr. Lown the question of financing this enterprise, out in Pittsburg? A. Yes, sir.

Q. And did you say that you would be in a position, or might be in a position to invest money in it? A. Yes, sir.

Q. Well, now, I will just repeat what I read a moment ago: "Nor is the statement true which appears in paragraph 35, as to the effect that I offered to help finance the Kerlow Steel Flooring Company in the erection of a factory." Which is true, your statement now, that you did discuss the question of helping in the financing, or your denial here that you did? A. I denied the possibilities of getting any outside help or financing beyond what I was temporarily willing to contribute myself.

Q. You denied the possibilities of any outside financing?

The Court: Outside of his own effort.

A. I made no suggestion or promise to help finance in a general way, that is, as I interpreted financing, and do yet.

Q. That is your reason for denying—your interpretation of finance? A. Mr. Lown proposed to me the question of financing; I didn't want to say no, I wouldn't; I possibly said I might help and might put something in.

Q. You said you might? A. I may have said that.

Q. Then how did you come to deny it? A. I was denying the assistance that was then implied.

Mr. Egner: The affidavit attacked the allegation that he offered to do; he means to testify that he discussed the possibilities to do so.

The Court: And that he might be willing to

put some money in, but not to finance it, in the broad sense of that word.

Mr. Kraetzer: With your Honor's permission I will read that section, paragraph 35, of Mr. Lown's affidavit, to which his denial is directed:

"About November 13 I was again in Pittsburg and called on Demorest pursuant to a request which he had made to me over the telephone while I was in New York. At that time he still had not made up his mind as to whether he wanted to become associated with the Kerlow Steel Flooring Company, but made the suggestion that said company erect a factory in Pittsburg, and stated that he was in a position to help finance it. He told me that a Mr. George Gibson was ready to put $15,000 into such a plant, and introduced me to said Gibson."

The Court: In his affidavit he denies any such statement, as I understand it.

Mr. Kraetzer Yes, in his affidavit he denies that statement.

Q. I understand that the statement that was made was that you might be willing to put some of your money in but you didn't consider that financing the company?

The Court: Is that it?

The Witness: Yes.

Q. I direct your attention to Exhibit C35, your letter to Mr. Lown, of October 26, 1921, the first sentence: "Replying to your letter of the 21st instant in

which you discuss the investment in your stock, it is most likely that we shall desire to take as much of this as possible at the proper time." Who is "we"? A. Stuart and myself.

Q. Then besides your own personal interest in this matter, you had Mr. Stuart interested in it financially? A. Yes, sir.

Q. You didn't tell us that before, did you?

Mr. Egner: I object; there was no occasion for his telling.

A. No, sir.

Q. What is this other job that you are giving Mr. Lown information about in your letter of October 26, 1921, where you speak of another job going through for about 3,000 square feet (C35)? That was another job, eh? A. Yes, sir.

Q. That you had in mind telling him about? A. Yes.

RE-DIRECT EXAMINATION by Mr. Egner:

Q. Did you keep your copies of the C. I. M.'s that you sent in, Mr. Demorest? A. Yes.

Q. You have a complete file of them there? A. Yes, sir.

The Court: Why did you keep them?

The Witness: So I would have a record of my own activities as reported to the home office.

The Court: Who furnished you the blanks?

The Witness: The Irving Iron Works Company.

The Court: Were they furnished so that you could make duplicate or carbon copies?

The Witness: Yes, sir.

The Court: Were they furnished in that form?

The Witness: They were furnished in pad form, gummed together.

Q. You would just slip a piece of carbon paper in between? A. Yes.

Q. You say that at the time Mr. Lown spoke to you in Chicago there was a balance owing to you from the Irving Company of approximately $1,500, you are not sure how much? A. No, sir.

Q. Was it at all unusual for a balance to exist on the books in your favor? A. No, sir.

Q. Did you have any arrangement with Mr. Irving as to allowing a balance to remain—certain specific amounts each week? A. Yes, sir, we had a subsequent arrangement.

The Court: Subsequent to what?

Q. Did you have any arrangement at that time when you spoke to Mr. Lown and when there was a balance of about $1,500 on the books? A. Yes, to the best of my recollection, they arranged to send me a specific amount weekly.

Q. How much? A. I think they were coming at the rate of $200 a week then.

Q. That was perfectly satisfactory to you, was it? A. Yes, sir.

The Court: Before you and Lown met in Chicago and after that conference, was there any dissatisfaction between you and the Irving Company in relation to your arrangement as their representative, any dissatisfaction for any cause?

The Witness: At that time, no, sir.

The Court: Were you annoyed or dissatisfied because of their failure to pay you your commissions promptly?

The Witness: No, sir.

The Court: Did you contemplate leaving or severing your relations with the Irving Company at any time prior to meeting Mr. Lown in connection with the Kerlow Company?

The Witness: No, sir.

RE-CROSS EXAMINATION by Mr. Kraetzer:

Q. What is the name of Mr. Stuart's cousin who was in the Westinghouse Company? A. A young man, his name is Cunningham.

Q. You wrote in this letter of October 20, 1921, Exhibit C34, "I am not at present in a financial position to subscribe for stock on a cash payment basis, even though I would be able to do so, it would hardly be the thing to do until certain other affairs are out of the way, which we discussed." What were these other affairs that you discussed which you wanted to have out of the way? A. If I were to accept the account, I would certainly not want to cancel a contract which would expire then the last of that year.

The Court: What do you mean by that; that you didn't want to take up with the Kerlow Company until the expiration of the Irving contract?

The Witness: No, sir.

The Court: Then I don't understand your answer.

The Witness: Then I wouldn't want to subscribe for stock, anyway, while I was representing the Irving Iron Works, and have a competitor's stock.

Mr. Kraetzer: I think your answer to his Honor's question, when you said, "No, sir," you meant that that was your reason, did you not? I just want to get that straight.

(Last two questions by the Court and the answers thereto read.)

The Court: Your answer, "No, sir," to my question was that you didn't want to take up with the Kerlow Company until your Irving contract expired; is that so or not?

The Witness: That is so.

The Court: And it expired at the end of the year 1921, is that right?

The Witness: Yes, sir.

Q. And that was chiefly because the Irving Company had made a substantial sum of money, was it not? A. No, sir.

Q. Didn't that have anything to do with that? A. No, sir.

Q. You had a right, under your contract, to cancel upon notice, did you not? A. I think thirty or sixty days, anyway.

The Court: It is admitted that these four contracts in evidence are the same as the form under which he was acting.

Mr. Egner: They were all subject to cancellation on notice, and thirty or sixty days' extension of credit.

The Court: Any particular notice to be given of termination?

Mr. Egner: No, sir.

Mr. Kraetzer: I read from Exhibit C13a, which states:

DURATION: Contract for agency to be for one year from date and may be cancelled by written notice from one to the other. Credits to remain in force for sixty days from the time the contract is cancelled.

Mr. Kraetzer: That clause was in your contract?

Mr. Egner: I don't know.

The Court: I have the admission on the record that the contract of Mr. Demorest was the same as the four in evidence.

Q. What do you mean by saying that you wanted to wait until the expiration of the contract, that you could terminate upon notice? A. As a matter of courtesy and custom. It wasn't necessary to resign promptly; it didn't seem like a good thing to do.

The Court: Did you renew your contract annually, or did it run from the beginning from year to year?

The Witness: Annually.

The Court: Renewed?

The Witness: Yes.

Q. And when did it expire? A. December 31, 1921.

Q. And it was merely as a matter of courtesy that you waited until that time before resigning? A. No, sir, not merely as a matter of courtesy; that was one of the things.

Q. That was one of your reasons? A. Yes.

Q. And the fact that Irving owed you money had nothing to do with it? A. No, sir; that always would happen, the owing of money.

The Court: He always owed you money?
The Witness: Yes.

The Court: He would have owed it just as much if he had resigned. There isn't any evidence before me that Irving wasn't financially responsible for the debt.

Q. Did I understand you to say that your arrangement, this two weeks arrangement, prior to December 3, with Mr. Stuart, was made after you had been to New York City and had seen Mr. Irving? A. No, sir.

Q. When did you come back from New York City; when did you see Mr. Irving? A. On November 26th.

Q. The day following Thanksgiving? A. Yes, the day following Thanksgiving and the day following that.

Q. So that your visit was during those two weeks; that is, your visit to New York City was during those two weeks? A. Yes.

MRS. ZELMA LASH DEMOREST, sworn:

Mr. Kraetzer: At the time that we had this question up, of expense account, with which we have now been furnished a copy, you suggested that, if necessary, we might have an opportunity to verify some of these figures. I have two propositions that I would like to advance, and ask your Honor to rule on.

First of all, we would like to obtain a list of the salesmen and salaries paid during the

year 1920; the amount of salesmen's salaries for that year, appearing as $37,645.

The Court: Why do you need the information?

Mr. Kraetzer: Because we believe that the information given here is incorrect.

The Court: It is merely to affect the credibility?

Mr. Kraetzer: Exactly.

Mr. Egner: Can't that be done on cross-examination? We will produce the man who made the compilation.

The Court: It may give you a lot of information you are not entitled to. You are asking them to disclose the names of agents and what payments they are making. Suppose the charge against you is true, and turn around after this case is over, and try to get some salesmen and agents away from them, as a result of the information you have received. I want all the information you think I should have to decide this case, but I don't unnecessarily want to disclose either party's business transactions to the other in this case.

Mr. Kraetzer: I will be willing to have this figure verified in any way you suggest.

The Court: Mr. Egner assures the Court he will call the auditor who prepared this statement.

Mr. Egner: I will call him, if you need him.

The Court: I think you should.

Mr. Egner: We will call him.

The Court: If he is called, he will be subject to cross-examination, and if necessary, his books can be here, to aid him in giving you

the information, except that I won't have disclosed by either side information I don't think is pertinent to the issue here.

Mr. Kraetzer: With the promise before the Court I will have the man; I will reserve some other questions that I have.

The Court: He was the one who prepared the list of prospective customers as well?

Mr. Egner: He will be here throughout the trial.

The Court: I am expecting him to be called; if he isn't, I will call him myself.

Mr. Kraetzer: I have another request to make. When the various cards were introduced in evidence, the cards that were made out as a result of the C. I. M.'s, the statement was made that we might have access to such cards as we chose. I have a list of the cards here, the customers and the particular accounts that I should like to have an inspection of the cards of.

The Court: Why do you desire that inspection?

Mr. Kraetzer: This, I may state, is a copy of the list of so-called jobs lost—the list that we have been referring to very frequently here. Some of these jobs were undoubtedly solicited by persons who are not under our control and from whom we can get no information. Substantially we are in the position of asking for what would amount to an examination before trial.

The Court: Suppose you find that some of the jobs were solicited; what else does it establish in the case, except the fact that Mr. Irving hasn't told the truth in regard to the number of jobs lost?

Mr. Kraetzer: I will not use it to establish anything but that. That is the purpose of my request.

The Court: His testimony in that respect is qualified. He states he only intends to say what he has received from men in his employ, who made up this list, as I understand it. If I am wrong about that qualification, you can correct me from the record.

Mr. Egner: That is true. Furthermore, Mr. Irving had no list before him of jobs lost. He was referring, in answer to their affidavit, which said that our company had had competition, and that they had lost certain jobs, mentioning two—in answering that, he said, "Those two are examples of probably half a dozen jobs which we have lost." It seems to me that entirely too much time has been spent trying to indicate that he is untruthful because of the fact that he made this estimate.

The Court: I cannot say that too much time is being spent for that purpose. That is a very fair comment to make at the end, but it does not interfere with counsel's right to determine whether his veracity is to be questioned or not. I want to give him all the latitude he asks for, and yet don't want information disclosed that he is not entitled to. These things have been offered conditionally; I will let that package go in only on condition that—

Mr. Egner: We have no right to prohibit them from looking at our exhibits.

The Court: I allowed that to go in, and Mr. Irving gave me a diagram showing the extent of his filing system there which covered a considerable space, and a great many of these

forms, in order to relieve him of the necessity, and put these in as examples or samples of every character of cards that he kept. I accepted them and counsel let them go in on the understanding that, if necessary to verify any of his statements, access to those cards could be had. I don't intend that they shall have access to those cards for any other purpose than to attack his veracity. I don't intend that they shall get any other information. If you can, you can agree on that between now and morning. If it is necessary, I will send a master over there; then I would have to have you specify what particular cards you wanted to see, and what particular information on that card you wanted to obtain, and I would have the master tell him whether it was on the card or not, and let either of you see it.

Mr. Kraetzer: That would be thoroughly satisfactory to me.

The Court: If that becomes necessary, it will be done. The master cannot go now, he will find a time agreeable to both of you, and you can go over there to make the examination, and you may recall Mr. Irving, if you desire, after that examination and report is in.

Mr. Kraetzer: I think in connection with your suggestion—I think it is rather a novel proposition, but probably sound, but you suggested that you would send a special master to make this examination.

The Court: I will ask Mr. Bindseil to go over there; he is a special master, and I will give him explicit instructions of what he is to do, and how he is to limit counsel in this matter. I want you to have the opportunity to

get the information from the card you seek, but no more information than that.

Mr. Kraetzer: The other suggestion I have to make is this: I don't know how far the complainant in this case will press a certain allegation that is made.

The Court: What is that?

Mr. Kraetzer: That allegation is to the effect that the Kerlow Steel Flooring Company purports to have certain improved methods of manufacture. We say we not only claim to have these improved methods, but we have them.

The Court: Suppose you have them; how does that concern the complainant?

Mr. Kraetzer: Simply that the complainant has charged us with making these misrepresentations. Now, we approach a question that we ask for protection, too. In other words, we are going to object if we are asked on the stand, "What is your present method of production?"

Mr. Egner: We haven't asked it.

The Court: The Court will assure you all the protection necessary, also.

Mr. Kraetzer: We want to show, as definitely as possible we have such improved method, and we think we can demonstrate it. I suggest the possibility of having the Court inform himself through the medium of the master on the subject.

The Court: Are you protected by patents or applications for patents on these methods?

Mr. Kraetzer: Yes, we are.

The Court: Frequently we have those things

produced only for the inspection of the Court and counsel.

Mr. Kraetzer: That will be all right.

The Court: I will take care of that.

MRS. ZELMA LASH DEMOREST, sworn for complainant:

Direct-examination by Mr. Egner:

Q. You are the wife of the last witness? A. Yes.

Q. Do you remember seeing Mr. Lown in the early part of October, 1921? A. Yes, sir.

Q. Where and when did you see him? A. Mr. Lown called up Mr. Demorest's office, and I was in the office and answered the telephone; I invited him to call at Mr. Demorest's office.

Q. Where was Mr. Demorest at that time? A. In Chicago.

Q. What did Mr. Lown say over the telephone? A. He would call immediately, or would come to the office.

Q. Did he come to the office? A. Yes, sir, immediately.

Q. Did you have a conversation with him? A. Yes.

Q. What was that conversation? A. We greeted each other, and I was very much pleased to see him, and he asked whether he could see Mr. Demorest, and I said, well, I supposed he could, in Chicago. He said, "I am going that way." I said, "You will find him at the LaSalle Hotel," and in the course of our conversation, he asked me how business was, and he asked me how I would like to have my husband make

a lot of money. I said, "Why, I would like to have him make a lot of money, provided it was made in the right way." He said, "I have something here that will interest him very much, and it will make him a wealthy man." I said, "You had better talk it over with Mr. Demorest, then."

Q. Did you send any word to Mr. Demorest about that call? A. No, I did not; Mr. Stuart did.

Q. Under whose instructions? A. Under my instructions.

Q. Was Mr. Stuart there at that conversation? A. Yes, sir.

Q. Do you recall anything that was said at that time? A. No, nothing only just general conversation.

Q. After that did you attend any talks between Mr. Demorest and Mr. Lown? A. I did.

Q. On what occasion? A. On one occasion, after leaving church, on Sunday morning, Mr. Demorest and I went to the office, as I wanted to use his telephone, and preferring to use the telephone in the office, instead of a public telephone, we went to his office.

Mr. Kraetzer: Can we have the approximate date?
The Witness: November 13, 1921.

Q. And you went to the office? A. And on arriving at the angle, or rather in the hallway leading to Mr. Demorest's office, I saw a light coming from Mr. Demorest's office, and I said, "Who is in your office?" He said, "I don't know." We went to the office and found Mr. Lown and Mr. Stuart there, which was a surprise to both of us.

Q. What time of the day or night was that? A. At noon, after morning service.

Q. Sunday noon? A. Sunday noon, after morning service.

Q. You say there was a light coming from the office? A. Yes. Mr. Demorest has the inside court office, which is supplied with electric light.

Q. Did you have any conversation with Mr. Lown at that time? A. I greeted him in a personal manner and retired to a corner, and overheard the conversation between the three men.

Q. What were the men talking about? A. They were talking about the new Kerlow Company, and financing of the company, the costs of the material would be effected in different manners.

Q. The cost of what? A. The cost of the making of the product would be effected in this manner, and also what Mr. Lown expected to do for Mr. Demorest in case he associated with them, and about the prospects of establishing a factory in Pittsburgh.

Q. Was anything said about the Irving Company? A. At the first interview with Mr. Lown, when Mr. Demorest was in Chicago, Mr. Lown told us that he was still a very good friend of Mr. Irving and he liked him very much, and wanted to know how he was getting along.

Mr. Kraetzer: Is this the interview in Chicago?

The Court: No, before the interview, while Mr. Demorest was in Chicago, at the first call in Pittsburgh; that is correct, isn't it?

The Witness: Yes.

The Court: What else was said?

Q. Were you in the office of your husband at any time when any letter came from Mr. Lown, addressed to Mr. Stuart? A. I was.

Q. When was that? A. When Mr. Demorest was in New York interviewing Mr. Irving.

Mr. Egner: You mean the latter part of November?

The Witness: Yes.

Mr. Egner: Will you produce that letter? We ask for a letter dated on or about November 25, from the Kerlow Company, or from Mr. Lown, to Stuart or Demorest.

Mr. Kraetzer: We haven't any such letter. I will look it up, or see if I can find it.

Mr. Egner: Dated on or about November 24 or 25, 1921, and it is a letter in which the phrase occurs that the Irving Company are about to emit their last gasp.

Mr. Huck: To Stuart.

Q. To whom was that letter addressed? A. To Wallace A. Stuart.

Mr. Kraetzer: We will look it up.

The Court: Produce it tomorrow morning. You can offer secondary evidence of its contents, if it is not produced.

EMILY M. HOBERG, sworn for complainant:

Direct-examination by Mr. Egner:

Q. Miss Hoberg, where do you live? A. 374 14th Street, Brooklyn.

Q. By whom are you employed? A. Lucius I. Wightman.

Q. How long have you been with Mr. Wightman? A. Twelve or thirteen years.

Q. What is your business? A. Advertising.

Q. Where is his office? A. 15 Union Square, New York.

Q. Is Mr. Wightman ill at the present time? A. Yes.

Q. Is he seriously ill? A. Yes, he is sick in bed.

Q. How long has he been ill? A. Since Saturday afternoon.

Q. Do you know whether Mr. Wightman has handled the advertising work for the Irving Iron Works? A. Yes.

Q. And how long a time? A. About three or four years.

The Court: What is your position with the Wightman Company?

The Witness: Secretary.

Q. You are Mr. Wightman's secretary? A. Yes.

Q. Where is your desk with reference to his? A. We have a double desk and I sit opposite Mr. Wightman.

Q. Do you recall some time in the year 1921 Mr. Lown coming to your office? A. Yes, he came in once when he was in the employ of Mr. Irving—he was with Mr. Irving, in the employ of Mr. Irving, and that was the early part of 1921.

Q. And did you overhear a conversation between Mr. Wightman and Mr. Lown on that occasion? A. Yes.

Q. What was said? A. Mr. Wightman asked Mr. Lown how the new company was coming along, and Mr. Lown said it was coming along very nicely.

Q. Did you hear anything else said at that time? A. No, because he was there on business about Mr. Irving's company at that time.

Q. After that time were you again present at another conversation between Mr. Lown and Mr. Wightman? A. Yes.

Q. And when was that? A. About November, 1921.

Q. Will you tell us what was said at that time? A. Mr. Lown came in the office and said that he had a new account and would like Mr. Wightman to handle the advertising of it. At that time he gave him a small card, with a piece of the grating of the Kerlow Company.

Q. Was it either one of these cards, or one similar to either of these that I show you? A. It was similar to this (indicating), but I think it was on heavier paper. I think there was another one that you had under this one when you lifted up these papers.

Mr. Egner: I would like to have this one marked as an exhibit.

The Court: It is one of the Kerlow cards?

Mr. Egner: Yes.

Marked Exhibit C37.

Q. You say he showed one of these cards? A. Yes, and said that he was in business for himself, that is, he and Mr. Bunker.

The Court: That was a grating they were building?

The Witness: Yes, and he said they would spend $75,000 in advertising; Mr. Wightman asked him at that time who was in back of them, and he said K. N. & K., with three million dollars in back of them. and they would wipe Irving off the map.

Q. Who said that? A. Mr. Lown said it; Mr. Wightman asked him how they would get around their

patents, and he said that they wouldn't have any trouble with that, and they would be able to sell it cheaper than Irving could.

Q. Was anything said about Mr. Wightman handling the advertising of both companies? A. Mr. Wightman said he didn't handle competing accounts, and when Mr. Lown left, why, Mr. Wightman he would just as soon take this over, but he did not handle competing accounts.

Q. Did Mr. Wightman in fact take on their advertising? A. No, had nothing to do with it.

Q. Do you recall whether Mr. Wightman said anything at this second conversation, about the former conversation in July? A. He asked him whether that was the account that he asked about at that time—at two different times, and Mr. Lown said yes, it was.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. After Mr. Lown had left the office, on the second occasion, do you recall telephoning to him? A. No, I do not.

Q. Don't you? A. No.

Q. Would you say that you did not telephone him? A. I don't just remember calling him up. You mean that same day, or sometime later?

Q. That same day. A. No, I don't remember.

Q. Have you any recollection of telephoning to Mr. Lown, saying in effect that you were telephoning at the instruction of Mr. Wightman to apologize for his manner to Mr. Lown? A. Yes, I do recall such a call, because Mr. Wightman sat there and didn't say very much to Mr. Lown.

Q. So, you do recall making that telephone call? A. Yes; I did call.

The Court: Was it the same day?

The Witness: I don't remember whether it was the same day or not.

Q. Did you telephone that message at Mr. Wightman's request? A. I don't think I did. I telephoned that of my own accord, I think, because Mr. Wightman had been—well, I thought that he was kind of rude; he sat back there, and didn't say anything, and I did it.

Q. Did you tell Mr. Lown that you were telephoning at Mr. Wightman's request? A. I don't think so.

Q. Did Mr. Lown talk to Mr. Wightman when you got through telephoning? A. I don't think so, no; I don't think he was in the office.

Q. You don't think he was in the office? A. No.

Q. Are you quite sure of that? A. As far as I remember, I don't think he was.

Q. Are you quite sure that Mr. Lown exhibited the cut that you have identified here? A. He had a small card, with the Kerlow—it had a bar of Kerlow grating, and the name was down at the bottom, and Kerlow grating up on top.

Q. Was there anything that he had in his possession at that time? A. Yes, he had a small sample of the grating with him, I should judge about that size (indicating 4 x 6 or 8 inches), because Mr. Wightman asked him in what way it differed from the Irving grating.

Q. What did he say? A. I think Mr. Lown said something at that time about rounded corners, and I think Irving was square corners.

Q. Have you read the affidavit verified January 30, 1922, signed by Lucius I. Wightman, that is a

part of the moving papers in this case? A. I was there when Mr. Wightman gave this affidavit.

The Court: Have you read the paper?

The Witness: Yes.

The Court: Mr. Wightman's affidavit?

The Witness: Yes.

Q. When did you last see it? A. I heard it over the telephone, last week.

The Court: When did you last see it, is the question; the affidavit itself.

The Witness: I was there when Mr. Wightman gave this testimony. I heard it read to Mr. Wightman over the telephone.

Q. When? A. I don't know just when it was.

Q. You said last week, didn't you? A. Maybe last week or the week before.

Q. The affidavit referred to by counsel was made sometime last January or February? A. Yes, but they read it; Mr. Irving read it to Mr. Wightman over the telephone.

Q. Before it was sworn to and signed by Mr. Wightman? A. Oh, no.

Q. What are you talking about, last week or at the time the affidavit was signed and sworn to? A. Last week; I didn't see it when Mr. Wightman swore to it.

Q. But last week, or the week before, Mr. Wightman received a telephone call from Mr. Irving? A. Yes, telling him that—

Q. At which time Mr. Irving read to Mr. Wightman this affidavit, which is a part of the moving papers referred to by me, and at that time you, as I understand it, listened in on the telephone conversation? A. Yes.

Q. And heard that affidavit read? A. Yes.

Q. Mr. Wightman is a general advertising agent and handles a number of accounts, does he not? A. Yes.

Adjourned until tomorrow, Wednesday, October 11, 1922.

Continuation of testimony taken in the above-entitled cause before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, October 11, 1922.

Present: Counsel as before stated.

Mr. Egner: Have you the letter asked for yesterday?

Mr. Kraetzer: There was a letter of the general tenor recited.

MRS. ZELMA LASH DEMOREST, recalled for further direct-examination:

By Mr. Egner:

Q. Mrs. Demorest, you said yesterday that on or about November 25 Mr. Stuart received a letter from Mr. Lown of the Kerlow Company? A. Yes, sir.

Q. Did you see that letter? A. I did.

Q. Who showed it to you? A. Mr. Stuart.

Q. Will you say what the letter said in substance, as you recall it? A. It in substance said that Mr. Demorest should make arrangements to clear his matters up so that he could go with him immediately, as

the Irving people were about to emit their last gasp, and it might save a lot of embarrassment if he would make the arrangements at once.

Q. You are quite positive that those exact words were used in the letter? A. I am for the reason that I copied them from the letter in the telegram that was sent to Mr. Demorest.

The Court: Was the telegram sent by you to Mr. Demorest?

The Witness: I copied them in a telegram that was sent to Mr. Demorest.

The Court: Who sent the telegram?

The Witness: Mr. Wallace A. Stuart.

Q. And you wrote the telegram immediately upon receipt of the letter? Is this the telegram you sent, marked Exhibit C36a for identification? A. Yes, sir.

Q. And does that telegram truthfully set forth the substance of that letter? A. That word "omit" is incorrect; it should be "emit."

The Court: With that correction?

The Witness: Yes.

Q. Was the telegram sent that same day that the letter was received? A. Yes.

Mr. Egner: I desire to offer the telegram in evidence, heretofore marked Exhibit C36a for identification.

The Court: Is it agreed that that is an error in the word "omit" instead of "emit"?

Mr. Kraetzer: Yes.

The Court: Let it be corrected on the telegram, in pencil.

(Copied page 203.)

Q. Mrs. Demorest, upon the occasion of your first talk with Mr. Lown at Pittsburgh, can you recall anything else that he said to you? A. He said he was leaving Mr. Irving for the reason that he had returned from a trip through Texas and had visited the oil companies in Texas and had been given an order for one million steps, providing Mr. Irving would take them at one cent per step profit, and which Mr. Irving refused to do, and that was one of the reasons that he was leaving Mr. Irving.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. You were in practically daily attendance at your husband's office, were you not? A. Yes.

Q. You took an active part in the conduct of his business, did you not? A. Handled his financial affairs, yes, sir.

Q. You wrote the checks for him? A. I do.

Q. You did it at the time referred to, back in October and November, 1921? A. Yes, sir.

Q. You were at the office every day? A. Practically every day.

Q. And I understand that you dictated this telegram that was to be sent by Mr. Stuart, the telegram that is now in evidence? A. Mr. Stuart dictated the telegram.

Q. To whom? A. To me.

Q. You act as stenographer, do you? A. I do.

Q. I just wanted to get the arrangement; and you wrote it down, did you? A. Directly on the typewriter.

Q. Can you tell us what you meant by this: "Advises you better make arrangements as to financial matters now to avoid misunderstanding and trouble

in the future." What was meant by that; what was that a reference to? A. Meant by whom?

Q. In Mr. Stuart's telegram to Mr. Demorest, you see the language says, "You better make arrangements as to financial matters now to avoid misunderstanding and trouble in the future." What was meant by that? A. I do not know.

The Court: Where did you get that expression from; why was it said?

The Witness: From Mr. Stuart.

Q. Weren't you advised by your husband of these negotiations that had been going on between himself and Mr. Lown? A. I knew it.

Q. And you don't know now what was meant by this expression about financial matters, and avoiding misunderstanding? A. No.

The Court: Nor to what he refers or relates?

The Witness: No.

Q. Did you ask Mr. Stuart what he meant by that expression? A. I asked Mr. Stuart what it related to.

Q. What did he say? A. He said he did not know.

The Court: Was there any explanation as to why it was used?

The Witness: Mr. Stuart took it from the letter which was written to him.

Q. Was Mr. Stuart in the office at the time? A. Certainly.

Q. At the time this telegram was sent? A. Yes.

The Court: She said he was there when it was written, when it was sent.

The Witness: He was there when it was sent.

The Court: Was it sent at once after being written?

The Witness: I took it down to the Western Union immediately and charged it to Mr. Demorest's telegraph account.

Q. Was Mr. Stuart there every day during that period of time at the office, we will say, for the period just around the time that this telegram was sent? A. Unless he was out making calls.

Q. Was he there in his customary way? A. Yes, sir.

Q. Did you know that he was engaged in working for the interest of the Kerlow Steel Flooring Company at that time? A. I did not.

Q. You didn't know anything about that? A. I did not.

Q. Did your husband ever discuss with you the possibility of her severing his connection with Irving and going with this new company? A. He did.

Q. And how long before the date on which this telegram was sent did he discuss it with you, for the first time? A. Mr. Demorest discussed practically all the conversations with me that were had with Mr. Lown.

Q. And, as a matter of fact, Mrs. Demorest, you were very closely associated with your husband in his business? A. I am.

Q. And he kept you fully advised of the progress that he made and everything else? A. Yes.

The Court: Before the conversation with Mr. Lown did he ever discuss with you about severing his relations with the Irving Company?

The Witness: No, sir.

Q. Had he ever discussed with you the advisability of going into the grating business himself? A. No, sir.

Q. At any time prior to his talk about Mr. Lown. had he ever discussed that with you? A. No, sir.

Q. You are quite sure of that? A. Yes.

Q. You came to New York at one time, I think, in 1920, wasn't it? A. Yes, sir.

Q. And at that time you went to see Mr. Irving with regard to an arrearage of commissions due Mr. Demorest? A. I called on Mr. Irving regarding a statement that had been made about some commissions.

Q. Wasn't it partially in order to obtain an arrearage of commissions that was due? A. No, sir.

Q. And that wasn't your intention at all? A. No, sir.

Q. To try to collect commissions? A. No, sir.

Q. And did you make any request for the commission when you called? A. No, sir.

Q. None at all? A. No, sir.

Q. Did you get any money at the time that you were here? A. I had been in New York—

Q. Yes or no.

The Court: From the Irving Company on account of commissions.

Q. Did you get any money at all from the Irving Company at the time that you called here? A. I did.

Q. You got about $75? A. I did not.

Q. How much did you get? A. $25.

Q. What was it for? A. I had spent more time in New York and used the money that I had, and needed it to get home.

Q. Do you recall whether there was any amount

of commissions due at that time when you called? A. There are always commissions.

The Court: Do you recall at that particular time if there were any?

The Witness: Yes.

Q. Do you recall how much was due at that particular time when you called? A. I do not.

Q. Approximately? A. No, sir.

Q. No idea at all? A. No, sir.

Q. Was it unusually large, do you recall? A. No, sir.

Q. Did you see Mr. Lown at that time when you called to get the money? A. I did.

RE-DIRECT EXAMINATION by Mr. Egner:

Q. Just what did you discuss at the time of your visit to Long Island City, which you just mentioned? A. The Irving Iron Works had told Mr. Demorest about some commissions, and there had been some misunderstanding on Mr. Demorest's part, and he said, "While you are in New York, go down and see them and find out just what was meant."

Q. It had nothing to do with the payment of commissions, but as to the amount that was to be credited to Mr. Demorest, is that it?

The Court: What difference does it make? The purpose of it was to show that they were in arrears, and Mr. Demorest was dissatisfied in some respects; according to her testimony, there isn't any foundation for that. With whom did you have your conference?

The Witness: Mr. Price.

The Court: Mr. Lown's name has been mentioned; did you meet him in connection with the subject at all?

The Witness: No, sir.

The Court: Was he the one who gave you the $25?

The Witness: No, sir.

Q. Who gave you the $25, Mr. Price? A. Mr. Price.

Q. You say that there are always commissions due. What was the arrangement as to payments with interest?

The Court: I don't see that it is at all material. The point was, of course, as I see, and I think counsel agree with me, they were endeavoring to develop that there was dissatisfaction on the part of Mr. Demorest prior to Mr. Lown's approaching him.

Mr. Kraetzer: May I have permission to recall Mr. Demorest for a few questions?

The Court: Yes.

GEORGE M. DEMOREST, recalled for further cross-examination:

By Mr. Kraetzer:

Q. Mr. Demorest, you told us that, I think it was about—and please correct me as to the date—about November 25 or 26 when you came on to New York City? A. Yes, sir, I was in New York.

The Court: He said he left on Thanksgiving Eve for Pittsburgh?

The Witness: Yes.

Q. And while you were in New York City you called to see Mr. Irving? A. Yes.

The Court: We have all gone on the assumption that Thanksgiving was about the 25th of November, in that year; I don't know whether it was or not, but he has fixed the time definitely by the reference to Thanksgiving.

Q. And you also called to see Mr. Lown? A. Yes, sir.

Q. Did you call to see Mr. Irving first? A. Yes.

Q. And then went to see Mr. Lown? A. Yes, sir.

Q. And what was your purpose in going to see Mr. Irving? A. At his request.

Q. At whose request? A. At Mr. Irving's request that I came.

Q. He had requested you to come on? A. Yes.

Q. And what was the nature of your discussion when you saw him?

The Court: What did you talk about?

The Witness: He wanted to know how I stood on this other proposition.

Q. You mean the Kerlow Company? A. Yes, which he had recently heard about, and about which I had not advised him. He wanted to know my sentiments. I was equally anxious to know his attitude, as to whether they checked up with the statements that had been made to me by Lown regarding the Irving Iron Works Company.

Q. And did you tell Mr. Irving that you were interested in the new company; yes or no? A. No, sir.

Q. Did you tell him that you had no interest in the new company?

Mr. Egner: It doesn't appear that he had any interest in the new company.

Mr. Kraetzer: I withdraw the question in that form.

Q. Did you tell him that you had discussed the new company with anybody, and that you knew anything about the new company? A. Yes, sir.

Q. Did you tell him that you had discussed it with Lown? A. Yes, sir.

Q. And did you tell him that you had turned Lown down, or words to that effect? A. No, sir.

Q. What did you tell him? A. I believe I related some of the salient facts that I have submitted here in an affidavit in response to Mr. Irving's request, and I listened to Mr. Irving's statements regarding his business, and he gave me everything that I might need to know to establish or maintain my confidence in his company and in him.

The Court: Did you tell him you were considering a suggestion or idea of joining the Kerlow Company, or staff?

The Witness: I so intimated.

The Court: How did you intimate it?

The Witness: I think the first intimation was when he asked me—I cannot recall his question, but I can recall my stating that I had to look after my own interest, which, of course, was based upon the fact, or presumed fact, that he was going out of business, or was going to sell out, or be put out; and Mr. Irving interrupted me with the statement that that is about the way they all talk, and I just wanted to hear from

Pittsburgh, to hear you say that, or words to that effect. I thought the discussion might end there, but we got together, and I believe he saw that I had a different attitude toward him and his company.

The Court: Different from what?

The Witness: When I made the statement that I had to look out for my own interest. I suppose he thought that I was ready to resign—that was to my interest, which was not the case. I impressed upon him that I was waiting the unfolding of the thing, to be sure of my position, and that I would not, under any circumstances, until I had all the facts. I did not have all the facts until I talked with him.

Q. Then do I understand that, to use your own expression, that you intimated to Mr. Irving that there was still a possibility that you might leave his employ and go with the new company? A. I may have intimated that, because I didn't know then whether he was going to remain in business or whether he wanted me to remain with him or not.

Q. I thought I understood you to say a moment ago that Mr. Irving was able to satisfy your mind on that subject. A. He did after practically a day's discussion.

Q. Then at that time you had made up your mind, had you not; your mind was made up?

The Court: As to what?

Mr. Kraetzer: As to the advisability of remaining with Mr. Irving.

The Court: When, at the commencement or conclusion of the interview?

Mr. Kraetzer: We will take at the interview —the conclusion of the interview.

The Witness: Yes, sir; at the conclusion of the interview I had made up my mind, and I immediately wired Mrs. Demorest to that effect.

The Court: Made up your mind to do what?

The Witness: To stay with Mr. Irving and represent his company as I had before.

Q. And you wired Mrs. Demorest to that effect? A. Yes, she was expecting it. I wired her to let her know where I would be, as I always do.

Q. She was interested in whether you were going to remain with Mr. Irving or not? A. Very much, because she was quite perturbed over the affair when I left.

The Court: You mean after the close of your interview with Mr. Irving?

The Witness: On Saturday morning.

The Court: Was that after you had finished your conference?

The Witness: Yes.

Q. After you had finished your conference with Mr. Irving, the following day, which was Saturday morning, you called to see Mr. Lown? A. Yes.

The Court: Where, in New York?

The Witness: New York.

Q. And that was at 50 Church Street, in the office there? A. Yes.

Q. And did you then tell Mr. Lown that you had made up your mind to stay with Mr. Irving? A. No, sir.

Q. Why not? A. I cannot recall directly why; we were quite busy, and we didn't have much of a conversation; it was rather broken.

Q. What was the purpose of your call on Mr. Lown that morning? A. I don't know as there was any distinct purpose.

Q. You knew that Lown was waiting for an answer from you, didn't you? A. Yes, he wanted an answer.

Q. And you knew, and you know now, that fair treatment of Lown would have been to tell him, if you had honestly made up your mind to stay with Irving—to tell him on that Saturday morning that you had so made up your mind, did you not?

Mr. Egner: I object.

The Court: What difference does it make what he thought was fair treatment of Lown? I will sustain the objection.

Q. But you didn't tell him? A. No.

Q. How long were you over there at Church Street? A. A half an hour to the best of my knowledge.

Q. What other matters did you have to discuss besides the question of your business associations with this new company?

The Court: That is, discussed with Mr. Lown?

A. I went over there for nothing specific; we may have discussed some general thing. Mr. Lown showed me a sample that had been tested at one of the laboratories here of their new product; that it had been tested until the elastic limit had been reached, and that it was very much stronger than Irving's. He introduced me to several men there, whose names I cannot remember. He said they were figuring on quite a bit of work. I cannot remember anything very definite.

The Court: Did you ever notify Mr. Lown that you would not join his organization?

The Witness: I told him in person; yes, sir.

The Court: When?

The Witness: Definitely on December 2nd, on Friday.

Q. Was Mr. Bunker present at this interview on the Saturday morning in New York City? A. Mr. Bunker came in; I met him for the first time, and shook hands with him and had a few words with him, and he had to go out immediately.

Q. Did you during that Saturday morning's discussion talk with Mr. Bunker or with Mr. Lown, or with both of them, at all about the manufacture of this grating in Pittsburgh in a factory to be installed there? A. No, sir; not that I remember.

Q. Wasn't anything said about that on this Saturday morning? A. Not that I remember. Mr. Bunker admonished Mr. Lown or advised him to say nothing about something, and as I remember, it might have been—

The Court: Not what it might have been.

The Witness: I don't remember definitely; I cannot answer that definitely.

The Court: Did you tell Mr. Lown that you had been to see Mr. Irving the day before?

The Witness: I did to the best of my recollection.

The Court: Do you remember what you said to him about it?

The Witness: No, sir; I don't remember.

The Court: Do you know whether you told him that you had been to Mr. Irving?

The Witness: I was still their representative; he knew that, and he knew when I came to New York

that I would certainly see the Irving Iron Works Company. I didn't want to have him—

The Court: Is this your recollection or are you reasoning it out?

The Witness: That is my recollection of what—

Q. Of what you discussed with Mr. Lown and what you said to Mr. Lown? A. I let him know that I had been to see Mr. Irving; I wouldn't want him to know that I had come to New York and not been to see him.

Q. Are you quite positive in your recollection that you told Mr. Lown that you had been to see Mr. Irving, or that you were going to see Mr. Irving? A. I am not positive, because I was going to see him, and did see him afterward.

Q. How long after? That Saturday morning did you see Mr. Irving? A. Perhaps two hours.

Q. That same day? A. Yes.

Q. And when was it that you returned to Pittsburgh, Mr. Demorest? A. I am not certain whether I returned on Saturday night or the following Sunday night.

Q. At this interview Saturday morning did Mr. Lown ask you whether you had made up your mind to sever your connection with the Irving and come with the Kerlow? A. I don't remember.

Q. Wasn't that possibility or that proposition discussed at all? A. There was nothing direct stated.

Q. That had been the subject of all of your other interviews, had it not? A. Yes, sir.

Q. And was this the only interview that you had at which that subject was not discussed? A. It was, to the best of my knowledge.

Q. What did you tell Mr. Lown as to your rea-

son for coming to New York City? A. General business. He knew that I wanted—

The Court: What did you tell him; not what he knew, but what did you tell him, is the question.

The Witness: I told him more than once that I wanted to verify his statement regarding—

The Court: On that Saturday morning he is directing your attention to. On that Saturday morning, what, if anything, did you tell Mr. Lown as to your reason for coming to New York?

The Witness: I cannot tell you definitely. I intimated and the conversation was to the effect that I had come down to investigate things that Lown had told me.

Q. And did you ask him to assist you or help you in any way in making that investigation? A. No, sir.

Q. Your investigation consisted of talking to Mr. Irving? A. Yes, sir; at that time.

The Court: Why did you qualify it that way?

The Witness: Because I wanted to make a further investigation from an unbiased and unprejudiced and independent source.

The Court: And what was that source?

The Witness: It is more or less confidential.

The Court: A source independent of both Mr. Irving and Mr. Lown?

The Witness: Yes, sir.

The Court: And did you make such an investigation?

The Witness: Yes, sir.

The Court: How long after this interview with Mr. Irving.

The Witness: I had started it before.

The Court: And concluded it how soon after?

The Witness: The following week. On Friday of the following week, when Mr. Lown was in Pittsburgh.

Mr. Egner: Was this other source which you say was independent of both sides, a Pittsburgh source?

The Witness: Yes, sir.

Q. And when you left Mr. Lown on that Saturday morning, do you recall telling him that you would return and see him on Monday morning? A. Yes.

Q. And did you state whether you would come back on Monday to see him? A. I believe he stated he was very busy, and I was busy, too, and I made that conditional; I didn't promise definitely.

The Court: What did you say about it?

The Witness: But that I expected to see him Monday morning.

The Court: What were you going to see him about Monday morning?

The Witness: I had hoped to give him a definite refusal.

The Court: A definite answer?

The Witness: Yes.

Q. Then you did discuss at that time the possibility of going with the Kerlow Steel Flooring Company? A. Yes, the possibility was discussed.

The Court: Did you on this Saturday morning?

The Witness: I had made up my mind not to.

The Court: Did you discuss, is the question, that is, talk together, you and Mr. Lown, about the possibility of joining his company?

The Witness: I don't think so.

Q. Did I understand you to say that you told Mr. Lown that you hoped to give him a definite answer on Monday? A. I don't remember that.

The Court: He didn't say that in answer to my question as to the purpose of calling on him on Monday; he said, "I hoped to give him a definite refusal" on Monday, and I corrected it and said, "A definite answer" on Monday.

Q. Did you tell Mr. Lown on that Saturday morning that you would give him or hoped to give him a definite answer on Monday morning? Yes or no. A. I don't remember that I told him that.

Q. You didn't go back on Monday, did you? A. No, sir.

RE-DIRECT EXAMINATION by Mr. Egner:

Q. Where did you see Mr. Irving on that visit to New York, at Long Island City? A. At his office in Long Island City.

Q. Was the plant running then? A. I cannot answer that definitely and prove it; I don't believe I was out in the plant.

The Court: Is the office detached from the plant some distance?

The Witness: No, sir; it is pretty close to the plant.

Q. On the occasion of your talks with Mr. Lown, did he say anything about the Irving plant being in operation or shut down?

Mr. Kraetzer: I don't see the materiality of this; I object to it.

The Court: I will receive it. It might have

been a circumstance, if it had been believed as indicative of the fact that the Irving Company were on their last legs and were about to emit their last gasp. I think it is competent in that aspect.

A. I think to the best of my recollection he made a statement at one time that they were shut down now. Q. Can you fix that? A. No, sir; I cannot tie that up to anything.

Q. Did you on the occasion of your talk with Mr. Irving discuss the question of his abandoning business and giving up in view of this new competition? A. Yes, sir.

Q. What did Mr. Irving say about that?

Mr. Kraetzer: I object as not binding.

Mr. Egner: He has gone into that subject on cross-examination.

The Court: You went into it and asked him what he was doing. I think it is competent from another aspect. You are charged with having persuaded this gentleman by misrepresentations, or attempted to persuade him to leave the employ of the Irving Company. I am endeavoring to find out what influence operated on his mind, either to retain him there or cause him to leave. I think I shall have it all. He has given me a very large part of the conversation in the conference. I think we should have all of it, and if necessary, I will allow either or both of you to call Mr. Irving again on that subject, if you desire.

Q. Did Mr. Irving say anything about his continuing in business despite this new competition? A.

Yes, sir; he very definitely stated that he would continue in business.

Q. Did he say anything about the financial condition of his company? A. He generally stated it was very good.

Q. In any of your talks with Mr. Lown in Pittsburgh, prior to your trip to New York, did you say anything to him about your desire to verify the statements that he had made to you? A. Yes, sir.

Q. What did you say on that subject? A. I told him I wanted to check up the statements he made.

Q. Did you tell him how you proposed to check them up? A. No, sir.

Q. What did he say to that? A. I don't remember.

Mr. Kraetzer: The office of the Irving Company is part of the plant; it is right in the plant, isn't it?

The Court: Is it all in the same building, or the same enclosure?

The Witness: Yes, the office is attached to the main manufacturing department.

WALTER E. IRVING, recalled for further direct-examination:

By Mr. Egner:

Q. Mr. Demorest has just spoken of a visit that he made to your plant at Long Island City on or about the twenty-sixth of November? A. Yes.

Q. Do you recall that visit? A. Yes, sir; very well.

Q. Will you tell us what conversation took place then between you and Mr. Demorest? A. The principal thing at the start was the query that "I have

come on here to find out whether you are with us or against us."

The Court: Query from you?

The Witness: Query from me. I didn't have any idea of where he was.

The Court: We want what was said.

Q. What did you say to him? I only want the conversation. A. I asked him whether he was with us or against us.

The Court: What did he tell you?

The Witness: He didn't say immediately exactly where he was. Then I told him that I knew all about this Kerlow Company; that these other agents had done so and so and resigned; I told him how some of them had taken and given our estimates to people, and that I had gone there before the expiration—

Mr. Egner: What is that?

The Witness: They had handed our estimates to certain prospective customers, and that I had gone there to those customers before the agent in that district had resigned—that is, before the day that he fixed for his resignation had occurred, and found estimates handed in there by the same agents, and found and was told that the agent was rooting for the Kerlow Company, while he was still drawing our salary. I told him about an agent in Hartford, one Kennedy, who had been carrying a sample of their grating around to Buck & Sheldon while still in our employ. I told him about Scarth having reported on the Detroit Edison job to us month after month, at the very start of that job sending in a C. I. M., saying that such and such a job was projected, and reporting the same and more about it next month, and

the next month he reported that he believed there would be so much money for the Irving subway in it, and that he had definitely found out in another report—

The Court: Don't give too much detail.

The Witness: It went on for months, more and more progress, and that it was a big job, and finally the last report, just before this thing happened, was that the job was abandoned, or something to that effect, or wouldn't go through until a long time after. That, of course, immediately shoved that card—

Q. State just what you said.

The Court: Did it turn out to be any different?

The Witness: Yes.

Q. Did you tell that to Mr. Demorest? A. Yes, I told that to Mr. Demorest; I told him everything.

Q. Did you tell him who had gotten that job? A. I don't know. I don't know yet whether they had the job at that time. I may be possibly wrong on all of that in regard to Scarth, because I don't know whether I checked all that up.

The Court: Strike it all out.

Q. I want what you said and nothing else.

The Court: And I don't want it again.

Q. Tell us what you said. A. I told him that I had spoken to a man by the name of Dominik, of the firm of Dominik & Dominik, who were bond brokers or bankers, about this K. N. & K. matter, and that Mr. Dominik told me that he didn't believe it was possible that a firm of the standing of K. N. & K. could be backing any concern like that, that wasn't well known

or hadn't been in business for some time; and that he was quite sure that if a concern of that sort was thinking of backing the Kerlow Company, that we would at least have had some inquiries made of us as to the moral character and ability of the leaders in it—

The Court: Do you want all this, Mr. Egner?

Mr. Egner: No.

The Court: Isn't the significance of the whole thing that Mr. Demorest, as a result of his interviews with Mr. Lown, made his own investigation through Mr. Irving and others, and as a result of his own investigation, at least satisfied himself that he was going to stay where he was? I don't care for all this. It took up the whole day, they say.

Mr. Kraetzer: No cross-examination.

WINIFRED HEALY, sworn for complainant.

Direct-examination by Mr. Egner:

Q. Where do you live? A. 709 11th Avenue, Astoria, Long Island.

Q. You are employed by the Irving Iron Works? A. Yes, sir.

Q. How long have you been there? A. Three years.

Q. What is your position? A. Clerk.

Q. In what department? A. Sales department.

Q. You were there during the year 1921? A. Yes, sir.

Q. And prior to May of that year who was your immediate superior? A. Mr. Lown.

Q. And what was his position? A. Sales manager.

Q. Do you remember when he left the company? A. Sometime in the spring, as I can remember.

Q. And before he left the company, what, if any, instructions, did he give to you with respect to a list of prospective customers? Did he give you any instructions? A. Yes.

Q. And when was that; how long before he left? A. About six or seven months before he left.

Q. Tell us what he said about that subject. A. He told me to make up this list of customers made by the addressograph.

Q. And did you make up such a list? A. I did.

Q. About how many names were there in the list? A. There were about three or four thousand names.

Q. Did that list contain all the names on the cards or a portion of them? A. A portion of them.

Q. Which did you take? A. There are more on the card file than in the stencil file.

Q. What names are on the stencil file? A. Best, bully, fine and fair. All the best prospects.

Q. You say those names were put on this list? A. On the stencil file and on the list.

Q. What did you do with the list after you prepared it? A. I kept it until after instructions from Mr. Lown.

Q. Where did you keep it? A. In my desk.

Q. Who helped you prepare the list? A. Miss Disimone.

Q. What happened to the list; did you give it to anybody? A. No, I kept it in my possession until Mr. Lown asked for it.

Q. He asked you for it? A. Yes.

The Court: When?

The Witness: About two or three months before he left.

Q. And did you give it to him? A. Yes, sir.

Q. And since giving that list to Mr. Lown have you again seen it? A. No, sir.

Q. Have you looked for it? A. Yes, sir.

Q. How thoroughly? A. In every place I could look.

Q. And when did you look for it? A. About a month after he left.

The Court: Have you ever seen it since you gave it to him?

The Witness: No, sir.

Q. What was the occasion of your looking for it a month after he left? A. That was after the other sales manager had come. He asked me for a list; that was the cause of my looking for it.

Q. Who was the other sales manager? A. Mr. Roope.

Q. And he asked for a list? A. Yes, sir.

Q. And you couldn't find this one? A. No, sir.

Q. And then what did you do? A. Made up a second list.

Q. And who assisted you in that? A. Miss Disimone.

Q. Did the list contain about the same number of names? A. More.

Q. Why did you make the selection from the stencil file instead of taking all the names generally? Did you have any instructions to make a selected list? A. No, that took in all, but there is just certain ones that we don't put in the file, only we have them in the card file.

Q. Why didn't you include those names in the list you prepared? A. We didn't keep them in the stencil file.

Q. What were your instructions from Mr. Lown to make a list? A. To make the whole file.

Q. From the stencil file and the list as you have described? A. Yes.

Q. And did not include, as you understood then, the names which were not included in the stencil? A. I don't just understand you.

Q. You had a number of names and you say you only made up a partial list, or list of a partial list, or list of a part? A. It was the whole file.

Mr. Egner: May I say something, and I think there is a stencil list that they used—

Mr. Kraetzer: I object to counsel making any statement in explanation of this witness's testimony, or purporting to be an explanation, until such time as we have concluded with the witness.

The Court: I think the objection is well taken.

Examination by the Court:

Q. Did I understand you to say that you made up this list of three or four thousand names from a stencil file and a list? A. No, sir.

The Court: I didn't hear all she said.

Q. From what did you make up this tabulation of three or four thousand names? A. From the stencil file; that was the whole file.

Q. The stencil file is your file of what? A. Customers and prospects.

Q. You said that the three or four thousand names on this list you made up, constituted only a part? A. No, sir, that was the whole file.

Q. Then you said that certain names you selected, the good, or better or bully— A. And put into the stencil file, from the card file.

Q. You didn't make up the list, then, from the card file at all? A. No, sir.

Q. And the card file, did that contain as many names, approximately, as the— A. More.

Q. And none of those names were included in the list you made for Mr. Lown? A. Yes.

Q. From the card file, too? A. Yes, but a selection in the card file, because the card file has more in that file than it has in the stencil file.

Examination by Mr. Egner:

Q. From what is the stencil list made up? A. From the card file, but it is picked out from the card file as being the best and bully; those were the ones we put in the stencil file.

The Court: So you took from the card file and stencil file the best names?

The Witness: Yes.

The Court: And made your list of three or four thousand?

The Witness: Yes.

The Court: And there were other names that you did not add to the list?

The Witness: Yes.

The Court: But it was in the list of the company?

The Witness: Yes, in the card file.

Q. Did you take every name on the stencil file for the list? A. Yes, sir, I did.

The Court: I understand now. I didn't get the expression before about the card file.

Mr. Egner: That was what I was trying to make clear.

The Court: I couldn't hear it when she answered it.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. What did you make this list up on; on the addressograph machine? A. Yes, sir, I did.

Q. You say the way you do that is, that you take your stencils out of the drawers that they are kept in, and feed them into this machine and just feed the paper through and that automatically stamps each name, isn't that right? A. Yes.

Q. You took every one of those stencils and made a list of every one of those stencils? A. Yes.

Q. And those stencils that you put in your addressograph machine, you say there were about three or four thousand of them? A. Yes.

Q. No more than that? A. Not at the time.

Q. That consisted, or that was your whole mailing list, wasn't it? A. Yes, it was.

Q. And if you had any catalogue or circulars or something of that kind to send out, you would stamp the address from these addressograph plates? A. Yes.

Q. And you would send them to all of the names on those addressograph plates? A. Yes.

Q. And to no others? A. No, sir.

Q. As I understand it, you considered that you called these addressograph plates a complete list of customers and prospects, did you not? A. Yes.

Q. On some of those addressograph plates were

the names of persons who had never purchased from Irving at all, weren't there? A. Yes.

Q. And others were people who had purchased? A. Yes, that was the customers.

Q. And you had to keep your cards from which you made up your addressograph plates? A. Yes, sir.

Q. And as the salesmen's C. I. M.'s came in, you and I suppose your assistant, Miss Disimone, took the information and wrote it down on cards? A. The whole information.

Q. And kept the cards posted right up-to-date? A. Yes.

Q. Then you had a little sort of a clip that you put on top of the cards? A. Yes.

Q. And these would have to be marked or moved to certain places, according to whether the customer or person whose names you had, bought goods or whether he didn't isn't that right? A. Yes, sir.

Q. It showed whether he was "best," "bully" or whatever it was? A. Yes, sir.

The Court: When you posted from the C. I. M. on the card, who determined whether the card came out of the card file and went into the stencil file, you?

Mr. Kraetzer: I think I can bring that out.

Q. Didn't you have a general order that whenever one of your C. I. M.'s came marked "best" or "bully" — A. That name was to go into the stencil file.

The Court: And you and your assistant determined that?

The Witness: Yes.

The Court: Under the general instructions received?

The Witness: Yes.

The Court: It was the salesman's report determined it, and her inspection of that report determined whether she put it in the stencil file?

The Witness: Yes. If the C. I. M. wasn't marked "best" or "bully" you would simply put the name on the card, if you didn't have a card for that man, and file that away until you got a better rating.

Q. Until you got a "best" or "bully" on that? A. Yes.

Q. Then it would go into the stencil file? A. Yes.

Q. So that really the only people that you sent circulars to, the only people that you considered customers or prospective customers according to your instructions and your understanding, were the people in this stencil file? A. Yes, sir.

Q. You say there were about three thousand in this stencil file? A. About three or four thousand; I don't remember.

Q. And of the cards, I suppose there were a good many more? A. Yes.

Q. And how many, about, would you say there were?

The Court: As many more?

The Witness: As many more.

Q. Say about eight thousand? A. I really don't know. About three or four thousand more.

The Court: It is just an estimate.

Mr. Kraetzer: We understand it is just an estimate.

Q. About six months before he left, Mr. Lown told you to make up a list from the stencil file, did he? A. Yes.

Q. You and Miss Disimone got out the little stencil that you had and you made up your list of names? A. Yes.

Q. And about how many sheets of paper would you say they covered? A. I cannot say; I don't know. It was quite large paper.

Q. What kind of paper was it? A. Just like the paper on the desk, on the table there.

Q. Foolscap paper with lines on it? A. Yes (indicating yellow foolscap paper).

Q. It is commonly known as "legal size foolscap paper?" A. I guess it was a little longer than that.

Q. But it had lines on it? A. Yes.

Q. Did it have a red line running down the side? A. Yes.

Q. Don't you know about how many names you could put on a page that way?

The Court: Did you put anything on the page besides the name and address?

The Witness: Yes, on each paper, the best I had marked on the top of the page "Best."

The Court: You used the caption "Best" or "Bully" as you used it in the office?

The Witness: Yes.

The Court: And you made a separate list of such designation?

The Witness: Yes.

The Court: And did you add anything beside the name and address?

The Witness: The attention of the man that is on the stencil.

The Court: The attention of the man connected with the concern?

The Witness: Yes.

The Court: Was there anything else on the stencil that you copied?

The Witness: No, sir, only the name and address and the attention of the man.

The Court: And the characterization, whether "best," or "bully," or whatever you described?

The Witness: Yes.

Q. Did you ever check back that list with Miss Disimone; did you check it back with the cards? A. That is what Mr. Lown was supposed to do with me.

Q. Did he ever do it? A. No, sir.

The Court: You mean after the list was made?

The Witness: Yes.

The Court: He was to check it back with you?

The Witness: Yes.

The Court: Why do you say he was "supposed to"?

The Witness: That is why he told me to make up the list.

Q. What did he say to you about that? A. He said "Keep that now until I find time to check it back with you."

Q. Did he tell you what he wanted the list for? A. To take out the dead prospects.

Q. Is that what he said? A. Yes, to check back on our card file.

Q. He wanted you to make up a list and then you were going to check this list back with the dead prospects? A. No, sir, with the cards, to take out the dead prospects.

Q. So that in this list of three or four thousand names there were some dead names? A. Yes, we had sent advertising to them, and they came back.

Q. How many would you say there were? A. I cannot say.

Q. Many? A. I don't know; there might have been, and might not.

Q. Did they come back to you, the letters as they were returned by the post office? A. Yes.

Q. Do you have a record of those? A. I may have destroyed that.

Q. How do you determine that they were dead prospects? How could you check back? A. It says "Out of business" or "Moved."

Q. Would you have that information in your file, that they had gone out of business? A. No, sir, unless I got something back that would state that.

Q. When you got something back, what would you do with it?

The Court: Did you make a record of it?

The Witness: No, I took it out of the file.

Q. You would send out a circular, we will say, to all of the people on the list.

Q. Then the post office department would return a certain number of them as "Not found" or "Out of Business?" A. Yes.

Q. And then when they came back, you would go to the stencil and take that stencil out? A. If it was possible. If I could look it up and find out from my own information what the different address was—lots of times salesmen sent in a report with the correct address, and that would give me a chance to correct my card file.

Q. You kept this up from day to day? A. Yes.

Q. Then why was it necessary for you to go back and pull out the dead ones from day to day? A. I don't know why. He wanted it made out; I did it for him, and he was supposed to check it back with me.

Q. Didn't he tell you that it was to be checked back and he wanted the list so you could go back and pull out the dead stencils? A. Yes.

Q. That is what he told you? A. Yes.

Q. And didn't you tell him at the time that you had kept your stencils right up-to-date? A. In some I knew and some I didn't know. Mr. Lown would know the dead prospects more than I would; he ought to recognize some of them; I didn't know them all.

Q. Your pulling out dead prospects was when you received a letter that had been sent to that prospect, wasn't it; wasn't that why you pulled them out? A. I don't understand you.

Q. It was a fact that you got back one of your letters that told you that a certain prospect was dead? A. Yes.

Q. And you got those letters, didn't you? A. Yes.

Q. And you were the one who would know whether a letter addressed to John Jones had come back, or whether it had gone through? A. Yes.

Q. It didn't need any instructions from Mr. Lown to do that, did it? A. No, sir.

Q. You could have done and in fact you did do it, all by yourself? A. Yes, sir.

Q. And you have been doing it? A. Yes, sir.

Q. When Mr. Lown told you that he wanted to get this list so that you could check back and pull out the dead names, didn't you tell him that they were live names? A. No, sir, because I didn't know whether they were or not; I only started to do it at the time I came there.

Q. How long had you been there? A. About a year or something like that.

The Court: In charge of these cards?

The Witness: That wasn't really my work, but I had to work on it at the time.

Q. Whose work was it? A. There was a different girl working there at the time.

Q. How many people were employed in the office at the time you made out this list? A. Only two; that was Miss Disimone and I working on the list at that time. We didn't have no girl on the stencil file at that time.

Q. Who was the man who usually gave you your instructions in 1921, at the time that this occurred? A. Mr. Lown.

Q. What was Mr. McNichol? A. He did the stenographic work for Mr. Irving.

Q. At the time you made up this list? A. Yes.

Q. He wasn't in your department? A. Yes, he was.

Q. Did he give you any orders? A. No, sir.

Q. Did you work under Mr. McNichol's instructions at all? A. No, sir.

Q. He had nothing to do with your work? A. No, sir.

Q. You are sure of that? A. Positive.

Q. Was Mr. McNichol associated with Mr. Lown in his work? A. Yes.

Q. And at that time, at the time the list was made up? A. I don't think Mr. McNichol was there at the time I made the list up; I don't think so.

Q. He wasn't working there at the time? A. Yes; I don't think he was there.

The Court: At the time the list was made up, he was there at the time you delivered the list to Mr. Lown?

The Witness: I think he was.

Q. At the time you gave the list to Mr. Lown, Mr. McNichol was there? A. Yes, I think he was.

Q. How long did it take you to make up the list? A. About three or four days.

Q. You just told me that at the time that Mr. Lown, or at the time that you made up the list, as I understand—correct me, if I am wrong—that Mr. McNichol was not there; is that right? A. Yes. I am not positive; I am not saying that I am positive; I don't know.

The Court: She doesn't think he was there.

Q. But you do know he was there at the time you gave Mr. Lown the list?

The Court: She didn't say; she said, "I think he was there."

A. I think he was there.

Q. So you think Mr. McNichol came to the office during those three or four days while you were making up the list?

The Court: Strike it out. That isn't a correct recital of testimony. She said that six or seven months before he left, he gave her an order to make up this list; two or three months before he left she gave the list to him, and she hasn't seen it since.

Mr. Egner: That is what I was trying to bring out.

Q. So that it was during that period of time that Mr. McNichol you think came? A. Yes.

The Court: The last two or three months while Mr. Lown was there?

The Witness: Yes.

The Court: That is your best recollection of it?

The Witness: Yes.

Q. After you made that list, until you gave it to Mr. Lown, you said you kept it in your desk? A. Yes.

Q. And you have your own personal desk there, have you? A. I have a couple of desks.

Q. Does anybody have access to those desks? A. Only Miss Disimone.

Q. You and Miss Disimone can get in those desks? A. Yes.

Q. You have keys for them? A. Only to the one desk.

Q. And was this list kept in the desk which was locked up? A. No, sir.

Q. It was in the unlocked desk? A. Yes.

Q. About that time—when I say "that time," I mean around the time that you made up this list, that is, about six months before Mr. Lown left, did you move your office? A. Yes, sir.

Q. And just about how close to the time when you made up this list was it that you moved your office? A. I don't know.

Q. You don't remember that? A. No, sir.

Q. You moved to a different part of the building? A. There was a new extension.

Q. A new extension that had been built? A. Yes.

Q. And of course I suppose there was a good deal of confusion when you moved? A. Yes.

Q. You had a lot of records and things to move? A. Yes.

Q. Do you recall whether you moved before or after you made up this list? A. I made up the list before we moved.

Q. Do you remember any talk about a fire over there? A. Yes, sir.

Q. You do recall that there was some talk about a fire? A. Yes.

Q. That was in your department? A. Not a fire in our department.

Q. I mean of some of the stuff— A. Yes, that was my stuff.

Q. Some of your records had been burned up? A. Some of the records of the automatic machine.

The Court: What sort of a machine is that?

The Witness: A typewriter, goes by power.

The Court: Did it have any connection with these lists at all?

The Witness: No, sir.

Q. You say two months before Mr. Lown left, he asked you for the list?

The Court: Two or three.

The Witness: Two or three, I am not just positive when it was.

Q. He asked you for the list? A. Yes.

Q. Did you get it for him at once? A. After going out into the new building, I had to look for it, and I found it, where it was, in my desk.

Q. Still in your desk? A. Yes.

Q. And did you give it to him? A. Yes.

The Court: Did you make more than one copy of the list?

The Witness: No, sir.

Q. And what did he do with the list? A. I really don't know. I handed it to him and walked out of the office; I don't know what he did with it after I gave it to him.

Q. You didn't see him do anything with it when you handed it to him? A. Yes.

The Court: Did he make any comment about it then or afterwards?

The Witness: No, sir.

The Court: Do you know if Mr. Irving knew that you were making up the list?

The Witness: No, sir, I don't know if he knew it.

The Court: Do you know if he knew that you gave the list to Mr. Lown?

The Witness: Yes, he knew it after a while when I told him.

The Court: How long after; after Mr. Lown had severed his connection with the company or before?

The Witness: After.

The Court: How long after?

The Witness: I don't know.

The Court: A week or month or day or year?

The Witness: A couple of months, I guess.

Q. How did Mr. Irving come to know about it?

The Court: She told him.

Q. Under what circumstances did you tell him? A. He asked me if I knew about the new company and I told him I didn't know. So he asked me did I ever see a list, so I said I gave that list to Mr. Lown.

Q. He said to you did you ever see a list, or the list? A. I had a couple of lists; I told him I gave the yellow list to Mr. Lown.

The Court: What was the other list?

The Witness: There was a list I had made, a typewritten list of photographs.

Q. At whose request did you make that up? A. At Mr. McNichol's.

The Court: Did you make up the photographic list before you made up the stencil list or after?

The Witness: No.

The Court: What did you do with the photograph list?

The Witness: I gave that to Mr. McNichol.

The Court: Won't you again repeat what Mr. Irving said to you about these lists after Mr. Lown had left?

The Witness: He asked me did I ever see any list lying around; I said the only list I had I gave to Mr. Lown, and that was on yellow paper.

Q. You had given another list to Mr. McNichol? A. That was one list, but that wasn't of any importance; that was only a little typewritten list for our own use.

Q. Just a little typewritten list? A. About two or three pages; something like that.

Q. When was this talk with Mr. Irving about lists; when did it take place? A. About the day before Christmas, the past year.

Q. The day before Christmas last year? A. Yes.

Q. It was then that you had this talk with Mr. Irving, at which you told him—what did you tell him? Just tell us what conversation was. A. It wasn't any conversation, only that I told him I gave the list to Mr. Lown.

Q. Did Mr. Irving call you in his office? A. Yes.

Q. Who was there? A. Just Mr. Irving and myself.

Q. Wasn't Mr. Bell there? A. No, sir.

Q. Nobody else there at all? A. No.

Q. Just the two of you? A. Yes.

Q. And what did he say to you first; what were his first words, as nearly as you recall? A. I don't remember.

The Court: What did he say, as nearly as you recall it?

The Witness: He asked me did I hear about the new company, were the first words.

Q. Did you ask him what new company? A. Yes; I didn't know anything about it.

Q. You hadn't heard anything about it at all? A. No.

Q. Did he tell you about the new company then? A. He explained a couple of things to me.

Q. What did he explain? A. That they had got up a new—

Q. Who? A. Mr. Lown and Mr. Bunker.

Q. He told you that they had gotten up a new company? A. Yes.

Q. What else? A. That was all; just told me they got up a new company. He didn't explain anything to me.

Q. And then what was the next thing that he talked about? A. I don't remember.

Q. Did he refer to the list? A. He asked me did I have any list; I said yes, I had one list and I gave that to Mr. Lown, but the other list didn't have anything, really, to do with him; that was the list that I gave to Mr. McNichol.

Q. Did you tell him that that was the only list that you had? A. I said that was the only list I had that was of any importance, but I had a couple of little lists, which were for my own use.

Q. Let us see what you mean by that; you said that was the only list that you had for your own use?

The Court: That was the only list except a couple of little lists which she had for her own use.

The Witness: Yes.

The Court: So you told Mr. Irving that you had made up this one list for Mr. Lown?

The Witness: Yes.

The Court: And that you had a few little lists for your own use?

The Witness: Yes.

The Court: Did you tell him that you hadn't made up any other list at all?

The Witness: No, sir, I didn't.

The Court: Did you tell him that you had made up other lists?

The Witness: The typewritten list; I told him that was for myself.

The Court: That was all you told him?

The Witness: Yes, that was the one and only list, and that was the list I gave to Mr. Lown.

The Court: Is that the only one you ever made up?

The Witness: Yes, that is the first list I ever made up by the addressograph.

Mr. Kraetzer: His Honor asked you was that the only list you made up.

The Court: I am speaking of the list she gave to Mr. Lown.

The Witness: Yes, that was the only one.

The Court: Aside from the ones you made up for your own use?

The Witness: Yes.

Q. Was that the only list you made up, up to the time you spoke to Mr. Irving?

The Court: Up to Christmas.

The Witness: I had made up another list, but I don't know just whether that was at the time or not, which I made up for Mr. Roope.

The Court: But you don't know whether it was made before or after Christmas?

The Witness: I don't know when Mr. Roope left.

The Court: Have you any recollection?

The Witness: No, sir.

The Court: You made a list up for Mr. Roope while he was in the employ of the Irving Company?

The Witness: Yes.

The Court: And was that a list similar in its character to the one you made for Mr. Lown?

The Witness: Yes, only there were more names on it.

The Court: Taken from the same source—the stencil list, as you described?

The Witness: Yes.

Q. When did you make it up? A. About a month after Mr. Lown had left.

Q. When was that? A. Mr. Lown left in the spring, sometime; I don't know exactly the month.

The Court: How did you come to make up this list for Mr. Roope?

The Witness: He was the new sales manager, and he asked me did I ever make up a list of the whole addressograph file, and I said I had. He asked me for it, and I said I didn't have it. I said I made it up for Mr. Lown. He said he would help me look for it, if I wanted him to, but I looked further and couldn't find it.

Q. Where did you look? A. All over the whole office—in the desk where Mr. Lown had sat.

The Court: And then not finding it, what did you do?

The Witness: I made up a second list.

The Court: At the request of Mr. Irving?

The Witness: Yes.

Q. When you were talking to Mr. Irving, did you tell him about the list that you had made up for Mr. Lown? A. Yes.

Q. Then, you told him about another list, didn't you?

The Court: Don't get confused; take your time, now, and give us the benefit of your best recollection. Going back, again, to your little conference with Mr. Irving, about Christmas time, can you remember now what you and he talked about in regard to the number of lists; and if you wish to make any correction, you have a right to do so. All I want is the best information you can recall.

The Witness: Yes, I think I did.

The Court: What is your answer now; when Mr. Irving asked you if you had made up a list or seen one, what did you tell him?

The Witness: I told him I had, and I had the one list in the drawer.

The Court: Which list was that?

The Witness: Second list which I made up for Mr. Roope.

The Court: You had that in the drawer?

The Witness: Yes.

The Court: Was that compiled in the same way,

with a caption of "Best," "Bully" and so on, as you had made them for Mr. Lown?

The Witness: Yes.

Q. You told Mr. Irving about that at this little conference? A. Yes.

Q. Did he ask for that list, and did you get it, the one you had in the drawer? A. No, he didn't ask for the second list.

Q. Did he inform you in any way why he inquired if you had made up a list? A. No, sir.

Q. And how soon after you had this little talk with Mr. Irving, at which you told him about these two lists, was it that you signed an affidavit about it? A. About in January or February.

Q. Did you tell Mr. Irving at the time that you had this little talk with him, about the packages?

Mr. Egner: I don't understand it; there have been no packages referred to on direct-examination.

Q. You did tell him at that time? A. I wouldn't say for sure.

The Court: Your best recollection is that you did?

The Witness: Yes.

Q. After that first talk with Mr. Irving—you have had a good many talks, haven't you, about this thing, with Mr. Irving or Mr. Bell or someone else? A. Only with Mr. Irving.

Q. Haven't you ever talked with Mr. Bell about it? A. No, sir.

Q. Mr. Stephen Bell I mean. A. I explained the card file to him, that was about all.

Q. Didn't you tell him about the lists?

The Court: About having made up the list.

A. Yes, but never had any conversation about it or anything; just told him about the lists.

Q. He was taking your statement, wasn't he? A. Yes.

Q. Mr. Bell was? A. Yes.

Q. He was the one that was over there in the plant getting the various statements of the various witnesses, wasn't he? A. Yes.

The Court: The Mr. Bell you refer to is the New York counsel for Mr. Irving?

Mr. Kraetzer: Yes.

Q. You also told Mr. Stephen Bell about the packages? A. I don't remember whether I told him about it or not.

Q. When was it that your salary was raised? A. About two weeks before Christmas.

Q. And have you had any increase since then? A. No, sir.

The Court: What was your salary at that time, before the increase?

The Witness: Sixteen dollars a week.

The Court: What was the increase?

The Witness: Two, making it eighteen.

The Court: And it is that now?

The Witness: Yes.

The Court: And was it before or after your talk with Mr. Irving that your salary was increased?

The Witness: Before.

The Court: Two dollars a week increase will not affect my mind.

Complainant's Witness, Winifred Healy, Re-direct

Q. Between the time when you made the first list for Mr. Lown and the time that you made the second list for Mr. Roope, how many names had been added, can you tell, approximately? A. About three or four hundred, as I can recall.

Q. Mr. Roope's was a longer list, then? A. Yes.

Q. And between the time that you made the list for Mr. Roope and the present time, how many additional names have you put on the list? A. A couple of thousand.

RE-DIRECT EXAMINATION by Mr. Egner:

Q. On what kind of paper was this Roope list? A. On white paper.

Q. Do you know if that is in the possession of the Irving Company yet, that list which you made for Mr. Roope? A. At the time Mr. Barry was there, he was cleaning out the desk, that was after Mr. Roope had left, and he found the white list, but it was half the size that I had made it up, and we tore it up in one tear and threw it away.

Q. Threw what remained of it away? A. Yes.

The Court: Do you know what became of the other part of the list?

The Witness: No, sir, I do not.

Q. Do you know who took it or how it was reduced in size? A. No; after I once gave it to Mr. Roope, I never knew what became of it, until I saw it partly destroyed.

Q. Who tore up the list? A. Mr. Barry and Mr. Irving.

Q. Is he in his employ yet? A. Yes.

Q. And about when was that destruction by Mr. Barry; can you fix about the time; was it this year? A. Yes.

The Court: Does it appear when Mr. Roope left the Irving Company?

Mr. Kraetzer: I think it is some time in November, the twenty-fifth.

Mr. Chanalis: Mr. Irving testified he discharged him in November.

VIRGINIA DISIMONE sworn for complainant.

Direct-examination by Mr. Egner:

Q. You are also clerk in the Irving Iron Works? A. Yes.

Q. How long have you been there? A. Three years now, but at the time of the affidavit it was two years.

Q. You have been there three years? A. Yes.

Q. With whom were you associated there in your work? A. Miss Healy.

Q. You have heard her testify about making up a list? A. Yes.

Q. Did you assist in making up that list? A. Yes.

Q. About when was it that that list was made up? A. About six or seven months before Mr. Lown left the employ of the Irving Iron Works.

Q. What was on that list? A. It was a list of the customers and prospective customers of the Irving Iron Works Company.

Q. Do you know what became of that list after you and Miss Healy made it up? A. We kept the list

in our possession for about three or four months, and then Mr. Lown, I understand, asked for it.

Q. Do you know; did he ask in your presence? A. Yes.

Q. What did he say? A. He asked Miss Healy for the list; I wasn't there at the time, but Miss Healy came out and asked me if I knew where it was, and said Mr. Lown asked her for it.

Q. Do you know whether you found it then? A. Yes, we found it then.

Q. And did you see her give it to him? A. No, I did not see her give it to him.

Q. But you helped to look for it? A. Yes.

Q. And she found it? A. Yes.

Q. Since Mr. Lown left, have you helped in any search for that list? A. Yes.

Q. When was that? A. That was when Mr. Roope asked Miss Healy if she ever saw a list made up. Miss Healy replied that she did make a list, and we looked for it all over the offices, but we couldn't find it.

Q. Has it ever been found, to your knowledge? A. No, sir.

The Court: Have you ever seen it from the time it was taken out to give to Mr. Lown?

The Witness: I saw it that day, but not after that.

The Court : What paper was it on?

The Witness: On yellow paper.

The Court: Who actually did the work on it, you or Miss Healy?

The Witness: We both worked on it.

Q. After Mr. Roope came there, did you take any part in making up another list? A. Yes.

Q. What kind of paper was that on? A. On white paper.

Q. Was that taken from the stencil file? A. Yes.

Q. Do you know what became of that list? A. We found part of the list afterwards, but that is all I know about it.

The Court: You mean you and Miss Healy, by "we"?

The Witness: Yes.

The Court: What part of the list; the greater part or the smaller part?

The Witness: I just don't remember, I think the list was about that thick.

The Court: About three inches?

The Witness: Yes.

The Court: You found about an inch or inch and a half of that?

The Witness: Yes.

The Court: What became of the white list you found?

The Witness: Mr. Barry tore the list up; he asked what it was for; I told him that Mr. Roope had it made up, but I didn't know what it was for. He said, "As long as it is no good, I will destroy it."

The Court: Where did you find the remains of the list?

The Witness: Mr. Barry found it in Mr. Roope's desk and came out to us with it and asked what it was.

Q. Were there more or less names on the Roope list than on the Lown list? A. There were more on the Roope list.

Q. About how many more? A. About three or four hundred.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. Who was Mr. Barry? A. He was Mr. Irving's stenographer. He also assisted in our department.

The Court: At any time before Mr. Lown left the Irving Works, did you tell Mr. Irving you had helped to make up a list of the names for him?

The Witness: No, sir.

Q. You did tell him after Mr. Lown left? A. Yes.

The Court: How long after Mr. Lown left?

The Witness: I think it was Christmas Eve when Mr. Irving asked us.

The Court: He asked you and Miss Healy?

The Witness: Yes.

Q. You had a good deal to do with these addressograph plates? A. Yes.

Q. Did you keep them in drawers? A. Yes.

Q. How were they filed, alphabetically? A. No, geographically.

Q. By states? A. Yes.

Q. That is, you had one drawer for a state, and in that drawer you had the names of all customers and prospective customers? A. Yes.

Q. Were they all mixed in together? A. No, each state had a different drawer.

The Court: Each state was arranged alphabetically?

The Witness: Yes.

Q. Were customers and prospects all mixed in the same drawer? A. No, sir, they were kept separate.

Q. And customers? A. Yes.

Q. But in the same drawer of the state? A. No, entirely separate.

Q. So that you had a separate drawer or drawers in which you kept the customers' names? A. Yes.

Q. And how many drawers contained customers' names? A. At that time?

Q. Yes; about. A. I don't remember about; I can tell you about how many drawers there were; there were about four drawers.

Q. Of actual customers? A. Yes.

Q. And about how many plates in a drawer? A. About 200.

Q. About 200 plates in each drawer? A. Yes.

Q. So you would say at that time there were about four times two, which is 800 actual customers? A. I believe it was more than that.

Q. About? A. There might have been a thousand.

Q. And then you had separate drawers in which you kept the prospects? A. Yes.

Q. These were people who had never purchased grating? A. Yes.

Q. But who the salesmen had said were either "Best" or "Bully"? A. Yes, or "Fair" or "Fine."

Q. That is, you would run their names, that is "Best," "Bully," "Fair" or "Fine," would go into the prospect drawers? A. We ran them first geographically; beginning with Albany, we would take all the "Best" in that drawer, and then they would run according to the cities, whatever the name, alphabetically.

Q. How many plates of the prospects would you say there were at that time, not including the 800 or 1,000 customers? A. About 2,000, I should say, prospects.

Q. And then besides that you had your card file, and of course that had a lot of dead stuff in it, didn't it? A. Yes.

Q. That was a sort of a permanent record that was kept there? A. Yes.

Q. In fact, you would never take any cards out of that file, would you? A. No.

Q. They were always, so far as you understood from the beginning of Mr. Irving's business, anybody that had been seen, the card record was in that card file, wasn't it? A. Yes.

Q. And that was the understanding? A. Yes.

Q. And they would run to a pretty large number, wouldn't they? A. Yes.

Q. How many were there, about; twelve or thirteen thousand? A. I don't remember.

Q. But except as to posting these cards, that is, the cards that got the posting as salesmen sent in their C. I. M.'s, you already had put your addressograph plates in the drawers, and they were marked "Best" or "Bully," the addressograph plates? A. They had this little tab.

Q. And that was true, whether they were "Best" or "Bully"? A. Yes.

Q. Those were the only ones that were ever used, as far as actual lists were concerned? A. Yes.

Q. The addressograph plates? A. Yes. There were a thousand actual customers, about.

Q. Did you say about two thousand prospects? A. Yes.

Q. How long were you employed at the Irving Iron Works? A. Three years.

Q. The lists that you made up, these lists that you have been talking about, for Mr. Lown and for Mr. Roope, were they made up from the actual customers or prospects, or both? A. Both.

Q. So that was a complete list? A. Yes.

Q. Of what you considered or what the Irving Iron Works considered, so far as your instructions were concerned, actual customers and prospects? A. Yes.

Q. And you say there were how many names on it altogether?

The Court: You have it about four times on the record; it is estimated there are three or four thousand on the yellow list, and about 400 additional on the Roope list.

EDWIN M. KENNARD sworn for complainant.

Direct-examination by Mr. Egner:

Q. You are in the employ of the Irving Iron Works? A. Yes.

Q. In what capacity? A. Shop superintendent.

Q. And when did you enter their employ? A. In April, 1920.

Q. And in what capacity at that time? A. When I first entered the employ of the Irving Iron Works, Mr. Bunker, who was then the production manager, sent me out on the road to keep track of railroad cars; these railroad cars contained steel which were to be used in the business, and I was supposed to and did keep track of these cars from the time they left the point of origin until they arrived at the plant at Long Island City; this period of chasing cars included about three months.

Q. Who was your immediate superior at the time of your employment? A. Mr. Bunker.

Q. Who actually employed you? A. Mr. Bunker.

Q. At the time of your employment, who was the general manager of the company? A. Mr. Price.

Q. And he still is in that position? A. Yes, to the best of my knowledge.

Q. And shortly after your employment, did you have talks with Mr. Bunker with respect to Mr. Price? A. In this connection I might say that—

Q. Did you have any talks about Mr. Price with Mr. Bunker? A. Repeatedly, yes, sir.

Q. What were these talks; give the substances of what was said. A. On various occasions, as things transpired about the plant, which I didn't think were quite right, I used to take the matter up with Mr. Bunker and made various suggestions to him, and on a good many of my suggestions he agreed with me thoroughly; but after I was there possibly three or four months, maybe four months, he began to tell me that there was no use of my making suggestions around the place, owing to the fact that Mr. Price was very arbitrary, and unless the suggestion came directly from him, it ordinarily wouldn't be put into effect.

The Court: Had you ever made at that time suggestions directly to Mr. Price, or only through Mr. Bunker?

The Witness: No, I did not, only through Mr. Bunker.

Q. Did you ever have any instructions from Mr. Bunker as to whom you should make your suggestions and through whom all the communications must come? A. Mr. Bunker employed me and I always understood he was my superior, and all my suggestions were made to him, with the exception of once; that is, prior to the time Mr. Bunker left the employ.

Q. Did you know Mr. Lown? A. I did.

Q. And he was the assistant sales manager? A.

I knew Mr. Lown as sales manager; I didn't know he was assistant.

Q. You knew him as in charge of sales? A. Yes.

Q. Do you remember his resignation? A. I remember about the time he left, yes, sir.

Q. How often did you see Mr. Bunker in connection with your duties? A. I saw him every day that he and I were at the plant, which was most every week day. During the course of the day I must have spoken to Mr. Bunker at least ten times.

Q. Where was Mr. Bunker's office at the factory? A. It was on the ground floor of the main building, approximately in the center.

Q. Did he have a private office? A. Yes.

Q. Did he have a desk? A. When I first came there, I had a desk to the south of his office, and later it was moved to the north of his office.

Q. Did Mr. Lown tell you that he was leaving, or did Mr. Bunker talk about Lown's leaving, to you? A. No, I think I got my information—as far as I can recall, my information about Mr. Lown's leaving was indirect; I don't think that either Mr. Bunker or Mr. Lown told me that he was going to leave.

Q. After Mr. Lown left, which you say was sometime in the spring of 1921, did you ever see him at the Irving plant in conversation with Mr. Bunker? A. I did.

Q. And how frequently? A. I saw Mr. Lown after he was supposed to have left the Irving Iron Works, at least seven or eight times at the plant of the Irving Iron Works.

Q. In conference with Mr. Bunker? A. Not only with Mr. Bunker, but also with Mr. Roope.

Q. Referring to his conversations with Mr. Bunker,

how long were these conversations; how long would they last? A. Mr. Lown generally used to get over there between half-past ten and eleven o'clock, and invariably he and Mr. Bunker went out to lunch together, and, I think, as I recall it, Roope went on one or two occasions.

Q. With him? A. With him, yes, sir.

Q. Did you talk to Mr. Bunker about these meetings he was having with Mr. Lown? A. On the first or second meeting I did, but I remember one particular meeting Mr. Lown stayed quite a long time, and the fact of his being over there repeatedly sort of struck my mind, and later when I was speaking to Mr. Bunker that day, just to find out what Mr. Lown was doing over there, I asked him when he and Mr. Lown were going in business. I had no intimation that they were, but I just put the question to sort of find out for my own information.

Q. At that time what did you understand that Lown was doing? A. I hadn't the slightest idea.

Q. Did you think he had some other job somewhere? A. Naturally; I know he wasn't with the Irving Works.

Q. Did you say anything to Mr. Bunker as to what Mr. Lown was doing at that time? A. I passed the remark to Mr. Bunker that inasmuch as Mr. Lown had left the employ of the Irving Iron Works, and was incidentally trying to make good in another connection, it was peculiar to me that he could spend so much time over at the Irving Iron Works talking to him, and not spend the time on his new job; either he had a soft job, or there was something peculiar about it, and to the best of my observation, it looked to me as though he and Mr. Lown had something afoot.

Q. What did Mr. Bunker say to that? A. Mr. Bunker simply laughed and passed it on as a joke.

Q. What did he say? A. I believe he told me—not to let my powers of observation run amuck, or something of that sort.

The Court: What reply did he make when you asked him when he and Lown were going in business; is that the reply he made?

The Witness: I believe that was the reply he made.

Q. Did he say anything about whether you should repeat anything you had seen or keep quiet, or any thing of that sort?

The Court: I think the proper inquiry will be to go on and tell what else was said.

Q. Did he say anything else that you recall in that connection? A. I don't believe he did the first time.

Q. Do you remember Mr. Bunker going on a rather extended vacation in the summer of 1921? A. Yes; he went on two vacations; one was a short one and one was a long one.

Q. Upon his return from his vacation, about June—

Mr. Kraetzer: I object to counsel suggesting these dates to the witness.

The Court: I sustain the objection.

Q. Did you, either before or after his first vacation, have a talk with Mr. Bunker? A. I had numerous talks with Mr. Bunker about general conditions.

Q. When was this first vacation? A. About June, 1921; somewhere around there.

Q. When he came back from that vacation, did you have a talk with him? A. No, when I had my talk was—during that first vacation he came back, as I

recollect it, on two occasions for a period of two days, to take over the running of the plant while Mr. Price, the manager, was away.

Q. That confused me; he came back during that vacation? A. Yes.

Q. Then, during that vacation did you have a talk with him? A. Yes.

Q. Tell us what he said then. A. That was the time that Mr. Lown was coming over to see him, and I believe it was after I accused him of he and Mr. Lown going in business, and on one of the times he was over to the office, he had possibly been away a week or so, and I went in and saw him and shook hands, and one thing and another, and asked him how things were going and how his health was. He told me everything was fine and dandy, and we got talking about various things, so I asked Mr. Bunker if he and Lown had done anything more, and he said to me, "Well, I tell you, Kennard, as things go, they are shaping up pretty well. Of course, I don't want to say too much right now, but if you keep quiet and mind your own business, possibly eventually we will have something interesting to say to you, but just now we are not in a position—I am not in a position to tell you anything definite."

Q. When was the second vacation? A. I believe it was during August, 1921, sometime.

Q. And do you know where he went then? A. To the best of my knowledge, he was up in Nova Scotia.

Q. Before he left, did you have any talk with him? A. I had several talks with him, trying to find out what he had in mind about the proposition that he promised me, or said might be interesting to me, but I don't believe he told me anything definitely.

Q. Did he ever tell you definitely what business he and Lown were going into? A. Yes.

Q. And when was that, as near as you can recall? A. I believe it was right before he went away on his second vacation.

Q. What did he say? A. As I recall the circumstances, he had been telling me about his proposed trip to Nova Scotia, and I had been going over with him the connections he could make by boat, so finally one afternoon he told me that he would like to talk to me, so he and I walked to the rear of the plant, which was down by the creek, and away from all the buildings, and at that time he and I talked for possibly an hour or hour and a half, and I believe that was the time that he finally told me that he and Mr. Lown were going into the grating business, and that they were lining things up pretty well, and that he intended to take a trip up through the country, taking in Nova Scotia, and on his Nova Scotia trip he intended to see our Mr. Prince, who was our agent at Boston.

Q. Do you recall anything else that he said to you in that extended conversation? A. Mr. Bunker and I rehearsed, as we usually did, the general rotten condition of the Irving Iron Works, as we both expressed it, and how badly things were going, and how they didn't seem to be getting anywhere, and we both concurred in the idea that if we could get a live crowd of fellows together, we could do twice as much business as the Irving Iron Works did, and at much cheaper production cost.

Q. From whom did you get your information as to the rotten condition of the Irving Company? A. I got that from not only Mr. Bunker on numerous occasions, but from my own observation.

The Court: What did you find rotten about it?

The Witness: There were several things that I found rotten about the Irving Iron Works, as I told Mr. Bunker, in which he concurred, and one was the fact that right after I first came there, that is, after I was brought in the office, the policy of the Irving Iron Works was to buy their steel from most any place they could buy it from; they would not only buy the steel at the market price as quoted from the mills, but also the warehouse prices, between which there was a material difference. They would not concentrate their buying in any one particular point, with the result that we would get steel from numerous mills, and then the steel arrived at the plant, we had all kinds of trouble putting it through the machines and working it properly.

Q. Is that one of the suggestions you made to Mr. Bunker for improving conditions? A. Yes; we discussed that many, many times. Another discussion I had with Mr. Bunker was the quality of men that we had around the plant.

Q. You mean in the shop? A. We had around the plant; those included both the shop and the offices. I told Mr. Bunker it was my idea that if we could get a more intelligent class of men around the office, and possibly in the shop, pay them a little more money than we seemed to be paying the present employees, we would get a more intelligent degree of work in general, and Mr. Bunker told me that the character of the help was entirely limited by the salaries which he was authorized to pay by Mr. Price; and, in fact, Mr. Price had told him that anybody who got more than $40 a week in the Irving Iron Works had better look for another job.

Q. Was there anything else that you observed that made you feel that the company was in a rotten condition? A. Just about that time the condition of our drafting room was exceedingly bad; we had a man in charge of the drafting room who was exceedingly incompetent.

Mr. Kraetzer: Who was that.

The Witness: Mr. Volk. This man was exceedingly incompetent; I never could obtain any accurate information from the gentleman; he never could tell me where any of the jobs stood, and I continually had a lot of trouble with him. I told Mr. Bunker this, and urged Mr. Bunker repeatedly to get another man in his place, which he eventually did.

Q. Can you recall any other thing which you observed yourself, aside from what Mr. Bunker told you? A. Another very striking thing that appealed to me—I believe it was in the last part of 1920—the suddenness with which we put on a night shift. We were delayed with orders, and were not able to get them out, and as a consequence Mr. Bunker—I wouldn't say this positively—but anyway, we put on the night shift, and it developed after a period of two or three days that the mistakes in the night shift were such that it took approximately seventy-five per cent of the time of the day shift to straighten out the mistakes of the night shift, and, as a consequence, while we increased our force approximately double, and perhaps even more, the quality and quantity of the production remained about the same, with very little increase, and caused a lot of trouble and annoyance and cost a lot of money.

Q. Did you mention that to Mr. Bunker? A. I did.

Q. And did you ask him to take that up with Mr. Price? A. No, sir; I did not.

Q. After Mr. Bunker's return—first, about how long was he away on the second vacation?

The Court: You say this conversation down by the creek was in August, about, before Bunker went on his second vacation?

The Witness: Yes; I believe a few days before.

The Court: At that conference did he tell you that his company had been incorporated in the spring?

The Witness: No, sir; he did not; I learned that later.

The Court: What disclosures, if any, did he make about getting a bunch of live fellows together?

The Witness: I believe I gave the substance of my conversation pretty well at that time.

The Court: What was said, if anything, about your connection with the enterprise?

The Witness: Only that he was considering me, to offer me some connection with it, but he wasn't quite ready then to say just what was what, as they were not in a position to make much of a drive at that period.

The Court: Was this information given to you confidentially; were you at liberty to repeat it?

The Witness: Mr. Bunker cautioned me not to open my mouth around the plant.

The Court: Did Mr. Irving or Mr. Price suggest to you that you get this information for him?

The Witness: No.

The Court: Had anyone else asked you to endeavor to get this information?

The Witness: No.

The Court: It was entirely on your own initiative that you had the conference?

The Witness: The last one you speak of was on the initiative of Mr. Bunker, as he asked me to come into the rear of the yard and talk to him.

Q. As far as you know, did Mr. Lown or Mr. Price know anything about the new company until on or about the first of November, 1921? A. I really cannot say when those two gentlemen learned about the company.

Q. You don't know when they found out about it? A. No.

Q. As far as you know? A. As far as I know, at that particular time they didn't know anything about the company.

Q. After his return from Nova Scotia did you have any other talk with him about his new venture? A. Yes; I had several long talks with Mr. Bunker after his return; I believe it was only a short while after he came back that he made an appointment with Mr. Tarof to meet him in a restaurant in New York.

Q. Who was Mr. Tarof? A. He was then the man who took over my duties when I was transferred from the office to the shop.

Q. And just what was he doing? A. He was doing substantially the same work that Mr. Bunker previously did, although I don't know whether he had as much authority or not, of that I am not sure.

Q. You had an appointment for you and Tarof to meet Mr. Bunker? A. Yes, sir.

Q. And did you meet him? A. We did; yes, sir.

Q. Where? A. Over in the restaurant in the Grand Central—I don't know which it was; I know we didn't go up from the level; we went right from the subway into the restaurant.

Q. What conversation did you have? A. We met Mr. Bunker after our office hours at night.

The Court: Did you meet him at his request?

The Witness: By his request, by his appointment.

Q. How did he make the appointment; did he telephone? A. He telephoned to Mr. Tarof, and Mr. Tarof told me that he told me to have both of us come there.

Q. When you met what was the conversation? A. We possibly spent an hour and a half or maybe two hours there in the restaurant, and at that time Mr. Bunker pretty generally unfolded his plans about Kerlow.

Q. What did he say? A. He told us that things were going pretty nicely with Kerlow; that Mr. Lown had been around to the principal gents, that is, the agents who controlled the best part of the Irving business, and that he had got practically all of them lined up. He also told us of all the chaps who were coming into the business; they would be given an opportunity to invest in the business and also told us how the stock proposition was going to be handled. As I understood it at that time, we were to—

Mr. Kraetzer: I object to the understanding.

The Court: State what he said. The stock was to be handled how?

The Witness: This is my understanding from the conversation.

Q. Your understanding means that you are giving the substance of what he said? A. Yes.

Q. Give us the substance of what was said, and don't term it "the understanding was." A. He said that we could subscribe as much stock as we desired, and then he would reserve a certain proportion of the

stock aside for any subsequent subscription that the employees would desire to make; we discussed the question of salary, and Mr. Tarof and I agreed that when the time was ripe, we would be glad to go with the Kerlow at the same salary that we were getting from the Irving.

The Court: What were you getting then?
The Witness: $40 a week.
The Court: What was Tarof getting?
The Witness: I don't know.

Q. Was anything else said at this conversation, as far as you can recall?

The Court: When were you to go with the Kerlow Company?

The Witness: That was left to Mr. Bunker, whenever the time was proper, to which we agreed. I believe also at that dinner we discussed, or Mr. Bunker told me the proper method of applying for a position with the Kerlow Company. He told me that he had been speaking to his lawyers, and they informed him that the proper legal way to do this was for me to send an application into the Kerlow Steel Flooring Company, and in this application I was to imply that I understood from outside sources that he had started this competitive company, and inasmuch as I knew him, I could apply in the regular way for the position.

Q. Did he tell you why you should make an application in this way; what that would accomplish? A. I believe I testified that would keep the Kerlow Company from any legal entanglements with the Irving Iron Works, in case anything was started after the company got going.

Q. At that time did he say anything about any improvements that you might see around the Irving plant?

Mr. Kraetzer: Objected to.
The Court: Strike it out.

Q. Did he say anything else? A. Yes; I remember another distinct happening at this dinner. Mr. Tarof and I—I had learned from Mr. Bunker previous to that time that Mr. Tarof was going with the Kerlow Steel Flooring Company.

Q. Did he tell you that? A. Mr. Bunker told me that.

Q. When did he tell you that? A. He told me that before he went away on a vacation.

Q. The first or second? A. On the second vacation.

Q. What did he say on that subject, about Tarof's going with him? A. I was in his office one day; we were talking about the proposition of the Kerlow Steel Flooring Company, and Mr. Bunker asked me if I knew much about this fellow Tarof up in the drafting room; I said to him, "As far as I can see, Mr. Tarof is a very bright chap, and has certainly brought order out of confusion up in the drafting room, and I am very well pleased with his work, not that it makes any difference, but it certainly eases up my work downstairs, and when I go up to Mr. Tarof, he can tell me what is what, and where we stand on the jobs, and what he says is really the truth. I don't seem to find him making any misrepresentations. I also understand from Tarof that he has got a little business on the outside, so I take it that the man is probably above the ordinary." Mr. Bunker said to me, "Would you be surprised to know

that possibly Mr. Tarof is going with us?" "No," I said, "I wouldn't, and I think he would be a very good man." "Well," he said, "Mr. Tarof and I have had a few conversations together, and possibly eventually he will be with us, too."

Q. You said a moment ago that something else impressed itself on your memory as happening at that dinner? A. I think that afternoon before we went to the dinner I walked in the office, and Mr. Tarof was at his desk, and he was writing on a slip of paper, as what I thought—

Mr. Kraetzer: I object to what he thought.

The Court: What did you see or hear?

A. (Continuing.) He was writing on a piece of paper, and I asked Mr. Tarof what he was doing, and Mr. Tarof said, "I will tell you, Kennard, there are a few live quotations that came in today, and a few live estimates; some of them are ours and some are not, and as long as we are going to see Bunker today or tonight, I thought that I would put these down on a piece of paper and pass the information over to him, so that if there is anything in it, Mr. Bunker can do something." I said to him, "Tarof, while you are on that, I will keep walking around the office, and possibly I will see a few improvements from Mr. Liebkert's desk." Mr. Liebkert was the estimator. The list was made up during the course of the afternoon by both Mr. Tarof and myself, and consisted of approximately eight or nine names. So that during the course of the dinner there in the restaurant, Mr. Tarof took this piece of paper from his pocket: he gave it to Mr. Bunker and he told Mr. Bunker what it was. Mr. Bunker said to Mr. Tarof, "Well, Tarof, you

know things are going really nice, and we really don't need it, but, of course, as long as you have it, I will take it," but Tarof immediately stepped up and he said—this conversation I am about to repeat with Tarof, I am not anxious to repeat at all.

The Court: Go on and say it, if it was said in the presence and hearing of Bunker.

Mr. Egner: It is rather a vulgar word. Give the substance of it.

A. (Continuing.) Tarof said to Mr. Bunker, "As long as we are going to , we might as well do it right," to which we all agreed and left.

Q. Can you recall anything else happening at that time? A. No; I don't believe I can.

Q. Do you remember Mr. Bunker saying anything about your noting any improvements you might see around the Irving plant?

Mr. Kraetzer: Objected to.

Q. After that did you again see Bunker? A. Yes, after the dinner, both Mr. Tarof and myself were down in Mr. Bunker's office two or three times.

Q. When were you down there on the next occasion?

The Court: Where was Mr. Bunker's office at that time?

The Witness: 50 Church Street.

The Court: Did he have an office himself, or was that the office of the Kerlow Company?

The Witness: Office of the Kerlow Company.

Q. Was there any sign on the door? A. New York Machinery Exchange.

Q. Do you know whether Lown was there at that

time? A. Every time I was down there Mr. Lown was there, and Mr. Bunker was there at the same time.

Q. Tell us, as near as you can, the date of your next meeting at the office in Church Street after the dinner. A. I believe the dinner took place in the middle of the week, and I must have been down there the following Saturday.

Mr. Kraetzer: Can't we get the date?

The Court: The witness is giving his best recollection. If he can fix it any more definitely than he has stated, he may do so.

Q. Can you tell approximately when it was; was it before or after Mr. Bunker left? A. It was after Mr. Bunker left.

Q. What month was it? A. It must have been in September.

Q. What happened then? A. We went down to Mr. Bunker's office on the first visit, and I greeted Mr. Lown, who was there; at that first visit, Mr. Bunker showed me a sample of the grating which the Kerlow Company intended to get out, so I asked Mr. Bunker where this sample had been made, and Mr. Bunker said to me, "Well, Kennard, this is a very peculiar story"; he said, "You remember back last summer, when I asked you on a couple of occasions to get me a couple of pieces of scrap iron down in the scrap pile, to make a grape vine trellis?" I said, "Yes; I recall." He said, "After you got me the scrap bars, I took them home and in my cellar I made the first sample of the Kerlow grating which you now see on the table," and he said, laughingly, "These bars were gotten ostensibly for a grape vine trellis, but eventually to develop into the first sample of the Kerlow grating."

Q. Was anything else said? A. Mr. Bunker and Mr. Lown told me how well things were going, and what they expected to do. I think that was about all I can remember on the first visit.

Q. Do you remember any particulars of what Bunker and Lown told you as to how things were going, in what respect? A. It seems that Mr. Lown had been out on the road—

Q. Did he tell you that? A. He told me this: Mr. Lown had been out on the road chasing up orders, and had gotten a few, but I don't think there was anything outside of the sample brought out at the first meeting, that is, the first meeting at his office.

Q. After that how many times did you meet him? A. Possibly three or four.

The Court: Meet whom?

The Witness: Mr. Bunker and Mr. Lown.

Q. Where were those meetings? A. I believe on the second occasion I went down there—I first went to the office of the Kerlow Steel Flooring Company, and not finding Mr. Bunker or Mr. Tarof there, I went over to White's restaurant on Fulton Street, and found him eating there.

Q. What happened then? A. I sat down and after greetings were passed, we got to talking about the representatives of the Kerlow Company, and Mr. Bunker said that they had a very interesting report from Mr. Lown to the effect that he had gone around visiting the different salesmen of the Irving Company, that is, the salesmen who were worth while, and would get in their respective towns and make a luncheon engagement with them; at the luncheon engagement he would say to the representative, "You, of course, understand that Mr. Bunker and I are going

into the grating business, and we have got everything lined up pretty well, all the best boys down in the plant are coming with us, and just at this particular time I am in your territory to pick out a representative for us." He said, "Of course, you and I have always been good friends, and we want to stay good friends, but at the same time, before I appoint a representative, I want to tell you that we are going in business, and that we are going to do everything we can to take the business, and before I select any man I thought possibly you would have someone in mind whom you would be interested in and would suggest him to me, and I would be glad to interview him," so then Mr. Bunker said, "Of course a statement of that character would make the old gentleman sit up and take notice," and he would say, "Well, Mr. Lown, if you have got such a damn good thing, how about letting me in on it?" Mr. Lown would say, "Oh, no, no, you are with the Irving Iron Works, and we couldn't think about it" but he said, of course, the agent would insist that he would be given first crack at it, and generally the conversation wound up where Mr. Lown would tell him substantially the same thing as Mr. Bunker told me about applying in the proper way, and then his application for a position would be duly considered.

Q. You have mentioned making an application; did you make a formal application for a position with the company? A. I did.

Mr. Egner: Will you produce that, please?
Mr. Kraetzer: Yes, sir (producing same).

Q. Is this the application which you made, which you referred to? A. Yes, sir.

Mr. Egner: I offer that in evidence.

P. O. Box #164,
Emerson, N. J.,
Sept. 27, 1921.

Kerlow Steel Floor Company,
Jersey City, N. J.

Gentlemen:

I am taking this opportunity of placing before your Company, my application for a position in case you will require the services of any additional men either now or in the future.

It is my understanding that you have associated with you, Mr. H. H. Bunker who was formerly connected with the Irving Iron Works and if this is so then this gentleman is pretty well versed as to my ability, etc., and by reference to him you can pretty well tell just about where I could fit into your organization.

Further details can be gone into more thoroughly at any time you would care to take the matter up with me, and trusting I shall have the opportunity of doing this shortly, I am

Yours very truly,
E. M. KENNARD.

Q. You say you wrote this after the talk you had with Mr. Bunker about making an application? A. Yes.

The Court: Is the form of the letter yours?
The Witness: Yes, made up myself.

Q. Did you get the position? A. Not yet, no, sir.

The Court: Have you the promise of one?

The Witness: Repeatedly.

The Court: When was the promise last repeated?

The Witness: The last time I saw Mr. Bunker, which was—it must have been sometime in October, 1921.

The Court: What was the date of the application?

Mr. Egner: September.

The Court: What sort of a position were you to have, then?

The Witness: To the best of my knowledge, when I first went with the Kerlow Steel Flooring Company I was to do most anything that was necessary to do, but eventually I was to have substantially the same position with Kerlow as I did with the Irving Iron Works, and, as a matter of fact, in one of my visits, Mr. Bunker and Mr. Lown told me that they were negotiating with Mr. Demorest, the representative down in Pittsburgh, for a factory location in that territory, and Mr. Lown asked me if there would be any objection to my moving to Pittsburgh to take over this factory, and I told him no—to take over the supervision of it.

Q. Did he tell you anything else about the prospects of the company and about who would be associated with it, the new company, I mean? A. Of course, all this conversation I had with Mr. Bunker, they happened repeatedly before he left the plant, and on the few times that I mentioned after he left the plant.

The Court: When did you have your last conversation with Mr. Bunker?

The Witness: Sometime in October, as I recollect.

The Court: Why did you stop your conferences at that time?

The Witness: That is a kind of a long story.

Mr. Egner: I will develop that later.

Q. Did you know Roope at that time? A. I knew Mr. Roope from the time he came with the Irving Iron Works until he left.

Q. And did you have any conversation at any time with Mr. Bunker with respect to Roope? A. I did, yes.

Q. When was that? A. That conversation I had with Mr. Bunker was approximately a month, or possibly six weeks, after Mr. Roope came with the Irving Iron Works.

Q. Can you give us the date? A. Mr. Roope came to take Mr. Lown's place—Mr. Lown left sometime in May, 1921, so that Mr. Roope must have come about that time, and it must have been around the middle of June that my conversation—it wasn't the middle of June; it was later than that—it was sometime between Mr. Bunker's first vacation and his second vacation.

Q. Then, that was in July or early in August? A. It must have been somewhere in there.

Q. What was your conversation about Roope? A. I will have to first give the conversation I had with Mr. Roope before I can start the conversation with Mr. Bunker.

The Court: Answer the question.

Q. Just tell what Mr. Bunker said to you about Mr. Roope. A. I asked Mr. Bunker where Mr. Roope figured in our organization, meaning the Kerlow Steel Flooring Company, and he said, "Who ever told you that Roope was going to be with Kerlow?" I said, "Nobody told me, but I am led to believe that," so I told him why I was led to believe that.

The Court: What did you tell him?

The Witness: I told him that Mr. Roope a few days ago, or a day or so ago, had come over into my office and told me that he and a few of the other fellows were thinking about starting in business, and he himself had been delegated to come to me and find out about how much money I could invest in this new business if I desired to come with them. I told Mr. Roope, depending on the proposition; I wasn't prepared to say how much I could invest, but he would insist that I set a figure; so I told him that the figure would range anywhere from $200 to a thousand dollars. I asked him just what his proposition was and who the chaps were, but he said, no, the people that he was talking to had told him to keep quiet, and just find out from me about how much money I could invest, if I were willing to come with them.

The Court: Did you tell any of this to Bunker?

The Witness: Yes.

Q. When you recited all this, what did he say? A. Then was the time that Mr. Bunker told me that as far as Roope was concerned, his connection with the Kerlow Steel Flooring Company was purely political, inasmuch as Roope's father was more or less wealthy, and he had been led to believe by Roope that his father would be willing to invest some of the money in the Kerlow plant, and he had been up to Boston with Roope and spent a week end on one occasion, and intended to go up again to find out just how much money Roope's father would invest; so that while Bunker himself wasn't very favorably impressed with Roope and didn't think he was much of a man to come with us, still and all, he would have to put up with him if he got his father's money.

Q. Prior to Bunker's leaving, did he say anything to you about the way in which Mr. Irving was running the company, and if so, when was that? A. It is very hard for me to fix a definite time at which these particular conversations went into effect, for the reason that from the time Mr. Bunker first told me that he was considering me for the new company, there was hardly a day passed that Mr. Bunker and I, when we were both at the plant, didn't discuss this thing one way or the other, and on one of those occasions we got talking about Mr. Irving, and Mr. Bunker said to me, "You know that Mr. Irving is pulling $500 a week; his wife is pulling out approximately the same amount of money, so they are milking this concern for all they are worth, and as far as the business is concerned, he hasn't the slightest interest in the welfare of the employees, either specifically or generally, and at any time any serious competition would come in the market, Mr. Irving has told me repeatedly that he would simply get out and quit and go up on the farm."

The Court: Was your loyalty to the Irving Company ever discussed by you and Bunker, or the lack of it?

The Witness: Your Honor, prior to the time my disloyalty to the Irving Iron Works was mentioned to one of the executives, the question of loyalty was never discussed between Mr. Tarof nor Mr. Bunker and I, with the exception of once when Mr. Tarof was obtaining this list of customers and estimates, when I passed the remark that this was a sort of a stab in the back, and Tarof said to me, "Of course, Kennard, I think I feel sure that you think that I am acting pretty rotten as far as the Irving Iron

Works is concerned, but inasmuch as we are out to make this a go, I am certainly going to do everything I possibly can to do it."

Q. You said a moment ago that you spoke of your disloyalty to one of the executives of the Irving Company. A. Yes.

Q. When was that? A. To the best of my recollection, that was the latter part of October or the first of November, 1921.

The Court: After you had applied for a position with the Kerlow Company?

The Witness: Yes.

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

Q. What did you say to him?

Mr. Kraetzer: I object.

The Court: Did you discover that you had been disloyal after that particular time, after applying to the Kerlow Company?

The Witness: Well, on various of my visits to Mr. Bunker, he had made several statements to me, which I knew were hardly in accordance with a new concern starting up. One of them was the fact that he could get unlimited credit at any steel mills for any amount of steel, which I didn't believe. Another one was that the factory where we were going to make this grating was repeatedly being started at different points, sometimes in Jersey City, sometimes in Long Island; also the fact that Mr. Bunker and I had previously discussed the question of price, and we both agreed that the proper way to start Kerlow off would be to run it purely on a Ford basis. We would ignore the other competitors in the market and get our production and costs purely on a Ford basis.

Q. What do you call a Ford basis? A. As I understand Mr. Ford's operation, he depreciates his cost and he puts his car on the market regardless of the price of any other car. Mr. Bunker agreed that that was the idea to be followed out with Kerlow, but on my subsequent visits I discovered that instead of doing this, they were simply letting their agents quote about five or ten cents under the Irving list, and Mr. Bunker told me that at any time Irving dropped his prices, he correspondingly would drop another five or ten cents.

The Court: Where were the goods being marketed which they were marketing during this period?

The Witness: Mr. Bunker told me that they were being manufactured under a year's contract with Fessler & Klein of Long Island City.

The Court: You discovered a lot of the statements made to you by Mr. Bunker were false or exaggerated and that caused you to disclose to this executive of the Irving Company your disloyalty?

The Witness: Yes.

Q. After the date of your talk with Mr. Price, did you have any further negotiations with the Kerlow Company or either Mr. Bunker or Mr. Lown? A. I did not, no, sir.

Mr. Kraetzer: Was the date of this talk with Mr. Price fixed?

Mr. Egner: Either the latter part of October or early in November.

The Court: After the application to the Kerlow Company for a position?

Mr. Egner: The application was in September.

The Court: The last promise from Bunker to him was made in October.

Q. After Mr. Bunker left, to whom did you report, and with whom did you have your dealings in the Irving Company? A. With Mr. Tarof.

Q. How about Mr. Price?

Mr. Kraetzer: I object.

Q. Who is your immediate superior? A. Mr. Tarof was my immediate superior after Mr. Bunker left.

The Court: The witness has already testified that Mr. Price was the general manager.

Q. After Mr. Bunker left did you have anything to do with Mr. Price? A. Yes, on numerous occasions after Mr. Bunker left I had occasion to deal with Mr. Price.

Q. Did you make suggestions to him; did you have any dealings with Mr. Price after that, and if so, what were they? A. I told Mr. Price right after Mr. Bunker left, because as I previously said, while Mr. Tarof was functioning down in the production department I was not sure that he had the same authority that Mr. Bunker had, to authorize me to proceed with any work, without first consulting Mr. Price, and immediately after Mr. Bunker left, I then for quite a period, maybe a month or so or six weeks, I made most of my suggestions direct to Mr. Price, although I afterwards changed this and made them to Mr. Price through Mr. Tarof.

Q. Do you know whether any of your suggestions were followed by Mr. Price? A. A good many of them.

Recess.

Q. Mr. Kennard, you stated that the position you occupied in the beginning was changed and thereafter you did something else; what was the second position you had? A. My present position now is shop supervisor.

Q. And who appointed you to that position? A. Mr. Bunker.

Q. And when did he appoint you to that position? A. I believe it was in October, 1921.

Q. In the early or latter part? A. It was at the time that Mr. Roope resigned, which I believe was in the early part of October, 1921.

Q. When did Mr. Bunker leave? A. Mr. Bunker left after that.

The Court: Was Mr. Bunker in the employ of the Irving Company at the time you made your application to the Kerlow for a position?

The Witness: No, sir.

Q. He had left at that time? A. Yes.

The Court: Didn't I understand that that application was made in September?

Mr. Egner: Yes.

Q. October of what year was that? A. This was in 1921, anyway; it was as soon as Mr. Roope left the employ of the Irving Iron Works; the exact date I am hazy on.

Q. And at the time that he appointed you to that position did you have any talk with him; did he say anything to you about what you should do? A. The day he appointed me to that position, as shop supervisor, he called me into his office and he said, "Now, Kennard, I have finally been able to get you arranged as shop supervisor out there in the shop, and for a

long time you have been in the office, and you know how things are going along here pretty well; you are now going on to the shop, and you will have every opportunity to determine what is going on out there. Keep your eyes open. If you make any improvements, put it down on a piece of paper and keep your mouth shut; put down and say nothing"—well, he warned me to find out all I could while I was out there in the shop, so if, as I said, any improvements came up, or I saw a way of bettering production, I could make a proper note of it, and we could use it in the Kerlow Company when we got going.

Q. You have testified about one occasion when Mr. Tarof handed a list of bids made by the Irving Company to Mr. Bunker; do you know of any other occasions when information as to bids being made by the Irving Company was conveyed to the Kerlow Company? A. This was done repeatedly.

Mr. Kraetzer: I ask that that be answered categorically.

Q. Yes or no? A. Yes.

Q. Tell us when? A. This was done on several occasions.

The Court: Can you fix the time?

The Witness: The first time was the time I testified before, before we went over to the dinner; that was the first time.

The Court: That was the occasion of the dinner?

The Witness: Yes, and then after that—I know positively that it was done at least four or five times.

The Court: Done by whom?

The Witness: The information was carried by Mr. Tarof, and was obtained by Mr. Tarof and I collectively in the office.

The Court: To whom was the information given?

The Witness: The information was given to Mr. Bunker, so Mr. Tarof told me lots of times, and on one particular occasion I went up to the telephone and endeavored to get Mr. Bunker on the telephone, but wasn't successful, so Mr. Tarof told me he would do it at night, and the next morning he told me that he had telephoned the information to Mr. Bunker at night.

The Court: Strike out what was told him by Mr. Tarof in regard to the matter as hearsay.

Mr. Egner: Will your Honor withhold action on that until later in the case, because I think we have sufficient to tie up Mr. Tarof. Mr. Tarof is now in the employ of the Kerlow Company and I think if your Honor will simply withhold that—

The Court: Is he one of the defendants?

Mr. Egner: No, sir, but he is one of the conspirators and is now part of the company.

The Court: I will hold it, and if it is not connected I will strike it out.

Q. In addition to information as to bids, etc., was any other information concerning the affairs of the Irving Company transmitted by Mr. Tarof, to your knowledge, to the Kerlow Company? A. There was one particular occasion that I remember, and it was at the time that Mr. Irving and Mr. Price, I believe, first got wind of the dealings of Kerlow; at any rate, the representatives were resigning one right after the other, and I recall this incident particularly, because during my employ it was the only time that Mr. Price had made a trip out on the road, and Tarof told me that Mr. Price intended to make a trip on the road and visit

all these principal agents. I think he mentioned Demorest and Scarth and Vonier, a Milwaukee chap, and would ascertain just what the trouble was, and how far it had gone, and I believe it was a day or so before Mr. Price left Mr. Tarof came out in the shop and—

The Court: This will be received under the same ruling.

Mr. Kraetzer: I understand so.

A. (Continuing.) Mr. Tarof came out of the shop and said to me, "You know, Kennard, poor little Leon is going to make a trip out through the west to interview our sales agents, but," he said, "we are way ahead of him, for the reason that I have a copy of his itinerary, and we have given this copy to Mr. Bunker, and Mr. Bunker has Mr. Price about one step ahead wherever he goes," and subsequently Mr. Price's trip was changed, through telegrams, and they brought Mr. Price back into the office, and on each occasion Tarof told me that the information was conveyed to Mr. Bunker, and Mr.—was changed accordingly, so he would always be ahead of Mr. Price in his trip throughout the country.

Q. Did you, on any occasion, discuss with Tarof the propriety of what you and he were doing, as far as the Irving Iron Works was concerned?

The Court: What do you claim Tarof's relation to be with the Kerlow Company?

Mr. Egner: We shall show that we have not only this evidence as to his transmitting information, we have other evidence; we have several references to him in letters, indicating that at that time he was in negotiations with the Kerlow Company. We shall also show

that he did not leave our employ until January of 1922, and at that time he went into the employ of the Kerlow Company and is still there.

The Court: In what capacity?

Mr. Egner: He is there as—

Mr. Huck: Chief engineer of the company.

Mr. Egner: I should think that that, with the other, would be sufficient for your Honor as being part of the conspiracy.

A. I believe it was during the trip of Mr. Bunker to Nova Scotia, I came in to Tarof one day and I said, "Tarof, you know what we are doing in connection with transmitting information to Kerlow and the method employed in getting the salesmen and one thing and another is all very well, but," I said, "has Mr. Bunker ever told you the proposition that I once put up to Mr. Bunker about giving the old man"—in speaking of him, I mean Mr. Irving—"giving the old man a little chance for a fight on this proposition?" And he told me, "No." So I said to him, "You know at one time I was talking to Mr. Bunker, and I said, 'You know, Bunker, if we were to start in business, and although you convinced me that Mr. Irving will never make a fight, if he should suddenly take it in his head to give us a battle, we undoubtedly will be taken to court and will have to spend considerable money to either prove what we are doing is right, or that in any event we will be wasting a lot of time that we could otherwise be devoting to business, and it seems to me that the easiest way out of this proposition would be for us to go in to Mr.—no, for us to have a talk with Mr. Irving; tell him just exactly what we intend to do. The fact that we have his principal agents, the fact that we have the principal men in his office,

and that we are going to give him a real battle unless he does what we want him to do, because if we are so sure that we can put this proposition across, there is no reason why we cannot say to Mr. Irving that we are willing that he should let Mr. Price have a year's vacation, with pay, and for us to then step into the plant and run the works for a year, after which it will have been demonstrated that we can do as we say we can do, or that Mr. Price comes back and we cannot.' " Mr. Tarof then said that he had heard nothing like that, and I said to Mr. Tarof, "Wouldn't it be a good idea if you and I could put that proposition across, and at the time Mr. Bunker comes back from Nova Scotia, we could have the whole thing lined up for him, and all that would be necessary to do would be for both Bunker and Lown to step in here in the plant, and we could start off." Mr. Tarof told me that he wouldn't want to do anything like this, unless he first consulted Mr. Bunker. And as a matter of fact both Mr. Tarof and I tried to get Mr. Bunker at his house on several occasions by telephone, but we were unsuccessful, and the matter was dropped there, although I believe—

The Court: Not what you believe. Had you ever mentioned all these things to Bunker that you recited to Tarof that you had told him?

The Witness: Yes, sir, I did.

The Court: When?

The Witness: I cannot tell the date exactly, for the reason as I said previously, that from the time Mr. Bunker first broached the subject to me, he and I had almost daily conferences on this one subject, and each time I broached to Mr. Bunker my idea of taking the matter up with Mr. Irving, he said, "Kennard, there is absolutely no use. I have tried to put that propo-

sition, or a similar one across with Mr. Irving repeatedly, and he won't listen," and he said, "The only thing we can do is to go out and give him a battle, and if he doesn't do what we want him to do, we will take the business from him."

The Court: Was Mr. Irving around the plant and taking active part in its management?

The Witness: He was in his office.

The Court: Was he there apparently attending to business?

The Witness: To the best of my knowledge.

The Court: He was accessible to you or Tarof if you desired to see him?

The Witness: He was.

Q. On or about October 12, did you receive this letter which I show you, from Mr. Bunker, being letter on the letterhead of the Kerlow Company, dated October 12, 1921? A. Yes.

Mr. Egner: I offer that in evidence.
Marked Exhibit C40.

"KERLOW STEEL FLOOR COMPANY

15 EXCHANGE PLACE

Jersey City, N. J.

October 12, 1921.

Mr. E. M. Kennard,
P. O. Box #164,
Emerson,
New Jersey.

Dear Kennard:

Acknowledgment is made of your subscription for ten (10) shares of stock in the Kerlow Steel Flooring

Co. Action will be taken on same in a short time. We will also include you in the pool as you desire.

We are also very glad to acknowledge your application for a position with the company. This means a great deal to us personally, with the right crowd of fellows working together we can accomplish what has heretofore been the impossible.

We are making headway rapidly, there is a great deal to do, we are trying to make everything solid that there'll be no remaking to do. Lown is now on his way back from Chicago with about 100,000 sq. feet lined up also agents placed. One of our agents will be a Mr. Moser who you may at sometime heard of.

You will hear from us definitely, regarding the starting off gun, just as soon as Lown and I have had to confer with some of our machinery people.

Kindly convey this information to Tarof, be patient, as this is too big a proposition to rush at.

With kindest regards, I remain,

Yours very truly,

H. H. BUNKER.

H. H. Bunker,
2543 Boulevard,
Jersey City,
New Jersey."

The Court: When had you made your subscription to the stock?

The Witness: Right after the dinner over in New York.

Q. And prior to applying for a position? A. That I am not clear on; I am under the impression that I applied for the position first.

Complainant's Witness, Edwin M. Kennard, Cross

CROSS-EXAMINATION by Mr. Kraetzer:

Q. You were employed by the Irving Iron Works Company in April of 1920? A. To the best of my recollection.

Q. Whom did you work for before that? A. Right prior to that time I worked for the E. F. Houghton Company, on Canal Street.

Q. And what had been your duties with that company? A. Salesman.

Q. How long had you been employed by them? A. During the winter of 1920.

Q. For how long did you work for this company that you have just named? A. I believe I went with them in October or November, 1919, and continued with them until right before I went with the Irving Iron Works.

The Court: You went with the Irving Iron Works in April, 1920?

The Witness: Yes.

Q. So from October, 1919, to April, 1920, are the two dates between which you were employed by this other company? A. As near as I can recollect.

Q. And whom did you work for before that?

Mr. Egner: Is this material?

The Court: It may be; I can see that there is a possibility of this being material.

A. The Norma Company of America.

Q. How long did you work for them? A. About five years.

Q. What was your position there? A. Purchasing agent.

Q. What was your first position with the Irving

Company; what were you employed to do? A. Mr. Bunker sent me out, keeping track of railroad cars for a period of three months.

Q. The three months following April, 1920? A. Yes.

Q. You kept track of railroad cars? A. Yes.

Q. You mean cars that might be on a siding over there in Long Island City? A. No.

Q. Was your work away from the plant? A. Yes.

Q. And at the end of that three months were you brought into the plant? A. Into the office.

Q. Whose office? A. The main office of the Irving Iron Works.

Q. Mr. Bunker's office? A. Not his private office, no, sir.

Q. Were you associated with him as his assistant then? A. Yes, sir.

Q. Were you his first assistant? Or did he have any other assistants? A. He had numerous assistants around there.

Q. What were your duties when you were called into the office? A. I was put on production work; it was my duty to take care of the jobs going to the shop, to see that they were run through the shop on schedule, and advise the customer as to the condition of the work in the shop.

Q. And was that your position and were those your duties until this appointment in October that you have spoken of? A. Yes.

Q. After which you were made what? A. Shop supervisor.

Q. The duties that you had occasion to perform when you came into the office after the three months checking up cars, took you into the shop constantly? A. They did, yes, sir.

Q. You were there every day? A. In the shop, yes, sir.

Q. And you were thoroughly familiar with the conditions in the shop? A. General conditions in detail.

Q. There were shop foremen, were there? A. Yes.

Q. To whom did they report? A. The superintendent.

Q. Of the shop? A. Yes.

Q. To whom would the superintendent of the shop report? A. Mr. Bunker.

Q. The superintendent didn't report to you? A. No, sir.

Q. You had no authority over him? A. The only authority I had was to obtain specific information, which Mr. Bunker sent me out to get.

Q. You say you found conditions unsatisfactory in the shop? A. Yes.

Q. That is, that was a matter of your own personal observation? A. Quite right.

Q. Were there instances where machinery broke down? A. Quite a few of them.

Q. Do you know what the occasion for their breaking down was? A. No, I do not.

Q. You are not a technical man? A. Only through reading, but I never studied it.

Q. Did you report those to Mr. Bunker, the breakdowns of machinery? A. Occasionally; not as a general rule.

Q. Was it part of your work to report it? A. Not necessarily.

Q. The shop superintendent would report that, would he? A. Yes.

Q. And you had something to do with the purchase of steel, did you? A. No, sir.

Q. How did the question arise as to the practice of purchasing steel? A. I used to keep a sort of statistic chart for Mr. Bunker, which told him the quantity of steel required for the orders we had on hand, both ready to go to the shop and out for approval; against that the chart showed the stock of steel and rivets that we had in the plant; also the material on the road; and against that Mr. Bunker would figure out what was required in the way of purchases.

Q. When did Mr. Bunker leave on this so-called vacation? A. Which one?

Q. The first one? A. I believe in June, 1921.

Q. When did Mr. Lown leave the Irving Iron Works Company? A. I don't know specifically, but I know he did not report over there at the plant, until sometime in May, 1921, from my observation.

The Court: Did he leave before the other party went on his vacation?

The Witness: Before Mr. Bunker went?

Q. Went on his first vacation? A. I believe he did, yes, sir.

Q. And about how long before? A. As far as I can recall, Mr. Lown left in May, 1921, and Mr. Bunker went on his first vacation sometime in June, 1921.

Q. What part of May did Mr. Lown leave, do you recall? A. I cannot recall that.

Q. Do you recall whether it was the beginning or end of May? A. I haven't the slightest idea.

Q. What part of June did Mr. Bunker go on his first vacation? A. I believe it was in the middle part of June.

Q. This is 1921 you are speaking of? A. Quite right.

Q. How long did he stay away on that vacation, that

first vacation? A. I believe he was away three weeks, but not consecutively. In other words, I mean to say that he was away for about a week or so, and then Mr. Price, who was the manager, went away for a couple of days, and then Mr. Bunker would come back and stay this couple of days while Mr. Price was away.

The Court: And then go away again?

The Witness: Yes, go away again when Mr. Price came back.

Q. Then when did Mr. Bunker go on his second vacation? A. I believe in August.

Q. How long did he stay on that vacation? A. quite a long time—I say a long time—

The Court: A month, as much as that?

The Witness: If not more, sir.

Q. Can you give us about how long it was? A. About five weeks; maybe longer. I don't know.

Q. What part of August did he go away, do you recall? A. No, I don't; it was somewhere around there, but I cannot put it down to a specific date.

Q. What was the approximate date of the first time that you ever heard from Mr. Bunker that he was going into business? Can you give us that? A. Yes, sir, it was maybe a month or a month and a half after Mr. Lown left. It was after I accused him of he and Mr. Lown going into business together.

The Court: That would be sometime the latter part of June, or July, the first part?

The Witness: Somewhere around there, yes, sir.

Q. Was there any talk as to your getting a position at that time? A. Yes, sir.

Q. At that very first interview? A. Yes, sir.

Q. And it was decided—was it decided what position you would have? A. No, sir.

Q. During the time that Mr. Bunker was away, to whom did you report? A. Well, I reported to Mr. Price, if I had occasion to.

Q. And where was your desk with relation to Mr. Bunker's office? A. As I previously testified, when I first came there, it was on the north side, and later on moved to the south side.

Q. Adjoining his office? A. Yes.

Q. You said it was the south side first and then the north? A. I didn't say the south side first.

The Court: Yes, that is what you said; which is the fact?

The Witness: That is quite right; south side first, north side second.

Q. Were there two entrances to Mr. Bunker's office? A. Yes.

Q. Was his office completely enclosed? A. Yes.

Q. And was your desk right outside the door of his office? A. Yes.

Q. And where was Mr. Price's office with relation to Mr. Bunker's office? A. When it was on the north side, Mr. Price's office was on one side and Mr. Bunker's, the other side.

Q. So you sat between the two of them? A. I was on the north side, yes, sir.

Q. How long a period of time were you on the south side?

The Court: Or when did you move to the north side, either one?

The Witness: I guess it must have been a year that I was on the south side, and then we were moved over to the north side.

Q. So that from the time that you were employed in April, 1920 to—so that from April, 1921, until the present time— A. Quite right.

Q. —you have been on the north side, between Mr. Bunker's office and Mr. Price's office? A. Yes.

Q. Just roughly, Mr. Kennard, what is the distance between Mr. Price's office and Mr.—what was formerly Mr. Bunker's office? A. I should say twenty or twenty-five feet.

Q. I suppose Mr. Bunker and Mr. Price were back and forth continuously between their offices? A. No, I don't say Mr. Bunker was in Mr. Price's office repeatedly; very seldom Mr. Price came out.

Q. This afternoon when Mr. Egner started to question you, or in the course of his questioning, you had this long talk with Mr. Tarof about the methods that were being pursued by the two of you and the advisability of going direct to Mr. Irving and suggesting that he give Mr. Price a vacation—

Mr. Egner: We object.

The Court: I will overrule the objection.

Q. —at which time Bunker and you and Tarof were to take charge of the business; was it said that Mr. Lown—that is, you were going to get Mr. Lown back into the business? A. He was always with the Kerlow as I understood. When I spoke of him I meant the whole Kerlow crowd.

Q. You were going to propose to Mr. Irving that he should let you and the Kerlow crowd take over his business? A. Not in the name of Kerlow, no, sir.

Q. No, under the Irving name? A. Yes.

Q. And conduct business? A. Under the idea that we had advanced; under the idea that we all felt so sure we could put it across.

Q. You said that one of your reasons that you gave to Mr. Tarof and to Mr. Bunker for proposing that was, that you had the principal agents of the Irving with you? A. Oh, no.

Q. Didn't you say anything about that? A. No, I didn't say that was my reason for that.

Q. Didn't you mention the fact that you had procured—

The Court: In his recital of what he had told Mr. Bunker to go in and tell Mr. Irving it was one of the things that he had accomplished, but that wasn't his reason for going in there?

The Witness: No, sir.

Q. When was this conversation with Mr. Bunker? A. I cannot place that definitely.

The Court: He told me, in answer to my question, that these various things that he summarized in his talk with Tarof, had been mentioned by him in various conversations with Bunker, and he told me he couldn't tell me the particular times or dates when he had those conversations, because they were almost daily.

Q. But the talk with Mr. Tarof in which you told him of having spoken to Mr. Bunker about these things, can you tell me about when that took place? A. Yes, that happened when Mr. Bunker was away to Nova Scotia—at least, I understood he was there.

Q. And to get back to this conversation in which you were telling Mr. Tarof, talking to Mr. Tarof, you did mention the fact that you had succeeded in obtaining the agents of the Irving Company to go with the Kerlow, was that it? A. I had—

Q. Did you? A. No, sir.

Q. The Kerlow crowd, or someone on behalf of the Kerlow crowd, had done that? A. Yes.

Q. Can you tell us what month that conversation occurred? A. No. I can with Mr. Tarof.

Q. Mr. Tarof? A. I told you that was when Mr. Bunker was away in Nova Scotia.

The Court: I don't think it is very material. He went to Nova Scotia and it was during that period.

Q. When did this dinner at the restaurant take place, can you tell us that? A. I will have to connect it up with Mr. Bunker's Nova Scotia trip, too. It was right after he came back.

Q. Do I understand that at this dinner at the restaurant, at which you had a lengthy discussion, that that was the time at which you subscribed for stock in the company? A. That was the time I received the application to subscribe to the stock.

The Court: What do you mean, the application blank?

The Witness: The application blank.

Q. And did you sign it at that time? A. No, sir.

The Court: Did you fill it in or mail it later or give it to Mr. Bunker?

The Witness: I filled it in later and mailed it to him.

The Court: To him?

The Witness: To Kerlow, I believe.

Q. I find in the affidavit which you made in the preliminary motion herein, which affidavit is verified the thirtieth of January, 1922, a statement by you to the following effect: "One evening on or about Oc-

New Jersey State Library

tober 15, 1921, the said Bunker invited Tarof and myself to dinner at a restaurant in New York City, and at that time he unfolded to us his plans * * * and he also gave both Tarof and myself subscription blanks for stock of his company." Do you know if that is correct?

The Court: He has already testified except as to the October feature of it, and giving Tarof the subscription blank; he hasn't mentioned either one of those two things. Otherwise he has stated the same thing on the stand here.

Q. I show you a letter, apparently in your handwriting, signed E. M. Kennard, addressed to the Kerlow Steel Floor Co., Jersey City, N. J., and what purports to be a stock subscription signed by you for ten shares of stock of the Kerlow Steel Flooring Company; is that your signature on each of these? A. Yes.

The Court: And you sent them to the company?
The Witness: Yes.

Mr. Kraetzer: I offer the letter in evidence. Marked Exhibit D14.

10/7/21

Kerlow Steel Floor Co.,
Jersey City, N. J.

Gentlemen:

I am enclosing my application for ten shares of stock and in addition to this would appreciate your

putting me down for my proportionate share in the "Pool."

Very truly yours,

E. M. KENNARD.

Mr. Kraetzer: I offer the subscription for ten shares of stock.

Marked Exhibit D15.

KERLOW STEEL FLOOR COMPANY

15 EXCHANGE PLACE

Jersey City, N. J.

I hereby subscribe for and agree to take and pay for 10 shares of the capital stock of the Kerlow Steel Flooring Company, said stock to be of non par value, and for which I hereby promise and agree to pay at the rate of Fifty ($50.00) Dollars per share, at such times and in such installments as the Board of Directors of such Company may require.

Dated N. Y. 10/7/21

E. M. KENNARD.

Received of the sum of $ same being payment in full of his subscription of this date for shares of the capital stock of the Kerlow Steel Flooring Company.

Dated: N. Y.

KERLOW STEEL FLOORING COMPANY,

By

Agent.

Q. Mr. Kennard, in reference to that quotation from your affidavit, at this dinner was a subscription blank also given to Mr. Tarof? A. Yes, sir.

Q. Having your attention or your memory refreshed by the quotation that this dinner was held in October, do you know that that is so? You indefinitely fixed it after the Nova Scotia trip; in view of that affidavit, can you say whether it was in October or not that you had the dinner? A. I am sure I can, because I recollect the circumstances. I sent that application a very short period after the dinner.

The Court: The application is dated October 7?

The Witness: Yes.

Q. Did this dinner take place while Mr. Bunker was still in the employ of the Irving Iron Works Company? A. No, it did not.

Q. He had previously left the employ? A. Yes, he did.

Q. When did you first tell Mr. Irving or Mr. Price about your connection with this Kerlow Steel Flooring Company? A. I have got that connected up also with a trip Mr. Irving made to Philadelphia.

The Court: When did he make the trip to Philadelphia?

The Witness: He made the trip to Philadelphia, I believe, some time in November.

The Court: Then was it sometime in November that you talked with him?

The Witness: Yes.

The Court: And Mr. Price? And what was your reason for taking these things to Mr. Irving?

The Witness: I only spoke to Mr. Price the first time.

The Court: When did you make your disclosure to Mr. Irving or Mr. Price?

The Witness: I made it to Mr. Irving, not to Mr. Price.

The Court: When did you make it to Mr. Irving, then? You say you had to connect that up with this trip to Philadelphia, and you said the trip to Philadelphia was about November. Now, when did you make the disclosure to Mr. Irving?

The Witness: I don't recall whether Mr. Price called Mr. Irving in the time Mr. Tarof and I were in and made our confession, or whether he waited until the next day.

Q. You first made a confession to Mr. Price? A. Mr. Tarof and I, yes, sir.

The Court: Was that in November as you referred to?

The Witness: Yes.

Q. And what was your reason for making this so-called confession to Mr. Price? A. If you recall my testimony, I went at great length and told his Honor here a long list of reasons why I was dissatisfied with Kerlow; the crowning event was when Mr. Irving came back from Philadelphia, and found our agent Madden down there was still in our employ, and who had not yet resigned and still receiving our money, not only knowing that the Irving crowd had submitted quotations for a particular job, but also had been routing for Kerlow and took an estimate from Kerlow over to the same people.

Q. How did you get that information; from whom did you get that information? A. From Mr. Irving.

Q. Did Mr. Irving tell you that? A. He did, yes, sir.

Q. What was the occasion for his telling you that? A. I don't know, only that he was disgusted from learning the conditions.

Q. And he called you into the office? A. I don't recall whether he called me in or not, but I know he told me. Whether he called me in or not, I cannot say.

Q. Had you been dealing with Mr. Irving? A. Only occasionally.

Q. You were at that time what, shop supervisor? A. Yes.

Q. Reporting to Mr. Price? A. Mr. Tarof.

Q. And Mr. Tarof reported to Mr. Price? A. I don't know whom he reported to.

Q. Don't you know that Mr. Price was general manager? A. Yes.

Q. And you say that Mr. Irving told you about this incident in Philadelphia? A. He did, yes, sir.

Q. What else did he tell you; anything else? A. That is all at that time.

Q. How did it come about that this conversation took place? A. I only know that Mr. Irving told me that, and after he told me, I came to the conclusion that, so far as I was concerned, it was the straw that broke the camel's back, and I so informed Mr. Tarof.

Q. You considered that that was dishonorable? A. I certainly did.

Q. And shortly before that you had been taking some information yourself? A. Yes.

Q. Did you consider that dishonorable? A. Yes, I certainly did.

The Court: How long after Mr. Irving told you of this as a result of the Philadelphia trip was it that you and Tarof made your confession to Mr. Price?

The Witness: It must have been the next day.

The Court: How did Tarof come to go in with you and make the confession?

The Witness: I will tell you. As soon as I decided to sever all connections with Kerlow, at the same time I knew that if I went in and told Mr. Price my connection with it, naturally I would have to draw in Mr. Tarof, and it wasn't my nature to draw in Mr. Tarof until I first told him what I was going to do, so I got Mr. Tarof out in the shop and I said, "Tarof, I am sick and tired of this whole business; I am going in to Mr. Price and tell him just exactly what connection I have had with Kerlow, because they are not giving the old man a square deal."

The Court: The "old man," being Irving?

The Witness: Yes. So Tarof said to me, "Well Kennard, I am more or less in accord with your sentiments, and we will both go in together." Whereupon we either went in immediately, or the afternoon of that day, and told Mr. Price our connection with Kerlow.

Q. Who did the talking when you went in? A. When we first went in the office I was the one that did the talking, and I, perhaps, spoke for five or six minutes, and after I told, not everything that we had done, but enough to know that we had been connected with Kerlow, Mr. Tarof jumped in and said he was in thorough accord with my sentiments, and he was sorry and he would do everything he could to make amends.

Q. I notice in your affidavit you made the statement, "After Bunker's resignation I began to deal with Mr. Price direct and soon discovered that all that he had stated concerning him was untrue. This and the

fact that I disapproved of the said Bunker and Lown's methods in enticing the various employees from the Irving Iron Works Co., induced me to reject the offer of employment of the Kerlow Company." Do you recall swearing to that? A. Yes.

Q. When did you first begin to deal with Mr. Price direct? A. As I previously testified, when Mr. Tarof was brought downstairs to take over my duties, from the office bulletin that was sent around, I wasn't quite convinced that he had as much authority as Mr. Bunker did, so that when I had occasion to make any changes in the shop, at the start-off, that is, for a period two or three weeks, I went in and saw Mr. Price, and subsequently I found out, and Mr. Price so told me, that I would save time if I first took the matter up with Mr. Tarof, and have him in turn take it up with him, which I later did.

Q. And it was during this period that you speak of, of two or three weeks, that you found that Mr. Price was different from what he had been reported to you? A. He would always listen to what I had to say, and there were numerous—

The Court: You stated that during some period you found Mr. Price to be entirely a different character and different man from what Bunker had represented him to be. That is what in substance you say in your affidavit; the inquiry is, when did you make that discovery?

The Witness: I made that discovery from the time that Mr. Bunker left up until the time I made the affidavit.

Q. When you say, "The time that Mr. Bunker left," you mean when he left the employ of the Irving Iron Works Company? A. Permanently.

Q. Which was about October first? A. Yes.

Q. Prior to that time hadn't you had any occasion to talk to Mr. Price? A. Only once before. I only had occasion to talk to him once, about something that I should have taken up with Mr. Bunker, but Mr. Bunker wasn't there.

Q. And during the time that Mr. Bunker was away on these two vacations, didn't you have occasion to talk to Mr. Price? A. Not very much, because we were—things were going pretty good.

Q. Didn't you ever hear Mr. Price and Mr. Bunker conferring about anything? A. Lots of times.

Q. So you were able to observe Mr. Price's manner at that time? A. No, I couldn't see through the wall.

Q. But you heard them? A. Yes.

Q. Did you hear any differences on their part or anything like that? A. I never paid much attention to conversation; I only knew they were talking.

Q. Incidentally, were the walls of Mr. Bunker's office wood or glass? A. Combination glass and wood; half wood and half glass.

Q. So you could see through those walls? A. Yes, but Mr. Bunker repeatedly went into Mr. Price's office.

Q. Do you recall the sample that was shown at the time you went to the office of the Kerlow Company? A. Yes.

Q. Can you describe it at all? A. It was a sample similar to this one that we have lying on the desk here, although I am not positive as to the dimensions.

Q. Was it painted or unpainted? A. Painted black.

Q. And was it finished or crude? A. To my idea the workmanship was crude.

Q. Do you think you would recognize it if you saw it now? A. I wouldn't say positively.

Q. You know the different types of grating that the Irving Company manufactures, don't you? A. Yes, sir.

Q. And you constantly saw samples of it there, didn't you? A. Yes.

Q. And in your work in the shop as shop supervisor, you saw the dies from which those gratings were made? A. The gratings that were made in my time, yes, sir.

Q. And you were trying to improve yourself in the position there, and took an interest in the work that was turned out? A. Quite right.

Q. Isn't that so? A. Yes, sir.

Q. And you were familiar with the contour of the dies that were used for the various types of grating? A. Yes.

Q. And you were able to recognize, were you not, from the contour of the die, what kind of grating that die would make? A. Yes.

Q. When did you see this sample of grating (indicating)? A. The first time I went down to see Mr. Bunker at his office—I don't know how long it was after he got out.

The Court: Sometime after he left the Irving Company?

The Witness: Yes.

Q. Was it prior to the time that you made your stock subscription? A. It was, yes, sir.

The Court: I think you said Saturday following the dinner.

The Witness: Saturday following the dinner I made my first trip.

Q. Mr. Bunker left the employ of the Irving Iron

Works Company on October 1, 1921, did he not? A. I am not positive, no, sir.

Mr. Kraetzer: I wish you would take my word for it; that is the date.

The Court: He is not disputing your knowledge.

Q. Your stock subscription is dated October 7, 1921? A. Yes.

Q. You can verify that by looking at it; that is correct; you say that your first visit to the Church Street office was before you made your stock subscription? A. Wait a minute; you have me confused.

The Court: Take your time, don't get confused.

A. (Continuing.) I will tell you why, because as I understand—I am only confused in this respect that there is a difference between the time, as I understood it, when Mr. Bunker stopped coming to the Irving Iron Works—

The Court: We are talking about his permanent severance of his relations.

The Witness: I don't know.

The Court: Counsel tells you that he resigned and quit the company on the first of October, 1921. There is no dispute about that. Your subscription for stock appears to be dated October 7, 1921. He asks you if it was between those two dates, the first and the seventh, that you called at the office at 50 Church Street, if that was your first call; if you don't know, say so.

Mr. Egner: There may be a little confusion—Mr. Bunker resigned some time before he actually left.

The Court: He tendered his resignation to take effect—

The Witness: His checks were continuing.

Q. Do you recall, Mr. Kennard, a representation that was made to Mr. Bunker, a present that was given to him at the time that he resigned? A. Yes.

Q. And it was then announced that he was leaving definitely? A. Yes.

Q. Do you recall when that was? A. No, sir.

Q. That is the date, so far as you know, of his permanent severance with the Irving Iron Works, isn't it? A. Yes.

The Court: He said his checks were continued. I don't know if that is influencing—

The Witness: Yes, Mr. Bunker's salary continued for two or three weeks after he didn't show up around the Irving Company any more. Whenever it was, he did not report back for duty at the Irving Company; I believe his check was continued for two or three weeks, I am not positive.

Q. Where did you get this from? A. I don't know who told me that; I don't know whether Mr. Bunker told me. I know he told me a lot of stuff about that.

The Court: He is apparently influenced by the fact that having received checks, he hadn't severed his relation with the Irving Company.

Q. Was it before you signed your stock subscription that you made your first call at the Church Street office? A. Yes, I guess I did; I am pretty positive I did.

Q. And it was then that you saw the sample, was it? A. Yes.

Q. At that first visit? A. Yes.

Q. Did you recognize the sample as something that you had ever seen before? A. I never saw a grating like that before.

Q. Had you ever seen a die that would turn out a grating of that kind before? A. No, sir.

The Court: I gather the impression that it was a sort of a homemade contrivance, made from this grape arbor iron; that apparently there wasn't any implication that a die had been used to produce it. Is that what you mean to convey, that it was a sort of a homemade affair?

The Witness: Mr. Bunker told me that he made it in his home, and he shaped it out of a piece of old iron with a hammer.

Q. Does this look like what he showed you (indicating)? A. No, sir.

The Court: Does that look like it (indicating)?

The Witness: Yes.

The Court: You would say that that was not the sample he showed you?

The Witness: No, sir, it is not.

The Court: What were the differences?

The Witness: The sample I saw was about that wide (indicating about as wide again as this sample, about three times as wide).

The Court: The present sample is about 4 by 14, and the one you saw was about 12 by 14?

The Witness: About 12 by 14.

Q. The general design was the same? A. Yes.

Sample marked Exhibit D16 for identification.

The Court: You said something about the same design; did you want to qualify that?

The Witness: Yes, I mean that the workmanship of this sample the gentlemen has shown me was much better than the sample I saw down there.

Q. This is even better? A. Yes, much better.

Q. You say Mr. Bunker told you that he had made that sample out of scrap? A. Yes, I explained that before.

Q. You say there was a conversation which you had with Mr. Bunker, in which he told you to be sure and make notes of any improvements? A. Yes, sir, that was the time that he appointed me to be shop supervisor, when Mr. Roope left.

Q. How long before he left—not when he drew checks—how long before the date of presentation, did he tell you that; can you give us any idea? A. To the best of my recollection, either a month or six weeks.

Q. A month or six weeks before he left—I mean before the date of the presentation?

The Court: Don't let us have a repetition.

Q. How long after he came back from Nova Scotia did Mr. Bunker leave? A. As far as I can recall, he stayed around the plant for maybe three weeks.

Q. And you say that this conversation that took place with Mr. Tarof, in which you told him about the plant that I described before, of taking over the plant, or the operation of the plant, was while Mr. Bunker was in Nova Scotia? A. Yes, he was supposed to be; yes, sir.

Q. Did I understand you to say that after you had talked it over with Tarof you then tried to get in touch with Mr. Bunker? A. Both, and Tarof tried to get in touch with Mr. Bunker; as a matter of fact—

Q. Was it right after your talk with Tarof? A. Yes, because Mr. Tarof wanted to first tell Mr. Bunker about my question bringing the subject up. In other words, I tried to convince Tarof that we ought to do it, and have the proposition ready for Mr. Bunker when he came back, and Mr. Tarof wouldn't stand up to the idea; I tried to get Mr. Bunker's house. Mr. Tarof stood by the switchboard, to see that the operator wouldn't listen in while I was holding the conversation.

Q. You didn't expect to find Mr. Bunker at home at that time, did you? A. Neither Mr. Tarof nor I had any definite date as to when he was coming home, and we thought possibly we could get hold of him.

Q. You say that after Mr. Lown left the employ of the Irving Company in May, he came back, I think you said, seven or eight times, to see Mr. Bunker? A. At least, yes, sir.

Q. Can you give us the dates of any of those visits? A. Only when he left the plant, that is, when he is supposed to have resigned from the Irving Iron Works, which to the best of my recollection was in May, not a week went past for a period of at least two months while Mr. Bunker was there, that Mr. Lown did not come back and have a chat with Mr. Bunker.

The Court: At least once a week?

The Witness: At least once a week.

Q. Where did these interviews take place? A. They generally started in Mr. Bunker's office, and on three or four occasions they wound up in Mr. Roope's office.

Q. How long did they last? A. Anywhere from

half past ten to maybe one o'clock, and then they would go out to lunch.

Q. This proposition of writing down bids, how often did that occur, that you made notations of information, bids, and took them over to Mr. Bunker? A. I never did; I gave it to Mr. Tarof to do.

Q. You personally never gave them to Mr. Bunker? A. No, sir, I did not.

Q. Were you ever present at the time that Mr. Tarof gave them to Mr. Bunker? A. Yes.

Q. That was on your first visit to Church Street, wasn't it? A. No, sir.

The Court: At the dinner?

The Witness: At the dinner was the first time.

Q. And you say that was quite a long list? A. It consisted of eight or nine names.

Q. What was this information that you gave? A. Names of stockholders who not only sent us orders, but also sent us estimates, that is, the customers; that is, the firm who wanted the estimate, together with the section of the grating, the size and also the stair treads that they wanted in that.

Q. You have testified in the interference proceeding, have you not? A. Yes, sir.

Q. Did you at that hearing testify to the following, page 352, XQ81: "Do you recall about what time it was when you first visited Mr. Bunker's new office, that is, the office of the Kerlow Company? A. It must have been, the best that I can recollect, somewheres around the middle of October, 1921." A. I cannot connect up those dates.

Q. Mr. Kennard, did Mr. Bunker from the very beginning discuss with you the organization of this new company? A. He did, yes, sir.

Q. And when did he tell you for the first time that the company had actually been organized? A. Mr. Bunker told me at the time of my first visit to his plant, that the Kerlow Steel Flooring Company was the result of an agreement that he and Mr. Lown had made up in Christmas, 1920; in other words, he told me that the day before Christmas he had Mr. Lown sign a paper whereby they agreed to start in business, and it was considered by each other as a Christmas present. That is the way Mr. Lown explained it to me, while Mr. Bunker was there.

Q. But what I mean to say is this: When did your association with Bunker and Lown commence with regard to the formation of this new company?

The Court: Do you know when the company was formed?

The Witness: Not positively, no, sir.

The Court: If he doesn't, I don't see how he can answer the question.

The Witness: I was never told that.

Q. Did you, in your examination in the interference proceeding, testify as follows—and I quote from page 336, Q9: "You say Mr. Tarof had previously told you 'that we were going to make a set of dies similar to that made by the Kerlow Steel Flooring Company.' Who and what was the Kerlow Steel Flooring Company, and what relation had they to the matter? A. The Kerlow Steel Flooring Company was known to Tarof and I at the time as a concern consisting of Messrs. Bunker, Lown, Tarof and myself." Did you give that answer? A. I did.

Q. And then, XQ120, to be found at page 359, did you give the answer that I shall read, to the question I will read: "In your direct-examination you have said

that Kerlow Steel Flooring Company was known to Tarof and I at the time as a concern consisting of Mr. Bunker, Tarof, Lown and myself. How was it you considered yourself as of the Kerlow Steel Flooring Company when you had no stock in the company? A. My testimony as to this is slightly in error for the reason that at that particular time I did not consider myself a party of the Kerlow Company as I had previously gone in and told Mr. Price that I was through with them, which was at that time and is my honest intention; however, as to originally considering myself part of the Kerlow Company, I obtained this impression from the fact that Mr. Bunker repeatedly told me that we would all be part of the Kerlow Company and that the application for the stock was a mere formality and at one time told me that if I could not dig up the ready cash I could possibly turn the money back from my salary to pay for the stock." Is that correct? A. Yes.

Q. What I am trying to get is more an approximation; Mr. Kennard, when did you begin to consider yourselves—you, Lown, Bunker and Tarof, as forming this Kerlow Company?

The Court: What difference does it make? I have been considering him one of the party from the time he participated in their conferences, up to the time he disclosed his disloyalty. He was a party working against his interest, if his testimony is true, from the time he engaged in these conversations and conferences with Bunker.

Mr. Egner: During the time that Mr. Bunker was at the Irving plant, he was production manager?

The Witness: I signed the letters; the letters I signed.

Examination by the Court:

Q. Was he the production manager, so far as you know? A. Yes.

Q. You are leaving me under the impression, or trying to, that your indignation was aroused when Mr. Irving came back from Philadelphia and reported the duplicity of the Kerlow people with the agents, to such an extent that you got disgusted with the Kerlow crowd and went in and confessed? A. I want to leave the impression; that was, as I expressed, the straw that broke the camel's back.

Q. I don't care to characterize it that way; that may be your way. I want to know if I understand you to mean that that caused you to abandon the Kerlow crowd, or your associates, whom you term the Kerlow crowd, and induced you to go in and disclose the situation to Mr. Price, and later to Mr. Irving? A. Yes, sir.

Q. You became indignant over the manner in which Mr. Irving was being treated? A. I did.

Q. Were you induced in making your confession, by the fact that you hadn't received any definite information about a position from the Kerlow crowd? A. Not at all, no, sir.

Q. What was there specially in the disclosure that Mr. Irving made to you about his Philadelphia experience, that aroused your indignation more than a lot of other things that had transpired for months? A. I tried to explain. The last thing what got me more provoked than anything else, was the fact that after getting Mr. Irving's best salesmen, and the method in which they got them, they wouldn't listen to

my plan, and going in and giving Mr. Irving a chance to allow us to prove our ideas in his own plant, without us going out and spending a lot of money in a new plant, and I thought it was wasting money and buying machinery.

Q. Was it because you were angry because they didn't adopt your suggestion, rather than Mr. Irving's report, that made you make your confession? A. No, not necessarily.

Q. What actuated you? A. No, I wouldn't say that.

Q. You knew, if your story to me is true, from what Bunker told you, that they had been endeavoring to undermine Mr. Irving's staff, agents throughout various localities; they told you so at different times? A. Only at piecemeal.

Q. But they made those disclosures long before he went to Philadelphia? A. Yes.

Q. You knew that? A. Yes.

Q. I am trying to reconcile your complacence with that situation and your indignation when Mr. Irving disclosed it to you as a result of their dickering with one man's agents in Philadelphia. A. There comes a point where you have got to stop getting in this muddle.

Q. You had reached the saturation point? A. Yes; I thought I had had enough of it.

Q. Anything else influence you to make your disclosure to Mr. Irving and Mr. Price? A. No, I believe I have given all my reasons.

FURTHER DIRECT-EXAMINATION:

Q. Was your salary raised at any time? A. My salary was raised along with everybody else, yes, sir, last Christmas.

Q. How much was the raise? A. Six dollars a week.

Q. Has it been increased since? A. No, sir.

Q. Any promise of an increase? A. No, sir.

Mr. Kraetzer: Was that before your confession to Mr. Price or after?

The Witness: No, it was after.

By the Court:

Q. How long after? A. It must have been a month and a half.

Q. Was Mr. Tarof in the company at that time? A. Yes, sir.

Q. Was his salary raised? A. Yes, sir.

Q. Was he discharged? A. He resigned.

Q. How long after the increase in salary did he resign? A. I believe he resigned around January 14.

Q. And your salaries were increased about when? A. Christmas, everybody's.

Q. The whole staff? A. Everybody, yes, sir.

BURTON A. PRINCE, sworn for complainant.

Direct-examination by Mr. Egner:

Q. You reside where? A. In Westfield, Massachusetts.

Q. Are the Boston sales agent of the Irving Iron Works? A. Yes.

Q. How long have you been such agent? A. Since November, 1919.

Q. What are you by profession? A. Engineer.

Q. A graduate of any institution? A. Worcester Polytechnic Institute.

Q. How long have you known Irving-Subway as a flooring? A. Since October, 1919.

Q. And through what source did you become acquainted with it? A. Through inserting an advertisement to be a sales representative for the Irving Iron Works Company.

Q. At the time you thus became acquainted with the Irving-Subway, did you as engineer know of any other steel grating in use as a flooring? A. Not as a flooring, no, sir.

Q. You say you became agent in what year? A. 1919.

Q. During the months of October and November of 1921 what were your relations with the Irving Iron Works? A. I was still with them as sales representative.

Q. Did they owe you any money? A. I think along July, August or September, somewhere along there, they owed me between three and four thousand dollars.

Q. Is that anything unusual? A. That I didn't know; it was my first experience with them.

The Court: Was it anything unusual with your relations with them, for them to owe you money like that?

The Witness: It was the first time they owed me any such large amount; of course, my commissions accumulated from time to time.

The Court: Were you on salary and commission both?

The Witness: No; commission.

Q. Did you make any demand for money which was not met by the Irving Company? A. No, sir.

The Court: I don't see that that has the slightest significance, unless it is shown that because these men were not payed promptly, or that the company was in arrears in paying them, that that angered them, and therefore they left the employ, and were not influenced by what you charge to be the conspiracy here.

Q. Mr. Prince, at any time during the fall of 1921, did you have any conference with Mr. Bunker? A. No, sir.

Q. Or with Mr. Lown? A. No, sir.

Q. Did you receive any communication from either of them, looking to your becoming associated with the Kerlow Company?

Mr. Kraetzer: I object.

The Court: It is objectionable as to form.

Q. Did you receive any letters from either of them? A. Not a letter; no, sir.

The Court: Any communication, in any form.

The Witness: Yes.

Q. What? A. A steel engraving, announcing Mr. Bunker's association, as general manager, as I recall it, with the Kerlow Steel Flooring Company.

Q. How did you receive that; through the mail? A. Yes; through the mail.

Q. Is that a card like Exhibit C32? A. Yes, sir.

Q. Do you know whether during that period of time Mr. Bunker called at your office? A. I think that he did; yes, sir.

Q. Upon what do you base that statement? A. I came back from a week end at home, on a Monday, and found a note or a little slip of paper, to the effect that he had been there and sorry that he missed me.

Q. In his handwriting? A. I cannot say.

The Court: Have you the note?

The Witness: No, sir.

Q. You say that was on one occasion or more than one? A. That was on one occasion that he left the note; if I recollect correctly, I think the office girl told me that he had been there once before, as well; these were on week ends, that I was at home at Westfield.

Q. When was that, Mr. Prince? A. I should say it was along in July.

The Court: I will strike out what the office girl told him.

Mr. Kraetzer: I move to strike out all of Mr. Prince's testimony with regard to calls supposed to have been made by Mr. Bunker.

The Court: Anything that he said about calls supposed to have been made, I will strike out; I shall let stand the testimony he has given about finding a note upon his desk purporting to have been left by Mr. Bunker. It will have to be shown that it was left by Mr. Bunker before it has any significance in the case.

Q. Were you even personally acquainted with Mr. Bunker? A. No, sir.

Q. At any rate, you didn't see him during that visit? A. No.

Q. Who employed you when you became an agent? A. Mr. Irving.

Q. Himself? A. Yes.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. Can you give us any approximation of the date on which this note which you have spoken of was

found? A. I cannot exactly. I think that there would be correspondence from Mr. Bunker to me expressing regret at not finding me in.

The Court: Was it in October or November?
The Witness: Along in the summer.

Q. During the summer of 1921?

Mr. Egner: I think he said in July, on his direct.

Q. You said in July, 1921? A. Yes.

WILLIAM H. VAN ORDEN, sworn for complainant.

Direct-examination by Mr. Egner:

Q. Mr. Van Orden, you are employed by the Irving Iron Works? A. Yes, sir.

Q. And what is your position at the present time? A. Chief draftsman.

Q. How long have you been with the Irving Iron Works? A. I have been there two years now.

Q. What was your position during the months of September and October, 1921? A. Chief draftsman.

Q. Were you the chief draftsman then? A. From the middle of September on.

Q. Do you recall when Mr. Lown left the Irving Iron works? A. I do not.

Q. Were you there when he left? A. I was.

Q. Did you see Mr. Lown at the Irving Iron Works on any occasion after he left their employ? A. I did not.

The Court: How can you say if you don't know when he left the employ? You know that he did leave, don't you?

The Witness: I know that he did leave.

The Court: But you don't know when he did leave?

The Witness: I didn't know the gentleman.

The Court: You don't know him at all?

The Witness: I know him now, but I didn't know him then.

The Court: Didn't you make his acquaintance during the two years you were in the employ of the company?

The Witness: I did not.

Q. Where was Mr. Lown's office, do you know, while he was with the company, in what building? A. In the annex, or in the new building, as we call it.

Q. Was that a different building from where your office is? A. It was.

Q. About how far removed? A. Not over twelve feet of space.

Q. And yet you never made his acquaintance during the two years you were there? A. I did not.

Q. Do you know Tarof? A. I do.

Q. Did you ever go out with Tarof to dinners? A. Yes, sir.

Q. And when was that, during what period of time? A. From—I would say from the first of September until he left, 1921.

Q. When did he leave? A. In about the middle of January, 1922.

Q. How frequently did you have lunch with him? A. Very frequently.

Q. On any of these occasions did you observe Mr. Tarof telephone? A. I did.

Q. Tell us what you saw in that respect. A. At every lunch—I wouldn't say at every lunch—while we were at lunch, on a good many occasions, he would, while waiting for the last course, or our dessert or coffee, he would pull a slip of paper out of his vest pocket and go to the adjoining telephone booth, which was in the cigar store adjoining a restaurant.

Q. Did you see what he did in there? A. I know he telephoned.

Q. Did he leave the door open? Or did he close it? A. I have seen the door open, from a distance, but if I approached the booth in any way, he seemed to be quite anxious to have it closed.

Q. Did he close it, in fact? A. He closed it.

The Court: Strike out what seemed to be; let it stand that he closed it.

Q. Did that happen once or more than once? A. More than once.

Q. How many times would you say? A. Three.

The Court: Three times when he telephoned or three times when he closed the door?

The Witness: Three times when he closed it.

Q. Did you approach purposely to overhear him? A. I did not.

Q. Do you remember having a talk with Tarof just before he left the Irving Iron Works? A. I had a good many with him.

Q. Did you have any talks with him on the subject of his leaving the company? A. Yes.

Q. What did he say on that subject? A. He said that he was—it was his intention to leave the company, in order to alleviate some trouble he had at

home, and also increase his business that he had on the outside.

Q. Did he have another business on the outside? A. He said he had a store in Port Washington.

Q. What else did he say about his leaving? A. He said that within two days to two weeks every one would be calling him by other than endearing names.

Q. Everyone where? A. In our office.

Q. Did he tell you why they would be calling him those names? A. He did not.

Q. Did you ever hear Mr. Tarof telephone at the Irving Iron Works about his haberdashery business? A. Yes, he has used my phone.

Q. How often? A. Four or five times.

Q. On those occasions did you overhear his conversation? A. I did.

Q. But you did not overhear his conversation when he telephoned at the restaurant? A. Not once.

Mr. Kraetzer: Nor did you ever see what was on any of those slips of paper?

The Witness: I did not.

Mr. Kraetzer: I don't see the purpose of this testimony.

The Court: I must confess I don't either.

Mr. Kraetzer: I move to strike it out as being immaterial.

The Court: I will let it stand; it doesn't hurt you.

CLARENCE H. LEWIS, sworn for complainant,

Direct-examination by Mr. Egner:

Q. You are an employee of the Irving Iron Works? A. Yes, sir.

Q. How long have you been such? A. Four years in February, 1923.

Q. What is your position? A. Supervisor of material and stores.

Q. You knew both Lown and Bunker? A. I knew them both.

Q. Do you remember when Lown resigned? A. I do.

Q. When was that? A. In May, 1921.

Q. After his resignation did you at any time see him at the office of the Irving Iron Works? A. Yes.

Q. How frequently? A. Perhaps half a dozen times.

Q. Whom did he see at that time? A. He saw Mr. Bunker.

Q. How often did he see Mr. Bunker? A. He saw Mr. Bunker at all times but one, that I saw him, after he had left the Irving Iron Works.

Q. How long did those conferences last? A. I cannot state the exact length of time of each; I generally saw him there at noon.

Q. By whom were you engaged? A. I was engaged by Mr. Bunker.

Q. And at the time he engaged you, what, if any, instructions, did he give you as to whom you were to report? A. He told me I was to report to him; that at no time was I ever to let Mr. Irving know of anything that happened around the place.

Mr. Kraetzer: No cross-examination.

LEWIS N. LUND, sworn for complainant,

Direct-examination by Mr. Egner:

Q. You are an employee of the Irving Iron Works? A. Yes, sir.

Q. And since when? A. Since October 21, 1918.

Q. What is your position? A. My position is assistant superintendent.

Q. You are out in the shop? A. Yes.

Q. I show you Exhibit C22, being the dies upon which the Irving Type "M" of grating was made; when did you first see those dies in the plant of the Irving Iron Works? A. I first saw those dies about three weeks after I come into the employ of the Irving Iron Works.

Q. And where they? A. They were lying about at the foot of press known as P6.

Q. What, if anything, did you do with them? A. I had nothing to do with the dies at that time. I happened to notice them lying there, as my work that I was doing there brought me about the shop, and I happened to see the dies lying on the floor, and seeing that they were of a different style than what the work going through the shop was; I happened to take notice of them.

Q. When did you see them again? A. I saw them about a year later, on a bench that was right outside of the foreman's office, in the grating department.

Q. And when after that did you again see them? A. After that, in 1920, when Mr. Roope came there and took charge as superintendent there was a tool room made, and all tools that were lying about the shop were segregated and put into this tool crib, and I saw those dies in the tool crib.

Q. When did you last see them? A. When we made a piece of grating, they were in the shop.

Q. When was that? A. That was in March; I would say approximately around March, 1922.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. You say you saw the dies last when you made a piece of grating in the shop? A. Yes.

The Court: A piece of grating with them?

The Witness: With those dies.

Q. And was that the first time that you had seen any grating made with those dies? A. No, that was not the first time.

Q. When was the first time that you had seen any grating made with those dies? A. The first time that I saw a piece of grating made with those dies was approximately, I will say, in the latter part of 1919, or the first part of 1920, when one of the employees there, known as Mr. Krouse, was getting a sample, and this was a sample made on the bench. The dies were not put in the machine to make the sample.

Q. In 1921, did you see those dies used to make any grating? A. I did not.

Q. Were they in use at all during that year?

The Court: To your knowledge.

The Witness: Not that I can recall.

Q. You were in charge of the shop there, were you not? A. I was.

Q. And if they had been used, it would have been your duty to know of it, wouldn't it? A. Yes.

Q. From the time when you came, which was in

1918, to the making of this sample, at the end of 1919, or the beginning of 1920, were those dies used on the machines? A. Not that I know of.

Q. So that from 1918 until the beginning of 1922, the dies had been used but once to make some samples is that it? A. To the best of my recollection, yes.

Q. You would know if they had been used? A. Yes.

RE-DIRECT EXAMINATION by Mr. Egner:

Q. I show you Exhibits C24 and C25, being photographic reproductions of the block dies; when did you first see these dies in the Irving Plant? A. In the latter part of 1918, I first saw this type of dies put into operation.

Q. And were they actually put in use there? A. They were actually put into use; all the others were equipped with this type of die (indicating).

Q. And was that use continued thereafter? A. It was.

The Court: Is it in use yet?

The Witness: No, sir.

Q. Do you know who made those dies? A. One of the machinists.

Q. And by name? A. All I know is by his first name, Joe.

Q. He was under you, was he? A. Yes.

The Court: If counsel could agree on the cards desired, if they are produced, they may be produced here before Mr. Bindseil and made part of the record in this case, as counsel see fit to enter them upon the record, subject to ob-

jection, to be ruled upon later; if counsel cannot agree, either in whole or in part, then I would suggest that you appear before me some morning and take an hour, covering the scope of the investigation to be made in respect to these cards. My regular motion day will be the twenty-fourth of October. Come in that morning, if you don't agree, unless you want to come in before that. Let it stand that if you cannot agree, you will be in here on the twenty-fourth of October, with an order. If you can agree, I think it will be just as well to frame an order or stipulation covering the scope of the inquiry before the master, Mr. Bindseil.

Mr. Kraetzer: The only information we want from the cards is as to the particular jobs referred to in our affidavits, with regard to whether those particular jobs were bid upon, and whether they were obtained or were lost.

The Court: Mr. Egner can soon determine that after consultation with his client, and let you know.

Mr. Egner: Are these all jobs mentioned in the list attached to Mr. Lown's affidavit?

Mr. Kraetzer: Yes.

Mr. Egner: Mr. Irving does not dispute that thes jobs were lost. The point about it is as to whether there was competition. We don't dispute the fact that the particular work shown on this list was not done by the Irving Company.

The Court: But the testimony now before me is, that the loss suffered through competition was, I think, limited to about six cases. They contend, I gather from what they say, that that

is absolutely incorrect; that you suffered a great loss in a great many more competitive cases.

Mr. Egner: Now, your Honor, they say that the only reason they want these cards is to show that we lost the jobs set forth on that list. We admit we lost them.

Mr. Kraetzer: We have counsel's admission that those particular jobs were lost. The only additional information that is required to round out this story is the type of installation that was put into these particular jobs, because I think your Honor will want to know that, to determine whether there was competition according to the criterion that you announced.

The Court: You want to know the type that was put into the jobs or jobs bid upon, because none of the types went in if they lost the jobs.

Mr. Kraetzer: When I say "type," I mean the general character of the grating; I am talking in general terms. What I meant by "type" was straight bar grating, as against this form of grating (indicating). I have urged my claim that straight bar is in competition and was in competition. I think we can persuade your Honor that it was actually competitive. We want to know what form of grating actually went into these jobs.

The Court: How can they know any more about that than you do?

Mr. Kraetzer: I am in error. I am misinformed.

The Court: I should think you would know as much about that as they do.

Mr. Egner: We now admit that we did not do the work specified on this list attached to

Mr. Lown's reply affidavit on the application for the preliminary restraint, and I shall endeavor to find out whether we bid on them; and if so, I will make that admission also; if not, we will furnish the Court with information on any job which we say we did not bid on.

Adjourned to Monday, November 27, and Tuesday, November 28, 1922.

Continuation of testimony in the above-entitled cause before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Monday, March 19, 1923, at 10 A. M.

Present: Counsel as before stated.

Mr. Egner: There were several things which under the progress of the trial we endeavored to produce. I have here now a printed copy of the complainant's patent.

I now offer in evidence a printed copy of the United States Patent No. 1,045,795, for reticulated wrought iron grating, applicant, Gustave A. Keller; assigned to the Irving Iron Works.

Marked Exhibit C41.

I also offer in evidence the original letter which was contained in the envelope addressed to Mr. Tomclier.

Marked Exhibit C42.

At the conclusion of the last hearing the other side asked us for certain information with respect to the loss of jobs, which was annexed to Mr. Lown's affidavit. You recall the

jobs which we stated the Irving Iron Works had lost after competition. I have had that looked up, and I had a rather elaborate analysis of the situation sent to me by Mr. Irving. It has been misplaced somewhere in the office; I cannot find it, and Mr. Irving is not back yet from the business trip upon which he has gone. I want to leave it this way. We have already admitted that we did not do the work. I shall also admit now, subject to correction later on, if I find that I must correct it, that we bid on every one of those jobs.

The Court: Every one of the jobs mentioned in the record?

Mr. Egner: Mentioned on that list annexed to the affidavit. Your ruling was that if we were not willing to make that admission, then you would ask Mr. Bindseil to look into our records, as to what the records show. I think my present admission goes as far as your Honor thought we ought to go.

Mr. Kraetzer: I don't think that that particular affidavit—in fact, I don't think that any of the affidavits have been marked in evidence, and it seems to me that we ought to complete the record by specifically offering them.

Mr. Egner: They are affidavits filed in connection with the preliminary hearing.

The Court: It seems to me that if they are to be used, counsel on one side or the other should have an opportunity to cross-examine.

Mr. Egner: It is a mere statement of the number of jobs which could be taken off and offered as a statement of what we have in mind.

Mr. Kraetzer: The significance is not merely

to have this information, but the fact that we claim that that is an attack on Mr. Irving's veracity, in view of his statement in the affidavit that certain two specified jobs were two of only six jobs that he had lost.

The Court: You have the benefit of the entire record, which includes these affidavits, and to affect his veracity these affidavits are available to you.

Mr. Kraetzer: If these affidavits are part of the record, so that we need not mark them in evidence—

The Court: If there is doubt about it, and you offer them, I will let them in.

Mr. Egner: I have no objection to that list going in.

Mr. Kraetzer: May I suggest that we consider all affidavits on the preliminary motion in evidence in this present hearing?

Mr. Egner: I should not want to go as far as that. That might make a very heavy burden. Why not detach that list and offer it as an exhibit?

The Court: It is considered that the list annexed to Mr. Lown's affidavit of March 4, 1922, on the preliminary motion will be marked in evidence as Defendant's Exhibit D17.

EDWARD M. KENNARD, recalled for further direct-examination.

By Mr. Egner:

Q. Did you have anything to do with sending out any notices on behalf of the Kerlow Steel Flooring? A. Yes, sir.

Q. Tell us what you had to do with that subject? A. On one of my visits—

Mr. Kraetzer: May we have the date?

Q. First, I ask you, when did this happen, that you are about to testify to? A. In the first or second visit to the Kerlow's office downtown.

Q. That will be about when? A. Along about the latter part of October, 1921.

Q. Tell us what happened. A. During the course of the conversation Mr. Bunker showed me a large list of customers, or prospective customers, I don't know which, which they were circularizing, in an effort to obtain business, and I asked Mr. Bunker if I could help him out in any way by typewriting some of the letters. They had a regular form of letter which they were sending out to this list, and I said that possibly I could do this home in my spare time, or come down to the office. Finally he told me that he had a portable typewriter, which he could let me have and I could undoubtedly do it on that. So the next visit Mr. Bunker had the typewriter there and I took the typewriter home, along with some stationery, and attempted to write some of the letters, but found the typewriter was broken, and gave it up.

Q. You say he gave you a list? A. Yes.

Q. Describe the list. A. The list was on plain long white paper, foolscap size, and I should say the list was about an inch and a half to two inches thick, and it had three columns, each sheet had three columns, written in blue typewriter ribbon.

Q. Do you recall what information those three columns gave? A. One column was the name of the company, the other column was the address of the company, and another column was the man to whom

the letter was addressed or marked for his attention.

The Court: You mean the name of the company to whom the circular was to be sent?

The Witness: Yes.

Q. You say the typewriter didn't work? A. No, sir.

Q. What eventually became of that list and the typewriter? A. First off, the next day after I found the typewriter wouldn't work, I brought it down to the shop, that is, the Irving Iron Works, and sometime during the morning I asked the foreman, Lumb, if he would look the typewriter over and see if he could fix it. I cautioned him not to spend any time on it outside of possibly monkeying with it during his spare moments during the day, and he tried it for a little while during that day and wasn't successful in getting it to operate. So that night I picked it up and brought it back to Mr. Bunker.

Q. What happened with the list? A. I gave the list back to Mr. Bunker, and the stationery, at the same time that I gave him the typewriter.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. Did I understand you to say that this list was typewritten, Mr. Kennard? A. I wouldn't say that positively.

Q. Do you say it was about an inch and a half to two inches thick; were you to address circulars to all of the names on that list? A. A circular letter, yes.

Q. To all of the names on the list? A. Yes.

Q. Did you say anything about this list in your affidavit on the preliminary motion or in any of your

previous affidavits here? A. I cannot recall right now whether I did or not.

Q. This list was given to you by Mr. Bunker? A. Yes.

The Court: The affidavit of Walter H. Lown, verified March 4, 1922, and attached to the answers to the replying affidavits in connection with the application for a preliminary restraint which were filed on March 7, 1922, is produced.

Marked Exhibit D17.

LOUIS N. LUMD, recalled for further direct-examination.

By Mr. Egner:

Q. Mr. Lumd, at any time in the latter part of the year 1921, was anything said to you about leaving the Irving Iron Works Company and taking up employment with the Kerlow Company? A. Yes.

Q. By whom was anything said to you on that subject? A. Mr. Kennard.

Q. When was it? A. In the latter part of October, 1921.

Q. Tell us what was said by Mr. Kennard?

Mr. Kraetzer: I object as not being binding on this defendant.

Mr. Egner: Your Honor has followed the course in allowing this to go in, I think, that we have shown enough to connect Mr. Kennard with what he say was a conspiracy at that time, if Mr. Kennard was requested by

Mr. Bunker and Mr. Lown to speak to the different men.

The Court: Have I sufficient in the record to show that Kennard was in any way authorized by any of the parties in control of the Kerlow Company to represent that company, even to the extent of soliciting Mr. Lumd and others connected with the Irving Company to leave the Irving Company and join the Kerlow? If there is sufficient in the record to show any such agency or authority, then, of course, what Mr. Kerlow said would be binding upon him. I don't recall what the record contains.

Mr. Egner: There has been other evidence which has been let in by your Honor.

The Court: I will let it in conditionally now. I will receive it, since you have the witness on the stand, and I will let it in on the condition that I find that you show me that in the record there is authority shown in Mr. Kennard to make the statement he did so as to be binding upon the defendant company, and if you do not show it, it will go out. That leaves the defendant in an uncertain position, but the witness is here and I will receive it. My present impression is against you, that you haven't shown enough. I will receive it in that conditional way, and unless you show me very positively that it is authorized, it will go out, and I will not call on the defendant to meet this testimony, or anything else on this line, from this or any other witness, unless that is shown. If it is shown, I will give you an opportunity, if I let it stand, to meet it. If it is

not shown, you will not have to take the trouble to meet it. My present impression is to receive it, if for a matter of convenience only.

Q. What was said by Mr. Kennard to you on that subject? A. Mr. Kennard called me into the office one morning and he asked me if he could take me into his confidence. I told him that he could. So he went into a detailed explanation and told me—

Q. Just give the substance of what he said; don't summarize it. A. He asked me whether I would consider a proposition to work for someone else. I asked him what it was, so he told me that the Kerlow Company is formed, and he, in fact, is going with them, and that he would like to have me know that they were holding the same position that I am now holding here.

Q. That is, in charge of the shop, the machine department, and so forth? A. And that I would be well taken care of if I would go with them. He also told me that they were going strong at it—the Kerlow is going so strong at it, that eventually it will be a case where the old man—refering to the Irving Iron Works —will have to shut down or go to the rocks, or something like that, so that I would be better off if I would consider the proposition of going with them, than remaining there, for my own good.

Q. Did you after this first occasion, again have any talk with Mr. Kennard along that line? A. Mr. Kennard called me in several days later, because I asked him if I could have time to think it over, and he called me in several days later and asked me if I had come to any decision; I told him at that time I did not as yet come to any conclusion; that the way I understood, the company is not established yet, as far as a building

and manufacturing, and I had plenty of time to decide, so I let the matter go at that time and didn't give no definite answer.

Q. Did you ever determine to go with them?

Mr. Kraetzer: I object.

The Court: What did you do.

Q. You never left the Irving Iron Works? A. No.

Q. Are you familiar with the amount of work being turned out in the Irving plant from time to time? A. I am.

Q. How does the personnel of the Irving Company, as far as number is concerned now, compare with that prior to the leaving of Messrs. Bunker and Lown? How many men have you in the shop, in comparison with that time? A. We have about the same.

Q. How does the amount of work now being turned out in the shop compare with the amount of work being turned out by the same number of men previous to the leaving of these gentlemen? A. We have increased anywhere from seventy-five to one hundred per cent.

Q. More? A. More.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. You say this difference of seventy-five to one hundred per cent increase is over the production date—we will say the first of January, 1922, is that it? A. Over 1922?

Q. Over 1921, we will say. A. Yes, over 1921.

Q. How many new machines have you gotten in recently? A. Six.

Q. How many machines did you have before the first of January, 1922? A. Twelve.

Q. Have there been any changes in the methods of production at all? A. There have.

Q. In what way? A. The machines have been equipped with cut and punch tools.

Q. Will you describe what you mean by that? A. The cut and punch tool is a tool that combines—where previous to the installation of that tool, the bars were first cut out and then punched, this tool combines those two operations and does it in one; it punches the bar and then cuts it.

Q. Is that the only change in operation? A. That is all that I can think of.

Q. Was the square footage per unit in 1921, do you recall? A. If we made about—on an average, I am speaking averages now—about 400 feet per unit, we were doing well.

Q. Is that per day? A. That was per day.

The Court: What unit do you refer to?

Q. State what unit you are referring to. A. I refer to unit of machines.

Q. That would be a set of machines? A. Yes. One machine would punch a straight bar, the other would punch a crimp bar, and the other machine would crimp the bar.

The Court: It would take three machines to constitute a unit?

The Witness: Yes, sir.

Q. How about riveting? A. Production or what?

Q. Production? A. Yes.

Q. If it has increased? A. Yes.

Q. If it has? A. It has.

Q. Per team? A. Yes.

Q. And a team is two men? A. Yes.

Q. I don't know if the Court has any idea how this stuff is made. The assembly of this grating by the Irving Iron Works is by hand riveting, is it not? A. Yes.

Mr. Egner: Why not let him tell?
The Court: This is cross-examination.

Q. The method is for two men to do the riveting? A. Yes.

Q. And the panel as it is fabricated is hooked on what you call a riveting table? A. Yes.

Q. And as the bars are riveted on, the panel of grating is lowered for each segment? A. Yes.

Q. Has there been any difference in production on the riveting end? A. It has.

Q. And what has the difference been over 1921? A. Anywhere from 50 to 100 per cent increase.

Q. Per team? A. Per team.

By the Court:

Q. What is that due to? Why did two men do 100 per cent more work in 1922 than in 1921? Have they any better facilities for riveting than formerly? A. No, sir, they have no better facilities for riveting.

Q. How is their efficiency increased to that extent? A. The equipment that is now on the machines and form these punch and cut tools has brought out the case where the work is more accurate coming off the machine and it helps the riveters. At the same time, I would say that the shop is working under a different spirit than it was in those days.

Q. It is a matter of spirit? A. To a certain extent.

Q. What was your work in 1921? A. I had charge of the machine department and also of tool making.

By Mr. Kraetzer:

Q. The same work you are doing now? A. In conjunction with that I am assistant superintendent at the present time.

Q. And had been during 1922? A. Yes.

Q. You say there has been no increase in the force in the shop?

The Court: He said about the same number of men. Do you think there is an increase in the number of men employed now to what there was in 1921 or up to January, 1922?

The Witness: I cannot recollect whether we were working slack in 1921 in January or not.

The Court: Are you employing a greater number of men now or did you during 1922 and this part of 1923, than you did during the year 1921?

The Witness: I would say about the same.

Q. Isn't it a fact that there has been an increase of from 23 to 33 1/2 per cent in the number of men employed in 1922 over 1921? A. I would say I don't know.

RE-DIRECT EXAMINATION by Mr. Egner:

Q. When did you acquire these six new machines that you have spoken of? A. They have been coming in, one by one, up to the last week.

The Court: When did you begin to get them?

The Witness: About two months ago.

The Court: So within the last two months, since the machines have been installed?

The Witness: The last one came in about two days ago.

Q. You told us in 1921 the production was 400 feet per unit per day? A. On an average.

Q. Can you tell us what the production per unit per day is now or was during the year 1922? A. On an average on the machines?

Q. Yes. A. We ran anywhere from 500 to about 600 square feet a day.

Q. What was it in 1921? A. About 400.

WILLIAM J. BROWN, sworn for complainant.

Direct-examination by Mr. Egner:

Q. You are now in the employ of the Irving Iron Works? A. Yes.

Q. In what capacity? A. Accountant.

Q. How long have you been with the Irving Iron Works? A. Since March 2, 1921.

The Court: As accountant?

The Witness: As accountant; yes, sir.

Q. After you came with the Irving Iron Works do you recall having had a talk with Mr. Bunker on the subject of his leaving the company? A. Yes, sir.

Q. When was that, as near as you can recall? A. Possibly in March or April, 1921.

Q. What did Mr. Bunker say to you on that subject? A. He told me that he was getting tired of staying with the company and he thought that he would quit and perhaps go in business for himself.

Q. Did he say anything further about the kind of business? A. He didn't say what business he was going in.

Q. After you came with the company, do you re-

call any talk by anybody on the subject of Mr. Price, the general manager of the concern? A. Yes, sir.

Q. And by whom? A. By Mr. Bunker.

Q. When was that? A. That was possibly around the same time.

Q. What did he say on that subject? A. That Mr. Price didn't know what he was doing, that he wasn't the right kind of a manager for the Irving Iron Works Company, and that he himself was practically running everything, other than Mr. Price.

Q. You were there when Mr. Lown left, were you not? A. Yes, sir.

Q. And Mr. Lown left in the spring, did he not, of 1921? A. I believe in May or June.

Q. And Mr. Bunker left— A. About the end of September, I think.

Q. Of the same year? A. Yes, of the same year.

Q. After Mr. Lown left and before Mr. Bunker left, do you recall ever having seen Mr. Lown at the plant of the Irving Company? A. No, sir.

Q. Prior to Mr. Lown's leaving, do you recall Mr. Lown or Mr. Bunker saying anything about the future of the Irving Iron Works? A. When I first went there both Mr. Bunker and my predecessor, Mr. Moyer, told me they expected—

Mr. Kraetzer: I object.

A. (Continuing.) —Mr. Bunker told me that if things kept on the way they were going, the company would be bankrupt.

Q. Do you recall in a humorous vein what they said about the company?

Mr. Kraetzer: "They," whom do you mean?

Mr. Egner: Bunker and Lown.

A. Both of them recited a poem to me.

Q. What was that poem? A. The substance of it is "The hours are long, the pay is small; just give us time, and we will get them all."

Q. And they recited that little jog, did they? A. Yes.

Q. Did they ever say anything to you about the wisdom of your continuing to remain in the employ of the Irving Iron Works Company? A. Mr. Bunker did.

Q. What did he say on that subject? A. He told me that I was a pretty bright chap and he liked me very much, and said it was a shame that I started in with the company.

Q. Did he say anything about staying there? A. After Mr. Bunker came back from his vacation, I was talking to him and told him that I had had an opportunity to go with another company, but I decided to stay with the Irving Iron Works, at which time he told me—if his Honor will excuse the language—he told me that I was a damn fool for staying.

The Court: For remaining with the Irving Iron Works?

The Witness: Yes, sir.

The Court: Did he give you any reason why he thought so?

The Witness: No, sir.

Q. When did you first know, Mr. Brown, that Mr. Bunker and Mr. Lown had gone into a new business? A. When Mr. Price told me.

The Court: When did you first learn that?

The Witness: I believe to the best of my recollection it was in November, 1921.

Q. Did you, at any time make up any books for the

new company? A. No, sir, I didn't make up any books.

Q. Or a bookkeeping system? A. Not for the company.

Q. Whom did you make it up for? A. For Mr. Bunker.

Q. Tell us about that. A. I was in the employ of the Irving Iron Works Company perhaps a month or so; Mr. Bunker had been talking to me and told me how much he thought of me, and said that I was a likeable chap and that he had employed me. He said, "I usually have good luck in picking out good people." He said, "Mr. Price has picked out some lemons we have had here, but," he said, "you are the right sort of a chap." He said, "Some day I am going to go in business and," he said, "I would like to know how to open up a set of books," so I told him, "All right, I would write them up for him some time." I didn't at that time. Possibly a month or so later he came to me again and asked me if I had made it up, and I told him I hadn't, and I said, "but I will." Just before he went away on his vacation he came to me again, and asked for it. I hadn't made it up. After he got back from his vacation he asked for it once more and I told him that if he would let me know what he wanted I would be glad to draw up a rough stretch for him, and I also told him if he was going in business I would be very glad, indeed, to start his books for him and help him out any time, Saturday afternoons or Sundays, until he got in condition, and I told him I would go to it right away. I went back to my office—before I went back to the office, he told me that he would no doubt have to have a little to do with stock, and he wanted to make sure that he had the entry of the stock on his books correct, because he didn't want any of the people that

might go in business with him to do him. He said, "I may have some of my friends in, and I may not, but I will not take any chance with any of them. I want to be sure so that I know I am correct."

Q. Did you in fact make up a sketch of the bookkeeping system? A. I did.

Q. And you gave it to Mr. Bunker? A. Yes, I gave it to Mr. Bunker.

Q. You didn't know at that time about this new company? A. Absolutely not.

The Court: Did you know the nature of the business that they were to engage in?

The Witness: No, sir, I did not.

Q. Do you recall having had any conversation with Mr. Roope, who succeeded Mr. Lown as sales manager? A. Yes, sir.

Q. And when was that? A. Roope had been in my office several times from the time he started. We had several conversations, possibly during October and November.

Q. Did you ever have any conversation with him at his home? A. No, at my home.

Q. When was that? A. It was in November—I cannot state the exact date.

Q. At that time was anything said about the Kerlow Company?

Mr. Kraetzer: I object on the ground that any conversation with Mr. Roope is not binding upon the defendants.

The Court: What connection have you shown Roope to have with the Kerlow Company

Mr. Egner: We have shown, in the first

place, Roope tried to call a strike; you remember the strike incident. We have shown by Kennard a statement of Mr. Bunker to him, that Mr. Roope was to go with him, and that they were to get financing from Roope's father up in Boston. I think that is enough. Lown hired him.

The Court: In what capacity was he hired?

Mr. Egner: Sales manager, to succeed Mr. Lown; he was Lown's successor. There are other things in the testimony and your Honor has already, on the same undertaking on our part to tie it up, allowed some conversations with Roope. I realize that as to all this testimony just how you feel about it.

The Court: The difficulty is I have no objection to receiving it, except that it leaves the defendants in rather an awkward position; they don't know whether I will let it stand or not, or whether they will have to meet it. If I let it in, I have got to do it again conditionally, and then wait until you show me its competency and its binding effect upon the Kerlow Company, and then if you do convince me that it is, then I will have to call on the defendants to meet that situation, if it can, and if I don't allow it to stand and strike it from the record, that will be the first intimation that they will have that it is not binding upon them. I do not want to exclude it, if it is at all competent. I don't attach very much importance to it until I am satisfied in my own mind that Roope and these others who are in this doubtful category had any authority to bind the Kerlow Company.

Mr. Egner: There is very little more, and a few moments will conclude it. I would suggest —we still have several days for the defendant to go on, and your Honor—

The Court: I think I will receive it in this way: I will receive this and the other testimony that was in this qualified and conditional way, upon condition that before the next session in April—I won't ask you to do it by Wednesday—that you furnish the Court with extracts from the testimony and reference to the pages, as well as counsel for the Kerlow Company, of the various feature of the testimony which you say make this testimony competent. If you don't do it by that date, then I will probably strike it from the record on the first session in April. If you do, then counsel for the defendant will have three days in April in which to meet it, and if they need another day, I will give it to them. In that qualified conditional way I will receive it. This applies to all witnesses whose testimony has been received in this qualified, conditional way, and it will apply to anyone else you will call along the same line.

Q. What did Mr. Roope say to you about the Kerlow Company? A. He told me that Mr. Bunker and Mr. Lown had formed the Kerlow Steel Flooring Company and that he was to be their sales manager, and he told me that he would give me a position as a salesman, and I told him I wasn't a salesman and I didn't know how to sell any goods. He said, "You can sell the same as anyone else can." He said, "You can talk on accounting and bills, and if you

know that much, you surely can go out and sell a product." He said, "It doesn't require a salesman to sell goods."

Q. Do you recall the so-called strike incident, Mr. Brown? A. Yes, sir.

Q. Tell us what happened in that connection, and when. A. Mr. Roope—

Mr. Kraetzer: Subject to the same objection and ruling?

The Court: Yes.

A. Mr. Roope walked into my outer office and called my fellows together.

The Court: When was this?

The Witness: To the best of my recollection, the day after he was to my house.

Q. You said that was sometime in November? A. Yes.

Q. He called your men together? A. Yes.

Q. How many men were under you at that time? A. Three men, I believe. He brought them into my office, and he said, "I am getting sick and tired of this whole place, the place is rotten, and the best thing we can do is all of us go on a strike." I said to Roope, "Here, you stop that, you don't know what you are talking about." I said, "You have no right coming into my office and disrupting our entire work here this way; the best thing you can do is to put on your hat and coat and get out of here." So he said, "Never mind him, boys, he doesn't know what he is talking about, anyhow." He said, "Come on, let us all go outside on a strike and let us go out in the shop and we will pull them all out there, and if

they are afraid to talk, I will be their spokesman, and we will go to Price and tell him what we think of him." I said, "Roope, calm yourself, get your hat and coat and go out and walk around the block, and come back, and then, you will feel sorry for what you have said," and thereupon Roope walked out of my office.

The Court: Did the men strike?

The Witness: I had spoken to my men, I said, "I will tell you what I will do; I am going to stay here. I will not go on a strike. You fellows can suit yourselves. If you want to pay attention to Roope and go on a strike, go, but I am going to stay here."

The Court: What did they do?

The Witness: They went back to their desk and went to work.

Q. Did you attend any talk or conference between Mr. Irving and Mr. Price and Roope on the subject of that strike? A. Yes, sir.

Q. What happened then?

Mr. Kraetzer: Same objection.

The Court: Same ruling.

A. Mr. Irving and Mr. Price had just come back from dinner and Mr. Irving motioned for me to come into his office; I went in and he spoke to me about—

Q. Who was there when they came in? A. Mr. Price and Mr. Irving—in my office. There was someone in my office at the time Mr. Irving came to me.

The Court: Is this a conversation with Irving and Price?

The Witness: Yes.

The Court: Was Roope there?

The Witness: At the time I was called in, he wasn't there.

The Court: I want to know what happened when Roope was there.

The Witness: Roope busted into the room when Mr. Irving and I were talking and Mr. Irving said—

Mr. Kraetzer: When was this conversation?

The Witness: In November.

Q. When, with relation to the strike incident; how long after they had been in your office? A. If I remember correctly, it was a week or so after.

Q. What was said when Roope came into the room? A. Mr. Irving accused him of starting a strike.

The Court: Tell us what they said.

The Witness: Mr. Irving said to Roope, "What is the idea of starting a strike in this place?" He said, "I didn't." Mr. Irving said, "You have, because I have got a fellow right here that told me that you started a strike," and Roope said absolutely not, he didn't. Mr. Irving turned to me and said, "What have you to say about it?" I turned to Roope and said, "Roope, you know right well that you did." Thereupon Roope said, "I did, I was very indiscreet," and Mr. Irving at that time discharged Roope.

Q. Mr. Brown, there has been offered in evidence as Exhibits C8 and C9 a statement of the various items entering into the selling expense of the Irving Iron Works Company, from January 1, 1917, to November 30, 1921, inclusive, which I now show you, did you prepare these schedules? A. Yes, sir.

Q. And from what did you prepare them, from what records of the Irving Company? A. From either the ledger or auditor's reports; one year from the

ledger and three years from the auditor's report, and one year from January 1 to November 30, 1921, from my own analysis records.

Mr. Egner: I stated before that Mr. Brown would be here for examination.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. Did you ever apply for a job with the Kerlow Steel Flooring Company? A. No, sir.

Q. Never discussed the possibility of a job with them? A. No, sir.

Q. Never had that in mind, I presume? A. No, sir.

Q. You say this conversation with Mr. Bunker with regard to making up a set of books took place in March, 1921? A. I said either March or April.

Q. You had joined the Irving Company in that very month? A. In March, 1921.

Q. Were your relations with Mr. Bunker very friendly from the time that you joined? A. Yes, sir.

Q. Had he employed you for the Irving? A. Mr. Price employed me.

Q. And your conduct, both in the business and social way was quite close with Mr. Bunker from the time you went with the Irving? A. Business only.

Q. But this proposition of drawing up a set of books wasn't in line with your business relations with Mr. Bunker at the Irving, was it? A. Only from that, that is all.

Q. That was a collateral issue, that wasn't part of your business relationship, was it? A. Any one would do it, naturally, if a man were to take hold of another person, the same as he took hold of me;

he was my superior, the same as Mr. Price, and if a person was to say to another that they liked you and that they liked your method of doing business, I am sure the average person would do the same thing.

Q. How soon after you joined the Irving did Mr. Bunker testify about his admiration of you, to you? A. Possibly a month before, about April, I would say; I am not sure whether it was March or April.

Q. Did Mr. Bunker ever talk to you about the kind of business that he was going to go into? A. No, sir.

Q. You knew nothing whatsoever of the kind of business until, as I understand it, Mr. Price told you what it was, in November, 1921? A. Yes, sir.

Q. Did you recently apply for a position elsewhere? Make application for a position? A. No, sir.

Q. I mean outside of the Irving Company?. A. No, sir.

Q. Didn't Mr. Bunker tell you the kind of business in any way whatsoever? A. No, sir; he told me it would have something to do with stocks, that he would have.

The Court: Shares of stock?

The Witness: Shares of stock.

Q. You mean he was going into the stock and bond business? A. He didn't say stock and bond business; he said it would have something to do with stocks.

The Court: I had the impression you meant stock of goods.

The Witness: No, getting the entries on his books —authorized capital stock, etc.

Q. These are the sheets that you prepared for Mr.

Bunker, are they not (witness shown paper)? That is in your handwriting? A. Yes. I am just looking at it. (After examining same.) Yes, sir.

The Court: All three?

The Witness: Yes.

Q. Are they the forms that you prepared for him? A. Yes.

Mr. Kraetzer: I ask to have those marked for identification.

Marked Exhibit D18 for identification.

Q. Are you quite sure, Mr. Brown, that these sheets marked D18 for identification were not made up by you sometime in October of 1921?

Mr. Egner: I object to the form of the question, because he has testified that they were made up after the return from the vacation.

The Court: He hasn't definitely fixed the time. I will allow it.

A. I can definitely state that it was before Mr. Irving left the employ of the Irving Iron Works Company.

The Court: And that appears to have been in October?

Mr. Egner: About the first of October.

Q. How long prior? A. I cannot say absolutely; it may be a week; I don't just recall.

Q. May be what? A. It may be a week or a few days before Mr. Bunker left.

Q. I thought you said you had prepared these sheets back in March or April?

The Court: No, he testified that Mr. Bunker requested him on three or four or more occasions. Finally, when Mr. Bunker returned from his vacation was when he thinks he put the sheets in existence, because on the return from the vacation Mr. Bunker then brought up the subject to him.

Q. Mr. Brown, did you say that this skeleton of books is designed for use by a concern to deal in stocks and bonds? A. I didn't say that.

Q. Would you say it? A. I don't think they would, because they are inventories and such things as that —no, I cannot say that.

Q. You would say that they were not designed for that? A. Not designed, as far as I know about the stock business.

The Court: If they were not designed for the stock and bond business, why were they designed at the request of Mr. Bunker, who was going in the stock business?

The Witness: I didn't say that.

Q. You are correct. At the request of Mr. Bunker who stated he wanted to keep track of the stock he was to deal in. A. He also wanted an idea of a general set of books.

RE-DIRECT EXAMINATION by Mr. Egner:

Q. What did you understand he meant by stocks; did he say stock or stocks? A. Stock, as far as I recall. He was going to issue stock and start a new company.

Q. And he wanted a stock account on the books?

A. He wanted to have the authorized capital stock on the books and the shares sold and treasury stock, if there were any. Perhaps I didn't make myself clear.

The Court: I thought you meant stock of merchandise.

The Witness: I didn't go into that.

RE-CROSS EXAMINATION by Mr. Kraetzer:

Q. That is what you meant to convey, that your reference to stock in your testimony had to do with the issuance of capital stock? A. Yes.

Q. That is what you meant all along? A. That is why I charged up that one particular entry at the bottom of the third sheet.

Q. Then why is it that just a few minutes ago, when I asked you if it was your idea that Mr. Bunker was going into the stock and bond business, that you had that impression from him? A. I didn't say that.

Q. It was right after you came in March, 1921, that Mr. Bunker began talking to you about Mr. Price and told you that he (Bunker) was running everything? A. Either in March or April.

Mr. Kraetzer: I am embarrassed about the testimony which your Honor allowed.

The Court: You may go into it without being bound by it. If it stands you will have the benefit of the cross-examination without having to recall him for examination, but your examination will not waive your objection.

Q. You say it was about a week after this strike episode that you had this conference with Mr. Irving and Mr. Price at which Roope came into the room

and there confessed that he had been the instigator of a strike? A. To the best of my recollection.

Q. In the meantime had you told Mr. Irving about this incident? A. Yes.

Q. When did you speak to him about it? A. The very day that it happened.

Q. Was Roope there each day from that time on? A. Yes, sir.

Q. Working at his work? A. Yes.

Q. Was Mr. Irving there each day? A. To the best of my knowledge.

Q. How soon after it happened did you tell Mr. Irving? A. The very day.

Q. Did you tell him that Roope had tried to call a strike with your men? A. Yes.

Q. Had there been any prior talk on your part with Roope about calling a strike? A. Not on my part.

The Court: Did you hear any talk of a strike prior to that?

The Witness: No, sir; I hadn't; not up to that time.

Q. Was Roope drunk or sober when he came in the first time? A. As sober as he always had been.

The Court: That doesn't answer the question.

The Witness: As far as I know; I am sure he was not intoxicated.

Q. You are sure of that? A. Positive.

Q. Had he discussed with you any question of dissatisfaction before this particular day? A. Yes, he told me he had been—he had talked with me.

The Court: Expressed his dissatisfaction?
The Witness: Yes.

Q. And had you intimated any dissatisfaction on your part to him? A. No, sir.

Q. You said you were perfectly satisfied? A. Yes.

Q. When he came in to call this strike, did he address you? A. He addressed my fellows first and brought them all into my office—I had a small office —a small caged-in office.

Q. Mr. Brown, referring to the selling expense sheets that you have before you, C8 and C9; C9, which is for 1921, is the one that you worked up from the books yourself? A. Yes. C9 was under my personal supervision.

Q. And C8 was taken from— A. Three years from the auditor's reports.

Q. The years 1917, 1918— A. 1917, 1919 and 1920.

Q. —were taken from the auditor's reports? A. If I remember correctly, and 1918 from the ledger itself, as I could not locate the brief, and I have the actual ledger sheets.

Q. The segregation of accounts into salesmen's salaries and commissions and salesmen's expenses, which are items found in Exhibit C8, so far as the years 1917, 1918 and 1920 are concerned, was the same segregation as you found on the auditor's report? A. Absolutely.

Q. And did you have to analyze the accounts for 1919 in making up your report in 1919? A. No, sir.

Q. You found the same segregation? A. Absolutely the same, on Exhibit C8. On Exhibit C9 we changed our system; from January first on, we

changed the accounting system. That is why there are so many accounts in C9 and so few in C8, in the preceding years.

Q. Is there any indication on these auditor's reports, or the source from which you took C8, as to the nature of goods sold to which the various expenses were attributed? A. I didn't look into that. All I took was their report of the expenses.

Q. So that whether the selling expenses was to be allocated to the sale of grating or sale of some other product wouldn't show on the books? A. I wasn't in their employ at that time, I don't know. I would say, so far as I know, it would show their business; it would show the total business, to the best of my knowledge.

Q. To the best of your knowledge, the total expense shown on C8 is for the Irving Iron Works Company operating *in toto,* so to speak, without regard to its interests? A. Yes.

Q. So far as 1920 is concerned, you didn't check back to verify any of those figures? A. I took the auditor's reports. I thought that would be more conclusive than anything else.

RE-DIRECT EXAMINATION by Mr. Egner:

Q. You also keep the books for the Irving Forge? A. No, I don't keep the books for the Irving Forge; I look at them, go over them with the manager over there.

Q. Did any of the figures relating to the Irving Forge Company enter into these statements C8 and C9? A. No, sir.

RE-CROSS EXAMINATION by Mr. Kraetzer:

Q. Did the books of account of the Irving Iron Works Company during 1921, when they were under your supervision, show the state of indebtedness to agents for commissions? A. They were incorporated January 1, 1921.

The Court: What was incorporated?

The Witness: The indebtedness due agents and salesmen for commissions was incorporated in our general books January 1, 1921.

The Court: Is that indebtedness shown on either C8 or C9?

The Witness: No, sir.

Q. Have you any record that would show that? A. The indebtedness to the agents and salesmen; yes, sir.

Q. During 1921? A. Yes.

Q. That is the current indebtedness? A. Yes.

Q. Exhibit C9 represents merely total payments, does it not? A. It represents total expense.

Q. Money paid out for expenses? A. Yes—no, I wouldn't say that. I may just correct myself. On our new system, starting January 1, 1921, as soon as a sale was made and the invoice made up, the commission was then set up.

The Court: What do you mean?

The Witness: Incorporated in the books; where prior to January 1, it did not become a commission until it was paid by the customer.

Q. But after your system was installed, then it was credited to the agent on sales as a commission, regardless of whether it was ever paid or not? A. Yes.

It was then paid to the agent or salesman at the time the account was paid to us.

Q. So that the change of method of accounting didn't mean any change so far as the agent's receipt of money was concerned? A. No.

Examined by the Court:

Q. Going back to Exhibit C9, does that represent money actually paid out or represent money paid out for expenses and also commissions credited agents, but not yet paid them? A. It shows on the salesmen's commissions money actually earned by the salesmen.

Q. And paid to them? A. Not paid to them. This statement doesn't show paid to them (C9).

Q. And not paid to them? A. This statement does not have anything to do with their individual account; the individual account of the agent or salesman in our accounts payable ledger will show what we are to pay the agents and salesmen.

FURTHER RE-CROSS EXAMINATION by Mr. Kraetzer:

Q. You have an item there, and I refer to Exhibit C9, of agents' commissions, which apparently runs from January 1 to November 30, 1921, of $35,693.09; what I should like to know—it may be a restatement, Mr. Brown—does that $35,693.09 represent money that was paid out during the period specified to the agents, or does it include an accrual of commissions not yet paid out? A. To answer that question, I can't say yes to either one of them; it does not represent money paid to the agents at all. If you will allow me to go into it in detail, I will try to bring it out for you.

Q. Do so. A. At the time the sale is made, we immediately set up our commission and charge out expense account, crediting the agent or salesman in the accounts payable ledger, with the commission that will be due him when the account is paid. That represents $35,693.09; it doesn't represent the actual amount of money that we have paid. That will only be shown on their account.

Q. In the statement you made up from January 1, to November, 1921, have you any item there showing the amount of commissions paid during that period actually? A. Not in this statement.

Q. Have you anything in your books or summary of anything that will indicate that amount? A. Yes, sir; I have the analysis sheets.

Q. Please get your figures.

Mr. Egner: There is one question which will perhaps help us, if you will permit me.

The Court: I am not quite clear whether this item of $35,693.09 represents the total of the moneys paid plus moneys earned and not yet paid out?

The Witness: No, sir; that does not represent any money paid at all. That is absolute expense or commission on our sales up to November 30, that will be due the agents and salesmen from January first on.

Q. With further reference to this $35,000 item on your selling expense statement C9, it is correct, is it not, that that represents the commissions earned on invoices during the period specified? A. Yes, sir.

Q. I notice another item on C9, a salesman's commission of $4,685.96; is that on the same basis as the $35,000 item? A. Yes, sir.

The Court: So that the total invoices commissions represent about $40,000?

The Witness: Yes.

Q. Then the salary item, the first item of $7,268, represents salary actually paid? A. Yes.

Q. And the second item of salesmen's commission is unpaid? A. It doesn't mean that at that time it was unpaid.

Q. It means the total amount accrued during the year? A. Yes, it may have been paid in November.

Q. Look at your books and tell us how much was actually paid to agents during this same period, January 1, 1921, to November 30, 1921, on account of agents' commissions? A. I would have to give you the total of the summary sheets that we have for each and every individual. That will take ten or fifteen minutes. I can give you the grand total.

The Court: Withdraw that for the moment.

Q. Do your sheets also show the current accounts with the individual agents during 1921? A. It shows all their transactions for the year 1921—their book accounts, shipments and everything.

Q. If I specify any date, can you tell me how much money was due to a particular agent on that date? A. At the end of any particular month?

Mr. Kraetzer: I think that in connection with that we might also ask the witness to give us a statement of the amount of moneys due to Mr. Demorest—we will say the first of September, 1921.

Mr. Egner: Is this cross-examination or an attempt to prove something that they should prove on their own case?

The Court: I don't know why it is not cross-examination. You have offered two papers compiled by this gentleman, or under his supervision. You qualified your offer with the promise that Mr. Brown would be called to explain any and all items. The very inquiry addressed to the witness relates to some of the items on the exhibits; why isn't it cross-examination?

Mr. Egner: It is an attempt to show that there were arrearages to Mr. Demorest at the time that these conversations took place. We are ready to produce that entire evidence, and therefore if he wants to do it this way, I have no objection.

The Court: I think he is within his rights; he is entitled to know everything that appears upon them, and for an explanation of everything that appears upon them.

The Witness: The information requested has nothing to do with these sheets C8 and C9.

Q. C8 and C9 you state have nothing to do with the same sheets; what sheets are you referring to? A. The answer to the question.

Q. What sheets are you talking about? A. My summary of accounts, agents' and salesmen's statement.

Q. The question is, can you tell the amount that was due to Mr. Demorest for commissions at the end of the month of September, 1921? A. Yes.

Q. Either from C8 or C9 or from other data in your possession? A. I can.

Q. Can you do it now? A. September first you ask for?

Q. Yes, what was it? A. $2,092.25.

Q. And October first? A. $1,274.04.

Q. November 1? A. $1,145.41.

Q. Just go back to August 1. A. $1,532.21.

Q. Going back to C9 for a moment, I notice, under "rent, light, heat, water and telephone," there is an indication that there is an operation charge; why is that? A. That is the proportion of the selling expense; we have factory overhead administrative expense and selling expense; in our actual expense for those eleven months listed, that is the operation for the selling department, or selling expense.

The Court: As I understand the effect of C8 and C9, it is merely to show the selling expense of the operation of the Irving Iron Works for the period from January 1, 1921, to November 30, 1921?

The Witness: Yes.

The Court: And nothing but the selling end of that business?

The Witness: That is all.

Q. The item of advertising indirect, on C9, does that represent actual expenditure? A. Yes, sir, that is actual invoices received for advertising.

Q. During 1921? A. Yes, sir, that is during that period.

Mr. Kraetzer: I would like the total payments to agents during that period.

RE-DIRECT EXAMINATION by Mr. Egner:

Q. Mr. Brown, referring to that sheet of Mr. Demorest's, you have stated that on August 1 Mr. Demorest had a credit of $1,532.21; does that sheet

indicate how much money was actually paid to Mr. Demorest during the month of August? A. Yes, sir.

Q. How much? A. $450.

Q. Tell us how much was paid to Mr. Demorest during the month of September, 1921? A. $1,200.

Q. Tell us how much was paid to him during the month of October, 1921? A. $800.

Q. How much was paid to him during the month of November, 1921? A. $400.

Mr. Kraetzer: Did you have anything to do with agents' requests for commissions; I mean correspondence with regard to commissions?

The Court: If an agent wanted money on his commission?

The Witness: That was handled through the sales department.

RE-CROSS EXAMINATION by Mr. Kraetzer:

Q. You have a figure there showing the total payments made from January 1 to November 30, 1921, of agents' and salesmen's commissions actually paid during that period of time? A. Yes.

Q. Will you state what that summary shows? A. $40,383.62.

Q. Does any part of that $40,383.62 appear in this thirty-nine or forty thousand dollars that you have on C9? A. No, sir.

Q. It is in addition to that? A. It is. This is cash paid; the other was commissions earned on sales.

Mr. Egner: I don't think he is right.

The Witness: This is not an expense.

RE-DIRECT EXAMINATION by Mr. Egner:

Q. I understand, Mr. Brown, that you, during the year 1921, kept your books, as far as these items were concerned, on an accrued basis? A. Yes.

Q. You have now testified that during the year 1921, in this particular period $40,383.62 was actually paid out to agents for commissions? A. Yes.

Q. Isn't it true that some part of the commissions which accrued during the year 1921 were in fact paid during that year? A. Oh, yes, included in this item of $40,383.62.

Q. So that some of the commissions which are included in the two items you show on Exhibit C9 were in fact paid by some of the money which makes up the total of $40,000? A. Yes.

Mr. Kraetzer: Can we get that amount?

Q. Have you the information here from which you can tell us how much of the forty thousand dollars shown on C9 was in fact paid during this period from January 1 to November 30, 1921; can you work that out? A. Yes.

Q. Have you made a calculation as to how much of the $40,383.62 was actually paid to agents and salesmen for commissions during the year 1921 up to November 30, is attributable to commissions placed to the credit of the agents and salesmen on the books during that period of time? A. Yes, sir.

Q. How much was that? A. $14,180.77.

Q. So that the remainder of the total paid during that time is attributable to commissions which were credited to the agents before January 1, 1921? A. Yes, sir.

Q. What was your practice during the year 1921 as

to the time when the commission was placed to the credit of the agents on the books? A. At the time that we invoiced our customer, their commission was then set up against their account and credited to the agents' account and charged to the agents' commission, and likewise with the salesmen, and credited to the salesmen's account and charged to the salesmen's commission.

The Court: When was the invoice stage; when you received the order?

The Witness: No, when we actually shipped the material.

Q. Can you tell us approximately the customary period of time elapsing between the issuing of the invoice and the actual payment to the Irving Iron Works?

The Court: And the actual payment of commission, you mean?

Mr. Egner: No, the actual payment to the Irving Company.

A. Some customers discount in ten days, others ordinarily pay in thirty days; occasionally there will be sixty, ninety and one hundred and twenty days before the account is paid to us.

Q. When does the Irving Company pay the commission with reference to the time of payment to the company itself? A. Fifteenth of the month following the date of our receiving the cash in settlement of the invoice.

RE-CROSS EXAMINATION by Mr. Kraetzer.

Q. Was that payment on the fifteenth of the month following receipt of payment invariable? A. Everything paid in January was paid to the salesmen on February 15.

Q. Everything, without exception? A. During 1921 and 1922, yes.

Q. So that from your knowledge of the books, you are able to state that all of the agents were paid during 1921 for all commissions earned and due prior to the date of each payment?

The Court: That does not follow. He said if the customer paid, then the agent got his money. As I understand it, there might have been a thousand dollars due an agent for January sales; $500 of that might have been paid in by customers settling with the company during January, and that $500 will be paid by the fifteenth of February. Is that the system?

The Witness: Yes, ordinarily.

Q. The commission was not due until the Irving Iron Works had actually been paid, isn't that right? A. Yes, that is right.

Q. As soon as the Irving Iron Works Company was paid, the agent in every instance was paid his commission on the fifteenth of the month following receipt of payment by the Irving Iron Works? A. I wouldn't say in every instance. You asked if every one was paid; I would say no. It is ordinarily our practice to do so; there were times when we didn't.

Q. During 1921 were there times you didn't? A. Yes.

VIRGINIA BELL sworn for complainant:

Direct-examination by Mr. Egner:

Q. Where do you reside, Miss Bell? A. 592 Seventeenth Street, Flushing.

Q. You are studying law, are you? A. Yes.

Q. Your father is District Attorney of Queens County? A. Assistant District Attorney, yes.

Q. Do you know Mr. Tarof—Mr. E. L. Tarof? A. Yes, sir.

Mr. Egner: Is that his right initials?

Mr. Kraetzer: Yes.

Q. Do you remember having seen Mr. Tarof in a Long Island Railroad train? A. Yes.

Q. That train was bound from what place to what place? A. From New York City to Port Washington.

Q. And when was that? A. That was one day last spring, I think.

Q. Can you give us approximately the date? A. The latter part of April or the first part of May, 1922.

Q. And where did you sit in the train with reference to Mr. Tarof? A. I was sitting on the inside and Mr. Tarof was sitting on the outside. Do you want me to tell what happened?

Q. Yes. A. I started to get out at my station and he was sitting on the outside, and got up and walked ahead; I noticed that he had left a package—a large envelope, and I picked it up, thinking that I could return it to him, so when I got out on the platform, I looked all over for him and I couldn't find him, and so I carried that home with me.

Q. What did you do with them? A. I looked over them and I thought that perhaps they were important,

that he was going out on some business and needed them. I noticed the address was the Hudson Terminal Building, and I thought—

Q. Did you speak to anyone about the papers? A. Yes, when my father came home, about half past four, that day—

Q. Don't tell what you said, but when your father came home, you spoke to him about the papers? A. Yes.

Q. Then what did you do? You spoke to your father? A. Yes.

Q. After that what did you do with this envelope and the papers?

The Court: Did you take them anywhere?

The Witness: Not that day.

Q. Did you give them to anyone? A. Later on I gave them to my father.

The Court: That same day?

The Witness: He looked over them and took them.

Q. And after that they were in whose possession, as far as you know? A. In the District Attorney's office.

Q. Have you those papers here today? A. Yes, I have.

Q. And from where did you get them? A. From the District Attorney's office.

Q. And are these the papers which Mr. Tarof left in the seat? Just look them over and tell us whether these are the papers he left in the seat? A. Yes.

Mr. Egner: I should like to offer these papers in evidence.

Mr. Kraetzer: I object on the ground that

they are not binding against this defendant. The connection has not been shown whereby the defendant could be bound by any act on the part of Mr. Tarof, particularly, what my friend will, of course, insist was a criminal act.

The Court: I will admit them conditionally, and conditionally upon my own inspection from them, and I may conclude from such inspection that they should not go in.

Mr. Egner: These papers consist of papers belonging to the Kerlow Company and papers belonging to the Irving Company.

The Court: You expect to identify them as such by other proof?

Mr. Egner: Yes. I merely show by her that she has these papers.

The Court: I think that they should be marked for identification.

Mr. Egner: I will ask that this folio be marked for identification. I should like permission to have the folio returned.

Marked Exhibit C43 for identification.

Mr. Egner: The folio just marked contains twenty-seven papers, and also a Manila folder in which they are enclosed.

Examination by the Court:

Q. Why were not these papers returned or an effort made to return them to Mr. Tarof, instead of putting them in the possession of the District Attorney? A. If I can say what I was told—

Q. You did it on the advice of your father? A. Yes. I brought them home; I asked him if they were important; he said, "I think I will call them up and

let them know." He said, "I will let them know, and see if they are." He said that a case had been brought recently in the District Attorney's office, and it was brought for grand larceny, and we didn't have any proof, but, he said, "These are the papers. I cannot understand how you found them."

Q. A coincidence? A. Yes. So I asked him what to do about them, and he said he would keep them.

Q. He relieved you of all further responsibility over them.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. You didn't know that the man who sat next to you in this train was Mr. Tarof at the time that he boarded the train, did you? A. No, I didn't even look at him at the time.

Q. Did you know Mr. Tarof at that time? A. No.

Q. When did you look at him? A. I was going home from law school and had my books, and as I got out at my station—Flushing, Long Island—I was sitting near the window—I dropped my little red cards from the book, and he stooped down to pick them up, and I looked at him, and he got up to let me pass, and walked ahead. I thought he was getting out at my station, but I found out later that he went through to the smoker and he got out at Port Washington.

Q. You found out later? A. Yes, because he told me so.

Q. You say as you got to the Flushing station you were about to get out? A. Yes.

Q. And you dropped some cards; did you arise from your seat when you got to the station? A. Yes.

Q. Was it as you arose that you dropped these cards? A. Yes.

Q. And they dropped in the aisle or on the floor in front of you? A. Yes.

Q. This man, who sat next to you, got up at the same time, did he? A. He got up and picked my cards up.

Q. He was sitting down, and had you passed out from between the seats when he got up? A. No.

Q. You were still standing there next to the window? A. Yes.

Q. And he, in order to pick these cards up, got up from his seat, was that it? A. Yes.

Q. And did he go out into the aisle to do it? A. Then as I tried to pass him, of course, he went in front of me, to let me out, and walked ahead, and I thought he was probably getting out at Flushing also.

Q. Was this after he had given you back the cards? A. Of course.

Q. And did you reseat yourself after he had given you the cards? A. No, I was just sliding out to the outside of the seat.

Q. What did that refer to, that you were just sliding out to the outside of the seat? A. Because I remember as I slid out I saw the envelope sticking out in the side of the seat, and as I got up then I picked them up with me.

Q. Was he right there? A. No, he had gone ahead, and quite a few people had come between us in the aisle, and so I thought when I got out at the station I would see him, because it takes quite a few minutes; there is quite a large platform, but I didn't see him.

Q. You say you got up in order to pass out; I suppose in front of him, to get off at that station, when

you came in the Flushing station? A. I could illustrate it; I was sitting near the window here (indicating), and this man was sitting here (indicating).

Q. He was sitting on the aisle? A. Yes.

Q. The seats were large enough to hold two people? A. Yes. I started to get up to get out, and my book dropped, and he stooped over this way (indicating) to get them, so I sat down while he stooped down. He was picking up my cards, so then he turned around and handed them to me, and then he got up, and as he got up I slid to the outside of the seat, and I looked down and I saw the envelope, and so I picked it up and looked at it, to see where he was, and four or five people had come between us, and so I had to wait, I couldn't pass out.

Q. You didn't call or attempt to attract his attention in any way? A. Oh, no, not down the aisle of the train.

Q. Did you look at the folder at that time to see what was in it? A. No, not before I tried to see where he was.

Q. Before you got off the car did you look in the folder? A. No, I didn't have a chance, the station was there.

Q. Was it tied up in any way? A. No, it just looked as it is now.

Q. You say it was stuck in the seat of the car? A. Standing up this way (indicating).

The Court: Along the arm part?

The Witness: Yes.

Q. Was it folded or unfolded? A. It was just like that.

Q. As I am showing it to you now? A. Yes.

Q. That is, so far as the individual letters are concerned, they were flat in the folder? A. Yes.

Q. When did you look at that? A. A car was waiting for me and when I got in, on the way home I looked over the papers, as I thought there was some contracting work that he would need to do that afternoon.

The Court: After you got off the car and got on the platform did you look for Mr. Tarof then?

The Witness: Oh, yes.

The Court: Did you see anything of him?

The Witness: No.

The Court: How long did you remain on the platform looking for him after alighting?

The Witness: About five minutes. I couldn't tell where he was; it was just as if the earth had swallowed him up.

The Court: Were there a number of people getting on there?

The Witness: Yes.

The Court: It is a long platform?

The Witness: Yes.

Q. What time did this train arrive at Flushing? A. I took the 12:22 from the Pennsylvania Station, which arrives about quarter of one.

Q. In the afternoon? A. Yes.

Q. When did you say you looked at the papers the first time? A. Going home in the car.

Q. What did you do when you got home with them? A. I just put them down on the desk and I went to the telephone to call up.

Q. You called up the man? A. I thought I could locate him through the Hudson Terminal.

Q. Were the papers in this order when you found the folder? A. Just like that, I think.

Q. Could you say that a letter from the Portland Cement Association was the first one on top? A. No.

Q. Could you say that this particular letter that I show you, which appears to be a letter addressed June 2, 1921, to E. L. Tarof, Data Department, from the Portland Cement Association, was in this folder at the time you picked it up? A. Yes, it was next to the last paper.

Q. And this carbon copy, dated June 30, 1921, would you say that that was positively in the folder? A. Yes.

Q. And the letter from the Portland Cement Association, dated June 24, 1921, addressed to Mr. H. H. Bunker, assistant manager, would you say that that positively was there? A. Yes.

Q. Then you looked at the papers very carefully, did you? A. I did afterwards, not at that time.

Q. What do you mean afterwards? A. After my father told me what they were.

Q. Oh, I see. You say you were going to call up the Hudson Terminal Building? A. Yes.

Q. And find out about the man, is that it? A. To see if I couldn't let him know that I had found them, but then I thought I was going in the morning, to school on an early train—I thought it wasn't very far from where I am, in the Woolworth Building, I thought it would be just as well if I waited until then, so I didn't do it.

Q. How soon after you got home did you start to make this telephone call? A. As soon as I got in.

Q. How far away from the station do you live? A. About ten minutes.

Q. And you were going to call up the Hudson Ter-

minal to get in touch with the man who lost them? A. With the firm he was connected with, of course, not the man.

Q. Your father came home that evening, did he? A. Early that afternoon, about half past four or five o'clock.

Q. And you showed him the package? A. Yes, he came home at half past four—I remember that, because I thought it was still time to call up; he told me they were important.

Q. You talked to him about the fact at that time? A. Yes, I showed them to him.

Q. Are you able to say that the papers in that package now, C43 for identification, are exactly as they were when you picked it up on the train? A. Yes.

The Court: Contained the same papers and no others?

The Witness: Yes, no others.

Q. You can say that positively? A. Yes.

Q. They have not been in your possession continuously from the time you found them? A. No.

Q. But you looked them up carefully to see just what letters were there? A. I cannot say, maybe there is a few that were there that are not there, but the ones that were in there are there now.

Q. Up to the time when Mr. Tarof got up and picked up these cards of yours, did you look at him? A. I looked at him then, because he took off his hat and handed them back to me, and I, of course, looked at him.

Q. Did you then, that evening, when your father came home, give him that package of papers? A. Yes.

Q. Was it your father who made arrangements to have you go to the office at 50 Church Street, to see if you could identify the man there? A. I don't recall how that came about. I know it was arranged with Mr. Brown, who met me at the District Attorney's office.

Q. Which Mr. Brown, the witness who has been on the stand here? A. Yes.

Q. Did you know Mr. Brown? A. No, I had never seen him before.

Q. What were the arrangements that you were to meet Mr. Brown at the District Attorney's office; for what purpose? A. We were going to this place, to see if I had seen this man before on the train.

Q. And was it Mr. Brown who accompanied you to Church Street? A. Yes—no, wait a minute; no, it wasn't, either.

The Court: Take your time; don't get confused. You don't have to be in a hurry.

The Witness: No, Mr. Brown brought me to Mr. Bell's office, and there I met a man—I don't remember his name—and he brought me up.

The Court: Mr. Bell's office, your father's office?

The Witness: No, sir.

Mr. Egner: Mr. Stephen Bell, the lawyer.

The Court: The gentleman sitting with Mr. Egner, and one of the counsel for the Irving Company?

The Witness: Yes.

Q. You went over to his office, did you? A. Yes.

Q. And then from his office you went where? A. 50 Church Street.

Q. Who went with you? A. An elderly gentleman, I don't recall his name.

Q. Was it someone Mr. Bell sent you? A. Yes.

Q. Was it a man by the name of Carroll? A. I think it was; the name sounds familiar.

Q. You remember testifying before the Grand Jury, don't you, over in Queens County on July 6, 1922? A. Yes.

Q. And do you recall stating that you went with a Mr. Carroll to New York to 50 Church Street? A. Yes, if I said Mr. Carroll, it was. At that time I remembered his name.

The Court: You don't recall the name now?

The Witness: No.

Q. What happened there at 50 Church Street? A. Mr. Carroll and I went upstairs and we went into the Kerlow Iron Works, I think it was, office, and I looked all around, and I said I would like to speak to Mr. Tarof, so this man called, he said, "Mr. Tarof," and he came out, and I recognized him as the man who sat beside me in the train. I said, "Do you remember leaving some papers in the Port Washington train quite some time ago?" He said, "Oh, yes," and he said, "Did you find them?" I said, "Yes," and I was quite confused at the time, and I said, "How was it I couldn't find you?" And he said, "Oh, I live in Port Washington. I went ahead to the smoker"—at my station there—"I didn't get out at Flushing," so he explained why I hadn't seen him.

The Court: What else happened?

The Witness: I said, "I didn't bring the papers in with me, but I was passing, and I thought perhaps you would want them," and I said, "Where shall I send them to you?" And he said, "Just a minute and I will give you a card," so he brought his card out and he signed his name, "E. L. Tarof," and gave it to me.

Q. And this conversation that you had with the man you spoke to was all a matter of prearrangement, that is, what you were going to do, to go to find this man? A. I was going to see if that was the man that sat opposite me in the train.

Q. What was it guided you to the same Tarof, why did you ask Mr. Tarof over there? A. That I don't know.

The Court: Any one suggest it to you?

The Witness: Some one must have, or I wouldn't have asked for him.

The Court: Can you recall how you came to ask for Mr. Tarof and how that particular name arose in the matter in connection with your visit there?

The Witness: Someone asked me to describe him before I went over there—to describe the man who sat beside me, and I told him, and he said, "That tallies up with a Mr. Tarof," and they said, "Mr. Tarof works in the Kerlow Iron Works and you go over and just see whether he was the man that sat beside you or not."

Q. Who was it that made this suggestion? A. I cannot recall that.

Q. You don't know whether it was Mr. Bell or Mr. Brown? A. No, it was one of them.

Q. Was it your father? A. No, because he didn't know.

Q. Was it Mr. Irving? A. It might have been him; I was just thinking of that. On the telephone one night I was thinking that Mr. Bell called up Mr. Irving.

Q. When you say, "Mr. Bell," whom—? A. My father called up Mr. Irving and told him that his daughter had found the papers, and about the en-

closures, and he said, "You tell me, Mr. Irving"—anyway, the name of Tarof came up.

Q. Did your father say to Mr. Irving, "What does Tarof look like?" A. Not until Mr. Irving said something about some man Tarof; he said, "What does he look like?" He said, "Wait a minute, I will ask"—Mr. Irving, evidently, asked my father for me to describe the man who sat beside me, so I did. I told him all I remembered and he repeated it over the telephone, and Mr. Irving said, "That sounds very much like Tarof."

Q. You remember that is where you got your information as to asking for Tarof? A. Yes.

The Court: Did Mr. Tarof ask you to return these papers to him when you met him at that interview?

The Witness: Yes.

Q. Did he ask you your name and address? A. No, he didn't.

Q. Who was it that you were going to call that afternoon when you got home? A. At the Hudson Terminal.

Q. Was it the concern? A. I didn't exactly know what to do. I had the idea to call.

Q. Whose office? A. I didn't know. I was going to ask for—I noticed some firm's name—there were two or three firm's names, but the most of one firm I was going to call.

Q. Who was it? A. I cannot say, I think it was the Kerlow. I know I saw the name several times, and I thought it must be that firm's papers, although I noticed several others, that belonged to Irving. I didn't know what it was all about.

Q. Where did you get these papers from to bring

them over here today? A. From the District Attorney's office.

Q. Are you related to Mr. Stephen Bell, the attorney? A. No.

Q. Have you any connection with the District Attorney's office in Queens County, any official connection? A. No.

PAUL L. PRICE sworn for complainant:

Direct-examination by Mr. Egner:

Q. You are general manager of the Irving Iron Works Company? A. Yes, sir.

Q. And have been how long? A. About ten years.

Q. I show you Exhibit C43 for identification and I ask you to look through that and to separate papers from that folio which are the property of the Irving Iron Works Company.

The Court: If there are any in there that are property of the Irving Iron Works.

Mr. Kraetzer: I object as calling for a conclusion.

The Court: It is calling for a fact. You can examine him afterwards when he selects those which he knows are the property, if there are any, of the Irving Iron Works. I want him to be positive. I want him to say if there are any there belonging to the Irving Company, and then I want to know how he knows it.

A. I can identify these four as being the property of the Irving Iron Works Company.

The Court: Which four are you referring to?

Q. You refer, in the first place, to a blueprint showing certain decimal figures and designated decimals of a foot? A. That is one.

Q. You refer secondly to a carbon copy of—what purports to be a carbon copy of a letter from the Irving Iron Works Company to the Philadelphia Electric Company, dated June 7, 1921? A. Yes.

Q. You refer, in the next place, to an original letter, dated June 24, 1921, from J. E. Freeman, Manager, Structural Bureau, of the Portland Cement Association, to H. H. Bunker, Assistant Manager of the Irving Iron Works Company, dated June 24, 1921, and annexed thereto a carbon copy of what purports to be a letter from the Irving Iron Works Company to the Portland Cement Association, dated June 30, 1921?

The Court: In answer to the letter of June 24?

Mr. Egner: Yes, apparently.

Q. You also refer to an original letter dated June 2, 1921, from J. E. Freeman, Manager, Structural Bureau, Portland Cement Association, to E. L. Tarof, Data Department, Irving Iron Works Company, and annexed thereto, what purport to be carbon copies of two letters, one from the Irving Iron Works Company to the Portland Cement Association, dated June 6, 1921, which apparently acknowledges receipt of a letter of June 2, and the other, carbon copy of a letter from the Irving Iron Works Company to the Portland Cement Association, dated June 10, 1921. Now, Mr. Price, what is your reason for stating that the blueprint, called "decimals of a foot," is the prop-

erty of the Irving Iron Works Company? A. It is a blueprint of a standard sheet of the Irving Iron Works Company.

Q. Have you ever seen that particular blueprint before? A. I wouldn't say that I ever did.

Q. Who prepared the data which is shown on that blueprint? A. Draftsman in our drawing room, but I don't know what draftsman.

Q. Is that data obtainable anywhere else than in the Irving Iron Works Company? A. The data is, yes.

Q. What is there about the paper that will enable you to say that it was a paper that had been in the possession or belonging to the Irving Iron Works? A. None; I have so many blueprints taken off of it. I have one in my own desk, that I use quite often. I simply recognize it as being a print of that sheet, because I saw the sheet very often.

Q. Referring to the letters which you have identified, what is your reason for stating that they are the property of the Irving Iron Works Company? A. The letter of June 30 to the Portland Cement Association is a letter written and signed by the Irving Iron Works Company. It has the Irving Iron Works Company rubber stamp impression on it—a reference stamp.

Q. Did you ever see the letter or a copy of the answer attached thereto, before; have you ever seen them before today? A. Yes.

Q. In the possession or in the office of the Irving Iron Works Company? A. Yes.

Q. When? A. June 27, 1921.

Q. Did you have anything to do with respect to correspondence down there? A. I did; my date is on here, opposite my letter, on the reverse side of this

letter; opposite my letter C is the date there in my handwriting.

Q. You identify that as your own? A. I do.

Q. What do you mean by your letter? A. The departments of the Irving Iron Works Company are all indicated by letter.

Q. And your department as general manager is what letter? A. Letter C.

Q. Is that an original notation, indicating that you had read the letter? A. Yes, it is.

Q. Referring to the carbon copy of the letter of June 7, how do you identify that? A. I identify it by general appearance—being signed, "Yours very truly, Irving Iron Works Company," and having the impression of the rubber stamp, so-called reference stamp, on the face of it.

Examination by the Court:

Q. Where is that stamp? A. There (indicating).

Q. When is that rubber stamp put on, at what stage? A. On the carbon copy; it might be put on any time; the stenographer stamps them up sometimes ahead.

Q. When is it put on ordinarily? A. Ordinarily when the mail comes in.

Q. Is there anything in the subject-matter of that letter that you are familiar with? A. I am perfectly familiar with the subject-matter, and perfectly familiar with the discussion that went on, and the reason that it was written, and know that it was written at the time.

Q. And know that it is a copy? A. I know that such a letter was written and there was a copy of such a letter in the files of the Irving Iron Works.

Further examination by Mr. Egner:

Q. Referring to the original letter from the Portland Cement Association of June 2, 1921, and the carbon copies attached thereto, what makes you identify those as the property of the Irving Iron Works? A. First, because I remember the correspondence. I remember the subject of it, and I remember the occasion of it; secondly, because the letter is stamped with the Irving Iron Works receiving stamp, dated June 6, 1921; that receiving stamp is kept in the office where the mail is received, and it is put on the mail as it is opened and comes in.

Q. Does that correspondence also contain the rubber stamp showing the examination by the different departments? A. All of these correspondence, all three of these letters, have that reference stamp on it. My notation, in this case, is not on any one of them, for some reason or other, although I remember the letters and the correspondence.

Mr. Egner: I should like to offer the file, offering particularly these letters which have been identified by Mr. Price.

The Court: Do you know how these letters got out of the possession of the Irving Company?

The Witness: I do not.

The Court: Do you want to cross-examine on the question of identification?

Mr. Kraetzer: Yes.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. Have you ever seen the letters in the file before today? A. Yes.

Q. Where? A. In the Irving Iron Works Company office.

Q. When? A. Just a minute; do you mean did I see them in the file?

Q. I am talking about the whole file.

The Court: This is the file; did you ever see the four letters or papers contained in this file before today?

Mr. Kraetzer: You misapprehended me. I will reframe the question.

Q. Did you ever see that manila folder, now marked Exhibit C43 for identification, with the contents, before today A. I never saw the manila folder before today, to my knowledge; I have seen part of the things that are in it, before, but some of it I don't remember ever having seen it.

Q. What part did you see, the parts that you have identified particularly? A. Not all of those four, these two, referring to the blueprint and the Portland Cement Association letter of June 2, 1921, and the reply thereto.

Q. And did you see any of the other letters in the file before today? A. I saw several of these letters of Fasler & Kline.

Q. Where did you see those? A. In the District Attorney's office in Long Island City, at the court house.

Q. The subject discussed in these letters with the Portland Cement Association has to do with certain information with regard to the use of cement, on which subject the Portland Cement Association purports to give advice generally, does it not? A. I don't know that it gave advice generally, until we raised the question with them.

Q. But that is the purpose of the association, is it not, to give advice generally on the use of cement? A. Yes.

Q. That blueprint "Decimals of a foot," what are the characteristics of this blueprint which leads you to say that that is specifically from the Irving Iron Works Company? A. The draftsmanship of the letter, they are familiar to me.

Q. It is a blueprint that is in general use about the plant there? A. Yes.

Mr. Kraetzer: That is all.

The Court: I shall admit these four and the folder containing them, and if proper connection is made with the remaining sheets in the file, I will probably be inclined to admit them. I am not admitting them as the property of the Irving or Kerlow. I am admitting them as papers identified by the witness which were at one time in the possession of the Irving Company.

Mr. Egner: Will counsel admit that the remaining papers in this file, and particularly the letters that purport to have been written to the Kerlow Steel Flooring Company, were written to that concern?

Mr. Kraetzer: I don't feel that in justice to my client I should make that admission.

The Court: I don't think I should press counsel to make any admission. I think I will admit the four papers and the cover, and what objection, if any, is there to the admission of the balance for whatever they may be worth. The situation now is this, that a young lady comes on the stand and testifies that on a train

last May or June she found a package of papers containing the exact papers now offered in court, and which have been marked for identification C43. These papers have been in the possession of the District Attorney of Queens County from the time they were found until today. The witness is produced, who is the general manager of the complainant for the past ten years; he identifies a number of these papers—the blueprint and some correspondence —I think three letters, but there are more letters than the three, because it contains the originals and copies of the answers thereto. I think sufficient connection with the issue involved in this case has been shown by that identification, and I am inclined, regardless of the subject-matter of the papers that may be in the file, to let the entire folder go in for whatever significance and weight it may have in connection with the issue here.

Mr. Kraetzer: It is on that particular ground that I press my objection that these papers are absolutely immaterial, so far as the issue here is concerned.

The Court: I will state one more thing, which I withheld, but will mention it now. The offer is made by the complaint to show a conspiracy on the part of Mr. Bunker and his associates, including Mr. Tarof to practically disrupt the business of the Irving Company, or take away from them by unfair methods, and by in fact abstracting its correspondence and using the same, and information that belongs solely to the Irving Company. Now, when the witness who found these papers called at the office of the Kerlow Company, she finds a

man whom she recognizes as the same individual who lost the papers, in the office of the Kerlow Company. He admits he lost the papers and doesn't request the return, according to her statement, and until I get some satisfactory explanation from him or from others connected with the Kerlow Company and who were in the office at the time, I think I am justified in admitting the papers as having some significant connection with the present issue before me, and I am inclined to admit them on that ground.

Mr. Kraetzer: May I suggest a correction? My recollection was to the effect that Miss Bell on her visit to the Kerlow Steel Flooring Company told this man whom she saw, that she had this package of papers, and that he not only asked her to return them, but gave her his card with his name on it.

The Court: I think the correction is proper, and should be made. I think you are right, and I am in error about it.

Mr. Kraetzer: I should like to place on the record an objection, on the ground alread specified, to the effect that the papers themselves and the incident testified to is immaterial, so far as the issue here is concerned, and on the further ground that the testimony is incompetent, in that no sufficient connection has been shown to bind the defendant for the act of Tarof.

The Court: I shall overrule the objection, and I will admit, first, and separately, the folder and the papers that Mr. Price has just identified with particularity; secondly, I will admit the balance of the papers that were in the folder at the time that they were found, that are now presented, as a separate exhibit.

Mr. Egner: I now offer separately the letters and blueprint.

Blueprint marked Exhibit C43.

Original letter of June 2, 1921, from Portland Cement Association, and two carbon copies of Irving Iron Works Company letters annexed thereto, marked Exhibit C44.

Carbon copy of letter from Irving Iron Works Company to Philadelphia Electric Company, dated June 7, 1921, marked Exhibit C45.

Original letter from Portland Cement Association, dated June 24, 1921, and carbon copy of reply thereto, dated June 30, 1921, marked Exhibit C46.

Mr. Egner: I next offer the other letters and documents contained in the folder, which will be marked as one exhibit, and which consists of sixteen papers.

Marked Exhibit C47—sixteen papers.

Mr. Kraetzer: Are all of the other papers correspondence having to do exclusively with the Kerlow Company—

Mr. Egner: I will make a statement which I think will simplify the matter.

Counsel have agreed that copies will be made of the so-called Irving papers, which have been separately marked, and copies will be used, in lieu of the originals, which we are returning to the District Attorney. With respect to the other papers, we have agreed to waive the necessity of producing copies, but I shall now state on the record what these letters are, with the assistance of counsel, and then I think we will have everything here that we need.

The folder is a manila folder, and on the inner sheet it has a printed summary of stand-

ard construction and standard units of the Kerlow Company. On the inside of the back sheet it has a printed summary of the standard sizes of steps made by the Kerlow Company and also information as to Kerlow concrete inserts, Kerlow Universal register and Kerlow Universal radiator guard. Both sheets have the details written in ink, showing the required deflection to determine size of grating for a given span and load.

The other sixteen papers are as follows:

Original letter of Fasler & Kline Iron Works, Inc., January 25, 1922, to Kerlow Steel Floor Company, attention Mr. H. H. Bunker.

A manila sheet showing lead pencil computations and yellow sheet showing other lead pencil computations, and referring to Kerlow Type K4 and Kerlow K5 and Kerlow 1 1/2 inch x 1/8 inch.

A letter of March 28, 1922, from Fasler & Kline Iron Works Company, Inc., to Kerlow Steel Flooring Company, giving a quotation.

A letter of February 3, 1922, from Fasler & Kline to Kerlow Steel Flooring Company, giving a list of the prices per square foot of Kerlow floor to be installed.

Small white sheet, with certain lead pencil memoranda.

An original letter of February 1, 1922, from Fasler & Kline to Kerlow Steel Flooring Company, giving a quotation on Kerlow flooring.

Letter of March 28, 1922, from Fasler & Kline to Kerlow Steel Flooring Company, giving a quotation on some frames.

Letter of April 7, 1922, from Solry Tile Manufacturing Co. to Kerlow Steel Flooring

Company, making a general proposition of furnishing their composition surface for standard gratings of the Kerlow Steel Flooring Company.

Page 6 of the Kerlow Steel Flooring Company's sales manual, giving standard prices and specifications of Kerlow Steel Flooring, a copy of the Steel Flooring Company's catalogue and confidential price list of the Kerlow Steel Flooring Company.

Original letter from Fasler & Kline to Kerlow Steel Flooring Company, dated January 18, 1922, giving prices on miscellaneous standard products of that company, that being a general statement of prices, not specifying any particular jobs.

A copy of page 7 of the sales manual, giving standard prices and specifications, continued.

Another copy of the confidential price list of the Kerlow Steel Flooring Company, with notations in ink for various types of carriers for the steps of the Kerlow Steel Flooring.

Mr. Egner: Do you know whose handwriting that is?

Mr. Kraetzer: No.

Mr. Egner: Does counsel know whose handwriting that is (indicating)?

Mr. Kraetzer: We cannot make any admission on that. Don't ask us to.

Mr. Egner: The last paper is a blueprint of Kerlow grating sizes.

The folder also contains some blank sheets of paper with nothing on them, making the total number that I mentioned on the first occasion.

ARTHUR C. DAVIS, sworn for complainant:

Direct-examination by Mr. Egner:

Q. What is your profession? A. I am a mechanical engineer.

Q. How much experience have you had? A. About twenty-one years.

Q. Were you at one time in the employ of the Irving Iron Works Company? A. I was.

Q. And when? A. I went with them in August, 1916.

Q. How long did you stay? A. I left in May, 1918.

Q. And what was your position there? A. Assistant manager.

Q. Under Mr. Bunker or under Mr. Price? A. Under Mr. Price.

Q. I show you Exhibit C20, which indicates the type of grating, while you were in the employ of the Irving Iron Works Company; did you see a piece of grating of that type manufactured? A. I did.

Q. And what was that called at that time? A. At that time I think that was called Type K.

Q. Just tell us what you know of your own knowledge about the construction of a grating of that kind at that time? A. What do you mean by the construction?

Q. Whatever you know. You say you saw a piece of that work in the original plant? A. Yes.

Q. Tell us your recollection of that? A. That piece of grating was made up as a sample from drawings which were furnished to me by the order of Mr. Price. At that time, in order to make this grating, it was necessary to make the steel dies for the grating. At about the same time there was an order came

out for the steel dies, and from the steel dies this piece of grating was made.

Q. Do you know what became of that piece of grating after it was made? A. That piece of grating was turned over to Mr. Price.

Q. As near as you can will you tell us about when that was? A. That is kind of hard for me to say; it was some time in 1917; I would say some time in the fall.

Q. You are at present employed where? A. By the New York State Bridge and Tunnel Commission and the New Jersey Interstate Bridge and Tunnel Commission.

Q. As engineer? A. I am.

Q. And your superior is Mr. Singstad? A. He is.

Q. Do you recall having had a talk with Mr. Singstad about a letter from the Kerlow Steel Flooring Company, which I now show you? A. I do.

Q. Where was that? A. In Mr. Singstad's office.

Q. Who called this letter to your attention at that time? A. Mr. Singstad passed the letter on to me.

Mr. Kraetzer: I object to any further testimony as to conversation.

The Court: He hasn't admitted it yet.

Q. Did you have any talk with Mr. Lown shortly after the Kerlow Steel Flooring Company started? A. I did.

Q. Can you fix the time? A. That was in Mr. Lown's office at 50 Church Street, sometime in the month of January, 1921.

Q. 1921? A. I think it was 1921.

Q. When was it with reference to this year, how many years ago? A. My recollection is it was 1921.

Q. And in what month? A. Now, let me see; perhaps I can check that up better—I think I am right on that, 1921.

Q. You distinctly remember having a conversation with him about the Kerlow Company? A. Yes.

Q. What was the conversation? A. The conversation in general was to the effect that the Kerlow Steel Flooring Company was launching a campaign against the Irving Iron Works Company, which would eventually close up the works of the Irving Iron Works Company.

Q. Do you recall anything else that was said? A. He also said that he would give the Irving Iron Works Company about one year to live.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. What was the occasion for your going to Church Street, Mr. Davis? A. I believe in this letter that you have shown me here as Exhibit C27, it says something about catalogues being available, if I am not mistaken (witness shown letter by Mr. Egner).

The Court: Was that the reason you went there?

The Witness: Yes, it says here, "Samples and catalogues await your request," and I went down there with the idea of getting these catalogues.

The Court: What is the date of that letter, C27?

Mr. Egner: There is no date; there is a lead pencil date 1/12/22; what that indicates, I don't know.

Q. You went down to get a catalogue? A. Yes, and the information that he said was available.

Q. Did you talk about the product of the Kerlow Steel Flooring Company at that time? A. The product was explained to me at that time.

Q. Did you go into the question of price? A. No, sir.

Q. No question of price at all? A. I wasn't interested at that time in prices, although it may have been mentioned. I didn't go down there with the idea of getting price; I wanted to familiarize myself with the product.

Q. For whom were you working? A. For the New Jersey Interstate Bridge and Tunnel Commission.

Q. You were not interested in the cost of the grating? A. I was to the extent of getting an estimate on the quantity; I had been told that the grating was considerably cheaper than the Irving grating.

Q. The idea was to use this grating in connection with the construction of the tunnel? A. It had been my idea in looking over the grating, to use it in connection with the ventilating buildings of the tunnel, over the shaft and not a part of the tunnel, as I infer you mean.

Q. So, this letter, C27, was the first information you had with regard to the Kerlow grating? A. I had known in a general way that it was in existence. However, it was the first inference I had that they had an office at that place.

Q. Isn't it correct, Mr. Davis, that you were the man who assigned the letter Type K to the form of grating, the picture of which was shown to you, Exhibit C20? A. Yes.

Q. You say that was back in 1917? A. That is my recollection.

Q. Did anybody ever call on you—a salesman of the Kerlow Company ever call on you? A. Yes.

Q. Was that prior to your visit? A. It was in such close proximity to the time of my visit, I cannot say whether it was just prior or immediately after.

Q. Do you know the name of the man that called? A. There were several men called to see me.

Q. From the Kerlow Company? A. At my office at the Tunnel Commission.

Q. Did you introduce the man who called to see you, to your associate, Mr. Singstad? A. I did not.

Q. You are sure of that? A. I am quite sure.

RE-DIRECT EXAMINATION by Mr. Egner:

Q. I show you, Mr. Davis, a photostatic copy of one of the exhibits in the interference case, namely, shop order record of dies; will you tell me whether this is the shop order that you have referred to in connection with the photograph of the grating, Exhibit C20, that was just referred to? A. That is the copy of that shop order.

Mr. Egner: Have you any objection to my using this in lieu of the original?

Mr. Kraetzer: No.

Q. Which is the reference to that particular item? A. "1 Sample Type K grating," and there is a little sketch showing the shape of this grating, the shape of the bar, which was the real designation of the grating.

Mr. Egner: I offer that in evidence, consisting of three sheets, but all being part of the one document.

Marked Exhibit C48.

The Court: Let a number appear on the one that you read from.

Marked Exhibit C49.

RE-CROSS EXAMINATION by Mr. Kraetzer:

Q. This Exhibit C49 is a card record that was maintained by you of samples of grating? A. That particular card was.

Q. And was it from this card record that you obtained the information that the letter K was the next letter to be assigned? A. No.

Q. Did you have some other records that would indicate that? A. We knew what the letter was of our last type of grating we made.

The Court: Did you have any record giving you that information?

The Witness: No, I haven't any record of that I could point to, unless I could see the catalogue. This was part record.

Q. But it was your practice, was it, to assign the letter to the new type of grating as it came along? A. Why, yes.

Q. And that, in the course of your duties, you had done from the time that you were employed by the Irving Iron Works Company? A. Not from the time that I was employed there. No.

Q. But either by record or from information from the catalogue or elsewhere, you knew that the last grating that had been issued had been assigned the letter J, was that it? A. Yes.

Q. And the K was the next one to be assigned? A. Yes.

Q. How long before the date of the assignment of the letter K to this particular type of grating that I am referring to, that shown in Exhibit C20, had you assigned the letter J to some type of grating? A. I cannot answer that question. That letter may or may not have been assigned by someone else, and I acted under order from them, which was a perfectly logical procedure.

Q. Which letter do you refer to? A. J.

Q. J may have been assigned by someone else? A. Yes, my superior may have told me that the former grating was J.

Q. What was the type of J grating? A. I cannot recall that.

Q. What letter was assigned to that type of grating —I am indicating a picture of a patent; I will mark it for identification, so that we can have it properly identified.

Marked Exhibit D19 for identification.

Q. (Continuing.) Did you ever see that type of grating, as indicated by Exhibit D19 for identification? A. I have.

Q. What type of grating was that?

The Court: What letter did it have?

The Witness: As far as I know, I don't know that any letter has been assigned to that; I did not assign a letter to that grating.

Q. How long before the manufacture of the grating, C20, was the grating indicated by D19 for identification manufactured?

The Court: Was it in existence before the Type K—the one without the letter?

The Witness: It was.

The Court: How long before, he asked.

The Witness: I cannot say how long.

The Court: Was it in existence when you went in the employ of the Irving Company?

The Witness: No.

Q. Do you recall the shop order for the sample of grating shown as D19 for identification? A. No, I do not recall that shop order.

Mr. Kraetzer: With your Honor's permission, I would like to know from counsel if the cards of Mr. Davis, if there was any prior to this one, were used in the interference, whether they are in evidence. I am quite sure they are not in evidence here.

Mr. Egner: They are not in evidence here; I don't know about the interference case.

With reference to C49, I find on examination that this exhibit should only contain one page, and I, therefore, have separated the other two pages. The page in question contains the Exhibit C49.

Q. Referring to C49, you have stated, I believe, that the rather faint sketch down here at the bottom was placed on that card by you? A. Yes.

Q. And when was that put there? A. About the date of the shop order; either that or before, or a short time after.

The Court: What is the date of the shop order?

The Witness: 9/27/17.

Q. Do you recall the making up of the car step for the Irving Iron Works Company? A. Yes.

Q. Do you recall about when that car step was made up? A. As near as my recollection goes, it was in the year 1917; I cannot tell you what month.

Q. Was it the end of 1917? A. I cannot specify that.

Q. What was the letter that was assigned to the car step? A. I cannot recall that either.

Q. Was there another card maintained by you similar to C49 that would continue on with the same record of samples? A. Yes.

Mr. Kraetzer: Has that card been produced, Mr. Egner? May I ask that the Court continue Mr. Davis' record from this time on?

Mr. Egner: If we have it, I will produce it.

Q. You recall that there was such a card? A. Yes.

Q. You were in charge of the manufacture of samples and the record of the manufacture of samples from the date of the last entry there until the time that you left the employ of the Irving Iron Works Company would be shown on the cards that continued this record? A. Yes.

Mr. Egner: We will produce that on Wednesday, if there is such a card.

Q. What was the occasion for putting that sketch on that card, C49? A. That to me was a new type of grating, I was not familiar with it and didn't know whether the letter would be changed, and in order to fix it in my mind, I put the sketch there.

Q. What about the letter? A. I say, it was a new type of grating to me, and I didn't know whether they would change the letter or do something else

with it, and I wanted to stamp that particular type of grating in my mind, and I put the sketch on it.

Q. You changed it from what to what?

The Court: He said he didn't know but what they might change it.

Q. What did you have in mind as to this? A. They might change it from K to any other letter or number; I had no control over that. If my superior officer gave me an order to change it, I changed it, but this was a new type of grating and I wasn't familiar with it to the extent of not becoming changed, and I put it there, and you will find on other cards that I carried out a similar practice of noting the things that were new.

Q. Was it customary to change the letters of grating after you had once assigned them? A. I don't know of it having been done, but there is always a possibility of it being done.

Q. Were any of the other types noted on that card, C49, new types of grating? A. No, they appear to be old types.

Q. What is the last letter shown there or indicated as a sample? A. The last grating indicated by a letter is the Type G.

The Court: Isn't Type K indicated there?

The Witness: Type K is indicated; I did refer to that.

The Court: Is there anything after Type K?

The Witness: There is a Type D shown.

The Court: That came into existence after Type K?

The Witness: No.

The Court: He asks you what is the last letter shown?

The Witness: He asked what was the last letter shown on this card?

The Court: Yes.

The Witness: The last letter ahead of the Type K I referred to is Type G.

The Court: He asked you the last letter; is there anything subsequent to K shown in its alphabetical order, L, M, N, O, P, any of those letters shown?

The Witness: No.

The Court: K, then, is the last letter shown?

The Witness: Yes.

Q. Was Type K started during the time that you were employed by the Irving? A. I think not.

Q. Was Type M? A. No.

Q. What type of grating was used on the car step that was made about that time which you speak of? A. I believe that was the Type D.

ELMER E. BROADHEAD, sworn for complainant:

Direct-examination by Mr. Egner:

Q. What is your position with the Irving Iron Works Company? A. Assistant sales manager.

Q. And your superior in the sales department is who? A. Mr. Irving.

Q. How long have you been with the Irving Company? A. Since February 1, 1922.

Q. In connection with the preparation of this case were there prepared under your general supervision a list of customers and prospective customers of the Irving Iron Works Company? A. Yes.

Q. Are these lists which I hold in my hand the lists in question? A. Yes, sir.

Q. Have you made an estimate as to the number of names on these lists? A. Yes, sir.

Q. How did you make that estimate? A. We approximated the number of names on each page and totaled the number of pages.

Q. And so doing, how many names of customers did you estimate to be in these lists? A. Approximately 15,000.

Q. No, customers? A. 1,300.

Q. Using the same method of calculation, how many names of prospects did you find? A. Approximately 13,000.

Q. Is that in addition? A. That is in addition to the customers.

Q. So that the total of both customers and prospective customers would be how many? A. Approximately 15,000.

Q. It is your department, is it not, has charge of these salesmen's C. I. M.'s and the cards? A. Yes.

Q. All the information pertaining to sales? A. Yes.

Mr. Egner: I should like to ask counsel whether they will admit that the Kerlow Steel Flooring Company got the following jobs through the agents whom I shall name, namely: Lansing Power House, 10,000 square feet, through Scarth?

Mr. Kraetzer: Yes.

Mr. Egner: The Detroit Municipal Railway, through Mr. Scarth?

Mr. Kraetzer: No. My answers here will be subject to looking up the records of the

company, because we are all speaking from memory. The present information is we did not get the Detroit Municipal Railway job.

Mr. Egner: The Horrocks Iron Works job, through Mr. Madden?

Mr. Kraetzer: Yes.

Mr. Egner: 1,450 square feet. The Detroit Edison Company, 12,000 square feet, through Mr. Scarth?

Mr. Kraetzer: Yes.

Mr. Egner: National Iron Works job, through Mr. Kennedy?

Mr. Kraetzer: Yes. I am informed that there may be some qualification as to the first job mentioned, the Lansing Power House job, Mr. Egner. We may want to qualify our admission as to that.

Mr. Egner: Is there any qualification as to the Detroit Municipal Railway job?

Mr. Kraetzer: They tell me they did not get that.

Q. Have you had prepared under your supervision a statement showing the contents of your files, as far as cards and C. I. M.'s are concerned, upon each of the jobs which I have just mentioned? A. Yes sir.

Q. I show you a statement and ask you whether this statement correctly sets forth the entries upon the cards referring to that job? A. Yes, sir.

The Court: The Lansing Power House job?

Mr. Egner: Yes. I should like to offer this in evidence. The original cards are here, and I thought it would be a very much more convenient way to make this statement of what

they contained, and the cards are here subject to examination and cross-examination.

Mr. Kraetzer: It strikes me we should have a chance to check them back with the original C. I. M.'s from which they were made.

Mr. Egner: If these go in I am willing to turn these over to counsel to examine at their leisure.

The Court: They can be admitted subject to verification, if counsel desires to do so, and subject to correction, if the investigation on the part of counsel shows any error.

Mr. Egner: I offer, first, statement with respect to the Lansing, Michigan, job.

Marked Exhibit C50.

Q. Have you a similar sheet with respect to the Horrocks Iron Works job? A. Yes.

Mr. Egner: I offer that in evidence.

Marked Exhibit C51.

Q. And also a sheet with respect to the Detroit Edison Company job? A. Yes, sir.

Mr. Egner: I offer that.

Marked Exhibit C52.

Q. And a similar sheet with respect to the National Iron Works job? A. Yes, sir.

Mr. Egner: I offer that in evidence.

Marked Exhibit C53.

Mr. Egner: May I ask counsel whether the Kerlow Company got the following jobs: The Atlantic Elevator Company, Philadelphia, Pennsylvania.

Mr. Kraetzer: I think you will have to give us time to look these things up.

Mr. Egner: May I have the witness identify these?

Mr. Kraetzer: Yes, we will look them up and let you know.

Q. I show you another paper and ask you whether it gives a reference to entries on cards showing so-called missionary work done by your salesmen with respect to certain concerns more particularly set forth on that card? A. Yes, sir.

Q. You have checked that off with the original card record? A. Yes.

Mr. Egner: I will mark that now for identification, offering it later when you advise me whether you had these jobs.

Marked Exhibit C54.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. So far as these lists are concerned, did you check them back with the cards at all? A. Yes, with the original cards.

Mr. Kraetzer: I ask permission for myself, without showing it to anyone else, to look at the make-up of the list, for the purpose of cross-examination.

Mr. Egner: I have no objection to counsel seeing one of them. Your Honor will recall that I promised to produce someone who made the computation. Now, he is here, subject to cross-examination. I am quite willing that counsel should see one of these. I am unwill-

ing, unless the Court so orders, to let them see these lists. Your Honor said that if there was any further question about the correctness of the amount, that you would permit Mr. Bindseil to examine it as master and report to you.

The Court: Mr. Broadhead has testified that he has made computation of the actual customers and the prospects, as he terms them, and he tells me that the total of the two amounts to 15,000, about. He has 1,300 customers and there are 13,000 prospects. I suppose those figures have considerable significance in the case. Suppose there were only one-fifth as many actually, the significance of the figures might be reduced just one-fifth.

Mr. Egner: The significance is entirely on the accuracy of Mr. Irving's estimate that he made in his affidavit, and your Honor said that they might go into the question of the number, so that you might know whether Mr. Irving had sworn carelessly.

The Court: You are endeavoring to corroborate Mr. Irving?

Mr. Egner: I haven't offered anything to indicate the number of customers we had. That was not offered here before your Honor. That was brought out by them on cross-examination of Mr. Irving, and has to do with his credibility entirely. I haven't brought any evidence here as to the number of customers. I have offered no testimony whatever as to the number of names on these lists. The thing came up in the case entirely upon Mr. Kraetzer's very elaborate cross-examination of Mr.

Irving, because he asked that we have someone here. I have produced it and your Honor will recall that—

The Court: I am not going to compel you—if you want to withdraw this line of testimony, I will not compel you to put it in; if you do, I don't see how I can shut the door to the other side cross-examining about it.

Mr. Egner: I have one page which I will show to counsel, and perhaps he can cross-examine on the one page. I quite realize that if I offer any testimony, then I must go all the way, but I am merely producing this as good faith on a matter brought out on their cross-examination.

The Court: If you insist on letting it stand, then you force me to open the door. The total number of customers and prospects may be immaterial anyway.

Q. In checking back these lists, Mr. Broadhead, you say that you checked them back with the actual cards? A. I was under the wrong impression when I answered that question; I thought you referred to the other evidence that I testified to, and not these lists.

Q. In the check-up or computation of these lists that have not been marked in evidence—purporting to be the lists of the customers and prospects, did you check them back with the card records of the Irving Iron Works Company? A. At the time the count was made?

Q. At any time. A. No, sir.

Mr. Kraetzer: Then I move to strike out his testimony as to whether the list of customers contains list of prospects.

RE-DIRECT EXAMINATION by Mr. Egner:

Q. Who made up these lists that have not been marked in evidence? A. Miss Hill and Miss Disimone.

Q. And you, in testifying, have testified solely your estimate as to the number of names on the list? A. Yes.

Q. That is all you testified to? A. Yes.

The Court: Do you insist on its standing?

Mr. Egner: I ask to have it held, so that I may produce these young ladies.

The Court: What significance do you think it has?

Mr. Egner: It is of no importance to me; I merely produced it because counsel I thought wanted it.

The Court: Counsel attacked Mr. Irving's credibility as to whether his estimate was correct.

Mr. Egner: I don't wish to go any further.

The Court: Then I will grant the motion to strike it out.

Mr. Kraetzer: I may say this, in view of your Honor's suggestion, that possibly the objection was not made seriously.

The Court: I mean that you didn't make it with the idea of pressing it or following it up. You have the right to call attention to it and later make your comment about it.

Mr. Kraetzer: I desire to direct the Court's attention, that in so far as the list is concerned, irrespective of the number of names, the testi-

mony was adduced by the complainant through these two young women, with the implication that the list of customers was highly confidential, which has been stressed by counsel's refusal to permit even myself to see more than one page of it; that this highly confidential list of 1,300 customers and 13,000 prospects were stolen and used by my clients.

The Court: You need not worry about that. If they don't put it in, I haven't very much to worry about.

Mr. Egner: You only strike out the testimony with reference to the number of customers?

The Court: And with reference to any papers in this bundle which have not been offered and which counsel for the defense has not had an opportunity to examine and cross-examine.

Mr. Egner: We will be very glad to have these lists examined by anyone whom your Honor may designate.

The Court: That doesn't help us any. I must endeavor to guard secret information. At the same time when it becomes a matter of court record, I cannot deprive the other side of its right to inspect and investigate.

PAUL L. PRICE, recalled for further direct-examination:

By Mr. Egner:

Q. You have already testified that you have been general manager during a term of years of the Irving Company? A. Yes.

Q. What are you by profession? A. Architectural engineer.

Q. Where did you receive your education? A. Massachusetts Institute of Technology.

Q. When did you graduate from that institution? A. I graduated in 1900, postgraduated in 1901.

Q. How long have you been with the Irving Iron Works Company? A. Since the fall of 1911.

Q. How long have you been the general manager? A. I think about ten years; I don't recall the date exactly.

Q. Just tell us generally what your duties are as general manager? A. To state it briefly, I am responsible as the executive officer of the company for all the details of the operation of the plant, from the sales department through the administrative department and the productive department, under the supervision of Mr. Irving, the president, as to policies and general operations; all the detail operations, except that having to do directly with publicity and promotion, are under my responsibility.

Q. Publicity and promotion has been under whose charge? A. Mr. Irving.

Q. You are acquainted with Messrs. Madden, Kennedy, Scarth, Skoning, Moser and Schuldt? A. Yes.

Q. They were all agents of the Irving Company? A. Agents and salesmen.

Q. And prior to their resignation they represented territory which made up what percentage of your company's business? A. From an estimate that we made, we found that it was about seventy-five per cent.

Q. You were, of course, acquainted with Messrs. Lown and Bunker? A. Yes.

Q. Both of them came after you did? A. They did.

Q. Were you present at any time when Mr. Lown informed Mr. Irving of his intention to leave? A. I was.

Q. Tell us when that was and what was said? A. It was in the spring of 1921, I had come in from lunch and Mr. Irving called me in the office, and Mr. Lown was in the office. Mr. Irving stated, "We are going to lose this fellow"; I said, "Yes? How come?" "He is going to take another position. I will let him tell you about it." Turning to Mr. Lown, "You tell him about it." Mr. Lown started then to tell me that he was going to take a position that had a very much better outlook than the one we had; that he had thought that he was with us as a permanent proposition, more or less, and this was going to be his life's work, so to speak, but that this offer had come to him and was so splendid that he couldn't turn it down; that it was going to give him a salary, to start with, three times the salary that he was getting with us, with splendid opportunities ahead of him; that he simply couldn't turn it down. I questioned him a little at the time, about what kind of a job it was; he said it was a job with Rosevelt & Company, a brokerage firm; and what was he going to do; he was going to organize the bond sales department of that concern and conduct a campaign of selling bonds; that this was an old organization that had new blood in it, and they were going to put themselves on the map again. I questioned how it would happen that a brokerage firm in the Wall Street district, when they wanted to reorganize and put on a campaign of bond selling and getting a sales manager to organize that department, should take a man who had no knowledge and no experience. I asked him if he ever had any experience in the bond brokerage

business and he admitted that he had not. I said to him it seemed to me a little strange that when there were so many men that had grown up in that business and the atmosphere for it, they should come over to Long Island City and to an iron shop and take a man to conduct that campaign. He said, "I have a friend there, and it is partly through him," and I said, "Well, of course, that answers a good deal. I can see that." And I expressly said to him I was glad that he had this opportunity and I hoped he would make good in it, but I said, "By all means don't lose a minute; you burn the midnight oil and bond like a good fellow and make good, because," I said, "you have an awful lot to learn to conduct a campaign in the bond brokerage sales business." That was about all.

Q. Was anything said at that time about his successor? A. Yes, he very kindly offered to interview men and pick out a new man and break in a successor. He was very nice about it and offered to give him all the start that he needed, and then he also said that he would be glad, even after he left, to come back and help in any way that he could, to help the new man in his duties until he got his feet under the table in good shape.

Q. Did he ever actually pick out his successor? A. He did.

Q. Who was his successor? A. Mr. W. H. Roope.

Q. Prior to this time what had your personal relations with Mr. Lown been? A. I was in touch with him constantly every day, practically, and our relations had always been very pleasant, very friendly; I had nothing against Mr. Lown, and so far as I knew, he didn't have anything against me.

Q. After Mr. Lown left, did you have any talk with Mr. Bunker with respect to his position with the company? A. Yes.

Q. When was that; when did you first have any talk with Mr. Bunker with respect to his employment by the company? A. You mean after Mr. Lown left?

Q. Yes. A. It was very shortly after Mr. Lown left—I have forgotten when it was—it must have been in the early summer or late spring of 1921. Mr. Bunker told me one day that he felt that it was necessary for him to resign from our employ, that he had been having a physical examination, which I knew, he had shown me some X-ray pictures, I believe, at this time—at any rate, I know he had been complaining, and he had been getting some medical advice, and he said he had finally come to the place—he had been staving it off for some time, but he had finally come to the place where his medical advice was that it was necessary for him to get away from cares and worry and daily occupation, and take a complete rest in order to get on his feet again and save him from a complete nervous breakdown, and, therefore, it was nothing more than just to us that he should resign. I immediately protested on that. Mr. Bunker had been with us eight years, perhaps, or more, and holding a position of assistant manager: I said that certainly, if he did break down in our service, and if it was only a question of getting away for a rest because he was on the verge of a nervous breakdown, that this company certainly wouldn't let him go that way and wouldn't let him resign, unless he absolutely must resign to satisfy himself. I said, "You go away, take your rest, and I will keep your salary up as long as I can. I won't make any promises

because I don't know, but at least get away for a couple of months and see what comes of it." Finally he agreed. I made the point stronger than that. If he still liked the company, still wanted to stay with us, and was only resigning because he thought it was a moral obligation to play fair with us, but would like to stay with us and would like to come back again when he got his health restored again, by all means go ahead, and we would see how long it took; at any rate, go away, and he went.

Q. When did he go? A. Approximately the first of July.

Q. How long was he away? A. Between two and three months. The only thing—I remember about when he came back, and I remember by the records that he had ten weeks salary, as I recall it—we gave, roughly, about two and a half months. He came back sometime early in September.

Q. And his salary was paid during the entire time that he was away? A. It was.

Q. You say he came back sometime in September? A. I think it was early September.

Q. When he came back did he again take up his work in the factory? A. He did.

Q. How long did he stay? A. My recollection is that it was roughly about three weeks, something like that; I remember that I went away for a few days in a week, for two or three weeks, perhaps; I think I was away ten or twelve weeks total, always back for the week end, Friday and Saturday, but I would take Monday, Tuesday, Wednesday and Thursday, for perhaps two or three weeks in there. It was after I came back from that last little furlough that I had, that Mr. Bunker finally left us, came in and resigned.

Q. To whom did he present his resignation? A. To me.

Q. Tell us what was said at that time? A. My recollection is that that occurred in Mr. Bunker's office, and that he said what he should have done was to resign early in the summer, but he had gotten to a place now where he settled it, he was going to resign. I remonstrated with him. I didn't quite see that, after what had transpired through the summer and what we had done for him, and he said, "Well, I cannot get interested in this business any more, I hoped I could. I thought I could, and I came back and have tried to, but I have lost interest in this proposition here, and there is only one thing for me to do, and that is to get out and resign." I questioned him then if he had any other plans in mind. I said I wasn't surprised at it; that his having an artistic temperament, and his ability as a draftsman, that he should stay so long in a mechanical position, and I said, "Are you going into illustrating or advertising or something of that kind," and he assured me that he had no plans of any kind, that he was simply going to take a rest and look around and not be too hasty in what he would do; his principal thing was his health.

Q. When did you first learn of the fact that Mr. Bunker and Mr. Lown had gone into the grating business together? A. During the first two weeks of November, 1921; the date I cannot fix.

Q. How did you learn it? A. I got it first from Mr. Irving's lips; Mr. Roope was in his office at the time, but Mr. Irving first said—

Q. You cannot tell what he said; you learned it first from Mr. Irving? A. Yes.

Q. After your learning of it, did you at any time see either Mr. Bunker or Mr. Lown? A. Yes.

Q. And when did you see either of those gentlemen, and which one? A. I saw Mr. Bunker in Mr. Irving's office.

Q. When was that? A. That must have been in the early part of November or the early part of December sometime.

Q. And what occurred then? A. There was a conversation that Mr. Bunker and Mr. Irving were having over the matter of some bonus compensation that Mr. Bunker thought was due him, and they were arguing about it. I was more or less a silent listener at that time.

Q. Was anything said about the Kerlow Company? A. I believe not to speak of while I was in there.

Q. After their leaving did you have any conversation at any time with either Lown or Bunker about the Kerlow Company? A. I have no recollection of having any conversation with Mr. Lown—no, I don't think I had with Mr. Bunker either, after that.

Q. Mr. Price, up to the time of his leaving, what had been your personal relation with Mr. Bunker? A. As his immediate superior officer my relations had always been friendly; we have had our arguments, and sometimes had reached more or less an impass, and had let it go at that; we didn't agree on a good many things and I wasn't entirely satisfied with Mr. Bunker's work, but that was just all in the business. Frequently we met socially, although we were not what you might say socially related, except that we had interchanged visits at each other's house, but my relations with him were friendly, I would say.

The Court: Did he criticise your management of the Irving Company at all?

The Witness: No.

The Court: Or lack of it?

The Witness: No, he never criticised me to my face.

The Court: I mean to you.

The Witness: No, except criticism of some things.

The Court: You might differ in your opinion about?

The Witness: Yes, he said he didn't agree with it, but, he said, "If you say it has got to be done, that is the way it will be done," but no general criticism.

The Court: When he talked of leaving or having lost interest, did he express any idea then to indicate that he was dissatisfied with your management?

The Witness: Not at all.

Q. Mr. Price, I show you Exhibit C20, showing what has been called Type M or K—it has been called both type of grating—did you ever see that grating in the possession of the Irving Iron Works Company? A. I have, yes, sir.

Q. Do you recall when that sample was manufactured? A. In the latter part of 1917.

The Court: Is that type patented?

The Witness: No, sir.

Q. That is the type about which interference proceedings are now pending, both sides have made an application for a patent and it hasn't been granted.

Mr. Kraetzer: We have a patent on it.

Mr. Egner: I didn't know that. But the interference proceedings are pending; I didn't know that the patent had actually been granted. Both sides are claiming the right to it.

Q. Tell us what you know about the manufacture of that sample in the latter part of 1917 as you say.

A. This pattern—when I say "type," I refer to the shape of the reticuline bar between the straight bar; it is only a question of design. This design of the reticuline bar was gotten up by me in the latter part of 1917. Mr. Bunker and I had discussed the problem several times. Mr. Irving, Mr. Bunker and I had discussed the problem of meeting a sales point in regard to our present grating at that time, to see if we could get up something—

Q. What was that sales point? A. The difficulty of dirt in the corners of the reticuline bar and the straight bar. I drew that out on a sheet of yellow foolscap paper and I outlined the reticuline bar in blue pencil and I took it in to Mr. Irving and turned it over to him, and as a result of his looking at it and our thought about it—whether I suggested or whether he said—at any rate, I did give instructions to have a die made for it, and a sample made of it, and that die was made and the sample was made, and that sample has been in our possession from that time on, and so have the dies.

The Court: Did you ever manufacture any of it?

The Witness: Not at that time; we have in the year 1922.

The Court: How many samples were made?

The Witness: There was only one sample made, to my knowledge, at that time.

The Court: And when you speak of samples, do you make up any of these goods and have them in stock—any of the types at all?

The Witness: Only samples. There are two kinds of samples, a sample of a new one which has never gone out, but experimenting on a regular sample of standard type which we make up and keep in stock and send out to prospective orders.

The Court: It is all made up to order and of the kind they desire?

The Witness: Yes.

Q. You stated you had some talk with Mr. Bunker? A. Yes.

Q. In connection with this design? A. In connection with this problem of non-dirt collecting grating. There was a competitor that had put out a grating made up of straight bars and cross bars at right angles, which made a ninety-degree corner of intersection, where as ours in the two standard types we already had at that time, the angle of intersection was either about thirty or forty-five degrees, and the question was whether we could still retain our fundamental type of interlaced grating and get away from the sharp corners.

Q. The dirt collecting corner? A. Yes; it was simply an investigation to overcome a competitor's sales talk. We personally didn't think that the right-angle corner was of more non-dirt collecting than ours, but at the same time, the competitor was making the sales point, and we were investigating, to see if there was anything that we could do that we could use, to meet that sales argument.

Q. When did Mr. Lown come with your company, before that or afterwards? A. After this, two years after this.

Q. So you did not discuss this in any way with Mr. Lown? A. Not at that time, no.

Q. Did you after he came into the employ of the company? A. I don't remember of ever discussing it.

Q. I show you Exhibit C49 and ask you what the original, of which that is a photostatic copy, is? A.

It is a photostatic copy of a card index record known as "shop order record"—a card record which Mr. Davis, the gentleman who preceded me here, got up while he was in our employ, and which he kept in use to enable him to keep track of the various shop orders as they went into the shop and went through the shop.

Q. After the sample shown on Exhibit C20 was manufactured, what was done with the sample? A. My recollection is that it was first brought to me and then it was taken in to Mr. Irving's office and then it was back in my office, and I think it was back and forth two or three times, perhaps, and finally it was out in my office for some little time, and finally Mr. Irving took it from my office and took it into his office and locked it in a drawer of his desk.

Q. What became of the drawing which you made? A. I turned that over to Mr. Irving. I don't know where it is now.

Q. You haven't seen it since? A. I have seen it since I turned it over to him first; I saw it a number of times.

Q. When did you last see the drawing? A. I cannot really tell you when I last saw it.

Q. Recently? A. I haven't seen it for over a year or year and a half at least.

Q. Have you seen it since this case has been in progress? A. No.

Q. Has search for it been made? A. Mr. Irving and I have both searched for it through his papers and we haven't been able to find the sketch.

Q. Did you see it at any time since the resignation of Messrs. Lown and Bunker? A. Not to my recollection.

The Court: When you sent your agents and sales-

men material, did they have actual samples of the gratings or photographs, or both?

The Witness: Both.

Q. Did you ever send a sample of this grating to your agent? A. I believe not; I have no recollection of ever sending it.

Q. Agents or salesmen? A. Either one; I have no recollection of ever having but the one sample of that up to the latter part of 1921.

Q. The original of C49 was taken from what place? A. Taken from a card index box that is on top of my safe in my outer office.

Q. What is your regular type that you sell? A. The regular types that we sell are G and E, and this type in the photograph is M.

Q. We had in court here what type? A. M.

Q. Have we also had our own type? A. You had G, as I recall it.

The Court: Why do you call it "our own type"?

Mr. Egner: The one we are selling, the commercial type G.

Q. What name was given to this type shown on C20 at the time it was fabricated? A. At the time it was fabricated, the type K was given to it by Mr. Davis.

The Court: Did you change that later to M?

The Witness: We did.

Q. When was it changed? A. It was changed to M in the latter part of 1921.

Q. And why? A. Because K had been applied to another type way back there; shortly after Mr. Davis had given K to that type. Mr. Davis gave K to that

type, I might say, on an assumption. J was the last letter that he knew anything about, and when that was put out, he just naturally marked it K to identify it, but fundamentally Mr. Irving up to that time had always had the matter of assigning type letters to the grating, and neither Mr. Irving nor I at that time knew that Mr. Davis had called that type K, and it was some weeks after that, or perhaps months, but it was shortly after that we did develop what has been called here a car step grating, and that car step grating we gave the type K letter to it, without knowledge of the fact that Mr. Davis had ever called this other K, because finally, I might say, Mr. Davis didn't call it K officially; he did it on his own responsibility, for his own record, and Mr. Irving didn't know that it had been called K, so when we come to assign the car step grating, we called it K, and thereafter for several years this type in the photograph which we now call Type M didn't have any letter; it hadn't been assigned a letter, because it hadn't been put out in publicity; there had been no occasion to assign a letter to it for any purposes.

Q. Were you also familiar with the use of the die for stamping your dies, which is shown on Exhibit C24 and C25? A. Yes, sir.

Q. When did you first see dies of that character in use by your company? A. I could only state that approximately; I should think it was 1919 or 1920, along in there somewhere.

Q. Prior to the resignation of Mr. Lown? A. Yes.

Q. Do you know anything about the making of those dies? A. Not very much, except I knew that they were made and knew they were being made and saw them in the machines and saw them produced.

The Court: Made in the factory?

The Witness: Yes, they were made in our factory; I remember Mr. Bunker coming in and asking me to come out and see them work one day.

Q. You, of course, remember the receipt of the various resignations from the agents which have been offered in evidence in this case? A. Yes, sir.

The Court: You mean to new salesmen?

Mr. Egner: Agents and salesmen.

Q. Do you make a distinction between agent and salesman? A. I do; a salesman gets no commission; a salesman gets a straight salary; an agent gets a commission and a salary, or a commission and no salary.

Q. Prior to the receipt of these resignations, to your knowledge had any of those gentlemen expressed any dissatisfaction with their relations with the Irving Iron Works Company? A. I wouldn't say dissatisfaction; there had been some matters come up from time to time, where there was a little argument, perhaps, and I don't recall that there was any of them that actually expressed dissatisfaction,

Q. Had any of them ever suggested their severing their connection with your company? A. No, I have no recollection of that.

Q. Did they have complaint or grievances because they didn't have their commissions paid them? A. In the early part of 1921, yes, perhaps one agent; not any of those agents, but a former agent did, perhaps in 1920.

Q. I am speaking of these who resigned. A. I think probably of those perhaps there was either one or two of them, because we had been slow in remitting.

Q. What kind of a year was the year 1920 in the

business of your company? A. It was a very hectic year; generally business through the country was poor and our year 1920 had been a big sales year, but a very poor financial year. We had turned out the most business of any year in the history of our company and lost more money than we ever had in any of the other years all put together, and therefore we went into 1921, which was a bad year for general business, with a deficit, and so 1920 year we started out with a pretty blue year, and our sales for the early part of 1921 were very low.

Q. When did the condition begin to remedy, if at all? A. Along in the early summer, I should say, and we went on, and by retrenchment and careful study of every element that went into production and everything else, we were able to weather the storm and come out at the end of 1921 with a margin of profit.

Q. Taking from August 1, 1921, or right after that date, was there any dissatisfaction expressed on behalf of any of those agents as to the payment of commissions due to them? A. I have no recollection that there was any trouble in the late fall or winter; the difficulties that we had of that kind were all in the early spring and summer.

Q. Of 1921? A. Yes, when we were having hard work to keep our heads above water, along with a great many other concerns; our payments—our collections were very poor. People that ordinarily had paid us on the dot, then averaging sixty, ninety or one hundred and twenty days, and we simply had to pass it along; we didn't have the reserve and capital to advance money to pay these things when our accounts receivable, which we depended on, were not coming in.

Q. During the years 1920 and 1921 how much of his time did Mr. Irving give to the conduct of the

business of the Irving Iron Works Company? A. You mean of the business hours of the day?

Q. I mean of his time to the business, either at the plant or in working for the company or in any other way. A. In 1920 I should say that he probably gave two-thirds of his time. In 1921 I should say that he gave practically all of his time. 1922 he spent a great deal of time on a subsidiary company, the W. Irving Forge, and which he was trying to make a success of, and which had not been going very satisfactorily, and he did at the time devote quite a lot of time to that.

Q. Mr. Price, will you tell me what you recall of this episode of Mr. Roope in the strike at the factory? A. My first knowledge of it was Mr. Brown's speaking to Mr. Irving and myself.

Q. Tell us what Mr. Brown said. Tell us what you saw; did you see this strike? A. I did not.

Q. Tell us any conversation with respect to the subject of the strike, which you had with Mr. Roope.

Mr. Kraetzer: I object to that for the same reason.

The Court: There will be the same ruling and qualification.

A. I never had any.

Q. Were you present when Roope was discharged by Mr. Irving? A. Yes.

Q. On any occasion did Messrs. Tarof and Kennard come to see you and state anything to you about their negotiations with the Kerlow Company? A. Yes, Mr. Tarof and Mr. Kennard came into my office together.

Q. When was that? A. I presume it was about the first of December, 1921.

Q. Tell us what was said on that occasion.

Mr. Kraetzer: Same objection.
The Court: Same ruling.

Adjourned to Wednesday, March 21, 1923.

Continuation of testimony in the above entitled cause before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, March 21, 1923, at 10 A. M.

Present: Counsel as before stated.

PAUL L. PRICE, recalled for further direct-examination.

By Mr. Egner:

Q. Mr. Price, you testified about the die shown on Exhibit C24, which you state was in use by your company prior to the time Mr. Bunker left its employ; I show you a paper and ask you what that is. A. That is an inter-office memo., numbered 23,355.

Q. Of the Irving Company? A. Of the Irving Iron Works.

Q. And refers to what? A. It is a memo saying "Please authorize shop order for one pair K dies new block type. (Signed) J. P. R."

Q. In whose handwriting is the body of that memorandum? A. I should say it was Mr. Roope's.

Q. Is that new block type die the die indicated on Exhibit C24? A. That is my impression, yes, sir.

Mr. Kraetzer: I move to strike that out.

A. To the best of my knowledge and belief, it is.

Q. What is this memorandum at the top of the memo.? A. In lead pencil?

Q. Yes. A. That is Mr. Bunker's initial signature.

Q. What was the practice of your company as to the necessity of the approval of a memorandum of this character by either Mr. Bunker or yourself? A. It should be approved by the head of the department—in this case, Mr. Bunker being the head of the production department—or by one of the officers of the company.

Mr. Egner: I offer the memo. in evidence. Marked Exhibit C55.

Q. Were you present at any conversation between Mr. Irving and Mr. Roope and anyone else with respect to the strike incident? A. I was.

Q. And when was that, approximately? A. It was when Mr. Irving called Mr. Brown into his office and asked him to—

Q. The date? A. It was about the latter part of November, I should say.

Q. What was said then by Mr. Irving or Mr. Roope?

Mr. Kraetzer: I object on the ground that it is not binding against these defendants.

The Court: There will be the same ruling; it will be admitted conditionally.

A. Mr. Brown said that Mr. Roope came into his office and attempted to get his—

Mr. Kraetzer: Was this in the presence of Mr. Roope?

Q. Mr. Roope was present at this conversation? A. Not just yet; he is coming in.

Q. I only want to know what happened when Roope was there. A. Roope came into the office and Mr. Irving said, "What is this I hear about your attempting to get these men out on strike?" Mr. Roope said, "I didn't do anything of the kind." Mr. Irving said, "I have a man here that says you did. How about it, Brown?" Brown turned to Mr. Roope and said, "Roope, you know you did; why do you want to stand there and deny it?" Roope said, "Yes, I did; I was careless, I was hasty." Then Mr. Irving said, "Well, tell us all about it" and then Mr. Roope described how he did it, I don't know whether you want all that description or not.

Q. No; then what happened? A. Then Mr. Irving said, "Well, you are through; we cannot have a man around here that will do things of that kind."

Q. Now, Mr. Price, when it became known that the Kerlow Steel Flooring Company was in business, and when it further became known that these various sales agents and salesmen had resigned, what was the effect of that on your business—the business of the Irving Company, on the plant and the conduct of your business?

Mr. Kraetzer: I object as calling for a conclusion or information on the part of the witness.

The Court: Suppose something injurious did happen, are you going to follow it up and trace it back to the resignation or severance of these agents and salesmen from the company or merely the inference that the witness is now drawing from the fact that they did sever their relations? His inference may be right or wrong. How am I going to consider it competent?

Mr. Egner: Wouldn't it be competent for him to state what the condition was at their plant?

The Court: There is no jury here; what are you trying to develop?

Mr. Egner: I am trying to show that during a period of time they were entirely disorganized and at sea; they didn't know where they were at when this break came. They were without the services of these men and didn't know who was honest, they didn't know whom to trust as their employees.

The Court: I don't think it is competent.

Q. Do you recall on any occasion Messrs. Tarof and Kennard coming to your office and discussing with you their relations with the Kerlow Company? Answer yes or no. A. I do.

Q. When was that? A. I should place it about the first of December, 1921. Mr. Tarof and Mr. Kennard came into my office—

Q. Tell us everything that was said.

Mr. Kraetzer: I make the same objection.

The Court: The same ruling.

A. Mr. Kennard was the spokesman of the two and said that he and Tarof had been talking the matter over and that it was time that they came in and had a good talk with me, but there had been so many things happening around here in the last few weeks that they felt that they owed it to us and owed it to themselves to let me know where they stood.

Q. Prior to that time had you or Mr. Irving, as far as you know, had any intimation that either Tarof or Kennard was considering joining themselves with the

Kerlow Company? A. No, sir; I had none, and Mr. Irving told me that he had none.

Q. As far as you knew, Mr. Irving had none? A. Yes.

Q. Go on with this conversation. A. Mr. Kennard then said that he and Mr. Tarof had been conferring with Mr. Bunker and Mr. Lown for some little time and had expected to be with them and go with them; that they had had several conferences with them at their offices at 50 Church Street, and as I recall it, had had lunch with them one or more times, and that they now felt that the developments that had recently occurred, that they had been talking it over together, and had decided that the way the Kerlow Company were carrying on this new company and its method of operations had gotten beyond them, that they didn't feel like subscribing to that method of operations any longer, and that they were through, and that they wouldn't blame us at all if we put no confidence in them—if we fired them, but at the same time, if we were willing to take their confession at its face value and put any further confidence in them, that they would be glad to stay with us and help us meet this new competition that was starting up, and my remark at that time was, "Well, this is certainly a surprise to me, but at the same time, even though we don't know where we stand here now, we don't know whom to trust and whom not to trust, but at the same time, you fellows have come in here like men and made a clean breast of this, apparently, and I am not disposed to be vindictive; I am disposed to take you at your word and give you a chance at it, and if you fellows want to stay here, and would like to stay here, and want to put your friends in here to help us meet this competition, well and good, we will call it a go," and they

both, either verbally or tactily assented to that proposition, and went on out from there and continued in their respective duties for some time after that; Mr. Kennard continually up to the present time; Mr. Tarof until he left in the middle of January, 1922.

Q. Did you call Mr. Irving into this conversation, do you recall? A. I don't think I called him into the conference; as I recall it, he passed through the office and had a word or two with us; I don't recall any words that he said or anything about it, but I have a recollection that he did go through my office at that time or through the office next to it.

Q. Did they tell you anything further that you recall about their relations with the Kerlow Company, as to how far they had gone? A. I believe not at that time.

Q. Did they at any subsequent time tell you anything further about how far their relations with the Kerlow Company had gone? A. Mr. Kennard did; I don't recall that Mr. Tarof ever made any further confidant of me in any way in regard to his relations to the Kerlow Company.

Q. You have heard Mr. Kennard's testimony in this case? A. I have.

Q. Without attempting to go over all his conversations with you, did he from time to time tell you substantially what he has testified to here in this case?

Mr. Kraetzer: Objected to.

The Court: Objection sustained.

Q. You say you had further conversation with Mr. Kennard? A. Yes.

Q. And this was after the conversation at which the so-called confession was made? A. Yes.

Q. And without going too much into detail, tell us substantially what Mr. Kennard said to you.

The Court: Fix the time and place where he had the conversation.

Q. Fix as near as you can when and where Mr. Kennard told you these things.

Mr. Kraetzer: And assuming that I will be answered with the conversations and taking, perhaps, a premature objection because the exact conversation hasn't been asked, I object on the ground that certain conversations with Mr. Kennard are not binding on the defendant.

The Court: Not at all; it is merely corroborative of what Mr. Kennard has testified to, and I am only qualifying the admission of his testimony, and that ruling will apply to this also.

Mr. Egner: If Kennard's testimony is not admissible, whatever they have to say makes this equally inadmissible. Conversations with Lown and Bunker are admissible.

The Court: Oh, yes.

Mr. Kraetzer: There has been no claim to that, that Kennard was solely in any way competent to bind these defendants; there has been the claim made that Tarof, by reason of his subsequent connection with the defendant, was thereby sufficiently connected, but I heard nothing with regard to Kennard, except his self-serving statement.

Mr. Egner: During the time that he was in negotiation with them, we claim, and expect to prove it, by reference to the testimony, to

your Honor's satisfaction, that he was part of the conspiracy, and therefore any statements that he made during that time are binding upon them.

The Court: I am receiving it on that theory and on your promise to show me that that is the situation of the record. I made no distinction between Tarof and Kennard. This is merely cumulative.

Mr. Egner: I don't think I will go into that. I will withdraw it.

Q. When did Mr. Tarof leave your company? A. Near the middle of January, 1922. My recollection is it was the nineteenth day of January.

Q. Have you told us everything that you recall that was said on the occasion of this so-called confession, as to their relations hitherto with the Kerlow Company? A. I think I have, except a few remarks that Tarof made, which I don't recall. I do remember that he said some things, but Kennard practically did all the talking. There were a few remarks that I don't recall.

Q. Do you recall, Mr. Price, whether anything was said as to either Kennard or Tarof having given any information as to painting work or estimates that had been given by your company prior to that time? A. I don't recall that that matter was mentioned in this confession.

Q. You say that Mr. Tarof left about when? A. January 14, 1922.

Q. And upon whose motion did he leave, your or his? A. On his own.

Q. Prior to his leaving did you have any talk with him about the circumstances of his leaving?

The Court: Just immediately prior.

Q. Just immediately prior to his leaving? A. Yes.

Q. Tell us what that conversation was with Tarof shortly before he left.

Mr. Kraetzer: I am not interposing my objection at each time this line goes in.

The Court: It would be well to do it.

Mr. Kraetzer: I object to this as not binding on the defendant.

The Court: The same ruling.

A. Mr. Tarof came into my office and said that his wife was of necessity going to have to undergo an operation, and in order for her to be ready for that operation, she would have to go to the hospital for some weeks previous, and then the operation would keep her in the hospital some little time, and then he wanted to send her up to Saranac Lake to recuperate, but that would be another month or so, so that all told it would be some three or four months that she would be away, and that he had a store in Port Washington, and he had nobody there that he could trust that store to, and that his wife going to be away for three or four months it placed him in the position of having to look after his interests there, and that he had a pretty good little thing there, he had a good little bunch of money wrapped in it, and made him a nice profit the year before, and he was convinced with the situation of throwing up his opportunity with Irving, which he considered to be a good opportunity, and had expected to be with us for some years, or sacrifice that business; he didn't feel that he could sacrifice the business; and he felt the only thing he could do was to give up his position with the Irving, and there-

fore there wasn't anything left for him to do but to resign and get through with Irving. I took him at his word, and told him that naturally, under those conditions, we couldn't say anything but "Good luck to you and hope you make a success of it," and so forth.

Q. Was anything said at that time as to whether he was going with Mr. Lown? A. I raised the question with him at that time.

The Court: What did you say?

The Witness: I said, "I suppose that you are not going with Lown and Bunker in any way, but are going for yourself, to take care of your own business," and he said, "That is right."

Q. In connection with his going, did you post any notice in your plant with respect to his leaving? A. Yes.

Q. You did dictate a notice? A. Yes.

Q. I show you a paper and ask you whether that is the notice which you put up (witness shown paper)? A. That is a carbon copy of the notice, and since this is written with my handwriting here "Front Office Bulletin," I will say that that is the notice which was put on the office bulletin at that time.

Q. Prior to posting that notice was it read to Mr. Tarof? A. Yes, I read this in my office while he was standing beside my desk and said, "Is that all right?"

The Court: Was that at the same time you had the other conversation which you just detailed?

The Witness: I should say it was the next day, probably, and he said, "Yes, it is."

Q. I notice at the lower left corner of this notice, Mr. Price, an entry in what appears to be your hand-

writing; that was not on the notice when it was posted, was it? A. No; that entry is in my handwriting, and was not on the notice at the time it was posted, but was put on by me on the day recorded here—2/9/22, meaning February 9, 1922.

Q. Other than that memorandum, was the notice in the form in which it now is, at the time it was posted? A. The rest of it is.

The Court: The typewritten part and the signature?

The Witness: The typewritten part and the signature and the other ink notations are all as they were at the time it was posted.

Q. When you say "other ink notations," you mean the two at the top of the notice? A. The two at the top, the date and the "Front Office Bulletin."

Mr. Egner: I offer this in evidence, excluding the ink at the lower left corner.

Mr. Kraetzer: I object on the ground that it is not binding on the defendant and incompetent and immaterial.

The Court: Same ruling. It will be admitted over the objection, with the same qualification and ruling already made on the others, and the notation "2/9/22" will not be admitted as any part of it.

Marked Exhibit C56.

Mr. Egner: I will read this notice:

Jany. 14-1922. Front Office Bulletin

NOTICE.

CHANGE IN PERSONNEL.

Mr. Tarof is leaving us to engage in business for himself, not with Lown & Co., we understand.

We are sorry to lose Mr. Tarof and wish him the best of success in his new enterprise.

Mr. Nicholls will function as Assistant Production Manager until further notice.

We bespeak for him the same hearty co-operation which has been accorded to Mr. Tarof by you all.

P. L. PRICE,
Manager.

Q. Will you tell us what the comparative production of your company was as between the years 1920 and 1921?

Mr. Kraetzer: I object as calling for an opinion.

Mr. Egner: I want the figures. I am asking for the facts. I withdraw the question.

Q. Mr. Price, were you personally familiar with the production of your company in the year 1920 and also in the year 1921? A. Yes, sir.

Q. And can you give us the production of your plant per unit for the year 1920, approximate figure? A. With a qualification of the word "unit"; I could not give you the production per unit—the term "unit" meaning what it has already meant in this case.

Q. How would you give it? A. I would give it per team of riveters.

The Court: Two men constitute a team?

The Witness: Yes, two men constitute a team, and all my production records are based on that.

The Court: Taking that as the unit referred to in Mr. Egner's question, what was the production per team during the year 1920?

The Witness: Do you want actual production?

The Court: Yes, actual, if you have it.

The Witness: Or on a comparative business.

The Court: No comparison at all; I want the actual situation as it was in 1920, if you can give it.

The Witness: The actual team production in 1920 per day of 8 3/4 hours was about seventy-five square feet.

The Court: How many teams were there producing?

The Witness: I could only give you what it was towards the close of the year. I don't know what the average for the year would be, because it varied.

The Court: Can you give us the total for the year?

The Witness: The total square footage?

Q. I am trying to get some statement of average production, and I think he has answered my question in stating seventy-five square feet of grating per day per team of two men, of so many hours? A. Yes.

Q. What was the production per team during the year 1921? A. About 150 square feet.

Q. During the same number of hours? A. Yes, the same units throughout, time and men.

Q. And same conditions throughout? A. Yes.

Q. That is approximately an increase of 100 per cent, is it? A. Approximately.

Q. What, if any, changes were there in working conditions and equipment between 1920 and 1921? A. There were no general changes in equipment or general conditions.

Q. What was the increase due to, then? A. I would say that any change that was there, was a change in refinement of details of operations and personal esprit de corps—I think you would call it—a closer attention to detailed operations. I recall of only one in machinery during 1921. We had been trying out a combined cut and punch tool, which eliminated two machines.

Mr. Kraetzer: This has nothing to do with riveters?

The Court: I don't know.

The Witness: They couldn't rivet until they have it made.

The Court: Is the purpose of this testimony to show incompetent management on the part of Mr. Bunker and Mr. Lown or both, to account for the falling off of production in 1920 or 1921?

Mr. Egner: We want to show that this conspiracy was brewing long before these gentlemen left, and that it affected them in their work for the company.

The Court: Deliberately and intentionally? Mr. Egner: Deliberately and intentionally, and it was all a part of their scheme, to cause dissatisfaction among the people there, and we are merely showing that after they left conditions got back to normal.

The Court: I assume so, but I thought I

might as well ask you what you were driving at.

Q. You were telling us about one change in machinery? A. Yes, we had been developing a cut and punch tool to put on the one machine that would eliminate the shears, and the development that came in 1921 was to carry on a little further, and that did help that end of the business. Now, as to the riveting, there were no changes made in the methods of riveting or the equipment for riveting, except in minute minor details, in order to increase the efficiency of the men, by giving a little better position at their work, or by a little change in the method of their handling of the material as it came through.

Examination by the Court:

Q. Who was responsible for effecting or installing such changes made? A. I was fundamentally, through the assistance of the men that were in the shop, because upon Mr. Bunker's leaving, early in the summer of 1921, I had direct charge of that work, where I had been some years previous.

Q. Had there been any particular increase in the early part of 1921 over the production in 1920 per unit as you have indicated, or did the increase in 1921 all occur in the latter part of that year? A. I cannot state that exactly, except that I know that for the first two or three months of 1921 there was no increase in the production. Just exactly when the first insurance began, I cannot say. I gave but the average of the entire year.

The Court: I am asked to draw the inference or conclusion that after Mr. Bunker and Mr. Lown quit the Irving Iron Works the pro-

duction increased practically one hundred per cent over what it had been the preceding year while they were in charge of things. They appear to have been there until October, in one instance, 1921, and the other left in May. I want Mr. Egner to clean that up.

Examination by Mr. Egner:

Q. When did the increase in production start? A. In the late spring or early summer of 1921; I cannot tell what month, without referring to the records.

Q. You have mentioned a better esprit de corps in the shop; when did that begin? A. That began in the middle of the summer.

Q. Of what year? A. 1921, June, July and August and perhaps right during the summer.

Q. You saw that the increase came when? A. In the early part of the summer of 1921.

Q. And Mr. Bunker left when; did he finally sever his connection with the company? A. He left the first of July and was gone ten weeks, 1921.

The Court: Had the increase occurred before that vacation of ten weeks or after?

The Witness: As I stated before, I cannot give those exact months, just exactly which month showed the first increase.

The Court: You say it was sometime in the summer of 1921?

The Witness: Yes, that is all I know.

The Court: After the first of July, 1921, did Mr. Bunker take any actual part in the management of the factory?

The Witness: Practically none; there were two or three weeks that he was back there in early Sep-

tember, but the personnel and everything was going ahead, and in the two or three weeks he didn't have much to do with it, I was back at the week-end every time.

The Court: So you say the increase of production came sometime after the summer of 1921?

Mr. Egner: I was confused, I thought they had left in 1920; it was 1921.

Q. How did the production for the year 1922, Mr. Price, compare with the production for the last six months of 1921 about which you have testified?

Mr. Kraetzer: We haven't any testimony specifying the last six months of 1921; he said he couldn't tell when that increase took place or was affected.

The Court: He said August or September, or the latter part of the summer; it has been general in that way.

Q. How does the production for the year 1922 compare with the production for the latter part of 1921, to which you testified?

Mr. Kraetzer: There has been no testimony specifying the latter part.

The Court: Yes, there has been. You may answer it.

A. I would say that there was about twenty-five per cent increase. The average in 1922 was about twenty-five per cent increase over the average of 1921.

Q. Over the average for the latter part of 1921? A. Over the last half of 1921, with the production for 1922, total, which was about twenty-five per

cent greater than the average for the last six months of 1921.

Q. What was it due to?

Mr. Kraetzer: I object to that as calling for an opinion.

The Court: I am asking for the facts. I want him to state what he knows.

Q. What is it due to? A. It is due to refinement of details of operations constantly and increased interest and effort on the part of the personnel.

The Court: Was it due to the elimination of Mr. Bunker and Mr. Lown from the company's management?

The Witness: In my judgment, yes.

Q. What is your reason for stating, Mr. Price, that that is due in any part to the leaving of Messrs. Bunker and Lown? A. I state that from my own observation of the actual operations.

Q. What have you observed that leads you to make that statement? A. That is a difficult question to answer; it goes into a thousand details; it is pretty hard.

Q. Give us some of the details.

The Court: The principal ones.

Q. Give the principal things which obtain now which did not obtain under their regime and the lack of which you ascribe to them? A. The principal thing, then, I will say is the attitude of the men throughout the shop and their expressions; a great deal of my judgment on that is based on the expressions of the men themselves about their work, as I

talked to them and as it is reported to me by their immediate superiors.

Q. That is the atmosphere in the shop?

Mr. Kraetzer: I object to it as leading.

The Court: It is suggestive.

Q. Anything else? A. On the other matter of the operations, it is simply a case of getting the co-operation of the executives through the shop, to put into practice little touches here and there to make the work more perfect; to eliminate all lost motion and dead motion and dead weight and dead material, and have the place running in shipshape order all the time, which it didn't do in 1920 or the early part of 1921.

Mr. Kraetzer: I move to strike that answer out as being a statement of opinion and conclusion. There are no facts stated there.

The Court: He is stating lack of co-operation. He said that those were facts that did not exist during the first part of 1921, which came into existence as a result of the departure of Bunker and Lown. He said they have that co-operation now.

Q. Who is responsible for the number of shifts employed, under your system?

Mr. Kraetzer: I object.

Q. Who was prior to the leaving of Mr. Bunker responsible for the number of shifts which were employed during the day and night and the way in which the work was handed out to the men working for the company? A. Mr. Bunker was responsible for those details, and occasionally in conference with me as to the necessity for them, etc., but the actual

work of the details of them were entirely under his direction.

Q. Who worked out the actual details of that after Mr. Bunker left?

Mr. Kraetzer: I object as immaterial.

The Court: I think it is material; I will receive it.

Q. Who worked out the same details after Mr. Bunker left? A. Speaking of shifts, we only had one shift.

The Court: For how many hours did each shift work?

The Witness: We did after he left.

The Court: Did you before he left?

The Witness: Yes.

The Court: How many before he left?

The Witness: Three part of the time.

The Court: For how hours did each shift work?

The Witness: I have forgotten exactly how that was divided up. I think one shift worked forty-eight hours and the other one about forty-four hours a week, and another one forty-two hours a week.

Q. How did that affect the production? A. That probably slowed up the production; it usually does; one shift is the ideal.

Mr. Kraetzer: I object to that on the ground that it is obviously—

The Court: Strike out what he said about probably slowing up.

Q. Did this actually lessen production, Mr. Price—the three shifts as against one shift? A. I don't

know, except my judgment; that is what I gave before.

The Court: I cannot tell whether your judgment is sound or not. We have got to have the facts.

The Witness: I cannot give them.

Mr. Kraetzer: I press my motion to strike out that testimony, because it is obvious that it is immaterial.

The Court: Which testimony do you refer to?

Mr. Kraetzer: The testimony as to the placing of the shifts and the responsibility of the shifts.

The Court: That is true. I have allowed it to stand that there were three shifts while Mr. Bunker was in charge; there is one now. The rest of it is out, because I think that probably is his judgment, that three lessened production. I am willing to let the fact in, but if he cannot tell on what he rests that probability, I won't allow it to stand.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. You were the general manager of the Irving Iron Works Company for how long, Mr. Price? A. About ten years, I think.

Q. General manager? A. If you are making a distinction between general—

The Court: He asks you a question that is plain as can be.

Q. When did you become general manager? A.

Probably about eight years ago; the term was never definitely given to me by an official decree.

The Court: You generally managed it for the last eight years?

The Witness: Yes.

Q. Then you were the general manager, whether you had the title or not? A. Yes.

Q. When I understood you Monday, you said that you were in charge of all of the operating details and in general charge of the business, including the administration of the business and the operation and production, except one, publicity, and what you term promotion; is that right? A. Yes, with a qualification.

Q. What is the qualification? A. According to the record, under the advice and counsel of Mr. Irving.

Q. But the details of the operation were in your charge? A. Yes.

Q. The question of methods of operation were in your charge, too, were they not? A. Yes.

Q. Directly? A. Yes.

Q. And you kept yourself fully acquainted with the methods of operation, and so forth, did you not? A. As nearly as possible.

Q. That was by personal observation, as well as by reports of subordinates? A. Yes.

Q. Your office there was right in the plant, was it not? A. It was.

Q. And the shop work, the actual manufacture of the grating, was performed in the same location as your office—I mean contiguous to it? A. Yes.

Q. And you were continually, or from time to time, each day in and about the plant as well as in your office? A. No, sir.

Q. Did you maintain a strict organization over there; what I mean is this: Mr. Irving was the head, you reported to Mr. Irving; someone reported to you, and in that way there was a—if you set it up in a diagram, you would have an arrangement? A. That was the effort to have it conducted with a system.

Q. And in carrying out that method or system, so far as information obtained by Mr. Irving was concerned, he was to get it from you; I mean exclusive of promotion and publicity? A. I will have to answer no.

Q. Were there others who reported to Mr. Irving directly? A. Anybody could report to him directly.

Q. So he was in active charge of the business, was he? A. No, he was not, but he could be. There was no law against it. It didn't have to go through me; that is what I am trying to say.

Q. But it did go through you as a matter of fact? A. Usually.

Q. Will you explain just what your duties were; how extensive were they? You said you were in general charge of details and then you qualified it. Tell us what your duties were. A. I don't recall that I made any qualifications.

The Court: You did, something about publicity and promotion.

The Witness: I will explain that. The way we handled the proposition, I was manager, originally; under the manager would come the publicity and promotion.

The Court: You don't understand his question. He said what did you do, among the things that you did have charge of; not the exceptional things, but all the other things.

The Witness: I had something to do with that, and I was trying to show why I had something to do with that.

Q. Go ahead. A. Mr. Irving, as president of the company, also functioned as the advertising sales manager; as manager I would function also, but the fact that he as president was doing that, I was in a dual position, so I did have a good deal to do with a good deal of the details of the publicity and sales department. At the same time I didn't have the same supervision over these details that I did other details of the plant, but I wasn't entirely over them, but I did have a good deal to do with those details.

Q. As a matter of fact, during the absence of Mr. Irving from the plant you were in complete charge, were you not? A. Oh, yes.

Q. And then all questions would be referred to you? A. When he was away.

Q. His absences were somewhat extensive, were they not? I mean, they ran into one and two months at a time? A. Yes, quite often.

Q. And did that occur several times in any one year? I mean, when you were placed in supreme charge by reason of Mr. Irving's absence? A. For a period of two or three months probably not more than once, and at other times it would be a matter of two or three weeks.

Q. By reason of that fact I presume that you have acquired a great deal of experience in the grating business, haven't you? A. I should say yes.

Q. And your acquaintanceship and familiarity with the management of the business over there would be even more intimate than Mr. Irving's, would it not? A. Yes.

Q. And as a matter of fact, your knowledge of the manufacture of grating is probably more intimate than Mr. Irving's, isn't it? A. I should say yes.

Q. And probably Mr. Irving consulted with you on questions of policy as well, did he not? A. Yes.

Q. You had under you a definite organization, did you, of a certain number of, we will say, executives and subordinates? A. Yes.

Q. And this ran all the way back to the beginning of the time when you became manager? A. Yes.

Q. And what was that organization, will you tell us, in 1919? I mean, just tell us briefly how you organized your business over there. A. The business at that time was organized into, I would call, three departments, a department of sales, which included publicity and promotion advertising; the department of production, known as the production department, and the general administrative department.

Q. The general administrative department would be represented by Mr. Irving and yourself, is that right? A. And what clerical force had to do with things that were not strictly production and strictly sales.

Q. And then the department of production would center in yourself, would it not; what I mean to say, you were the capstone of the department of production, so to speak, to whom the other subordinates, or the subordinates who were in charge of production, would report, is that correct? A. As manager I was their head, but there was another head of the production department.

Q. Mr. Irving was over you? A. There was a man under me.

Q. It centered on you? A. Yes.

Q. And you were in charge of the production? A. Yes.

Q. Who was the man in 1920 who was under you in charge of production? A. Mr. Bunker.

Q. And Mr. Bunker had a certain number of men under him? A. Yes.

Q. During 1920? A. Yes.

Q. How long had he been in charge of production up to the time that he left? A. I should say three years—almost three years.

Q. And prior to that time, what was his title or position? A. Chief draftsman.

Q. You say he was changed from chief draftsman to what I think you called production manager? A. Yes.

Q. About 1917? A. Early 1918, I should judge; it might have been the latter part of 1917 or 1918.

Q. And it was required that Mr. Bunker report to you with regard to methods of production, etc.? A. Yes.

Q. And did you rely solely on what Mr. Bunker told you about things? A. No, sir.

Q. You made your own investigation independently, didn't you? A. No, I would say no to that.

Q. Then what other source of information did you have apart from Mr. Bunker? A. My judgment largely.

Q. In the business? A. Yes.

Q. Based on your observation? A. And observation, but not direct investigation over his head is what I am trying to bring out.

Q. But if Mr. Bunker came to you with a proposition involving a change of method or something of that kind, you would form your judgment on your past experience, or would you make an investigation

into conditions as they were at that time? A. I would take his investigation, if they were actual definite facts, unless I saw something about it that didn't look good, and then I would raise a question, and I perhaps might go out and investigate that, but generally, if he placed before me definite data covering any operation or improved operation or new scheme, or anything of that kind, I naturally would size it up on my judgment and my own experience and observation, and if it looked good, and he thought it was good, and his men thought it was good, if I thought it was good judgment to put it in, I wouldn't go and make an investigation over the thing. I usually—if I didn't agree with it, I would raise the question and let him investigate it further.

Q. You mentioned in the course of what helped you to form your judgment, the fact that if Mr. Bunker thought it was good, and if his men thought it was good, then you might adopt it, if it was in accordance with your good judgment? A. Yes, even sometimes if it wasn't.

Q. You people pursued a plan of having more or less family councils on things that were to come up or new things? A. To some extent.

Q. And if Mr. Bunker proposed anything, why you would have a little family council with Mr. Bunker and his men, who were particularly interested, to find out just what was what, didn't you? A. No, I don't recall that.

Q. Wouldn't you consult with any of his men at all? A. Very rarely, not in the family council, at least.

Q. But you would consult with him at other times? A. Sometimes individually.

Q. And did Mr. Bunker rather frequently make suggestions as to changes of operation and so forth? A. I wouldn't say very frequently, no.

Q. As a matter of fact, you never had any very high opinion of Mr. Bunker's efficiency, did you? A. Yes, I did.

Q. As manager or draftsman? A. As a manager?

Q. Yes, as a production manager? A. I am trying to answer that yes or no; it is rather difficult. I gave Mr. Bunker a chance to—

Q. Did you have a high regard or high opinion of Mr. Bunker's efficiency? A. When?

Q. As a production manager? A. When?

Q. During the three years that he was production manager. A. No.

Q. At no time? A. No.

Q. How would you characterize your regard for Mr. Bunker's efficiency? I have said, "Did you have a high regard"; that is in my mind; what is your expression of regard for Mr. Bunker's efficiency? A. Mr. Bunker's efficiency as a production manager was absolutely an unknown quantity, when he was made production manager.

The Court: As a result of the three years' experience, what did you find?

The Witness: At the end of the three years I didn't have a high opinion of him.

Q. What kind of an opinion did you have of him? A. I don't think he would ever make one.

Q. A production manager? A. No, I thought it was against his whole makeup. We tried it out and tried to see, but it wasn't developing exactly, and I was beginning to—I never did think he was a high grade production manager.

Q. On what did you base your opinion of Mr. Bunker's lack of ability as a production manager? What had you observed that led you to form that opinion? A. Everything in connection with his work, general sizing up of the man.

Q. There was nothing that he did that would lead you to believe that he was efficient? A. There were lots of things that he did without—

Q. You said so? A. I said I based my judgment on everything.

Q. Can you give us any details or particulars, cite particular instances that showed his inefficiency and led you to form your judgment that he was inefficient? A. I am only hesitating to try to get something that stands out rather than some half a dozen—the thing that stands out to me principally was the difficulty that I had with Mr. Bunker to get him to actually go into things thoroughly and discuss them thoroughly, a difficulty that we had to actually get to the bottom of problems that came up. There was so much of the time that they were left sort of unsettled, I didn't seem to be able to get the real results to enable me to form a definite judgment.

The Court: Why was he retained for three years, then, if he manifested such lack of ability?

The Witness: Because he had a lot of ability; I haven't said for a moment—

The Court: I am wondering if he wasn't as efficient as he should have been, or you didn't think he was an efficient production manager, why did you keep him in that position for three years?

The Witness: Because he wasn't—I haven't indicated that he was satisfactory.

The Court: Give me an answer.

The Witness: We kept him because we wanted him.

Q. What? A. We wanted to keep him.

Q. Was it a matter of charity?

Mr. Egner: I object.

A. A matter of judgment.

Q. Then you did think him worth while keeping? A. Yes, indeed.

The Court: I want to reconcile—a man who was incompetent as a general manager and at the same time remained in the position and paid for it.

The Witness: I thought that I said that I didn't have a high opinion of him as a production manager.

The Court: You have said that. I ask you, having said it, why did you retain him?

The Witness: He was satisfactory to us at the time we retained him.

Q. And your satisfaction was the result of your observation and your judgment as far as Mr. Bunker was performing as production manager, wasn't it? A. Yes.

Q. Did Mr. Irving consult you with regard to increase of salary from time to time for the men under you? A. Not very often.

Q. As to Mr. Bunker's, did he ever consult you? A. Yes, I think he has.

Q. You know as a matter of fact that Mr. Bunker's salary was increased from time to time during the time that he was manager? A. Yes, sir.

Q. Did Mr. Bunker participate in the so-called bonus that was given there as part compensation during 1920? A. Yes, I think he did.

Q. And during 1919? A. I think so.

Q. And also in 1921? A. 1921 I referred to as 1920.

Q. And those bonuses, as I recall, were based on conditions and the man's work for the year preceding that in which they were given, were they not? A. I only know that as hearsay; I don't know that.

Q. Don't you know the policy? A. I don't know what it was based on.

Q. Wasn't that the declared policy of the company and were you not notified to that effect in writing when you got your notice that it was being given to you for your work the prior year? A. I remember only one year when that statement was made.

Q. Those bonuses were paid in August? A. Sometimes.

Q. Usually paid in the summer time, were they not? A. Yes.

Q. And they were based on the prior year's business, were they not? A. Yes.

The Court: How many years were they paid?

The Witness: Four or five. I don't recall which.

Q. During all the time they were paid, Mr. Bunker participated in them, didn't he? A. I believe he did.

The Court: Who determined whether a man was entitled to participate in the bonuses?

The Witness: Mr. Irving.

Q. Was there any increase in wages in the shop around the first of January, 1922? A. Yes.

Q. Do you attribute the increase in production in any way to the increase in wages? A. I can only say I suppose so.

Q. Who determined the salary to be paid to the workmen during 1920; the workmen in the shop, I mean? A. I determined them finally, after some consultations.

Q. Did Mr. Bunker have the right to make raises of his own initiative? A. I believe not, not without approval.

Q. Could he at any time during the time that he was production manager increase the wages of the men? A. Not without approval.

Q. Do I understand that Mr. Bunker had the right to put on a night shift, if he so chose, without approval on anybody's part? A. I believe not.

Q. Whom would he consult with in regard to that? A. Me.

Q. And did he consult with you with regard to putting on the night shift in 1920?

The Court: Was there a night shift?

Q. There was a night shift, was there not, in 1920? A. Yes.

Q. And during what part of the year was the night shift put on in 1920? A. The latter half somewhere, I have forgotten just when it began to function.

Q. And why was the night shift put on? A. Because we were behind in our orders.

Q. And did you catch up with your orders as the result of that night shift? A. No, sir.

Q. At whose suggestion was that night shift put on? A. Mine, I think.

Q. Your suggestion? A. Yes.

Q. You have measured business from the production per team of riveters, haven't you? A. Yes.

Q. And you have indicated that as a criterion? A. Yes.

Q. Of the production in the business? A. Yes.

Q. Is that absolutely determinative of the production of the riveters, the number of square feet that they can rivet during that time? A. That is the controlling measure of the production.

Q. That is the last operation performed? A. Yes, except painting.

Q. Have you looked into the question of the production per unit of machines that you had there? A. When?

Q. During 1920? A. Yes.

Q. Can you tell us what the production per unit of machines was during that time? A. I figure that was 400 square feet a day.

Q. And how many machines did you have or how many units of machines did you have? A. I believe we had four in 1920.

Q. So that your production during 1920 for the machines was 1,600 square feet per day? A. I don't know whether it was or not; that was about the average. I didn't say it was that every day; that was the average that we used in computation.

Q. You found that to be a fair average? A. A fairly good average for estimate purposes.

Q. But you would assume that during 1920 your machines were performing the average work; as a matter of fact, they were performing the average work in 1920, weren't they? A. The average of 1920?

Q. Don't you know whether your machines were doing average work during 1920? A. Yes.

Q. And that was 400 square feet per day? A. About that; that is eight and three-quarters hour day.

Q. In 1920 did you have a cut and punch tool machine? A. I don't remember when the first one was developed in 1918.

Q. Will you describe to the Court just what cut and punch means? A. On a punch press, that ordinarily has one or two or three punches in the gang to punch a bar, that is to perforate the bar for the

rivets to get through; that operation is one operation done on the machine; the bars are cut into the proper length on another machine; this cut and punch tool simply means combining that one machine and shear that will cut off the bar on that same machine as it goes through on this operation, rather than having to have it handled to another machine.

Q. How many holes did your punching machines punch at one operation? A. Ordinarily three.

Q. And, as a matter of fact, the three holes would cover a span of about, say, twenty-one inches, on a straight bar? A. Yes, on certain types.

Q. Your cutting operation would only be performed at the end of the bar, wouldn't it? A. Yes.

Q. And did you have cutting and punching machines in one machine during 1920? A. I think we did.

Q. Then there was no change, so far as the operation was concerned, between 1920 and 1921? A. No, I don't think there was any change.

Q. How about crimping? And by crimping, I mean making the curves in the pieces of steel or bars of steel that go between the straight bars; how was that operation performed in 1920? A. On a punch press.

Q. And how many crimps did you make in one operation? A. That depended on the type of grating largely; there was a crimp and a half or perhaps two crimps sometimes.

Q. When you speak of a crimp and a half, you mean the space from rivet to rivet, do you not? A. That would be a crimp; a crimp would be from rivet to rivet on the bar.

Q. There is no crimping on the straight bar? A. No, I mean the distance on the straight bar—from the

rivet on the straight bar to the next rivet on the straight bar would include one full crimp of the crimp bar.

Q. Because there is a rivet hole and a rivet between the two rivets on the straight bar? A. Yes.

Q. And you would make a crimp and a half? A. Yes.

The Court: Or two.

Q. Would you make as many as two? A. I don't think we ever did that commercially; we have experimented with it. We call it one crimp, I suppose, if you analyze it closely.

Q. Have there been any changes in crimping in 1921 over what you did in 1920? A. No change that I know of; it was generally done the same way as before.

Q. How about 1922? A. Generally the same way.

Q. You are performing your operation of crimping and your operation of cutting and punching in the same way now as you did in 1920; is that right?

Mr. Egner: All the examination hitherto is between 1920 and 1921.

The Court: You have gone into 1922 also.

Mr. Egner: His own examination hitherto has been confined to 1920 and 1921.

Mr. Kraetzer: I press my question.

A. We are performing it on all units the same as we did in 1920, and in 1920 we only had one unit so equipped. We had the shearing machines in the other months, so that we are now operating all on that cut and punch.

Q. When was that change in method put into operation? A. During the last few months of 1922.

Q. On all of the units that you have now? A. Yes.

Q. And didn't have it before? A. Yes.

Q. So that the additional operation that you now perform, is that on the last punching of a bar, your machine cuts off the end of it, is that it? A. Yes, the same machine that punches it.

Q. That only applies to punching; in other words, you don't cut and crimp at the same time? A. No.

Q. Because the crimp bars are punched first, but you do cut and punch in every case? A. Yes.

Q. And that applies to the last operation on the bar? A. Yes.

Q. If you have got a six-foot panel before you, after you have punched six feet of bar, on the last punching of three holes, your machine cuts the end off that bar? A. No, you move it over on the shear and do it.

Q. It is a separate operation? A. Yes.

Q. Or in other words, you have got merely a shear attached to the punch? A. Yes.

Q. And it is necessary to lift the bar off the punch and put it over to be cut by the shear? A. Yes.

Q. So that you have to have two depressions of the machine, one for punching and the next for shearing? A. Yes.

Q. Prior to that time, going back to 1920, the difference in operation was that you would have to take that bar to another machine, to be cut, is that it? A. We took it to the shear machine first before we punched it.

Q. It was cut at another machine and then taken to the punching? A. Yes.

Q. What other changes, if any, were made in 1921,

or even in 1922, over 1920? A. No fundamental changes that I know of.

Q. You have qualified that "no fundamental changes"; what other changes were made, whether fundamental or otherwise?

The Court: That increased production.

Mr. Kraetzer: That is what we have in mind, of course.

The Court: Were any made other than those you have mentioned?

The Witness: The kind of chairs that some of the machine operators sat on, modifying the position of the lever which operates the machine, modified to suit the individual operator; new tables on which the bars could come through were put in on some units, bringing all the units up to the same standard classification; that is about all. No new ideas, but making all of the units operate with the same efficiency, as possible.

Q. In 1920 who determined what equipment was to be purchased for the Irving Iron Works Company? A. I approved of purchases.

Q. Who determined what equipment was to be purchased; who decided that you needed a new machine and that you would get it? A. I did, in the last analysis, but I would take suggestions and advice from the men who had charge of it.

Q. What men do you mean? A. Directly through Mr. Bunker, but if I may illustrate, if the men in the shop, the foreman of the machine shop, for instance, felt that we needed a different sort of machine, he would make his suggestion to Mr. Bunker, Mr. Bunker would take the matter up with me and

we would discuss it, but before it was finally bought, I would have to approve it.

Q. Before you decided that it was to be gotten? A. If it was gotten, I would.

Q. Would you order it if it was gotten? A. I would give instructions to order it.

Q. Of your own initiative, or did you consult with Mr. Irving with regard to that? A. Sometimes yes and sometimes no, depending on the character of it.

Q. Each one of your units of machinery consisted of two machines, did it not? A. A unit consisted of five machines. Now it consists of three; in 1921 it consisted of three.

Q. That was because of the elimination of the separate shearing machine. In determining whether or not an additional unit was to be added to your equipment, who would first settle that point? Would you, and would you purchase the machines? A. I settled whether it was required or not, but those matters were always discussed with Mr. Irving, except probably in a case where Mr. Irving was out of town for several months, and then I was left to decide whether I would or would not, but all of such purchases of new equipment and new machinery were always discussed with Mr. Irving or me.

Q. Did you buy any new machinery in 1920—and when I speak of machinery, I mean your larger machines, forming parts of the unit so-called? A. I don't recall whether we did or not.

Q. Did you purchase any new units or parts of units in 1921? A. I cannot say definitely as to that. We didn't increase any unit.

Q. Don't you know whether you purchased any new units of machinery in 1920 or 1921? A. How do you mean the word "unit"? We are getting confused.

Q. Any machine or any part of the three machines that formed a unit.

The Court: No, part of the machinery that cost a considerable or substantial sum of money.

A. I don't recall that we bought any large machine in 1921. He asked a unit.

Q. Did I understand you to say that you found that there was a different spirit among the men after Mr. Bunker left? A. Yes, after he left.

Q. And you, of course, were familiar with the spirit of the men before Mr. Bunker left? A. Yes.

Q. As a matter of fact, you were on the point, were you not, of discharging Mr. Bunker at the time that he left the Irving Iron Works Company? A. I have no knowledge that I ever made that decision, no.

Q. Hadn't you come to the conclusion that if Mr. Bunker hadn't resigned you would discharge him, at about that time? A. No, sir.

Q. Did you ever tell anybody that you had come to the conclusion? A. No, sir.

Q. Do you recall a conversation that you had with Mr. Rothman on March 14, 1923, over in Long Island City, at Fourth Street, near at about 1:15 in the afternoon.

Q. Did you or did you not tell Rothman at that time that as a matter of fact you had come to the conclusion that Mr. Bunker was inefficient; that you had decided to discharge him, if he hadn't resigned? A. No, sir; my statement at that time—

The Court: He didn't ask you that.

Q. Did you say that in words or substance? A. No, sir.

Q. Or in effect? A. No, sir.

Q. Do you recall having lunch with Mr. Bunker after he left the employ of the Irving Iron Works Company? A. Yes.

Q. And did he tell you that he was going into business for himself at that time? A. No, I don't remember that he did.

Q. There was some discussion about that? A. Yes.

Q. You were familiar, you handled the accounts of the agents, did you, the commission accounts? A. I approved them; they passed through my hands.

Q. The condition of their accounts, and so forth, was a matter that you had charge and knowledge of? A. Yes.

Q. And I think you told us that during the early part of 1921, there were arrearages of commissions due to various agents? A. I don't remember telling that.

The Court: Not this witness.

Q. Didn't you say Monday that in the early part of 1921 there was considerable dissatisfaction expressed by the agents with regard to the payment of their commission? A. I said there was some dissatisfaction with one or two agents, as I recall it; that is the fact, anyhow.

Q. Did that same condition obtain in 1920; was there dissatisfaction expressed during that year? A. I only recall one agent in 1920.

Q. As a matter of fact, one of the agents of the Irving Iron Works Company sued for his commission? A. I don't remember their ever being sued.

Q. Do you recall a man, Westerfield, bringing an action and attaching some goods or accounts out west? A. No, I do not.

Q. Do you recall a man named Patterson doing that? A. No, sir, no suit I ever knew of.

The Court: Attaching property, goods or accounts?
The Witness: Attaching an account, yes.

Q. In an action that he brought for his commission? A. I don't know anything about it, except that there was an attachment; that is the only knowledge I had of it. Just how it was gotten, I don't know; I never heard of it until I was notified that the attachment was there.

The Court: For his commission?
The Witness: Yes.

Q. Then, when Mr. Irving says in his affidavit that no suit was ever brought against the company for commissions, you say that that was incorrect?

Mr. Egner: I object.
The Court: Objection sustained.

Q. As a matter of fact, from your testimony we are to gather, are we not, that the Irving Iron Works Company is better off, financially and otherwise, since Messrs. Bunker and Lown left its employ; isn't that a fact? A. It is better off today than it was then.

Q. And as a result of their leaving, too, isn't it? A. I don't know that.

Q. You have attributed it to that, haven't you?

The Court: I haven't allowed him to attribute it to anything.

Q. You think it is ten times better off?

The Court: I don't care what he thinks. I want to know what the situation is. It may

be ten times worse or better, but I don't want what someone thinks about it.

Q. You are the man who claims to have invented the design or type of grating now manufactured by the Kerlow Steel Flooring Company?

Mr. Egner: I object to the form of the question.

A. I claim to have originated the design of the crimp bar.

Q. And the design of grating, too, in general? A. Just the surface design of it, yes; nothing to do with the depth of it.

Q. And when was it that you designed that? A. The latter part of 1917.

Q. Are you sure it wasn't in the summer of 1917? A. The latter half, I should say; it might have been in the late summer.

Q. Don't you recall when you designed it? A. Not exactly.

Q. How many types of grating has the Irving Iron Works Company manufactured during the period that you have been connected with it, approximately? A. Seven or eight, I should think.

Q. How many of those types did you design? A. I don't remember designing any, except this type in question here, so-called Type M.

Q. How do you account for the fact, Mr. Price, that in your affidavit, sworn to January 30, 1922, on the preliminary application herein, you made the statement with regard to the kind of grating manufactured by the Kerlow Steel Floor Company, as follows: "My recollection is that the said pattern was designed several years ago by myself." And again,

the fact that you verified or later swore to the truth of the petition in this matter, the bill of complaint in this matter, wherein it was set forth that the grating had been designed by you in 1919. How does it occur—

The Court: How is he responsible for what the bill sets forth?

Mr. Kraetzer: He says he has read the bill and knows the contents thereof, and swears to the truth of it.

Q. How do you reconcile that statement in your affidavit with your present statement that you designed it in 1917?

The Court: How is he inconsistent in his affidavit? He said it was several years ago. In his recital of his familiarity with the contents of the bill he said it was in 1919. If it were designed in 1919, and it was sworn to in 1922 or 1923, that might properly be regarded as several years ago.

Mr. Kraetzer: The statement has been made here that Mr. Price designed this grating in 1917; he has so stated on the stand.

The Court: And so stated in his affidavit, or he stated it "several years ago"; then he states, with the recital in the bill that it was designed in 1919, he is familiar. Which do you want him to reconcile?

Mr. Kraetzer: The statement in the bill, to the effect that it was designed in 1919, with his present statement, that it was in 1917.

The Court: Now I understand the question.

A. I later found the statement in the bill was in

error. I should have caught it—should have seen it, but I didn't know then; I know now that it was in 1917. I have looked up documents and refreshed my memory on the whole thing, but at the time of that affidavit, I overlooked that fact, that in the bill it said 1919.

Q. What documents did you look up? A. The shop records.

Q. When were those shop orders found? A. Sometime in the spring, February or March, somewhere in shop order records.

Q. Have you got the original drawings that were made of this grating back in 1917? A. No, sir.

Q. Where are they, Mr. Price? A. I haven't any idea.

Q. There were some made, weren't there? A. Yes.

Q. As a matter of fact, we have some exhibits here, some shop orders, which call for the making of certain drawings: these are the shop orders that were used by you to refresh your recollection, weren't they? I refer to Price Exhibit C in the interference suit, which have been marked, to the best of my recollection, Exhibits C29 and C30 in these proceedings. Those are the two? A. Yes, sir.

Q. You will note that the sample called for is Type K, is it not? A. Yes.

Q. Was that letter assigned to this form of grating which you call Type M here? A. Yes.

Q. How did that occur?

The Court: Didn't he explain that fully on Monday?

Q. You are familiar with the so-called Berson type of grating? A. I don't know any grating by that name.

Q. I show you Exhibit D19 for identification, being copy of a patent issued April 30, 1918, to the Irving Iron Works Company. A. Yes, I have seen a sample of that.

Q. This was designed, apparently, in the early part of 1917, was it not? A. I don't know when it was designed.

Q. Don't you recall that? A. No, sir.

Q. When did you apply for a patent on your invention, this Type M? A. The latter part of 1922.

Q. January 9, 1922, wasn't it? A. It was in January, I think; I don't recall the date.

Q. And it was after you had seen the sample of the grating made by the Kerlow Company? A. After I had seen the cut of it, not the sample.

Q. Now, as I recall it, at the time that you invented this Type M, there was a sample made, was there not?

The Court: I don't want to try your patent case here. I am going to stop it; we are confronted in the statement in this case by the witness that he is the designer. That alleged type of the design must have considerable significance.

Assuming it to be the property of the Irving, was it stolen by Mr. Bunker or Mr. Lown, or those associated with them, and appropriated improperly by the Kerlow Company?

Mr. Kraetzer: Doesn't that come down to the essence of the story?

The Court: I will not pass on the question whether this gentleman did or did not design it. The point I will pass on, and only this, is, did they, in furtherance of the conspiracy, or

one formed by them to take over this business, abstract from the files or papers of the Irving Company, plans and designs, or sketches and letters, and other acts in furtherance of the conspiracy. I will not determine who originated that idea. If it was the property of Mr. Irving, it was in his possession and they took it away with them, it is a very significant circumstance that probably the rest of the things that they are charged with doing is true. If, on the other hand, you come in and show me, as you say, in your defense, that this man didn't design this at all, Mr. Bunker designed it, or one of these persons; it never was in the possession of Irving and couldn't have been abstracted, it is a question then whether I will believe, not merely that he didn't design it, but, in addition, that they didn't abstract it from the Irving files.

I will not try the patent case; I am not called upon to. You may bring proof, when you reach this case, that this witness never had anything to do with it.

Q. Mr. Price, at the same time that this sample of grating was made, back in 1917—there was such a sample made at that time, wasn't there? A. Yes.

Q. At that same time there was a die made from which this particular kind of grating could be made, or with which it could be made, was there not? A. Yes.

Q. You have had that die? A. The Irving Iron Works Company has.

Q. At that time and ever since? A. Yes.

Q. And has produced it and we have a picture of it here as one of the exhibits? A. Yes.

Q. Did you ever advertise this Type M in your catalogue since 1917? A. No, sir.

Q. Did you prior to 1922 make any sales of that Type M? A. No, sir.

Q. Under any letter or style? A. No, sir.

Q. I direct your attention to your statement in the affidavit sworn to by you on January 30, 1922, in which you say: "I also know of my own knowledge that the die for use in crimping the bars in the process of manufacturing the said flooring which is claimed by the Kerlow Company, was evolved in our company during the period that Bunker was production manager, and that the same has been used continuously by my company, and is the exclusive property of it." How do you explain that or reconcile that with your present statement that you have never manufactured any of that grating?

Mr. Egner: He is referring to a different die.

Q. What die were you referring to when you made that statement?

The Court: Let the witness read the affidavit that you are quoting from, and then show him the die to which you are referring, and then let him answer.

Q. I show you Exhibit C22, which purports to represent the original die made in 1917, and I ask you if that is the die that you referred to in this affidavit?

The Court: Let me see his affidavit.

Q. (Continuing.) And read the part which has been read. A. Yes, this is the die that I referred to.

Q. Will you reconcile your present statement that

that grating was never manufactured or sold by you, with your statement in the affidavit, that the die has been used continuously by your company?

Mr. Egner: I object to that question, because, unless I am mistaken, the witness said that they had not sold that type of grating.

A. The statement of "continuously in use," I would say now, from what I now know of the present fact, sounds to me a little broad, a little loose. The idea that I had in mind at that time was, that the die was with our other dies, not scrapped, not discarded, but there for use, but I didn't mean to infer that it was used in every hour of the day or every week.

Q. Was it in use at all? A. As I know now, it never was in use in the machines, except the time when it was made as a sample. That is the only way that I know of it was ever used in the machine; that is the fact now to the best of my knowledge.

Q. That was the fact back in January, 1922, wasn't it? A. Yes.

Q. You knew that to be a fact, didn't you, then? A. Yes, I presume I did.

Q. You knew the different types of grating that were being manufactured by the Irving Iron Works? A. I knew at that time that it hadn't been manufactured, but the die was there with the other dies, and in constant use and ready to be used, if an order came in for it.

Q. Did the Irving Iron Works Company ever manufacture any of this type of grating as shown on Exhibit D19 for identification? A. I never saw any made like that except one sample.

Q. At the time that you designed this Type M grating—I think that letter was that characterization.

The Court: Type K and Type M are the same type?

Mr. Egner: Yes.

The Court: Not at the present time?

The Witness: No, we have no Type K now.

The Court: At the time that the sample was made, to which reference has been made?

The Witness: Yes.

The Court: Type K was also Type M?

The Witness: Yes.

Q. But at the same time when that sample was made, there was another Type K? A. Later.

Q. Before that? A. No.

Q. Does the shop order, September 27, 1917—I show you the shop order—does that indicate the first time that Type K was used for designation— A. That is the first time I knew of it being designated as a grating.

Q. That was the story we had of Mr. Davis' selection of Type K? A. Yes.

Q. Will you look at this paper marked D20 for identification and tell me whose handwriting that is in, please? A. I would say Mr. Davis.'

Q. Do you know it is Mr. Davis'? A. The best that I can know.

Q. And the date of this shop order is March 27, 1917? A. Yes, sir.

Q. And it contains your initials on it, does it not? A. Yes.

Q. Do you know that that calls for a sample Type K grating back on March 27, 1917? A. Yes.

Q. That was before the time that this— A. Yes.

Q. How do you account for that? A. I am just

in error; I evidently did know that, but I didn't recall it.

Q. There have been in existence three Type K's; one prior to the Type K and a subsequent Type K!? A. It seems so.

Mr. Egner: Is this Type K, referring to the exhibit just marked Exhibit D20 for identification, the same as the present Type K?

The Witness: No.

The Court: It is an oversight on the part of Mr. Price; he had forgotten that until his attention was called to it.

The Witness: That was another case of Mr. Davis assigning K, and no one officially knew it. Our records show only one K officially adopted: that is the present one.

Q. In the latter part of 1921, sometime in December, you ordered a set of drawings to be made for the dies and grating here? A. Yes, I ordered a drawing to be made for Type M.

Q. Did you at that time have any drawing in your possession of the Type M? A. Not full sized drawings to make a die from.

Q. Did you have some drawings in your possession? A. I will say I don't know whether we did or not at that time.

Q. You didn't have full sized drawings? A. No.

Q. Do I understand you to say you don't know whether you had a reduced sized drawing? A. I am not sure whether at that time we did or did not.

Q. I direct your attention again to this portion of your affidavit which I read before, verified January 30, 1922, in which you say, "pursuant to the said

drawing, the said Irving, Bunker and I at various times discussed that point, as a result of which I made a design of the said pattern advertised at present by the Kerlow Company, and pursuant to the said drawing a full set of drawings were made and a set of dies and a sample were constructed, and the same have been in our possession ever since." Did you at that time have a full set of drawings—at that time in 1917? A. No, we did not.

Q. How do you account for your statement in this affidavit that you did have that set of drawings in your possession? A. I thought we did; when I went to look for them, they were missing.

Q. Had they been made prior to that? A. They had been made in 1917.

Q. Have you found them? A. We have never found them.

The Court: Do you know what became of them?

The Witness: I haven't any idea.

Q. It is a fact, is it not, Mr. Price, that so far as the Irving subway grating is concerned, anybody could make it at any time by making the bars of equal depth, without infringing Mr. Irving's patent, isn't that so? A. I understand it that way.

Mr. Egner: That calls for a conclusion. I object.

The Court: I don't care what his opinion is about Mr. Irving's patent rights; he may be absolutely right or wrong.

Q. How recently did you see the drawing of Type M, that was made back in 1917, a copy of which is referred to in your affidavit; when did you last see it? A. I have no recollection of seeing it at all

since 1917, or since the time when it was first made, whenever that was.

Q. Do you know whether or not there was a copy of that drawing in existence in 1922? A. No, I do not.

Q. Do you know that there was no such drawing in existence? A. No, I don't know that.

Q. Has that drawing ever been produced at any time at any of the interference proceedings? A. Not to my knowledge.

Q. Were you present at the time that the witness May in the interference proceeding was in Mr. Irving's office with Mr. Irving, Mr. Davis, Mr. Werkle—were you present that time? A. I don't remember being in there when they were all there. I was there when Mr. May was there.

Q. This particular drawing was called G20, wasn't it? A. By the shop order.

Q. And that was the designating mark on that order? A. On the shop order.

Q. Did you at the time of that conference see a copy of G20? A. I did not.

Q. Have you made an effort to find a copy of G20? A. We have, both myself and the different draftsmen under whose charge the drafting room has been since Mr. Tarof left the drafting room.

Q. Monday we had shown to us, Mr. Price, a blueprint that was contained in the portfolio that was found; that blueprint was entitled "Decimals of a foot" or "Decimals of an inch"? A. "Decimals of a foot."

Q. Will you state what that is; is that any secret information that the Irving Iron Works Company— A. No, sir.

Q. That is merely a statement of computations, is it not? A. Yes.

Q. And probably one of the commonest pieces of information that engineers and draftsmen use?

Mr. Egner: I object.

A. Yes.

Q. Can it be purchased in the open market, that table with others? A. Yes.

Q. It is given away, isn't it, that information? A. I cannot say as to that.

Q. You are an engineer? A. Yes.

Mr. Egner: I object, unless it is shown that it is given away by our company.

Q. I show you a series of pages torn from various publications and ask you if those pages do not give substantially the same information as was contained on that blueprint found in the portfolio?

Mr. Egner: I object. The only significance of this is that it is a particular blueprint which was prepared in our shop, not that it contains information.

The Court: I don't recall any such information.

Mr. Egner: That was a tracing from our shop.

The Witness: The original tracing of those figures from which that blueprint was made, was a tracing made in our drafting room, copying this data from some book.

The Court: You didn't create the table?

The Witness: The subject-matter didn't originate with us.

Q. And the blueprint in itself has no intrinsic value? A. No, sir.

The Court: The blueprint is a blueprint of a copy of a table copied by them in that office from some other source.

Mr. Egner: And handed out for our employees' use.

The Court: It was copied in some book while in their possession?

The Witness: That is correct.

Q. And then the blueprint made from that copy? A. Yes.

Q. Therefore, it is not information which originated with the Irving Works? A. No.

The Court: The whole significance is this, that this blueprint was produced by Miss Bell, with other papers she found in the portfolio said to have been left in the car by Mr. Tarof, and the intimation given me is that Mr. Tarof abstracted these papers from the files of the Irving Company. That is the whole situation as far as it relates to that blueprint.

Mr. Egner: Yes.

Q. As to the correspondence—the letters to and from the Portland Cement Association, which were contained in that folder that was produced by Miss Bell, do they contain secret or confidential information of the Irving Iron Works Company? A. Yes, I would say they did; they are in answer to a specific question raised by our correspondence, covering the question of the use of cement in connection with the Irving subway grating, and this is, I would say, per-

haps, confidential information given to us by the cement people, answering our queries in regard to its application to our product.

Q. Don't you know that they would give that same information to anybody that should make an inquiry of that kind?

Mr. Egner: I object.

The Court: If he does know.

Q. Don't you know that to be a fact? A. No, I don't know it to be a fact.

Q. You know the purpose for which the Portland Cement Association was formed and is maintained, don't you? A. Yes.

Q. You know it is for the purpose of disseminating information generally and gratuitously, don't you? A. Yes.

Q. That is the kind of information you get there, general and gratuitous? A. This isn't general information; it is specific information, specific application to subway grating.

Q. Don't you know that if the Kerlow Steel Flooring Company asked about the application of Portland Cement to Kerlow Steel Flooring or grating, that they would get the same information?

Mr. Egner: I object.

The Court: I don't see how he can possibly know, or anyone else.

Q. During 1920 did Mr. Bunker in the course of his talks with you ever request you to install any additional machinery? A. Yes, I presume he did.

The Court: Do you know?

The Witness: Yes.

Q. Did he, and when I speak of machinery, I am again referring to the large units of machines, not small immaterial stuff—did he? A. Yes.

Q. And did you install the machinery? A. No, sir.

Q. And in 1919 did Mr. Bunker ask you to install any machinery, any additional units or parts of units of machinery? A. Parts of units.

Q. And did you? A. No, sir.

Q. How about 1921, did he ask you for any while he was still there? A. I have no recollection of that; I don't think he did. If I may be allowed to qualify, that he didn't ask for any specific machines to be bought and installed, but he did put up the proposition of us buying certain machinery.

Q. Additional machinery? A. Yes, but he didn't specifically put in that request to have these particular machines bought.

Q. He said in words, or substance, to you—you speak of 1921? A. 1920 and 1919.

Q. He said that additional machinery was necessary? A. He would like to have some new machinery to replace machines that were there, and he would like to have—his idea was that a certain kind of a machine would be a fine thing for us to have.

Q. And was it your judgment, and was it the result of your judgment, that instead of buying the new machinery, or recommending the new machinery, the night shift was put on in 1920? A. I don't recall that that question was settled that way, one way or the other.

Q. Did you at this conversation with Mr. Rothman that I spoke of before, on March 14, state to him that the Kerlow Steel Flooring Company was not doing any harm or had not done any harm in any way to the Irving Iron Works Company?

Mr. Egner: I object; how is that material?

The Court: Are you laying this as a foundation for contradiction?

Mr. Kraetzer: Yes.

Mr. Egner: Must he not contradict him as to a material element in the case?

The Court: Yes, I think this is.

Q. Didn't you say that? A. No.

Q. Did you at this conversation with Mr. Rothman that I spoke of before, on March 14, state to him that the Kerlow Steel Flooring Company was not doing any harm, or had not done any harm in any way to the Irving Iron Works Company—in words or substance? A. No.

Q. Did you in words or substance, at your interview with Mr. Rothman, on March 14, 1923, at the place specified by me over in Long Island City, say to Mr. Rothman, in words or substance, that the Kerlow was not hurting you (the Irving Iron Works Company) more than Mitchell Tappan had ever hurt you, and that that was not at all? A. I said that or words to that effect; we knew they were not hurting us, but I didn't say that they never had hurt us.

Q. Did you at that time and place say to Mr. Rothman that you had done more business in 1922 and made more money during that year than you had ever made before—referring by "you" to the Irving Iron Works Company? A. No, sir.

Q. You made no such statement, either in words or substance to Rothman? A. No, sir.

Q. Did you in words or substance say to Mr. Rothman, at the time and place specified, that the only reason that Mr. Irving had for bringing the various actions against the Kerlow and the individuals con-

nected with it, was in order to make an example of them? A. No, I didn't say that.

Q. Did you at that time and place say to Mr. Rothman, in words or substance, that Mr. Irving felt himself in duty bound to protect his business, and for that reason, and for that reason only, was he bringing action against the defendants Kerlow and the individuals Bunker and Lown, in order to make an example of them? A. No, I did not say that.

Q. Have you a patent at the present time issued to you on the Type M grating, or to the Irving Iron Works Company? A. No, sir.

Q. I show you Exhibit D2 for identification, and direct your attention to the picture of Type M on this exhibit, and ask you how you explain the fact that that type is marked "Patented" in this exhibit, which is a copy of the Irving Iron Works Company's catalogue? A. The word "Patented" here is in connection with the heading "Irving Subway" with the trade-mark "Fireproof Ventilating Flooring." That patent does not refer to the design patent, it refers to a constructive patent of the Irving Subway grating.

Q. Is that Type M covered by that patent? A. Yes, sir.

The Court: It refers to patent in construction, but not design?

The Witness: Not design. The design is anybody's property, so far as I know.

Q. What feature of the construction is covered by that patent?

The Court: There, again, is a patent.

Mr. Egner: We offer our patents; they speak for themselves.

The Court: It is merely to contradict him?

Mr. Kraetzer: No, sir.

The Court: I don't care what features are covered.

Mr. Kraetzer: Yes, it is offered for the purpose of contradiction.

Q. What feature of it is covered by that patent; only the construction features that you claim are covered by that patent? A. I would have to refresh my mind from the patent papers.

Mr. Kraetzer: Let us have the patent papers.

The Court: If you are going to take that subject up, put the patent paper in and it will speak for itself. He said they didn't mark that particular type patented; he said they mark the construction feature of that type as patented, but not the design feature of that type.

Q. What do you mean by the construction feature that was marked patented in this Exhibit D2 for identification?

The Court: Am I correct in my understanding?

The Witness: Yes. I don't know any way to read that, except to say this—

The Court: Don't you know what you meant? Can you summarize it generally what is in the patent itself?

The Witness: I meant that that "patented" there is put in to cover the patents on Irving Subway grating, and we have no patent on design.

Q. You said that it was to cover the construction feature. I ask what did you mean when you told us

it was to cover the construction feature; what particular thing did you have reference to? A. All of those things that are covered by the patent.

Q. They can be summarized in this way, can't they, that the bars are of different depth? A. That is the fundamental, but there are a lot of other things in there.

Q. Isn't that what you had in mind when you said it was to cover the construction feature? A. No, I had in mind that it covered the patent we had.

The Court: And all features mentioned in it?
The Witness: Yes.

Mr. Kraetzer: The patent is in evidence as C41. The two claims are:

1. A grating for sidewalks and floors, which comprise in combination a series of straight bars and a series of intermediate reticulated strips of much less depth, riveted at their point of contact to the straight bars, the upper edges of all the bars and strips to be in the same plane and the space between the straight bars below the reticulated strips being entirely open.

The second claim is a grating for sidewalks and floors which comprise in combination a series of straight bars extending horizontally in vertical planes, said straight bars being of considerable depth, to produce a girder-like formation and a series of intermediate reticulated strips of much less depth, lying wholly between and rigidly fastened at their point of contact to the straight bars, the upper edges of all the bars and strips being in the same plane and the space between the straight bars below the reticulated strips being entirely open.

Q. Now, I ask you again what were the construction features which you have referred to in your answer as being covered by the statement that Type M is patented; what did you have in mind?

The Court: He hasn't said that it was patented.

Q. Covered by the word "patented" appearing under the picture of Type 14, opposite the word "Type M" on this catalogue.

Mr. Egner: I object, it infers a statement that Type M was patented.

The Court: I will sustain you; I think it is quite clear what the features of construction are which you have read.

Q. Will you reconcile for us the fact that in that catalogue D2 for identification prices for Type M with bars of equal depth are quoted?

Mr. Egner: I object as not cross-examination.

The Court: You are working too hard to convince me that this man is not telling the truth. I don't want quite so much effort, and that is the only significance I attach to this line of examination, except as to whether those things were or were not in the possession of the Irving Company and appropriated by Kerlow.

Q. Is the question of increase of work a matter of record? A. Yes.

Q. Can you produce those records from 1920? A. I am not sure whether I can produce the definite records for 1921 for the entire year; I think I could

get them; I haven't them in immediate form, but from the first of September, 1921, I have the daily records and could give you that very readily, but previous to September, 1921, I might have some difficulty in making up those records.

The Court: Do you desire these records in the form he has them, or make them up?

Mr. Egner: They have a lot of other information with some sheets with them, financial and so forth.

Mr. Kraetzer: We don't want that.

The Court: I think we might have a summary that the witness could state was an accurate summary of his records.

Mr. Egner: We will make that up and produce it at the next hearing.

Q. Is Roope still in your employ? A. No, sir.

RE-DIRECT EXAMINATION by Mr. Egner:

Q. You stated on cross-examination that you did not have a high opinion of Mr. Bunker as a production manager; what was your opinion of Mr. Bunker generally during the time that he was in the employ of your company?

The Court: How is that material as an individual or workman or officer, or what?

Mr. Egner: As an officer of the company.

Q. Mr. Price, at the time of this dissatisfaction on the part of the agent, Mr. Patterson, who in behalf of your company, was in charge of the negotiations with Patterson with respect to his claim for commissions? A. Mr. Lown.

Q. Do you know whether your company disputed the amount due Patterson? A. I think we did.

Q. Are you familiar with the details of the matter? A. I was at the time.

Q. Are you now? A. Very hazy.

Q. Do you know how much money was involved? A. It was a few hundred dollars; it was less than five hundred—a couple of hundred as I recall it.

Q. You stated that your company has not made any sales of Type M grating, that is, you have not exploited it commercially; why was that?

Mr. Kraetzer: I object as not binding on us.

The Court: It is explanatory of their claim that the Kerlow appropriated it. I would want the answer.

Q. Why didn't you use it? A. The reason we hadn't used it was because we hadn't reached the point where we felt that it was time to put it out, and then the war came on and we laid it aside entirely because we were engaged in other matters entirely different, and that really carried us through to the year 1920, when there was no time to put anything out like that. This type as we designed it didn't fill the bill that I originally got it up for. It turned out to be valuable to us from another point of view, and that was the point of view of its architectural ornateness—its beauty, and we hadn't gotten to a place in the development of our business where we were ready to launch a campaign on ornateness; we were dealing with engineers at that time, but we felt that there was a chance that the time would come when we would be.

Q. What type during the last four or five years have you been marketing? A. G and E.

Q. You stated that on some occasions during 1919 and 1920 Mr. Bunker asked you to install certain new machinery? A. Yes.

Q. He suggested it should be done? A. Yes.

Q. Why was this suggestion not followed? A. The one that I have in mind particularly was a large multiple punch machine that he thought was a wise thing for us and argued for it a good many times, and it was not done, because in the best of our judgment—Mr. Irving and I and Mr. Bunker talked that over and we thought it wasn't a good investment, although it would be a nice thing to have.

RE-CROSS EXAMINATION by Mr. Kraetzer:

Q. What would that multiple punch machine cost? A. About $10,000.

Q. What size bed was this multiple punch to have? A. Six or seven feet.

Q. It would cost $10,000? A. To make the kind of machine that we were discussing.

Q. Lown was sent to Kansas City on the matter by Mr. Irving or by you? A. Yes, he went after discussion, but he wasn't actually sent.

Mr. Egner: I made reference to some affidavits in the contempt proceeding. I wish to say now that we are maintaining our position on this, but I thought that perhaps your Honor would prefer to take that up at the conclusion of all the evidence, as undoubtedly whatever conclusion your Honor comes to on the merits, would very much effect what you would be

willing to do in the contempt matter, so with your Honor's permission, I will reserve that and rest.

The Court: Then you rest otherwise?

Mr. Huck: The only feature about that is that we will have some of the witnesses here, probably, who are involved in the contempt proceeding, and the question in my mind just now is whether we shall interrogate them or submit their affidavits.

The Court: Mr. Egner has to furnish counsel within a week before the next session, a reference to the testimony I referred to, and you give Mr. Egner a memorandum in reply two days before the next hearing.

WALTER HERBERT LOWN, sworn for defendant.

Direct-examination by Mr. Huck:

Q. Mr. Lown, where do you reside? A. 261 Bergen Avenue, Jersey City.

Q. What is your age at the present time? A. Twenty-four.

Q. You are one of the defendants in this case? A. I am.

Q. Are you connected with the defendant Kerlow Steel Flooring Company either as an officer, agent, employee, director, stockholder or in any other capacity at the present time? A. No, sir.

Q. Were you formerly connected with it? A. Yes, sir.

Q. In what capacity? A. As secretary, treasurer and sales manager.

Q. You were also a director? A. Yes, sir.

Q. When did your connection with the company cease? A. February 10, 1923.

Q. And what is your present business? A. Building tile.

Q. Is the defendant Kerlow Company or the defendant Bunker in any way interested in your present business? A. No, sir.

Q. Were you formerly employed by the complainant, Irving Iron Works Company? A. Yes, sir.

Q. And when did you enter their employ? A. September, 1919.

Q. How old were you at that time? A. Twenty.

Q. What had you done immediately prior to entering the employ of the Irving? A. I was with the United States Army.

Q. From when until when? A. From July, 1917, until August, 1919, in France.

Q. And prior to that what had you done? A. Assistant sales manager of the Berwin Manufacturing Company, manufacturer of fire extinguishers.

Q. What period did that cover? A. Approximately a year.

Q. And prior to that? A. I was with the Brewster Automobile Company.

Q. How long were you with them? A. About a year.

Q. In what capacity? A. Automobile salesman.

Q. When did you enter the employ—I think you did answer that— of the Irving Iron Works Company? A. September, 1919.

Q. And in what capacity? A. Assistant sales manager.

Q. How did you come to go there? A. I answered an ad. in a New York publication.

Q. Who employed you? A. Mr. D. A. Wilson, sales manager.

Q. Who was your immediate superior when you entered the employ of the Irving? A. D. A. Wilson.

Q. And did Mr. Wilson continue there as long as you did? A. No, sir; he left about a month after I came.

Q. And who became your immediate superior then? A. Mr. Price, Mr. P. L. Price.

Q. The general manager of the company? A. He was general manager, yes, sir.

Q. Were you under the immediate jurisdiction of Mr. Price? A. Yes, sir.

Q. Now, when did your employment with the complainant terminate? A. May 9th, 1921.

Q. And at what salary were you employed? A. $35.00 per week.

Q. Did that salary continue or change? A. It changed.

Q. Can you tell us how it changed? A. It was $50.00 per week when I left.

Q. Was that in one jump from $35.00? A. No, sir.

Q. There had been gradual increases? A. Yes, sir.

Q. What was your position when you left? A. Sales manager.

Q. And who was your superior then? A. Mr. Price still continued to be my superior.

Q. Came there a time when you told Mr. Irving you were going to leave the employ of the corporation? A. Yes, sir.

Q. When was that? A. Along the latter part of March or early part of April, 1921.

Q. Where? A. In Long Island City at the office.

Q. Who was present at that time? A. Mr. Irving was the only one present.

Q. And what did you tell him—what was said by you and what was said by him? A. I told Mr. Irving that I had decided to leave the company, that I had a much more lucrative proposition in view.

Q. Give the whole conversation. A. Mr. Irving asked me what I was going to do and I told him I was going to selling securities in connection with Roosevelt and Company and in connection with a man who was named Beaver who was in there at that time.

Q. In Irving's employ or Roosevelt & Company? A. In the employ of Roosevelt and Company. Mr. Irving very sorry to see me go and asked me to reconsider leaving. He told me that although he had not been able to do anything for me at that time, he probably would be able to do something in the future and asked that I consider staying with the Irving Iron Works. I told him I had made up my mind definitely what I was going to do and could not reconsider my decision. He then went and called Mr. Price in and told me to tell Mr. Price substantially what I had told him, which I did.

Q. Was anything else said then? A. Mr. Irving and Mr. Price both asked me if I was dissatisfied with them. I said no, that I felt friendly toward them and I liked them both, but I felt that my future in other fields would be better for me and although I thought a great deal of the product which they had, I nevertheless felt I could not afford to stay with them any longer.

Q. At that time had you determined to manufacture grating? A. Not definitely, no, sir.

Q. And what do I understand by that statement you made to Mr. Irving that Roosevelt & Company wasn't used to sell the securities? A. That was true. The manufacturing was entirely dependent on my ability to sell the securities of the Kerlow Company and had I been unable to raise the capital the Kerlow Company would never have materialized.

Q. The securities were of the Kerlow Company you were going to market? A. No.

Q. Did you tell them that? A. No.

Q. Was Roosevelt & Company a brokerage house? A. Yes, sir.

Q. Stocks, bonds and securities? A. Yes.

The Court: From what you said you gave them the impression that you were going to deal in securities generally?

The Witness: No, I tried not to leave that impression, but I was, at that time, dealing in bonds in connection with a friend of mine, who was with another brokerage house down there.

The Court: Did you suppress all information from them in relation to the Kerlow Company or your connection with it?

The Witness: Yes.

The Court: At that time?

The Witness: Yes, sir.

Q. You did that deliberately? A. Yes, sir.

Q. Why did you do that? A. I didn't think it would be good business policy to tell Mr. Irving because from what I knew of Mr. Irving I was afraid that he would kill the company before it had an opportunity to perform.

The Court: That is kill the Kerlow Company?

The Witness: Yes, sir.

Q. Did you leave after that? A. No, sir.

Q. When did you actually leave? A. May 9th, 1920.

Q. What did you do between the date of this conversation, which I understand was about the end of March or first of April, and the day when you finally quit? A. I took a train to Detroit for Mr. Irving and stayed there a while to break in a new man.

Q. When did you take that trip to Detroit? A. In the early part of May—I believe it was the second or third of May.

Q. How did you come to take that trip? A. Mr. Irving came to me on Friday morning and he told me it would be necessary for someone to go to Detroit to place on a new man in that territory as the present agent had done something which would necessitate his discharge. Mr. Irving said he understood I wanted to get away immediately, but he said his wife was very sick and he was afraid she was going to be much worse and he asked me if he could call me up Saturday, that was the next day, to tell me the condition of his wife and if she was worse he would be unable to go to Detroit, that he would meet me in the Grand Central Terminal in New York and give me the railroad tickets and ask me to take the trip for him, to which I agreed. Mr. Irving called me Saturday night and said his wife was worse and asked me to meet him, which I did the next night at five o'clock and I got on the train and went to Detroit. After I had placed a new man on in Detroit I came back.

Q. Whom did you place in Detroit? A. Mr. Harold Scarth.

Q. Where did you get his name? A. Mr. Irving told me to see Mr. Bambrook, formerly a field engineer and a man at that time engaged in the Auto

Match Company of Detroit. He told me that Bambrook would undoubtedly have someone in mind and he would very much appreciate Bambrook's suggesting someone as he felt Bambrook was a very responsible fellow. I got into Detroit Monday morning. The first thing I did was to look up Mr. Bambrook and he told me he could recommend no one higher than Mr. Scarth, who was at that time chief engineer of the Safety Council of the City of Detroit. Scarth came over to see me about an hour after that, and after investigating his record and looking him up as far as I could, I hired him.

Q. Did you know Scarth prior to that time? A. No, sir, I had heard of him but did not know him.

Q. Did I understand you to say you made another trip during that period? A. I made another trip about the latter part of March and the beginning of April. The latter part of March or the beginning of April.

Q. Was that before or after your conversation with Mr. Price and Mr. Irving? A. I am not positive. I tried to jack my memory but I don't know. I think that trip was before my conversation with Mr. Irving.

Q. Where was that trip to? A. I had to go to Kansas City to straighten out a legal matter which had arisen out there. Our agent, W. L. Patterson, had sued us for commissions due, and in suing he had attached the accounts of J. Goldberg & Son, a structural outfit. In doing that after Goldberg found out that the account was attached he refused to pay the money. There was a lien that was due on the building in about two weeks and we had a very short time to work so Mr. Irving talked it over and he told me that I had better go to Kansas City as quick as I

could to save that money and also to straighten out the suit and endeavor to keep Patterson on as our agent. That was the definite purpose of that trip.

Q. And who did you see when you got to Kansas City? A. Mr. Patterson, Mr. Battle McArdle, the lawyer who was looking out for our interests at that time, and who handled the suit Patterson had brought and I also saw J. Goldberg & Sons and succeeded in getting the money in the account.

Q. Did you pay Patterson? A. No, I did not, because Patterson had already received his money from the attachment, and Goldberg was holding up the balance of ours.

Q. Do you remember how much was involved in that matter? A. We owed Patterson at that time in the neighborhood of four or five hundred dollars.

Q. Who told you to see Battle McArdle? A. Mr. Irving and Mr. Price was in on it too. It was a three-cornered conversation and we made up our minds what we wanted to do before I left New York.

Q. Did you then or afterwards pay Battle McArdle a fee? A. I did not, I brought his bill in to New York and gave the bill, which was $25, to Mr. Price. Whether he approved it or not, I don't know.

Mr. Huck: I ask complainants to produce a check which I have served them with notice to produce, to the order of Battle McArdle, dated about the time referred to.

Mr. Egner: I entirely overlooked such a notice. I don't see its materiality. I have not produced the check. If we have it we will produce it.

The Court: Is the purpose to show his interest?

Mr. Egner: There is no dispute about that.

The Court: To show that he was acting in the interest of the Irving Company? Mr. Price also admitted it today.

Mr. Huck: Mr. Price admitted it this morning. He admitted that there was an attachment.

Q. This new man that you say you broke in, who was he? A. Where?

Q. To succeed you in the Irving plant? A. One W. H. Roope, whom I had gotten through the National Employment Exchange in New York.

Q. Who told you to employ a man to succeed you? A. Both Mr. Irving and Mr. Price.

Q. How did you go about getting the man? A. I applied to the National Employment Exchange, gave them the qualification of the man and they subsequently sent up a number of applicants and I looked them over and took down their qualifications in detail and I sent them in to Mr. Price for a final decision.

Q. Among them was Mr. Roope? A. Yes, sir.

Q. Had you known him before that? A. No, sir.

Q. Ever seen or heard of him before that? A. No.

Q. You sent him in to Mr. Price? A. Yes.

Q. Did you go in with him? A. I introduced him.

Q. What did you say? A. I told Mr. Price that this man was a likely looking candidate for the job, although I myself was not satisfied that Roope was the best of the men, but Mr. Price had a long conversation with him, and after he had this conversation Mr. Price come in and told me he had decided to take Roope, "because he speaks about his mother and I can see a sentimental strain in him; that is a

very good thing in business," and from what I could judge, Mr. Price had definitely decided to hire Roope, although he was not hired that day.

Q. When was he hired? A. The next day when he came there again and interviewed Mr. Price further and went in to interview Mr. Irving, and when I arrived at the Irving Iron Works, Mr. Irving told me that they had hired Mr. Roope to take my place. Mr. Roope was then turned over to me for training and instruction.

Q. How long did you stay there after Roope came? A. About ten days; possibly two weeks, I don't recall.

Q. Then you definitely left? A. Yes, sir, on May 9, 1921.

Q. After that date did you ever return to the plant or office of the Irving Iron Works? A. Never.

Q. Now, when did you first discuss with Mr. Bunker the question of going into business with him? A. December 24th, 1920.

Q. And what was the nature of that discussion? A. I went into Mr. Bunker's office just before quitting time on Christmas Eve, and I told him that I felt the Irving Iron Works Company were not doing the proper thing in the conduct of their business; the general policy was very poor; the entire organization was hanging by the thread of a patent, and in addition to that, the production methods were methods typical of the year 1850. They made the material by hand and entirely in an elementary way. I told him that I felt if a boy ten years old were to go out and go into the grating business, he would make it exactly as the Irving Company made it. The weakness of the patent, combined with the very high cost of production, put the business in a dangerous way, which left it

open to competition, and I told Mr. Bunker that I had noticed throughout the country, here and there, various companies beginning to manufacture a similar type of grating and getting the business away from us. I further told him I had spoken with Mr. Irving and now and then Mr. Price on the matter, and Mr. Irving told me that he didn't care to either strengthen his patents or improve his production schedule, and that for the last three or four months I had had two or three conversations with Mr. Irving on the subject, but as he continually refused to do anything regarding the matter, and I feeling that I was gambling my future by remaining with the company, I had practically decided to enter the same business myself, and I told Mr. Bunker that I was putting my future practically in his hands, but I felt that he would trust the confidence that I had in him, and I told him that I had watched his work around the Irving Company, and felt it was very efficient and that he was a desirable asset. If I were to go into business for myself I would like to have him consider coming into the business with me. He told me that he could not give me a definite reply at that time. He said he had been up against the same proposition himself. He had talked the matter over with both Irving and Price and had gone so far as to offer to purchase machinery himself, if they would give him half of the saving that was effected by the use of the machinery, but he said, however, that he would like to have one more attempt to convince them, and if I would please let the matter rest, with my promise that if he would convince them, I would stay, and I promised I would stay if he could convince them, and he told me he would let me know later on. That was the end of the conversation.

Q. Then was anything done in the furtherance of that plan from the time that you had that discussion until the time that you left the Irving Iron Works? A. The company that was to manufacture the material was incorporated, and that is practically all that happened.

The Court: When was that?

The Witness: During the month of March. The day the company was incorporated was the day that I gave Mr. Irving my first notice of leaving.

The Court: That was the Kerlow Company you are talking about?

The Witness: Yes.

Q. That was on the day when you gave Mr. Irving your notice? A. Yes, either that day or the next day. I remember I received the notification of the incorporation, and the next day was the day I went to Mr. Irving and told him that I was through.

Q. At the time you discussed this with Mr. Bunker in December, what was the condition of his health, to outward appearances? A. His health was in very poor condition.

Q. Was that the subject of any conversation? A. That was not the subject of the December conversation, but on New Year's Eve, a week later, Mr. Bunker came and he asked me if I had had any new thoughts on the matter; I told him that I had not, I had done nothing further; he told me that he had two discussions with Mr. Price and Mr. Irving that week, and that he was fully convinced that they didn't intend to do anything about improving the methods. He said, "I cannot give you any definite decision." He said, "I don't know whether I can work for anybody or not. My health is in very poor condition, as you

know." Many a time I had gone home with him purposely to see that he got home all right. His health was in very bad shape. And he further told me that inasmuch as his health was bad, he did not want me to tie myself down to any agreement with him, and that I should hold nothing definite as to his going with me. I asked him now how he felt about my going ahead, and he said he thought I was perfectly justified in doing so, as he was convinced at that time that the Irving Iron Works refused to do anything further to be a thoroughly progressive company.

Q. You mentioned before the weakness of the patent as having been the subject of a discussion with Mr. Irving. What was said about the weakness of the patent? A. The patent that the Irving Iron Works Company had consisted mainly of a very meagre claim, in that the depth of the reticulated or crimp bars—

Mr. Egner: I object, unless this is part of the conversation.

Q. Is this part of the conversation with Mr. Irving?

The Court: Or are you telling me your version of the claim?

The Witness: Yes, sir, my version.

The Court: Strike it out.

Q. I asked you for the conversation between yourself and Mr. Irving? A. I had various conversations with both Mr. Irving and Mr. Price.

Q. Tell us what the conversations were.

Mr. Egner: First let us have the time fixed.

The Court: Fix the time. Take them in their

order, and give me the oldest conversation and with whom you had it, whether with Mr. Irving or Mr. Price, or both.

The Witness: I can fix one conversation that occurred along the latter part of November, 1920.

Q. With whom? A. Mr. Irving.

Q. Tell us what was said about the patent. A. I went in to Mr. Irving and told him that I considered the patent to be very weak. I did not consider that he was doing the right thing by continuing to carry along the organization, which was entirely dependent on a patent which had no strength, and Mr. Irving told me that he decided to do nothing to get further patents, or to strengthen that patent, inasmuch as he felt that if anyone came into the field and got too strong for them, he had enough to do him for the rest of his life.

Q. Did you tell him why or did he tell you why the patent was weak? A. He, on a number of occasions, made this phrase, "Well, when it comes to patent cases, we haven't got a leg to stand on." He knew it.

The Court: How familiar were you with patents and patent claims? You were then a lad about twenty-one years of age, weren't you?

The Witness: Yes.

Q. What familiarity had you with patents and patent claims? A. During the month of July I had occasion to use my head and ability—whatever ability I had—toward designing a new grating, as the Irving grating at that time was very unsatisfactory, from a dirt collecting standpoint.

Q. This was in July, 1920? A. Yes.

Q. Did you bring that design to the attention of Mr. Irving and Mr. Price? A. Yes—not Mr. Price, Mr. Irving at that time. I went in to Mr. Irving; told him, "Mr. Irving, we cannot get a certain job because our grating collects dirt; however, if we will take the grating and put a double crimp in the bar, we will be able to get that job, because I have already investigated it." Mr. Irving told me that he didn't want to make that. "We will stick to what we have, it is very reasonable—rather cheap to make, and we want to stick to one standard. We may lose a few jobs because it is dirt-collecting, but that will be lost sight of because of the many jobs we will get on the general article." At that time I was a little proud of the fact that I had invented a new design, and I went over to the New York Public Library. I went into the archives of the patents there and dug Mr. Irving's patent out, and there I found that the claims amounted to just what I have said now, and that was my extent of dealing in patents.

Q. Did you discuss this weakness of the patent with Mr. Irving?

The Court: He says he did and couldn't get any response that they would be remedied, or improved in any way, as I understood him.

The Witness: That is right.

Q. Substantially what was the weakness in the patent? A. That competitive concerns could make the grating with all bars of the same depth.

The Court: And as he thought, he made an improvement in July.

Q. By eliminating the dirt collecting to a large extent? A. Yes.

Q. Do you know of any instance of competitors who were circumventing Irving's patent by making all of the bars of the same depth, instead of crimp bars half depth as Irving was making them? A. Many of them.

Q. Did you speak to Irving about that? A. Yes.

Q. Who were some of the competitors who were doing that? A. One job I remember was a job for the Lakehurst Naval Hangar, in Lakehurst, New Jersey, where a concern by the name of Richmond & Kemp got the structural contract, and when they received their price they proceeded to tell us to go to the devil, and made their own grating. There was another concern at that time just breaking out, named William Klemp & Co., of Chicago, and shortly before my leaving—I think it was about three or four months —we had a job up with the Corn Products Refining Company—there were thousands of square feet on it—and this man Klemp came along—he didn't underbid ten or twenty per cent, but he was fifty or sixty per cent under our bid, and he took it from us, the only difference being the reticulated bars were the same depth as the straight bars.

Q. Did you ask Irving why he didn't prosecute these infringements? A. Yes.

Q. What was his answer? A. He said they did not have a leg to stand on, and at any rate, if he went out and it were to become public property, that the Irving patent was so weak that anyone could make a grating which would be a little bit better than the Irving type; the entire country would get wise to it, and we would have every iron shop throughout the United States making that type of grating, and he said, "We had better keep it a little secret."

The Court: What was done with your sketch or design?

The Witness: I don't remember what was done with the sketch.

Q. Any suggestion made about having it patented? A. Mr. Irving did not make any suggestion.

Q. Did you make any application for a patent? A. Yes, I did later on, in February, 1921, and the conversation took place in July, 1920.

Q. That is when you made your design? A. Yes.

Q. This type of grating which you say you designed to obviate the dirt-collecting corners was shown to Mr. Irving in July, 1920? A. Yes.

Q. And is that the same type of grating which is now manufactured by the Kerlow Company? A. Yes.

Q. And patented by the Kerlow Company? A. Yes.

Mr. Egner: I object and ask that that be stricken out. I would like to see the patent.

The Court: I will sustain the objection. Withdraw your question for the present.

Mr. Huck: When was the patent granted?

The Witness: May 16, 1922.

Q. Is this the only type of grating that the Kerlow has been manufacturing since it was formed? A. No.

Q. This is their principal type? A. Yes.

Mr. Huck: I offer in evidence a printed copy of the patent of grating issued to W. H. Lown, under date of May 16, 1922, No. 1416484, pursuant to application filed on Au-

gust 30, 1921. The patent was actually issued to the Kerlow Steel Flooring Company as assignee of Walter H. Lown, the inventor.

Marked Exhibit D21.

Q. I show you this Exhibit D21 and ask you whether the sketch, or one of the sketches, appearing on that exhibit, is the sketch which you developed in July, 1920? A. Yes.

Q. Which one is it? A. The figure 2.

Q. Is this the design patent? A. It is a mechanical patent.

The Court: The design is not patented.

The Witness: That takes in the design.

The Court: It includes the design?

The Witness: Yes.

Q. You say you made a sketch of this design and showed it to Mr. Irving? A. Yes, sir.

Q. What was Mr. Irving's response to the showing of that sketch? A. He said he would much prefer—

Mr. Egner: Was this about the time he made it?

The Witness: About July, 1920.

A. (Continuing.) He said he would prefer to stick to the standard; he didn't want to monkey with that; that they would get a good many more jobs on the standard type than they would lose because of its being dirt collecting, and we didn't have to worry about it. It was really a small thing and didn't amount to anything. He was willing to sacrifice that big job we had at that time, too, because of that.

Q. Had you ever prior to July, 1920, seen that design or type of grating? A. No, sir.

Q. At the Irving Iron Works or anywhere else? A. No, sir.

Q. Had you ever seen any sample of that type or design? A. No, sir.

Q. Had you ever seen any machinery, tools or dies designed for use in making that type of grating? A. No, sir.

Q. Either at the Irving Iron Works or anywhere else? A. No, sir.

Q. Did Mr. Irving make any comment at the time you showed him this design in July, 1920, as to whether or not he had even seen that design before? A. No, sir.

Mr. Egner: I think we should have the conversation.

The Court: I think it should go out; the inquiry should be what did he say. I will limit you to what conversation took place and what occurred, and go into that as fully as you please.

Q. Was there anything else said at the time that that was shown to Mr. Irving? A. Mr. Irving said that he thought it was a good grating and could be sold.

The Court: Did he say anything else?

The Witness: I don't remember; I don't recall anything else.

The Court: You have stated the whole conversation as you recall it?

The Witness: Yes.

Q. Did you know these various sales representatives of the Irving Iron Works, who have been referred to here, namely, Madden, Scarth, Kennedy, Moser, Schuldt and Demorest? A. Yes, sir.

Q. Did you know a man named Skoning? A. Yes.

Q. Was he an agent also? A. Yes, sir.

Q. Where was he located? A. Chicago.

Q. Did he enter the employ of the Irving Iron Works Company? A. Yes.

Q. I mean of the Kerlow Steel Flooring Company? A. Yes.

Q. Did you ever at any time have occasion to correspond with these various representatives or agents concerning claims for commissions? A. Continually.

Q. Was that in the jurisdiction of your department? A. Yes, sir.

Q. And can you state what the situation was during the year 1920, and until you left the Irving Works in 1921, concerning the amounts owing by the Irving Iron Works for commissions to these various representatives? A. Yes, sir.

Q. What was that situation?

Mr. Egner: I would like to cross-examine on that.

The Court: His qualification to give that information?

Mr. Egner: Yes.

Mr. Huck: May I ask another question? I call upon the complainants to produce all the correspondence with their various agents during the years 1920, and 1921, concerning commissions, for which I have served notice to produce.

The Court: Is it produced?

Mr. Egner: No, sir.

The Court: Can they be produced?

Mr. Egner: We have here a complete statement of our commission accounts with these agents.

The Court: That does not meet the demand of the notice. They ask for the correspondence.

Mr. Egner: I have overlooked that request and we will produce it at another time.

The Court: Do you want to defer that examination?

Mr. Egner: May I make a statement which may save a great deal of time on this branch of the case? We have had prepared and have a complete statement showing the commission accounts with every one of our agents.

The Court: That may not be what they want. You charge among other things, that they have induced or coaxed your agents away from you. I suppose in effect they are trying to show that the agents were angry at you because you didn't pay their commissions, and there may be expressions in the letters that will go to bear them out and the mere tabulation of the account itself would not show that.

Mr. Egner: Further than that I don't think we should be asked to produce all our correspondence. We ought to have our attention directed to specific letters.

The Court: They are asking for all correspondence between you and your agents on the question of an adjustment and settlement of commissions only.

Mr. Egner: We shall get all those letters out and have them here.

The Court: They are entitled to them, I think, that is if you press that as an element in your case.

Mr. Egner: We certainly do. If there is

any question about the accounts owing we have the full information here.

The Court: I gather that that is not the question but the claim is that these men were incensed because they were not paid.

Mr. Huck: There was no inducement necessary for these men to go. They were anxious to come with us. The objection then is that that is not the best evidence.

The Court: I have not ruled on it and even if I entertain the objection I will give you the privilege to defer pursuing that line if you wish until you get this correspondence produced, or if it is not produced you can put in secondary evidence as to the contents of that correspondence. You can defer everything in connection with the commissions until the next session.

Mr. Huck: I will accept that suggestion.

Q. All of these sales representatives to whom I have referred, can you state which ones entered the employ of the Kerlow Steel Flooring Company? A. Yes, sir.

Q. Give their names in full? A. Scarth, Madden, Schuldt, Moser and Kennedy.

Q. Did Roope ever enter the employ of the Kerlow Steel Flooring Company? A. No, sir.

Q. Are all these agents still employed by the Kerlow Company? A. When I left, Scarth, Madden, Schuldt and Moser were still in their employ.

Q. So that eliminates Kennedy? A. Yes, sir.

Q. Did you see these representatives after you left the employ of the Irving Iron Works Company? A. No, sir, not until they were employed by the Kerlow Company.

Q. I don't think you understand my question. After you left the Irving Iron Works did you call upon these representatives or some of them? A. Yes, sir.

Q. When did you see Skoning? A. Around October 10th, 1921, in Chicago, Ill.

Q. And was he the first man you saw? A. Yes, sir.

Q. The first of the agents? A. Yes, sir.

Q. What conversation was had between Skoning and yourself on that occasion? A. I was in Chicago and I called on Skoning. He said he was glad to see me. We just had a general discussion. He asked me what I was doing and I told him. I told him that I was now engaged with the Kerlow Company, a new company in the grating business and Skoning looked over the samples and other things on the grating and said he liked it very much. However, Skoning said, "I am considering an offer to go west into business and am also considering a company here to handle one or two different engineering specialities so I am not sure whether I would want to do anything with it." Skoning and I never went very deeply into the subject of agency.

Q. Was that the end of Skoning? A. Skoning told me later he had two friends who might keep the manufacturer's agency and he introduced me to them and they later took the Kerlow line for three or four weeks, pending my ability to place an agent in Chicago.

Q. Are they still your agents in Chicago? A. No, they were only temporary appointees.

Q. Did Skoning go to the Kerlow Company, finally, through your efforts? A. No, sir, he never came with us.

Q. Why did you go to see Skoning? A. Friendly reasons.

Q. Did you go to see him to get him to join the Kerlow staff? A. No, I am friendly to all the boys and I didn't feel justified in going into their town with a competitive line which was to be sold at a lower price and give it to some outsider or stranger behind their backs.

Q. Did you go there to give them the first opportunity to avail themselves of your product? A. No, sir, I went to tell them what I was doing.

Mr. Huck: Can't we have in the record a tabulated statement as to when these various employees entered the employ of the company and when they left?

A. I got it from the affidavits in the case on the other side.

The Court: Put it in subject to correction if any be needed.

Mr. Egner: I think it is already in the testimony. I have no objection to the tabulation, subject, of course, to correction.

Mr. Huck: Madden entered the employ of the Irving Company, March 8, 1919, was appointed agent in Philadelphia, on February 1, 1921, and left November 17, 1921.

The Court: Did he join the Kerlow then?

Mr. Huck: He joined the Kerlow thereafter. Moser was employed by the Irving Iron Works on April 1, 1920. He was appointed agent at Cleveland, February 1, 1921, and left the Irving on November 2, 1921, and thereafter came to Kerlow.

Mr. Egner: These agents went with the Kerlow immediately on leaving?

Mr. Huck: Within a short time. I don't know that it was immediately. Kennedy was employed by Irving Iron Works on August 16, 1919, was appointed agent in Hartford, Conn., April 1, 1920, and left or was discharged on November 7, 1921, and subsequently came to Kerlow. Schuldt was employed by Irving Iron Works March 19, 1920, and left November 28, 1921, and subsequently came to Kerlow. Skoning was employed by Irving Iron Works on April 1, 1921, and left Irving on October 24th, 1921, and did not then or at any time come to Kerlow.

Mr. Egner: I cannot admit that because Lown has just testified that his associates handled the Kerlow line for a time, for the company he had formed.

The Court: Except as it may from the testimony of Mr. Lown appear that he had any connection with the Kerlow.

Mr. Huck: Scarth was employed by Irving Iron Works about May 9th, 1921, and left about November 17th, 1921, and came into the service of Kerlow.

The Court: I understand this tabulation to mean that these agents did not engage in any other line of work between the time they severed their connection with Irving until they took employment with Kerlow within a comparatively short time.

Mr. Huck: Except some of these men handled several lines.

Mr. Egner: I want proof on that, as far as this tabulation is concerned.

Mr. Huck: Put on the record, "Except as they might have handled other lines."

The Court: Except as the testimony may show that they were engaged in any other line of work, unless I am corrected by the proofs, I shall draw the conclusion that they left the Irving and went to Kerlow, joined the Kerlow staff.

Mr. Huck: We don't dispute that.

Q. Now, did you thereafter see any other of these agents?

The Court: After your visit to Skoning in Chicago?

The Witness: Yes.

The Court: Which one?

The Witness: Scarth, Moser.

The Court: When and where did you see Scarth?

The Witness: In Detroit, around the first of November—I don't recall the exact date.

The Court: Did you call on him purposely?

The Witness: Yes, sir.

The Court: For the purpose of having him join the Kerlow organization?

The Witness: No, sir.

The Court: What was the object of the call?

The Witness: The same motive as with the others. I felt very friendly towards Scarth. I put him on there and I felt I did not want to sneak in there into his territory with a better line at a lower price without letting him know fully what I was going to do.

The Court: Will that same answer apply to all of the agents whom you called on?

The Witness: Every one, sir.

The Court: That was the reason for your call?

The Witness: Yes.

The Court: What did Scarth say?

The Witness: Oh, before Scarth knew what I was doing he and I had quite a conversation regarding his treatment by the Irving Iron Works since he came with them. He told me at that time he was preparing to send a letter to the Irving Iron Works begging them for money. He had not received his commissions promptly. It had been necessary for him to send his wife out to work because he could not get the money. The service was very poor. He could get no attention whatever, cable and telegrams or special delivery letters or anything else. He said he was very much disgruntled. He said, "I felt like crying for joy when you walked in, because before you left I got consideration from the Irving Company, but I don't any more," and he said, "I have got to tell my troubles to someone who understands." And afterwards, when he got all through he asked me what I was doing. He heard I was in some dock business. I showed him a sample of the Kerlow grating. I said, "Here is what I am doing," and he was very much amused.

The Court: Where was this, in Detroit?

The Witness: Yes, sir.

The Court: Were you actually there in Detroit with this sample of grating, Kerlow grating, for the purpose of selling it and getting orders for it?

The Witness: No, for the purpose of placing an agent.

The Court: Did you place an agent while you were on that trip?

The Witness: Yes, sir.

The Court: Whom?

The Witness: Mr. Scarth.

The Court: What was the object of carrying the sample with you?

The Witness: To show Mr. Scarth what I had. I carried the sample around with me at all times.

Q. To show Mr. Scarth or any person? A. Yes.

Q. Did you employ Mr. Scarth on that trip? A. Yes.

Q. I will not ask you to repeat in detail the conversation with each of these others, because you stated that it would be the same.

The Court: He stated the purpose of his call was the same; he hasn't stated that the conversation was the same.

A. Mr. Scrath asked me what I was doing, and we went over to the hotel where I was staying, and I showed him the sample. He said, "I want that line in Detroit." He had asked me first, "Well, what are you doing here?" I said, "I am here to put an agent on." He said, "Won't you consider me?" I told him, "You are an Irving man, and I don't want to consider an Irving man; I cannot while you are with the Irving Company," and he took that, I guess, as the idea that he could have the agency, and he said, "I will immediately"—

Mr. Egner: I object.

The Court: Strike it out.

A. (Continuing.) "I will immediately wire in my resignation," and he went back in the office without knowing anything further about the company— he had only seen the sample—and he wired his resignation in to the Irving Iron Works, and Scarth hired himself right there.

Q. Who was the next agent you saw after Scarth? A. Madden, as I remember.

Q. How did you come to see Madden and when did you see him? A. The first time that I saw Madden was at the mechanical show in New York City.

Q. When? A. September, 1921.

Q. Did you have a conversation with Madden then? A. Yes.

Q. What was said? A. Madden asked me what I was doing, and I told him I could not tell him. He said, "I hear you are going into a competitive line," and I told him that no matter what I was doing I couldn't give him any information at that time, but the conversation apparently aroused his curiosity, because he kept after me, sending phone calls to my home, and also writing up to my home to speak to me, and at his request I finally went to Philadelphia to see him.

Q. In Philadelphia, that was where he had his agency? A. Yes.

The Court: Why couldn't you tell him, in September, when you met him, what you were doing?

The Witness: I didn't feel justified in doing it.

The Court: What prevented you?

The Witness: The company at that time was not ready to manufacture and I had nothing definite in mind. I wasn't positive that we were going ahead

Q. When did the Kerlow Company commence to manufacture? A. December 10th, as I remember it.

Q. What year? A. December 10, 1921.

Q. Did you manufacture then in your own plant; did you have a plant of your own at that time? A. No.

Q. Who did the manufacturing? A. Fassler & Klein, Long Island City.

Q. They manufactured your product under a contract? A. Yes, sir.

Q. Did you then employ Madden? A. Yes, sir.

The Court: When did you employ him, in November?

The Witness: Yes.

Q. Whom did you see after you saw Madden? A. Previous to the time that I saw Skoning I had seen Moser in Cleveland.

Q. What was the situation with regard to Moser?

Mr. Egner: When did you see him?

The Witness: The beginning of October, I believe, 1921. Moser told me that he was just about to accept a position with the Swift Canadian Company and he had been offered a position if he would go to Montreal, and he had just about decided to go to Montreal. He was discouraged and ready to quit the Irving Company; prices were too high; he couldn't get any business; he was very, very much dissatisfied, and when I told him about the Kerlow Company and showed him what we had, he immediately applied for the agency.

The Court: Applied to you?

The Witness: Yes. I told him—

Q. He applied to you in this conversation? A. At the conversation he made oral application and I told him I couldn't consider it and couldn't go any further, but I would hold over, pending his application and his position with the Irving Company, and he said he would make a formal application.

The Court: Who was to act on his application beside yourself?

The Witness: The Board of Directors.

Q. As a matter of form or fact? A. We made the practice of being very familiar with our Board of Directors; we told them practically everything we were doing.

Q. Who was your board at that time, at the time you were calling on these agents? A. Mr. Merriam, Mr. Slater, Mr. Bunker and Mr. Beaver, and myself as I remember it. The board changed a little bit, or is subject to change.

Q. There were five on the board? A. Yes.

Mr. Kraetzer: The fact is that the name of Mr. Merriam should be stricken out and my name, Kraetzer, should be inserted in place of it. I was on the board at that time. Mr. Merriam was not a member of the Board of Directors.

Q. Whom did you see after that? A. I saw Moser first; Skoning second; Scarth third; Madden next and Kennedy last, as I remember.

Q. When did you see Kennedy and where? A. I don't remember. I think it was during October, 1921. I went up to Hartford.

Q. Is that where his agency was? A. Yes. I met Mr. Kennedy up there and practically the same thing was gone through. Mr. Kennedy applied a week later, in writing, to the Kerlow Company, for the position as agent in that territory.

The Court: On those trips you made, did you visit other towns and cities with your sample?

The Witness: Yes.

The Court: Did you appoint other agents?

The Witness: Yes.

The Court: How many others, outside of the five you mentioned, did you appoint at this time?

The Witness: Two.
The Court: Where were they?
The Witness: Milwaukee was one of them.
The Court: Who was it?
The Witness: One Fred F. Stoll.
The Court: Who was the other?
The Witness: The other was Bulkey.
The Court: Located where?
The Witness: In Newark, New Jersey.

Q. That was during what period?

The Court: The period he was calling on these other agents; is that right?
The Witness: Yes, sir.

Q. From about September to November? A. Yes.
Q. Those were the agents you appointed during that time? A. Yes; Bulkley was appointed in December some time.
Q. At the time when you severed your connection with the Kerlow Steel Flooring Company how many agents had been appointed by the Kerlow Company?

Mr. Egner: I object. Is that material?
The Court: I will let it in.

A. At the time of my leaving we had a force of eighty-four salesmen and agents.
Q. Who did? A. The Kerlow Steel Flooring Company.
Q. On May 9th or in February? A. He is talking about the time I left the Kerlow Company.
Q. That would be February, 1923. A. Eighty-four agents.

Mr. Egner: I don't see what that has to do with it.

The Court: I should think it would be very material for you.

Q. The last man, I think you said, was Kennedy? A. Yes.

Q. Afterwards did you get a letter from Schuldt? A. Yes.

Q. Who was Schuldt? A. He was the Irving man in New York.

Q. Was he an agent? A. He was a salaried salesman.

Q. Attached to the main office? A. Yes.

Q. I show you a letter dated October 30, 1921, addressed to you, and ask you to state what that is. A. A letter from Mr. Schuldt to me personally.

Q. Do you remember where that was received? A. No, sir, I don't.

Mr. Kraetzer: I offer that in evidence. Marked Exhibit D22.

Q. Had you seen Schuldt prior to that? A. Casually on the street; I met him and said, "Hello."

The Court: Had you talked about the subject of the salesmanship or agent for the Kerlow Company?

The Witness: No, sir.

Q. How many agents did Irving have at the time when you severed your connection with Irving? A. About 24 or 25, I believe.

The Court: Do you make any distinction—that some other witness did—between agents and salesmen?

The Witness: Yes, sir, I do.

Q. And when you say there were 24 or 25 agents did they have salesmen in addition? A. Yes.

Q. How many salesmen? A. Two.

Q. So it would make a total of 26 agents and salesmen? A. Yes, about that.

Q. When you spoke of Kerlow in February of this year having 84 agents, did you include salesmen? A. No, sir, we have no salesmen.

Q. They are all agents? A. Yes.

Q. They are scattered throughout the country? A. Yes, throughout the United States and Canada.

Q. What was the basis on which these various agents of Irving were employed; can you state that? A. Skoning, salary and commission.

Mr. Egner: The contracts are all in.

The Court: If they are, they speak for themselves.

A. (Continuing.) Schuldt had no contract with the Irving Company, so that couldn't be in there; Kennedy had no contract.

The Court: What was their contract?

The Witness: They were salaried and expense men —Schuldt and Kennedy. They received no commission on work they brought in.

Q. What was the basis on which men were employed by you? A. Strictly commission basis; no salary or expenses.

The Court: What rate of commission did you allow; uniform?

The Witness: No, sir.

Q. It varied in different towns? A. As an inducement to the men, if they went up over a certain point, we added two per cent on the business they brought in.

Q. What was the minimum? A. Ten per cent to all—standard throughout the country.

Q. It was graduated according to the amount of business they did? A. Yes.

Q. Was that compensation higher than that paid by the Irving? A. I didn't consider it so.

Q. Was it in fact a greater percentage? A. From a percentage viewpoint?

Q. Yes. A. It was higher.

Q. What minimum did the Irving pay? A. That was a flat ten per cent on a certain amount of business and then the scale went down.

The Court: Instead of up?

The Witness: Yes.

Q. You have stated that you had some talks with Mr. Irving and some with Mr. Price concerning the conditions in the factory and with reference to the sale of the product of the Irving Iron Works Company and I think we got in one conversation.

The Court: There was one with respect to that. He said he had others. Then, he got into the subject of this July sketch and question of the patent, and so on. I don't think he told of any other conversation beyond that.

Q. Do you recall that you had any other conversation with Mr. Irving and Mr. Price, or with either of them, concerning conditions at the plant and with reference to the selling of the product? A. Yes, several.

Q. Do you recall when they were and with whom? A. At various intervals during the year 1920, and with Mr. Irving and Mr. Price on and off, especially at a weekly conference that we had with Mr. Price, Mr. Bunker and Mr. Moye, who at that time was the

head of the accounting department of the Irving Iron Works Company. In my conversation with Mr. Irving around October I went more into detail than in any other conversation that I had with him.

The Court: What was that conversation? That was October, 1920?

The Witness: Yes. I went in and told Mr. Irving that I felt that inasmuch as the Irving plant was losing a great deal of business to competitors, that throughout the country we had kicks of all sorts from customers and would be customers, that we were making poor delivery on the product, I felt something should be done to remedy the condition. I told him that the western territory was neglected and should have warehouse facilities. He did not agree to that or did not agree to the equipping of the plant with modern up-to-date machinery in any form. And in addition to that the policy of the company was one that was hardly in line with making progress; in fact it was impossible to make progress of the company, because of the policy and attitude toward the agents—the refusal to pay commissions and the continual fight that I that on my hands to keep the agents with us, and we lost a good many, too, incidentally—were facts that made me more than dissatisfied with what we were doing, and those were the subjects of the conversation on and off.

Q. You say you lost a good many agents? A. Lost quite a few agents. In the City of Chicago we had four different agents; in St. Louis, three.

Q. Within what period did you have four agents? A. During my association with the company—that was about from 1919 to 1921.

The Court: Four agents consecutively, you mean?

The Witness: Yes. In San Francisco we had three.

Q. In the same period? A. Yes. In St. Louis, we had three and in Indianapolis, we had three, and we couldn't keep one for any length of time. In Milwaukee we had three.

Q. Why couldn't you keep them? A. They were not satisfied with the service they got, and the inability of the company to give a competitive price was one of the greatest things that went to discourage the agents. We would sell him and tell him that he had the most wonderful line in the world; he believed that and put enthusiasm in the work, and when it came time to bid on the job he would find that his price was all out of proportion and reason, and the man would lose two or three jobs, and then we couldn't hold him.

Q. When did you first make up your mind to go into a competing business to the Irving Company? A. I had an idea first in the month of December, 1920.

Q. You spoke to Bunker, December 24th? A. Yes, Christmas Eve.

Q. You conceived the idea first to go into business, in the previous month? A. Yes.

Q. Do you recall any other places where they had several successive agents during your connection with the company? A. We had two in Atlanta, Georgia; we had three in Memphis, Tennessee; two in Houston, Texas. Mr. Westerfield quit because they wouldn't pay his commission. Two in Tulsa, Oklahoma.

The Court: Do you mean they refused to pay or the company didn't have money enough to pay, or simply refused to pay?

The Witness: The agent would write to me and ask for money, and I would go in and see Mr. Price. Mr. Price would say, "Stall them off." I might on some occasion go in to Mr. Irving. He would say, "Mail them one of your good letters and tell them to go to hell." That happened on a number of occasions.

Q. Do you know the reason for it; was it lack of money? A. I knew the company was short, but at the same time Mr. Irving had money. Mr. Irving was a wealthy man, and he let the agents go without it while he had it. I went myself without my salary for a couple of days one time.

The Court: On only one occasion did you go without your salary?

The Witness: Twice, I think.

The Court: Was that because the company didn't have the money?

The Witness: Yes, and Mr. Irving had it all the time.

The Court: When were those two occasions?

The Witness: During 1920.

Q. Who paid your salary? A. Mr. Price.

Q. Did he ask you to go without it? A. Yes.

Q. Did he tell you why? A. Yes.

Q. And that was the reason which you have given? A. Yes, they didn't have it.

Q. You have mentioned a man named Westerfield in Houston, Texas; what was the situation with regard to him? A. Mr. Westerfield was the Irving agent down there. He had worked quite hard and gotten a great deal of business; he had approximately, as I recall it—this is subject to correction—about $3,300 coming to him. He wrote in and wanted it.

Mr. Egner: When was that?

The Witness: That was in October and November—about then—1920—and Mr. Westerfield wrote in and demanded his money. I wrote back and told him, "Nothing doing"—as I did that to all the men —kept stalling them off. Finally, I couldn't stall them any longer; I turned the case over to Mr. Price and Mr. Irving, and they wrote a few letters. Mr. Westerfield came through and said, "Now, you pay this to me by such and such time."

Mr. Egner: Was this by mail?

The Witness: Yes.

Mr. Egner: I object to this, unless the letters are produced.

The Court: You have the letters?

Mr. Egner: We will produce them. I think it should all go in at once. The notice to produce it wasn't in my papers, and I overlooked it, and that is the only reason why we haven't it here. I had forgotten all about the notice.

Q. Did I understand you to say that Westerfield did or did not come to New York? A. Westerfield came to New York on one occasion.

Q. When was that? A. I don't recall just when that was. Within three months, I think—sometime in the early part of 1920, around June. It may have been April.

Q. Was that in connection with the same subject—the commission? A. Yes.

Q. Did he talk to you? A. Yes.

Q. Was anyone else present? A. Mr. Price came there later.

Q. What was said? A. Mr. Westerfield told me

that he was very much disgruntled over the fact that he had sold a nice job to the ship building company down there and the contract was subsequently cancelled; the Irving Company absolutely refused to pay Mr. Westerfield a cent of commission on that job, and Mr. Westerfield felt that he was entitled to it and asked that the money be paid him. The board thought the claim should have been paid, and Westerfield after all his nights of real work on the job was out of his commission, and the Irving Iron Works Company never paid it, as far as I remember, although I think there may have been a settlement made later on, because Westerfield was pretty hot and was going to sue for it.

Q. Did you have any correspondence with Mr. Irving or Mr. Price or both of them concerning prices of the product? A. Yes, many.

Q. When were those conversations? A. During the year 1920. In May, 1920, when steel was at its peak, our prices were raised, but when deflation came in, along about October, November and December, in 1920, when it was practically impossible to sell anything, the Irving Iron Works Company insisted on maintaining its war prices, and would not come down on a job. We saw many jobs get away from us because they refused to reduce even one per cent. We lost twice as much business as we got at that time. I continually went in and told Mr. Irving that I felt we should make some effort to improve our production so that we could subsequently reduce our prices, or reduce our prices without doing anything. Mr. Irving refused. This matter was taken up with Mr. Price on several occasions, and we lost a number of big jobs. They let them go, when a two per cent reduction in price would have gotten them.

Q. What do you mean you lost as much business as you got? A. We bid on it and wouldn't get it. The competitors, with straight bar grating and other types of grating, underbid us fifty, sixty and seventy per cent. One job in particular that I remember, we went out and bid $1.70 a square foot.

Q. What was the name? A. Commonwealth Edison job; S. & L., the largest power plant engineers in the country specified our material, and while war prices were in effect, subway could be sold easily. An iron job came in, and came in with a bid forty cents a square foot as against our $1.70, and they went to Sargent & L and they said, "Never mind what is specified, put in the bar grating," and that is what went in.

Q. The Irving actually bid on it? A. Yes.

Mr. Egner: That is a bar grating.

Q. What was the situation with respect to gratings of a similar type to Irving? A. There was one job in particular I remember—I think about 16,000 square feet—came up with the Corn Products Refining Company and William Klump of Chicago, who is the manufacturer of that type of grating, came in and bid on it and took the job away. And later on, checking up the prices, I found that the Irving price was $1.45 a square foot for inch grating, and this fellow bid 75 cents a square foot and done the whole bunch of it. The grating was just like the Irving type, except the rivets were on a little closer centers. There was one-quarter inch difference, and they were able to produce that grating for 75 cents a square foot, while Irving was asking $1.45 and wouldn't reduce two per cent.

Mr. Egner: When was that?

The Witness: About November—October or November, 1920.

Q. Was there any other concern except those named, manufacturing the same type of grating that Irving was manufacturing? A. William Klump & Co., was one; Arrowhead Iron Works, in Kansas City; some other company, I don't remember the name.

Q. Who owned the Arrowhead Iron Works? A. W. L. Patterson, a former Irving agent.

Q. Is he the one that put the attachment on? A. Yes, and Mr. Patterson kept telling me that he knew how high Irving's prices were, and he said, "By gosh, I would like to get in the business"—he was an old farmer type of a fellow—and it wasn't long after, he got in the business, and he got every bit of business through that territory with a grating very similar to Irving's.

Q. What about your salary in comparison with the salaries which agents were supposed to get? A. Practically all of them were getting more money than I was, except in one instance.

The Court: Did you ask for any increase that wasn't granted you?

The Witness: When I went there Mr. Price told me that it was one of the most unethical things you could do in the Irving Iron Works—to ask for an increase in salary; I should always wait, and I always did.

Q. When you left the employ of the Irving Iron Works, did you notify the various sales representatives in any way? A. Yes.

Q. In what way? A. I wrote up a publication that

went to all the Irving agents weekly. I did that throughout my entire association with the Irving organization, and on my leaving I wrote up a farewell message, telling the men that I was going to leave the Irving Iron Works and was sorry to go, and so forth, and I hoped they would be successful.

Q. From the time you resigned from the Irving Iron Works until October 1, 1921, when Mr. Bunker resigned, what was done in furtherance of the plans of the Kerlow Steel Flooring Company? A. The company was financed through my efforts in selling stock.

Q. Was there anything done in the way of manufacturing? A. Absolutely none, nothing.

Q. Did you sell the stock or securities through Roosevelt & Company? A. Mr. Beaver, of that concern, helped me out

Q. He was also a director of the Kerlow? A. He was at one time; I wouldn't be positive.

Q. He was at one time? A. Yes; he later resigned.

Q. Mr. Lown, were the prices of the Irving Iron Works Company, from May, 1920, until May, 1921, secret in any way? A. Not at all.

Q. Were they available to anybody? A. They were public property, at request.

Q. And were they standard prices? A. Standard square foot prices, and average price on steps.

Q. You say there was no change in those prices from May, 1920, until you left? A. That is right.

Q. At the time you left the Irving, can you tell approximately how many people were employed in the shop? If you don't know, I will take it up with someone else. A. About 75 or 100.

Continuation of testimony in the above-entitled cause, before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Monday, April 16, 1923, at 10 A. M.

Present: Counsel as before stated.

Mr. Kraetzer: I would like to ask Mr. Brown a few more questions on cross-examination.

The Court: You may do so.

WILLIAM J. BROWN recalled for further cross-examination.

By Mr. Kraetzer:

Q. In the course of your examination, I asked you this question, and you gave this answer: "Did you recently apply for a position elsewhere; make application for a position?" And your answer was, "No, sir. Q. I mean outside of the Irving Company? A. No, sir." I ask you, sir, had you not recently, prior to the time when this particular question was asked, which was on the nineteenth day of March, 1923, file an application for a position with the National Employment Exchange of New York City? A. Absolutely not.

Q. You did not? A. Absolutely not.

Q. Were you ever connected with any company or employed or live in Penn Yan, New York? A. Yes.

Q. Were you ever employed by a textile dyeing company? A. Yes, sir.

WALTER H. LOWN recalled for further direct-examination.

By Mr. Huck:

Q. Mr. Lown, what were your relations with these agents of the Irving Company who subsequently entered the employ of the Kerlow Company; that is, were there any social relations outside of business relations with any of them? A. I had social relations with Moser and Schuldt, and through business was very friendly with both Mr. Kennedy and Mr. Madden.

Q. How long had you known Schuldt? A. About ten years.

Q. What had been your relationship with him? A. Mr. Schuldt was employed in the New York Telephone Company some years ago—around 1913—when I was with the telephone company, and I met him there. I know Mr. Schuldt's family very well.

Q. What was your relationship with Moser? A. Moser was introduced to me about eight months before him being employed by the Irving Iron Works Company, and during that eight months I went about with him quite a little bit and got to know his family, also.

Q. What was the situation with Kennedy? A. Kennedy and Madden were both employed by the Irving Company when I got there, but through our business we went out quite a bit together, and I stood up with Mr. Kennedy when he was married. On their coming into the office we would invariably go around for one or two days. I took both of them to my house and was with them and went to the theatre with them and did the usual thing that way.

Q. Did you have any conversation with any of those

men who were representatives of the Irving Company and who subsequently came to the Kerlow, concerning where their offices were to be after they came with the Kerlow? A. No, sir; I merely told them that under the terms of their contract they were obliged to submit their intended office location for our approval, and I said nothing as to recommending where their office was, or was to be.

Q. Incidentally, did these particular men represent any other concern, do you recall? A. Mr. Scarth represented the Claridge Fan Co., of Kalamazoo; he also was interested in a line of pumps. Mr. Madden had some other side line—I don't remember what it was.

Q. Did you have any talk with any of these men with reference to any Irving records they might have? A. No, sir.

Q. Did you ever see any Irving records in their office during this period when you had talks with them? A. I may have seen Irving records, yes, but I do not recall.

The Court: What sort of records are you referring to?

Mr. Huck: With reference to C. I. M. and correspondence.

The Witness: Every manufacturer's agent away from home has a certain amount of correspondence and records.

Q. What was the rule with reference to keeping duplicate C. I. M.'s during your connection with the Irving Company? A. I suggested to the men that they ought to keep a carbon copy for their own files, but there was no definite rule; they were not obliged to keep any records.

Q. Mr. Demorest has described himself as an independent agent, free to handle competing lines. Can you describe briefly, generally, what was the relationship of these sales representatives to the Irving Company?

The Court: Mr. Demorest in particular, or all of them?

Mr. Huck: All of them.

Q. Did that apply to all of them? A. No, sir; I did not consider that Madden, Schuldt, Kennedy or Moser was free to handle competing lines, as under their contract they were all on salary and commission, and it would not have been right if they had handled competing lines.

Mr. Egner: I move that that be stricken out. The contract speaks for itself.

The Court: Have the contracts been offered?

Mr. Egner: Yes.

The Court: Strike it out.

Q. Can you describe, briefly, how the orders which Irving got originated, generally; in other words, what was the course of transacting business and the agent's connection with it, and so forth? A. Any construction project in any territory is usually advertised through local mediums and contracting journals; it is very often the case that projects far out in the west are advertised even in New York City. Concerns all over the country bid on the projects, and immediately on seeing a job contemplated or even the funds being raised by any public municipalities or utilities to go with a construction job, the agent in that territory would follow the interested party up—probably the chief engineer in charge of the work, or

some other designer who might have charge of it; then the job is advertised for bids. It goes into the newspapers in the city and into contracting journals. It becomes common property around among competing contracting concerns, and then the job is given to the lowest bidder, usually sometimes to another bidder; it depends on the responsibility or the character of the concern that has the lowest bid. Thereafter the general contractor sublets the various contracts on the job, and it is the business of the salesman to get in touch with the general contractor and find out who the subcontractor is who will erect the material that he has to offer for sale. At other times, a large company will purchase the material itself. There are many public utility companies in the United States that will purchase the material. Then, after the company has determined as to who will receive the subcontract, or they find out that the parent company is to purchase the material themselves, the salesman gets in touch with the man who is to purchase it and puts his bid in, and it is usually decided on the basis of what material is specified and the price.

Q. Do you know whether Irving had a card file containing names of what is called in this case customers, and prospective customers? A. Yes, sir; he did.

Q. Can you describe that file briefly; tell us what it contained, and what the cards in it contained?

The Court: Did you have access to the file?

The Witness: Yes.

The Court: In connection with the course of your work?

The Witness: Yes.

A. This card file was small, 5 by 3 drawers, having

cards of the same size inserted; after information came from the agents, or from customers or prospective customers, it was written on these small cards, and the cards were placed in the file, according to territory, and also according to the type of customer. This record contained every bit of information that the Irving Company had ever gotten on any prospective customer; it contained a lot of unnecessary information, to my mind, because the information was never used or checked up, and it made a voluminous file that wasn't any good.

Mr. Egner: I ask that that be stricken out.

The Court: The characterization can go out, that it wasn't any good. That merely is his opinion.

The Court: How many cards were in the customer file at the time that you were familiar with it, or when you left?

The Witness: I would say forty or fifty thousand.

The Court: How many in the prospects.

The Witness: I meant altogether.

The Court: Separate them.

The Witness: Your Honor, I want to qualify that statement with this, that there might have been fifty or sixty cards for one prospect.

The Court: I don't care about that; give me the fact. How many related to customers and how many related to prospects in the file?

The Witness: There were about three prospects and about five or six hundred customers, possibly; the extra cards were on the same people—information on them.

Q. How was this card file compiled, aside from

the information which was sent in by salesmen? A. That card file was compiled from every possible source of information that we could secure. Mr. Irving in his trips around the country would invariably tear the engineers and architects from the local telephone books—classified advertising telephone books, and he would bring them in to me, and I would take these records and assemble them and make out a card for each one that seemed to be a likely prospect. We also received information on jobs from publications of other kinds, and we would make out cards. We got lists from the various state bureaus; each state makes it a business to give to anyone in the country requiring it, a complete list of the manufacturing industries and their responsibility, to the state, federal and municipality engineers located in the state, and we make that card file up from all that data, with what the agents gave to us, and also from direct inquiry received from prospects in response to our advertising.

Q. You rated a man as a prospect as soon as you got any kind of an inquiry from him? A. Usually.

Q. These people, whose names you took from telephone contractors, even though no inquiry had ever been received from them, what were they rated as? A. In case of the telephone inquiries, we would wait until we had some report from a man before we gave him a very high rating.

The Court: What were they called, prospects?

The Witness: Prospects.

Q. This file of three or four thousand prospects contained a great many names from whom you never had heard at all?

Mr. Egner: I object to this question; it is leading.

The Court: Counsel should frame his question so as to avoid leading questions.

Q. When a card was placed in the file, as you have testified, was anything else done with reference to the name contained on that card? A. We would make an addressograph plate from the record at the same time he made the card for the card file.

Q. What use was made of that card file in the prosecution of the business of the Irving Iron Works Company? A. There was very little use made of it; in fact, hardly any at all.

Q. What use was made of the file of the addressograph plates made from the names on this card file? A. That was used for direct advertising purposes in sending letters or postcards or other advertising data out to prospects and customers.

Q. During your connection with the Irving Company, did you know of any persons who were customers of that company in the sense that their business was handed to the Irving Company without competitive bidding? A. No, sir.

Q. Who generally are the prospective users of grating or ventilating flooring? A. The various trade journals in this business are engineers, architects, industrial companies, state, federal and municipal engineers, municipalities as a whole, water works, iron and structural steel jobs, mines, public utilities of every type and description.

Q. Is it used on ships to any extent? A. Yes, although the ship business has fallen off so greatly in the past few years we don't consider that.

Q. Are there any publications or lists available to

the trade generally containing the names and other data concerning such prospective users? A. There are several such lists.

The Court: Can you name any of them?

The Witness: The most important and best service available in this country is the Dodge Service, which is a service giving to manufacturers or whoever may desire it, at a small cost, full information on all building projects contemplated or actually in operation.

The Court: That is a concern like the Irving will subscribe for the Dodge Service, and then they will advise them of all prospective work or use for their material?

The Witness: Yes; this service covers small houses, garages, large plants or industrial buildings; it gives the names of the architect or engineer, the general contractor, the subcontractors for each line of work, and they even go so far as to have available in their office complete plans and specifications for the information of any of its subscribers. The Brown Service is another institution working along the same lines, and there are very many about the same as those two.

"The American Contractor" is a journal which is published weekly, which gives every construction project from building a road up to building a power plant or large factory, all over the United States and Canada. It gives details as to the engineers and architects and other people involved in the contract work. Even sometimes giving the people who are raising the money to put the project over.

In every section of the country there is published a construction journal which gives all of this information and data. In the daily papers, it is customary to see most large jobs advertise for bids, and

"Sweet's Distribution List," which gives a list of men who are interested in the purchase of engineering specialties and building materials of every type and description, is given to the subscribers for advertising in Sweet's catalogue. That is given gratis. This catalogue contains over 12,000 names of people who are actually interested in the purchase of engineering specialties and supplies of this kind. I myself looked over this list and found out that approximately ninety-five per cent of the people that the Irving people advertised in their catalogue as being their customers, are found in that list, and I am sure that a comparison between the two lists will show these names and many thousands more appear in that list.

Mr. Egner: I object to the last part of the answer.

The Court: Strike out from the words, "I am sure."

Q. Is there any other service that you think of? A. There are several, but they are too numerous to mention.

The Court: Giving the same information generally?
The Witness: Yes.

Q. I now hand you a book called "Sweet's Distribution List" of the "Sweet's Engineering Catalogue," and ask you whether that is what you referred to as information of the magazines which you referred to? A. Yes; it is.

Q. How often is it published? A. Every year, and it is revised every year.

Mr. Egner: Every year?
The Witness: Once a year.

The Court: Revised annually?

The Witness: Yes.

Q. You say this is given with an advertisement in "Sweet's Engineering Catalogue"? A. Yes.

Q. What is the minimum cost of an ad. in that? A. I am not sure; it is around $100.

Q. An advertisement in the same book? A. No, not in this book, but this is a list of the people to whom the books go. Sweet's give them away to responsible people.

The Court: The conclusion is that all who are mentioned in there are advertisers?

The Witness: No; they are interested in the purchase of the articles, and this book is a service to put before various purchasers the materials they want to buy.

The Court: And furnished gratis to the advertiser?

The Witness: Yes; this is furnished, and the other book is given to the purchasers of engineering specialties.

Q. Did the Kerlow Steel Flooring Company obtain one of these distribution lists? A. Yes, sir.

The Court: When?

The Witness: It was about in December, 1921, as I remember.

Q. And is this the one which they obtained at that time? A. Yes. I know that, because I had that list; it was separated by myself. You have our mailing list.

The Court: Did Kerlow obtain this list as a result of advertising in Sweet's?

The Witness: Yes.

Q. And only in that way? A. Yes; that is the only way it can be obtained.

Mr. Huck: I offer it in evidence.
Marked Exhibit D23.

Q. I show you an issue of the "American Contractor," of January 21, 1922, and ask you if that is one of the publications you have referred to in your previous testimony? A. Yes, sir; it is.

The Witness: Is that for sale?
The Witness: Yes; that is $10 per year, issued weekly.
The Court: It is a subscription rate?
The Witness: Yes.
The Court: And can also be bought on the news-stands.
The Witness: Yes, not all news stands.

Q. Will you turn to the pages where it appears that the information is given which you have testified to? A. From page 54 to 87, both inclusive.

Mr. Huck: I offer that in evidence.
Marked Exhibit D24.

The Court: Does the Kerlow subscribe for that?
The Witness: Yes.

Q. When was the subscription placed? A. January or February, 1922. We get two copies each week, and when I left the Kerlow Company we were clipping them up and sending the clippings to the various agents, so they could follow the construction project up.

Mr. Huck: I would like to call the attention of the Court, without burdening you with

reading these magazines, briefly to what they contain.

Q. "Industrial Plants, Cincinnati, Ohio, Queen City Printing Company, E. F. Cheseman, Manager, 125 Plant," what does that mean? A. I believe that is the plant's power or amount of employees, I don't know. There is a cut there which gives the horsepower and number of employees.

Q. What was the custom as to persons once having purchased grating from Irving and then having subsequent requirements—what was the custom as to the purchase of the subsequent requirement through Irving?

Mr. Egner: I object.

Mr. Huck: Custom on the part of the purchaser. I will withdraw the question.

Q. Do you recall any firms to whom Irving once sold, placing their subsequent orders elsewhere? A. Yes, sir; I think the most noticeable one of this is the Ford Motor Company, who purchased grating from the Irving Company.

The Court: When; can you recall the year?

The Witness: Before I was there, and while I was there, and they also purchased grating from other people.

Q. While you were with the Irving? A. Yes, after having dealt with the Ford people and gotten practically all of their work, a large job came along, which was the biggest job that Fort had had and given out during my time, which covered some 20,000 square feet, to go in the River Rouge power plant of this company, and after the Irving Company had bid on it,

the Ford Motor people turned around and gave the order to competitors.

Q. Who was the competitor? A. Mitchell Tappan Company, of New York. There were many instances of that kind where people purchased grating from us and then turned around and gave the order to others.

Q. Did Irving's card file or any other records he had during your connection with his company, give you any information with respect to prospective jobs, which was not available to the whole world?

Mr. Egner: I object.

The Court: I don't know how he could possibly know that.

Mr. Huck: I will strike out "the whole world," and limit my question to other grating manufacturers.

Mr. Egner: I object to that; it should specify with the same inducement that Irving had made or without it.

The Court: I think I will receive it. I don't see how he can possibly answer it.

Q. What do you say? A. As far as I know—

The Court: I don't see how it could be any other way.

The Witness: The information in most of the cases was available to the others—the information that I spoke of.

The Court: The information that Irving got from its agents wasn't available to competing manufacturers?

The Witness: No, sir.

The Court: So that in that respect, at least, they couldn't have had the same information.

The Witness: No, the information that I speak of.

Mr. Egner: I object to what he speaks of.

The Court: Give the answer to the question. Have you the question in mind?

The Witness: I would rather have it read.

Q. (Reading.) Did Irving's card file or any other records he had during your connection with his company, give you any information with respect to prospective jobs, which was not available to the other grating manufacturers?

The Court: I don't see how he could possibly answer it.

Q. After the Kerlow Company started in business did it have a list of prospective users prepared? A. Yes, sir.

Q. For what purpose? A. For the purpose of direct advertising, and for my use in directing the sales efforts of the sales force.

The Court: How long after you started was that prepared?

The Witness: I started the compilation of that list in November and finished in February.

Q. And that would be eleven months after your organization or incorporation? A. Nothing was done with that list until after they were actually producing material.

Q. In November you began it? A. Yes.

Q. From what source was that list compiled? A. That was compiled from telephone books, local mediums, which I instructed the agents to send in, and from "Sweet's Distribution Catalogue."

The Court: Was any of it compiled from informa-

tion that you had obtained or gathered while in the employ of the Irving Company?

The Witness: Some of it was, sir. The names that the agents remembered of their good customers they wrote down on paper and sent in to us.

Q. Approximately how many names were on that list at the time your connection with the Kerlow Company ceased?

The Court: He ceased in February of this year?

Mr. Huck: Yes.

A. About 25,000 names.

The Court: Where did you have 25,000 names to the Irving's one for 3,000 after all the years it had been in business.

The Witness: The Kerlow is a progressive company.

The Court: In that 25,000 do you include all the duplicates that you say were in the files of the Irving?

The Witness: No; they are separate and distinct names, as far as I know; I spent three or four months in checking it and going over it.

Q. Did you have a list while you were in Irving's employ from the names in the card files? A. No, sir.

The Court: Or from the addressograph?

The Witness: From the addressograph plates I did.

Q. Who prepared the list? A. I don't remember who prepared it, what I remember of the list.

The Court: He didn't ask you that.

Q. Do you remember when it was prepared? A. I cannot say definitely regarding the date.

The Court: Why was it prepared?

The Witness: Mr. Irving asked me if I would have a list of customers made up and sent to the McGraw Hill Company, who conducted field photo service, who went out around the country taking photographs of installation, and I gave instructions to McNichol, my assistant, and told him to have the list made, and either give it to Mr. Irving or the Field Photo Service. I don't remember the details.

Q. Do you remember when that was? A. That was sometime during the year 1920.

The Court: How long before you severed your connection with Irving?

The Witness: Six or seven months, possibly, because by the time I left we had received photographs.

Mr. Egner: I object to the comment.

The Court: Strike it out.

The Court: Don't give the reason every time. Counsel will ask for all the detail they think necessary.

Q. What names did you direct to be put on that list, if you gave any direction? A. The names of customers.

The Court: Of prospects?

The Witness: No.

Q. What became of the list? A. I do not remember.

The Court: Did you have a carbon copy in addi-

tion to the one you had prepared for Mr. Irving and the photo company.

The Witness: No, only one copy was made, but I told McNichol to give it to Mr. Irving or send it to the photo company.

Q. Do you remember whether the list was ever in your possession? A. No, sir.

The Court: Was it ever in the possession of the Kerlow Company?

The Witness: No, sir; I know that emphatically.

Q. Did you take that list with you when you left the employ of the Irving Company? A. No, sir.

Q. Did you take it with you at any time before you left the employ of the Irving Company? A. No, sir.

Q. Did you ever see it after you left the employ of the Irving Company? A. No, sir.

By the Court:

Q. Ever see a copy of it? A. No, sir.

Q. Or any part of it? A. No, sir.

Q. Did you take any other list, record or memorandum relating in any way to the business of the Irving Company with you when you left that company, or before or after? A. No, sir.

Q. Did you ever receive any list, record or memorandum, or information at all of any kind relating to the business of the Irving Company from Bunker, Kennard, Tarof or any other person after you left the Irving Company? A. No, sir.

Q. Did you receive or take any such information before you left their employ, for the purpose of the Kerlow Company? A. No, sir.

Q. Or for any other purpose? A. No.

By Mr. Huck:

Q. Do you know if anyone else connected with the Kerlow Company received any such list or information? A. No, sir, not to my knowledge.

Q. At any stage? A. No.

Q. Either before or after you left Irving? A. No.

Q. Did you ever give anybody any instructions to procure for you or for the Kerlow Company, or for any purpose, any information, list, records or memorandum concerning the business of the Irving Company or relating thereto? A. No, sir.

Q. Have you checked the names of Irving's catalogue which is in evidence here, exhibit—I think it is C12b, with the names in "Sweet's Distribution List," Exhibit D23? A. Yes, sir.

Q. When did you make that check? A. About March, 1922.

Q. In connection with the preliminary proceedings in this case? A. Yes.

Q. Can you state how many of the names contained in that Irving's catalogue, Exhibit C12b, are also in "Sweet's Distribution List," Exhibit D23? A. About ninety-five per cent.

The Court: What was the purpose of making the check?

The Witness: I am trying to convince our counsel that it wasn't necessary for us to take a list from Irving.

Q. Do you know Mrs. Zelma Lash Demorest, the wife of George M. Demorest? A. Yes.

Q. How long have you known her? A. I first met Mrs. Demorest in New York around the latter part of 1920, as I recall it.

Q. Where did you meet her? A. Mr. Irving or Mr. Urice introduced me to her in the office at the Irving Iron Works Company.

Q. You have said the latter part of 1920? A. I think it was about then. I wouldn't say definitely that date.

Q. What was said; did you have a conversation with her? A. Yes, sir.

Q. Where was that conversation held? A. In the office of the Irving Iron Works Company, Mr. Price's office.

Q. You say that Mrs. Demorest was introduced to you by Mr. Price or Mr. Irving; is that correct? A. Yes, sir.

Q. Did you have any conversation with Mr. Price or Mr. Irving prior to their introducing you to her? A. No, sir.

Q. You say you have had a conversation with her at Mr. Price's office? A. Yes.

Q. And who else was present at that conversation? A. Mr. Irving and Mr. Price, myself and Mrs. Demorest were the only ones present, as near as I can remember.

Q. What was said by each one, as near as you can now recall? A. We talked generally over business matters, and Mrs. Demorest always got back to the commission idea; she was there for the purpose of collecting commissions.

Q. Did she say so? A. Yes; Mrs. Demorest said that she wanted money for commissions, inasmuch as Mr. Demorest had a loan that he had made at the bank and his collateral was about to go on the loan; she made a very strong plea for commissions, and afterwards Mr. Price came into my office with a check —I forget the amount—he said, "Give her this and

get rid of her." When I went back Mr. Irving suddenly discovered he had a bunch of engagements, and Mr. Price said he had one, too, and left her on my hands to take her out to eat and pass this check to her.

Q. Was the check in full for the commission due? A. No; it was just enough to get her back to Pittsburgh.

Q. Do you recall how much the check was for? A. I don't remember—$275 or $100, or it may have been ten dollars, for all I remember now. I know it was nothing in comparison to what was actually due Mr. Demorest, and she got no satisfaction out of her trip.

Q. Did you take her to lunch? A. Yes.

Q. Was anything else said by Mrs. Demorest while the others were present? A. It was mostly conversations complaining about commissions.

Mr. Egner: I object to the characterization.

The Court: Can't you tell us?

The Witness: It is so long ago I don't recall all the details.

The Court: I wouldn't believe you, if you did, but I expect you to recall the substance.

The Witness: Mrs. Demorest told myself, Mr. Irving and Mr. Price that she was in New York for the purpose of collecting commission; she said further that inasmuch as Mr. Demorest had been unable to get his commissions and that he had such a great amount of money due him from the Irving Company, she was unable to have a home, and their loan at the bank was going, and a lot of other things like that that I can't remember. The whole conversation centered around her dissatisfaction and her dealing with Mr. Irving, Mr. Price and myself to do what we could toward

collecting commissions for Mr. Demorest and give her money to take back.

Q. What did you say as to why you didn't give the commissions that were due? A. Mr. Irving told Mrs. Demorest that the company was not in a position to give her the money, and Mrs. Demorest told me how badly she had been treated and how what a lot deal her husband had got.

Mr. Egner: I object to that. These gentlemen were not present.

Q. Had there been any correspondence that had come to your attention prior to that time, between Mr. Demorest and the Irving Company, concerning this claim for commissions? A. Yes; I was continually writing letters.

Mr. Huck: Has that correspondence been produced?

Mr. Egner: We have been served with the most general notice to produce. I don't want to be in the position of failing to produce anything that we have, and that your Honor thinks you would like to see, but at the same time we don't want a fishing excursion, and I—

The Court: Why aren't they entitled to fish, if it relates to the issue?

Mr. Egner: I don't think they are. In a notice to produce, they must give enough information to indicate that a particular document is in existence; then they have a right to ask for it.

The Court: Among other things, at the last session, there was something stated about the

attitude of the agents, and it was insisted that that might fairly be shown, and would more clearly be shown by the correspondence which had been demanded under the notice. I thought that was true. That was not written in anticipation of this litigation, and would give the real attitude of the agents and their relations to the company.

Mr. Egner: We have all the correspondence here, but we must not forget that practically every one of these agents who is alleged to have been dissatisfied, went with the Kerlow Company; they know their own correspondence. If they have particular letters in mind that they want, it is a very easy matter for them to indicate that a letter written on or about such a time by so and so, and we will produce that letter. I don't like the idea of taking all that correspondence which we have—

The Court: As between these particular agents in relation to commissions?

Mr. Egner: Yes.

The Court: All they want is the correspondence.

Mr. Egner: We have all the Demorest correspondence.

The Court: And I expect, unless there is some reason for not doing so, to have that limited to the correspondence that relates to the expression of dissatisfaction, or even the demand for payment of the commissions.

Mr. Egner: We have the Demorest correspondence in a separate file. I am quite willing to entrust it to counsel and let them look through it, and if there is anything in it, let them make the most of it.

Mr. Huck: Suppose we suspend that for the present.

Q. Now, of course, you know Mr. Demorest? A. Yes.

Q. How long have you known Mr. Demorest? A. Possibly four years—three years, I would say.

Q. And in October, 1921, did you call at his office in Pittsburgh? A. Yes, sir.

Q. Do you recall approximately what date it was? A. I think it was around the fourth or fifth of the month; at least, it was very early in the month.

Q. What month? A. October, 1921.

Q. Did you see him there? A. No, sir.

Q. Whom did you see? A. I saw Mrs. Demorest and Mr. Wallace A. Stuart.

Q. Did you get any information from them or either of them as to where Demorest was? A. Yes; they told me that Mr. Demorest was in Chicago.

Q. Did you subsequently see Mr. Demorest? A. I saw Mr. Demorest in Chicago at the LaSalle Hotel, around about four or five days later.

Q. Before you saw him in Chicago had you heard from him, that is, between the time you were at his office in Pittsburgh and the time you saw him at Chicago? A. Mrs. Demorest asked me where I was going to stop in Cleveland, and asked me to give her the name of the hotel and she wired that information on to Mr. Demorest, who sent me a telegram to Cleveland.

Q. And made an appointment for you in Chicago? A. Yes.

Q. When did you arrive in Chicago? A. I do not recall the date—around the ninth or tenth of the month, somewhere in there.

Q. Did you ever hear from Demorest while you were in Chicago? A. When I got to Chicago there was a small card saying that Mr. Demorest would like to see me, or at least there was a message from him —I do not recall what it said.

Q. Did you see him? A. Yes.

Q. When did you see him with reference to the receipt of that message? A. I saw Mr. Demorest that day.

Q. Did you have any conversation with him? A. Yes, sir.

Q. What was the conversation; what did he say and what did you say? A. Mr. Demorest and I first had a talk on general things, and I told him that I was now in a competitive line of business. I told him I had gone to Pittsburgh for the purpose of placing an agent there, but had not done so, inasmuch as I wanted Mr. Demorest to know fully as to my intentions. I showed him my grating and he asked me if I would kindly hold up placing an agent in Pittsburgh until he had an opportunity to come back and consider the matter. I told him that I would do this. He told me that he had a matter of money to straighten out with the Irving Company; that he did not want to let go, inasmuch as he felt if he made a move or took our agency quickly, the Irving Company would not pay him the money that was due him. He also told me that he was having great difficulty in securing any business whatever, due to the high prices of the Irving material; that his customers were generally dissatisfied with the prices and that his income that year amounted to practically nothing. He also told me that he had figured on going into the grating business himself and had gotten someone to manufacture, or rather, design a machine for the pur-

pose of manufacturing grating. This man was with the Westinghouse Electric Company, as I recall it, and was a mechanical draftsman, capable of doing that sort of work. I believe that was all the conversation we had.

Q. Did he say why he wanted to get in the grating business himself? A. Because he felt that Pittsburgh was a wonderful field and there was a lot of money to be made in it, and he had gone so far as to investigate the Irving patents, and he found that if he made all the bars of one depth, he would not be infringing on the Irving grating, and there was so much business that was getting away, and he could get it at a lower price and he felt he could make a great deal of money, if he could get the business himself.

The Court: Did he say how much money was due him from the Irving Company?

The Witness: Around $4,000 as I recall it.

Q. Did he say anything else? A. He said also that he had gotten another loan, and that he was greatly in debt.

Q. That is all you can recall as to the first conversation? A. Yes.

Q. When did you see him again? A. I saw him the next morning, as I remember, and Mr. Demorest told me then of a job that he was wrestling with, as he expressed it, for the past thirty days; this job involved some five hundred Irving safe steps, and because of the price he couldn't get it. He said the order was practically gone. Then he asked me if he could put a bid in on these steps which were to be purchased by the Heyl & Patterson Company, and he asked me about what we could sell them for.

By the Court:

Q. He wanted to put in a bid for your material? A. Yes; he said the order was gone unless he could quote a certain price. I told him about our selling price for that size of step, and he immediately put a bid in, and then he told me later that he had gotten the order for the five hundred steps on the strength of our price, and he could not get it with the Irving Company. I told him then that I didn't think that he should do any thing like that, inasmuch as he was with the Irving Company, but he insisted that he was a competitive agent, he had a right to handle competitive lines, and he didn't think he was doing anything wrong.

Q. Was your price very much below that of the Irving Company? A. Irving was two-thirty and our price was two-fifteen; the Irving price was two-fifty; he said two-fifty was as low as the Irving Company would go, because they came down from two-sixty-five.

Q. Two-fifty a foot? A. Two-fifty a piece for the steps.

Q. And yours was two-fifteen? A. Yes.

Q. Did you fill the order for him? A. No, sir. Mr. Demorest turned around later, after taking it for us, and gave it to the Irving Company, and the Irving Company took it for two dollars.

FURTHER DIRECT-EXAMINATION by Mr. Huck:

Q. I show you Exhibit D7a and ask you if you received that from Mr. Demorest? A. Yes, this was the first knowledge I had that he had landed that order.

Q. The step order referred to in this card is the step order you have testified to? A. Yes, sir.

Q. Did Demorest give any explanation as to why he turned the order over from you and gave it to the Irving? A. No, sir, he never did.

Q. Did you have any conversation with Mr. Demorest concerning any correspondence which he had received from Mr. Irving? A. Demorest and I had a general talk on condition that he told me that he was more than ever dissatisfied with the treatment he was receiving from the Irving Company.

Mr. Egner: Was that Chicago?

The Witness: Yes.

The Court: In this same interview?

The Witness: Yes. He told me after that that when Mr. Bunker had left the company he had lost practically the last friend he had there, as neither Mr. Irving or Mr. Price had ever agreed to do very much for him, but treated him very shabily, in the way of giving him commission, and he resented very much Mr. Irving's attitude in writing to him and raking him over the coals because he couldn't get business, saying he was a weak salesman. He also told Demorest that he had to be a first class liar to he able to go out and get business.

The Court: That Irving had told him?

The Witness: Yes, that he had played too much golf and didn't pay enough attention to digging up business, and Demorest told me that he had repeatedly written in and told the Irving Company regarding the high price at that time and his absolute inability to meet the competition he was getting, and losing practically all of his business, and that he had never gotten any satisfaction from it, and all of

these things tended to make him very much dissatisfied.

Mr. Kraetzer: The records produced of correspondence with Mr. Demorest would not be satisfactory, because we only have it up to the end of 1920, and of course 1921 is the more or less crucial year. I understand from Mr. Brown that that will be supplied before the afternoon session.

Mr. Egner: That will be done.

Mr. Huck: I call upon the other side to produce an order from the Irving Iron Works Company to Mr. Demorest, dated in or about September or October, 1921, stating in words or effect that Mr. Demorest was a bum salesman because he was not a good liar.

The Court: You have asked for all the letters?

Mr. Huck: Yes.

Mr. Egner: I first call attention to the fact that they are asking us to produce a copy of a letter and not an original, and our reply to the notice is, that there is no such letter.

The Court: You should have the original.

Mr. Egner: It was written to Demorest; we have no copy of any such letter.

The Court: You have the benefit of the secondary evidence.

Mr. Egner: If Demorest said it.

Q. Did you see Demorest after that? A. Yes, sir, I did see Demorest after that.

Q. When and where? A. In Pittsburgh.

Q. About when? A. A few weeks afterward, I would say.

Q. After having looked over these exhibits can you refresh your recollection as to the date? A. Yes, I recall going to Detroit, and while there Mr. Demorest called me on the long distance 'phone and asked me to come to Pittsburg immediately, as he had a man by the name of Gibson.

The Court: When did you see him. is the question.

The Witness: About the seventeenth of October, 1921.

Q. And you say that you had received a telephone call from him while you were at Detroit? A. Yes.

Q. And where was he? A. In Pittsburgh.

Q. What did he say in the telephone conversation? A. He said that Mr. George Gibson, a man whom he had been trying to get in touch with for quite a while was in town, and he wanted me to come over to Pittsburgh, to go into the matter of putting a plant up in Pittsburgh, and I went to Pittsburgh.

Q. Did you go to Pittsburg? A. Yes, I went to Pittsburgh.

Q. And you saw Demorest? A. Yes.

Q. Did you see anybody else? A. I saw Mr. Gibson and also Mr. Stuart.

Q. Where were they? A. In Mr. Demorest's office.

Q. And you had a conference with them? A. Yes.

Q. What was said? A. Mr. Gibson was evidently a very good friend of Mr. Demorest.

The Court: Strike that out. What was said?

The Witness: Mr. Gibson put up a proposition to me; he asked if we would consider the building or hiring of a plant in Pittsburgh to manufacture our material, and he wanted to figure with me on the approximate cost of machinery and other items. He had seen the picture of the large machine which the Kerlow Company intended to purchase, and he asked me if I could give him a price on that. He told me that he had $15,000 to put into a plant down there, and that he and George had been figuring together—

The Court: Who is George?

The Witness: —Demorest had been figuring together on putting up a plant.

The Court: Who told you this, Gibson?

The Witness: Yes. He asked me to make the best proposition, the company to put on Mr. Demorest in Pittsburgh for the starting of the plant there, saying that he wanted Mr. Demorest to be a director or general manager, and he would stand in back of him to bring any financial aid that was necessary. He wanted to purchase some of the stock of the Kerlow Company, in return for which the Kerlow Company were to send machinery and structure and all necesary data and equipment down to start the plant. That was the substance of that conversation.

Q. Had you known Gibson prior to that time? A. No, sir.

Q. How did you meet him? A. Mr. Demorest introduced me.

Q. How long did that conversation last, do you recall? A. It lasted all the afternoon and up into the night; it was a lengthy discussion on cost, over-

head and materials, and labor and everything else. It was a very long discussion.

Q. Did the Kerlow Company agree to put up a plant in Pittsburgh under those conditions? A. No, sir.

Q. Did you see Mr. Demorest again after that? A. Yes, I returned to New York and then I saw Mr. Demorest in New York.

Q. While you were in New York did you hear from Mr. Demorest? A. Mr. Demorest came down to the office to see us, and he also wrote several letters to me.

Q. I show you a telegram dated November 7, 1921, and ask you if you received that? A. Yes, I received that telegram.

Mr. Huck: I offer that in evidence.
Marked Exhibit D25.

"November 7, 1921.

Kerlow Steel Floor Company,
Room 391 50 Church St., New York.

Mr. Egner: That telegram is evidently in answer to a telegram, Exhibit C36, from Kerlow Company to Demorest, and says, "Must make arrangements regarding known business there have you objection our placing temporary representatives"; that is stamped November 5, 1921.

Q. Do you recall the sending and receiving of these telegrams? A. Yes.

Q. Does that refresh your recollection as to your subsequent talks with Demorest and where they were? A. Yes, Mr. Demorest, as I recall it, then

came to New York, and on a Saturday morning we had a little talk regarding his business. He said he came to New York to collect commisions from Irving and see what kind of an arrangement he could make, and he was very much afraid to do anything with us until he had settled that account. He said, however, that he had started Mr. Stuart in another building, another office, and he had Stuart out doing missionary work for the Kerlow Company, in going around, endeavoring to sell Kerlow grating.

Mr. Egner: When was that?

The Witness: Around November 10, or possibly 12. Mr. Demorest told me that he had only one or two jobs down in Pittsburgh, which he had written me about, saying that a good price was needed to get them, and also a little protection for the structural fabricator on the job, and as soon as this came through he would send them to the Kerlow Company, through Mr. Stuart. He told me that he was going over to the Irving Iron Works, to see what he could do about getting his money, and he would return to the Kerlow Company Monday morning, but he never came back to us. One or two days later I left for Pittsburgh, with the idea of getting an agent down there. We had received applications for the agency, and at that time there were quite a few nice jobs in Pittsburg which were about to come up, and I went to Pittsburgh and told Mr. Demorest that I could not hold the thing open for him any longer, and Mr. Stuart, who had applied for a position was hired.

The Court: What did Demorest say when you said you couldn't hold it open any longer?

The Witness: He was very displeased.

The Court: What did he say, I asked you.

The Witness: He asked me if I would hold the thing open for him until the first of January anyway. "You can see my position. I cannot get my money and I cannot make a definite decision." He said, "You don't want me to lose four or five thousand dollars, do you," or three thousand, whatever it was.

Mr. Egner: What did he say?

The Court: Keep to the question that you are asked. What did Mr. Demorest say when you told him you couldn't keep it open for him any longer?

The Witness: He eventually said, "Well, all right, I don't suppose I can do that."

The Court: What did he say? That includes both eventually and present and everything. Can you tell me what he said, when you said you couldn't keep it any longer?

The Witness: He told me that he was very much disappointed and he also told me that I put him in a very bad position, inasmuch as the Irving Company owed him money, and if I forced the issue and he came with the Kerlow Company, he would be unable to collect it. He asked me to hold it up until January first, and I told him I wouldn't, that negotiations were off. He said he was very much dissatisfied and couldn't do anything more about it.

Q. You said you had received applications from others in Pittsburgh; whom had you received applications from? A. We received an application from one Walter C. Rott.

Q. Who was he? A. He was formerly chief engineer of Julian Kennedy's steel plant, blast furnace engineer.

The Court: Did Demorest obtain Stuart as your agent for you?

The Witness: No, Stuart at that time was working for Demorest.

The Court: While these negotiations were pending you said that Stuart was acting for you in another office?

The Witness: Yes. Demorest sent Stuart over to handle our line.

The Court: Then after you and Demorest had this final talk, then you went and hired Stuart permanently?

The Witness: Yes, Stuart had kept after me—

The Court: That is all I want.

Q. You had received an application from Stuart? A. Yes.

Q. And from Rott? A. Yes, Rott wrote two or three times for the agency.

Q. Was he subsequently employed by you as your agent or in connection with your agency in Pittsburgh? A. The contract was given to Stuart and Mr. Rott worked in connection with him; they had a copartnership agreement.

Q. Did Stuart then leave Demorest's employ? A. Yes, he left that night.

The Court: This office that you state that Stuart occupied was it in the same building with Demorest?

The Witness: No, sir; Demorest was in the Union Arcade and Stuart was in the Bessemer Building.

The Court: Who fitted up the offices and paid the rent?

The Witness: They just hired a desk and paid the rent for the desk room.

The Court: Did Kerlow have anything to do with the expense of that office?

The Witness: No, that was entirely up to Mr. Demorest.

The Court: Was any business done up to the time of your interview about the tenth of November, when you told Demorest you wouldn't keep it open any longer? Was any business done between the time you first met him in Chicago and that particular date when you hired Stuart definitely?

The Witness: No.

The Court: By you or Stuart for the Kerlow?

The Witness: No. We received no business, but Demorest made bids.

The Court: But actual work?

The Witness: No.

Q. Did you ever see Demorest again after that date of this last conversation? A. I recall seeing him casually in Pittsburgh, but I am not sure.

Q. Did you have any further conversation with him in connection with this matter? A. No, not to my recollection.

Q. Have you now stated all that you can recall as to the conversations had between you and Demorest from the time you first saw him in connection with this matter until the end? A. I recall a conversation in a restaurant regarding income taxes and insurance.

The Court: When was that?

The Witness: That was on one of the occasions of my trip to Pittsburg, I don't remember which one.

The Court: After you had hired Stuart definitely?

The Witness: No, sir, before.

The Court: Have anything to do with the business at all?

The Witness: No, sir, it didn't.

The Court: A personal matter of taxes and insurance?

The Witness: No. It was the topic of the day, the way to beat the income tax, something like that.

The Court: Do you want that?

Mr. Huck: Demorest testified as to a lot of things alleged to have been said by Lown, and I was trying to cover—

The Court: Was there anything said in relation to this business of Kerlow or Irving or your conduct with the Irving right after you left?

The Witness: We were talking generally on figures and income taxes and everything else.

Q. Did you say anything on these topics that I have mentioned? A. Yes.

Q. What did you say? A. Mr. Demorest showed me a piece of paper where a number of men had insured their lives for great sums, and then had proceeded to borrow immediately on the insurance and deducted it from their income tax. He suggested that it would be a good thing for Mr. Bunker and myself to do, as it would help us to get away from paying large income tax, and we had a long general discussion on that. I told Mr. Demorest of a friend of mine in New York who had secured a policy of $500,000 or a million, and I had afterward heard that Mr. Demorest said that we had our lives insured in great amounts.

The Court: Strike that out.

Q. Did he tell you that? A. I read it in his affidavit.

Mr. Egner: I object.
The Court: Strike it out.

Q. Did you ever tell Mr. Demorest that you were going with an investment bond house? A. No, sir.

Q. Do you recall having had any conversation with Mr. Demorest prior to the time when you left the Irving Iron Works Company? A. I did not.

Q. I show you a photograph of this machine and describing it as a brake. A. Yes.

Q. Did the Kerlow Company afterwards acquire that machine? A. Yes.

Q. And did you ever tell Mr. Demorest that the Kerlow factory in Long Island was a smoke screen to the plant of the Irving Iron Works? A. No, sir.

Q. Did you ever tell Demorest that you expected to put the Irving Iron Works Company out of business? A. No, sir.

Q. Was anything said about putting the Irving Iron Works out of business, or in competition with the Irving Iron Works Company? A. In Mr. Demorest's case, as it was invariably the case, in talking to people who knew the Irving Iron Works prices and costs, Mr. Demorest said, "Well, Irving won't be able to last very long when you go out and quote prices that you have told me."

Q. That was all that was said? A. That is all.

Q. Did you ever tell him that if you didn't put Irving out of business, or he did not get out, that you would offer him $100,000 for his business, feeling that he would like to retire to his country place? A. No, that was Mr. Demorest's suggestion. What actually happened was that Mr. Demorest thought

that it would be better to alleviate all bad feeling and bad condition that might arise from us going into a competitive business, and offer Mr. Irving $100,000.

The Court: When did he make that suggestion to you?

The Witness: I don't remember which conversation it was; there was so much general talk, I cannot remember.

Q. Did you tell Demorest that you received a job of approximately $40,000 from the Johns-Manville Company of Milwaukee? A. No, sir, we discussed that job. Mr. Demorest told me that a structural fabricator in Pittsburgh had figured on the job and he was very much interested to know the outcome. I told him that the job had not been let, and didn't know when it would be, and also told him that the Kerlow Company was going to put in a bid on the job.

Q. Did the Kerlow Company get that job? A. A small part of it.

Q. What proportion of it? A. It wasn't very much; we got a piece of it as a trial installation.

Q. Did you tell Demorest that you had a very deep feeling or much sympathy for Vonier, Irving's Milwaukee representative, and out of consideration for his hard work and your appreciation of his ability, you thought he would feel better if he could send him a check for $4,000, which would have been his commission had Irving obtained the order? A. I did not, but Demorest told me that he had a sympathetic feeling for Vonier in as much as he knew the Irving prices and he knew our prices, and he knew that if we went to bid on that job, the work that was done

by Vonier for the past two years would be gone. I told Mr. Demorest that Mr. Vonier had worked on that job for months before I even left the Irving Iron Works Company, and that his labor would not be worth anything to him if the Kerlow Company got it. I also told him, however, that if the Kerlow Company did secure that order, out of friendship to Vonier, I would see what we could do for him in the event of us getting the job.

The Court: Did you as a fact do anything for him?

The Witness: No, sir, because we did not get the job, only a tiny bit of it.

The Court: Was Vonier ever in Kerlow's employ?

The Witness: No, sir.

Q. Did you tell Demorest that Kerlow was to launch a great advertising campaign through the medium of the "Engineering News Record," "Iron Age" and "Iron Trade Review"? A. I told him that we were going to launch an advertising campaign.

The Court: Did you tell him these things that were quoted?

The Witness: No, I do not remember mentioning these specific magazines.

Q. Did you tell him that in as much as Irving was looking out for himself and his family and for their welfare, that if his business ceased, as you anticipated, that the agents would be left without the representation of that company, and their previous missionary work would not be realized upon, and they would lose the benefit of that? A. I did not. That entire conversation was Mr. Demorest's contention, that if a competitor came into the field, his work over

a period of years for the Irving Iron Works Company would be entirely dissipated, and we would not be able to get any reward from that.

Q. Did you tell him that Kerlow was authorized to issue $200,000 of capital stock, $50 per share, par value, and that there had been $110,000 of that stock sold or subscribed, that only $60,000 remained, which would be distributed among agents and direct employees? A. I told him that the Kerlow Company was capitalized for that amount. I also told him that all but $100,000—rather, all but $60,000 worth would be distributed to stockholders, and to the controlling interest, and that $60,000 worth would at some time or other go to the various employees and agents of the Kerlow Company; that it was our intention to reserve $60,000 of treasury stock for that purpose.

Q. That is, for them to subscribe to? A. Yes; we were going to sell it to them and they were to pay for it from the dividend earnings.

Q. Did you tell them that Prince had resigned? A. Absolutely no.

Q. Did you mention Prince? A. No.

Q. Did you see Prince? A. No.

Q. Did you ever see Prince after that? A. No, except in this trial.

Q. Did you during the course of the talk with Demorest in Pittsburgh in November call Bunker on the 'phone from Demorest's office and tell him that Kerlow had secured a contract for the Electric Company's Fort Worth, Texas, power palnt? A. I do not recall having done so.

The Court: As a matter of fact, had the Kerlow Company obtained that contract?

The Witness: No.

Q. Did you tell Demorest that you had secured a job from the Belmont Iron Works Company? A. No, sir.

Q. Did you tell Demorest that the president or the vice president of the Lehigh Valley Railroad was a stockholder in the Kerlow Company? A. I told him that he was interested in the Kerlow Company, yes.

Q. Who was? A. The vice president of the Lehigh Valley Railroad.

Q. As a matter of fact, is the vice president of the Lehigh Valley Railroad now a stockholder in the Kerlow Company? A. He is the largest stockholder that the Kerlow Company has.

Q. Who is he? A. John A. Middleton.

Q. Did you tell him anything about K. N. & K. being interested in Kerlow? A. Yes.

Q. What did you tell him? A. I told him that three, or rather two of K. N. & K. people were interested in the Kerlow Company and on its board of directors.

The Court: And were they, in fact?

The Witness: Yes.

Q. Who were they? A. Mr. Merriam and Mr. Slater.

Q. What was your purpose in giving him this information? A. Mr. Demorest wanted to give it to Mr. Gibson.

The Court: In connection with the proposed Pittsburgh plant?

The Witness: Yes.

Q. Did Demorest ever at any time tell you that he would not go with the Kerlow Company? A. No, sir.

Q. Did you tell Demorest about buying—I think he said—500 tons of steel from the Carnegie Company for cash? A. No, sir, I did not, but we did have quite a conversation regarding steel and the Kerlow Company purchasing steel from the Carnegie Steel Company.

Q. What was that conversation and when and where? A. Mr. Demorest asked me whom the Kerlow Company intended to place their tonnage with in steel purchases, and I told Mr. Demorest that I did not know, as Mr. Bunker would take care of that matter. He asked me if we could see our way clear to place an order with the Carnegie Steel Corporation or the United States Steel Corporation in New York, in as much as they had never been able to secure any of the Irving business, owing to the fact that the steel corporation operated entirely on reciprocity basis in their dealings in purchasing steel articles.

The Court: They wouldn't buy from you unless you bought from them?

The Witness: Yes. The Irving Company had not made a practice of purchasing steel from the corporation, and he told me that if I would place an order with the Carnegie Company, he would send the agent Stuart down to interview the assistant engineer of the United States Steel Corporation of New York, and that would have been the way to get a great deal of business. He asked me to advise him immediately on the placing of this order, but I never did advise him and never told him that we had purchased any steel from the Carnegie Company, or told him that it was our intention to do so, and we since did it.

Q. Did you tell Demorest that life insurance for $125,000 had been taken out by the Kerlow Company

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on the lives of Bunker and yourself, that the premium had been paid in advance, that money had been borrowed on the premium, and then reinvested in bonds at six per cent? A. No, this came in line with that general conversation about income tax and insurance, and I told Mr. Demorest it was the intention, at a later date, to insure both the lives of Mr. Bunker and myself.

Q. Did you tell Demorest that all would-be agents of the Kerlow Company must send in written applications, so there would be no come-back on the part of the Irving Iron Works Company that Kerlow had directly solicited them? A. I did not.

Q. Did Demorest ever send in a written application? A. I do not recall whether he did or not; in fact, I am almost positive that he did not.

Q. Did you ever tell Demorest that you had Roope and Kennard with you and that you had the originator of the idea, that is, of Irving grating, in your employ? A. No, sir; I did tell him that I knew the originator of the Irving grating.

Q. Who is the originator of the Irving grating? A. Mr. Gustave A. Keller.

Q. I show you Exhibit C26, and I ask you if that envelope was sent out by or under the direction of the Kerlow Company? A. Yes, it was.

Q. I ask you if that envelope was sent out under the direction of the Kerlow Company? A. Yes, it was.

Q. And by whom was that envelope addressed? A. Supreme Multigraphing Service, New York City.

Q. They are an addressing service? A. Yes.

Q. And were they furnished with a list upon which that name appeared? A. Yes.

Q. I show you a list of names annexed to affidavit of Walter H. Lown, verified March 4, 1922, on the proceedings for preliminary injunction in this case, and ask you if that is the list or a part of the list to which you referred? A. That is a part of the list.

Q. And in whose handwriting is that list? A. Mr. Schuldt's.

Q. Did Mr. Schuldt give it to you? A. Yes.

Mr. Huck: I ask to have that list marked in evidence.

Mr. Enger: Will there be any objection to detaching that from the file and having it marked as an exhibit?

The Court: No, but a copy can be put in, in place of the original.

Marked Exhibit D26.

Q. And that list contains the name J. G. White Engineering Company, New York, and Mr. Tomclier? A. Yes.

Mr. Huck: I desire to call attention to the fact that on Exhibit D13 for identification—the significance of that is that the envelope was offered in evidence as some evidence that it had been copied from a list which had been taken from the Irving Iron Works, and the point was made that the name is spelled Tomclier on the envelope, that the name actually is Tonnelier, and that it was taken from a list, was pointed out that it is written on this card index file Tomclier, by mistake. I call attention to the fact that this envelope is addressed exactly as it appears on the list attached to the affidavit, as to the spelling and

abbreviations; that there is no street address on the envelope; there is no street address on the list attached to the affidavit; that the card file does contain a street address and that the C. I. M. contains a street address.

The Court: C. I. M. being marked Exhibit D13?

Mr. Huck: Yes.

Q. I believe you testified that up to the time you left the Irving Iron Works Company, their prices were all fixed and standard and no reductions were made to meet competition; is that correct? A. Yes, sir.

Q. And that these prices were quoted freely and could be ascertained by simply calling up the office of the Irving Iron Works Company on the telephone? A. That is right.

Q. Did you ever tell Kennard that you were negotiating with Demorest for a factory location in Pittsburgh and ask him if there would be any objection to his (Kennard's) moving to Pittsburgh to take over the supervision of the factory? A. No, sir, I did not.

Q. Do you know Lucius I. Wightman? A. Yes.

Q. What is his business? A. General advertising agency.

Q. Where is his office? A. 50 Union Square, New York City.

Q. Did he handle the advertising for the Irving Company? A. Yes.

Q. Was he the exclusive representative of the Irving's; that is, is that all the work he did? A. No, he handled several advertising accounts.

Q. He was a general advertising agent? A. Yes.

Q. Do you recall a visit to his office in or about November, 1921? A. Yes, sir.

Q. What was said on that occasion? A. I went up into Mr. Wightman's office, as I was in that vicinity, and I took with me some samples, as I remember it, of the Kerlow grating; I was kind of proud of my grating, an Mr. Wightman and I had been very friendly, and I thought I would like to show it to him. I showed the grating to him, and he discussed it generally; he asked me what the price was, what the difference was between that and the Irving grating, and he asked me who was in back of the company, whether or not we were going to do any advertising. I answered all these questions for him, and I didn't spend very much time there. In about fifteen or twenty minutes I left.

Q. Did you tell him that you had spent $75,000 in advertising? A. I did not; I told him that we were going to do advertising, but did not mention any sum that we were going to spend.

Q. Did you tell him you had K. N. & K. worth three million dollars back of you and you would wipe Irving off the map? A. I told him that men in K. N. & K. were interested in the Kerlow Company, but did not tell him that K. N. & K. were in back of it.

The Court: What do you say about the rest of it, that you would wipe the Irving Company off the map?

The Witness: No, sir, I didn't make that statement.

The Court: Listen to the questions and answer them responsively.

Q. Did Wightman in the November talk say anything to you as to whether the company you were

then talking to him about was the same company you had spoken to him about before? A. No, sir.

Q. Had you spoken to him about anything before? A. Yes.

Q. When? A. During the summer of 1920.

Q. What did you say to him then? A. I asked Mr. Wightman if he would be interested in any new accounts, as some time before he told me he was filled up and didn't want to take any more work, his health was poor, and other things entered into it; he asked me what the nature of the account was. He confined his work strictly to a certain form of technical advertising and technical phraseology was used mostly in his advertisement.

The Court: What did he say?

The Witness: He told me that he confined it strictly to technical advertising, and before he could give me any answer on that, he would have to know the nature of the product. I told him this product was a valve cover which was under contemplation at that time by some people I knew, and I thought that in as much as the whole strength of this sale would be in the forcibility of the selling argument, through its advertising, and knowing Mr. Wightman to do work of that kind, I thought he would make a good advertising man, and I also told him that I would endeavor to secure that account for him, if I could.

Q. Were you interested in that; were you going to manufacture a valve cover? A. No, sir, I was interested in an advisory capacity only.

Q. On behalf of some friends? A. Yes.

Q. Who were those friends?

Mr. Egnor: I object.

The Court: Will that make any difference?

Q. Do you know Arthur C. Davis? A. Yes.

Q. Do you recall ever having seen him at the office of the Kerlow Steel Flooring Company? A. Yes.

Q. How often did you see him there? A. Twice, I believe.

Q. Do you recall when? A. About January or February, 1922.

Q. What was said the first time; what did he come for or say? A. Mr. Davis came up to the office and told me that he wanted information on Kerlow grating, as he was interested in the use of that grating for some construction work that he was working on for the Interstate Bridge and Tunnel Commission. I gave him the grating and explained the various features of the grating to him, showing him the samples and going into the matter very carefully. Mr. Davis left and said that he would like to have complete catalogues when we had them ready, and that was about all that was said at the conversation.

Q. Did you see him again afterwards? A. I think I saw him once after that, although I do not recall it, and don't remember any conversation.

Q. You said that this conversation took place when? A. Around January, 1922.

Q. Did you see him there in January, 1921? A. No, sir, I didn't know Mr. Davis at that time.

Q. The Kerlow Company wasn't in business in 1921? A. No, sir.

Q. I asked you, at the last hearing, whether you ever returned to the office or plant of the Irving Iron Works after you left on May 9, 1921, and your answer was no. I meant my question to cover a return for any purpose whatsoever, whether to see Mr. Irving, Mr. Price, Mr. Tarof, Bunker or anybody con-

nected with the Irving Iron Works. Did you so understand that question? A. Yes.

The Court: Did you answer it accordingly?
The Witness: Yes, I said no, I never was back.

Q. You never returned to the office of the Irving Iron Works Company for any purpose after you left their employ? A. No.

The Court: Then you don't desire to correct your testimony—your answer?
The Witness: Yes.

CROSS-EXAMINATION by Mr. Egner:

Q. How long were you in the employ of the Irving Company altogether? A. About nineteen months.
Q. You entered when? A. September 2, 1919.
Q. And you left when? A. May 9, 1920, or rather 1921.
Q. Up to what time did you receive pay as an employee of the Irving Company? A. I believe I received an additional pay after May 9th.

The Court: Up to what time, he asks you.
The Witness: I am not positive of the amount I received.
The Court: Give it approximately.
The Witness: May 18 or 20.

Q. And was that paid by check or cash or how? A. I do not recall.
Q. Do you know how you got it; did you call for it, or was it sent to you? A. I believe I got it from Mr. Bunker for the last week.
Q. Mr. Bunker brought it to you? A. I called at

Mr. Bunker's house, or he brought it to me, I don't remember which.

Q. During the time that you were with the Irving Company, you were in charge of sales? A. Yes.

Q. And it was your duty to endeavor to promote sales? A. Yes; keep up the spirits of the agents and salesmen.

Q. And promote the business of the company as far as the sales were concerned? A. Yes.

Q. During that time you published what was known as an issue known as "Subway Smiles," did you not? A. Yes.

Q. That was a periodical publication gotten out for the benefit of the Irving employees? A. Yes.

Q. And from time to time you also issued certain memoranda of instructions to agents and salesmen and bulletins? A. Yes.

Q. Did all that matter go through your hands? A. Most of it, yes, sir.

Q. And in fact it was prepared by you, wasn't it? A. Yes.

Q. I show you a booklet containing memorandum of various kinds and ask you if you will be good enough too look through that and tell us whether these are memoranda of this kind you prepared and sent out from time to time? A. Yes, sir, that is it.

Mr. Egner: I would like to have that marked. I offer that in evidence.

Marked Exhibit C57.

Q. Now, Mr. Lown, when you left the employ of the Irving Company in May of 1921, you were how old? A. Twenty-two.

Q. And you were how old when you entered their employ? A. Twenty.

Q. What other business employments had you had before you entered the employ of the Irving Iron Works Company?

The Court: Hasn't he covered all that.

Mr. Egner: I would like to go over that for a moment.

A. When I left school I went to work for the Lauter Piano Company of Jersey City.

Q. How old were you when you started to work for them? A. Twelve.

Q. From that time on until the time you entered the Irving Company's employ, you had various employments? A. Yes.

Q. Just what did you do immediately prior to going with Irving Company? A. United States Army.

Q. You had no business employment before you came with the Irving—immediately before? A. No.

Q. What was the last business employment you had before going with the Irving? A. Pyrene Manufacturing Company and I also served a little time with the National Appraisal Company of Boston, Massachusetts.

Q. You got how much salary when you came with the Irving? A. Thirty-five dollars per week.

Q. What had been your salary in the last business employment before that time? A. When I went with them or when I left.

Q. Before you entered the army? A. I think it was about forty dollars a week.

Q. When you were employed by the Irving Company, whom did you see; whom did you have your talk with? A. Mr. Donald A. Wilson.

Q. Did you also talk with Mr. Irving? A. Not on my first going with the company, no.

Q. At that time you were asked how old you were? A. Yes.

Q. What did you tell them? A. I forget—twenty-six or twenty-seven, something like that.

Q. Then you didn't give your correct age? A. No, I did not.

Q. I show you, Mr. Lown, a check of the Irving Iron Works to your order, dated June 6, 1921, for $50, and ask you whether that does not refresh your recollection that you were actually in receipt of pay from the Irving Company down to June, 1921? A. No, it does not; I remember now that I spent something like three or four weeks trying to convince Mr. Price that I should have that extra week's salary, and finally it came to me in that form.

Q. Then you did get money from the Irving Company in June, 1921? A. I am in receipt of it.

The Court: What week are you referring to?

The Witness: The week after I left.

The Court: Why did you think you were entitled to that after you left?

The Witness: During my entire employment with the Irving Company, I had never had a vacation; I thought I was entitled to a week's vacation during the summer in as much as I had never taken any vacation before.

The Court: Had you severed your relations with the company on the ninth of May?

The Witness: Yes.

The Court: You quit?

The Witness: Yes.

The Court: They knew before?

The Witness: Yes, and before I left I asked Mr. Price if I could not have my week's pay as vacation money.

The Court: That is what you had the dispute about three or four weeks after that?

The Witness: Yes, and I finally got that.

Q. Do you remember how this check came by mail, or did you call for it? A. I do not recall exactly; I think Mr. Bunker brought it over, because I asked Mr. Bunker to get the money for me, if he could, and I think I got it at his house.

Q. You say you quit on the ninth of May? A. Yes.

Q. You said you had considerable dispute with Mr. Price as to whether anything further was coming to you? A. Yes.

Q. Where were those disputes held? A. In Mr. Price's office.

Q. And that was after you left? A. Previous to the time I left.

Q. Did you have any disputes after the time you left? A. No, sir.

Q. None whatever? A. No, sir.

Q. So that after you left on May 9th, up to the time you got this check, there had been no dispute or argument about it between you and any officer of the Irving Company? A. Not in any office; over the 'phone I had spoken to him, but not in any office of the Irving Company.

The Court: Did you write to each other on the subject?

The Witness: No; I think I called Mr. Price up once or twice.

Q. During that time did you call up anybody else at the Irving plant? A. I might have; I don't recall. Yes, I called Mr. Irving; I know it.

Q. Did you call Mr. Bunker? A. I may have.
Q. Did you? A. I don't know.

Mr. Tarof: No, sir. I hardly knew Mr. Tarof.

Mr. Egner: I ask that that be stricken out.

The Court: Strike it out.

Q. Mr. Lown, when you came with the Irving Company you knew nothing about the steel flooring business, did you? A. No, sir.

Q. Had you ever known of the use of this grating as a steel flooring before that time? A. No, sir.

Q. So it was an entirely new subject to you? A. Absolutely.

Q. And what you came to know about it, you learned in service with the Irving Company? A. Yes.

Q. When did you first decide in your own mind that you were going to leave the Irving Company? A. In about October or November, 1920, I firmly made up my mind that I would get out at the first opportunity.

Q. When did you first make up your mind that you would go into a competitive line? A. On December 24, 1920.

Q. And that was the occasion of your talk with Mr. Bunker? A. Yes.

Q. Prior to that Christmas Eve you had never mentioned the subject to Mr. Bunker? A. No, sir.

Q. Had you prior to that time ever stated to Mr. Bunker that you were dissatisfied with the Irving Company? A. He and I had a conversation along those lines; we both were very much dissatisfied.

Q. Had you and he before that time ever dis-

cussed the possibility of going into a competitive business? A. No, sir.

Q. Or the advantage to accrue to anyone who would go into that business? A. We may have discussed that; I cannot fix any definite recollection.

Q. When was it you went to the New York Library to look up Mr. Irving's patent? A. In, I think, about August or September, 1920.

Q. And it was before that? A. Yes.

Q. Why did you go there to look at the patent? A. Because I had invented the new grating myself and I wanted to find out about Irving's patent.

Q. Why didn't you ask Mr. Irving to show you a copy of his patent? A. That never occurred to me. I was entirely unacquainted with patent matters and didn't even know that he had a copy of his patent.

Q. Did you have Mr. Irving tell you anything about his patent? A. We discussed it on several occasions; I never asked him specifically for any information.

Q. What was the particular thing you wanted to find out about Mr. Irving's patent? A. Nothing in particular; merely to look over the cut up of it.

Q. And for that you went to the New York Public Library? A. Yes.

Q. Did you ever tell Mr. Irving that you had looked up his patent in the public library? A. I don't recall that I did.

Q. In fact you didn't tell him, did you? A. I don't know.

Q. Do you think that you may have told him? A. I may have.

Q. Haven't you any recollection about it? A. No.

Q. What did Bunker say to you on Christmas Eve when you approached this subject? A. He told me

that he felt much the same as I did, that he had made numerous endeavors with both Mr. Irving and Mr. Price to get them to change their policy, to improve their method of production, and to give to the company a policy which would allow it to be progressive and mean something to the men who were working for it. He told me that he wanted me to promise very definitely that if he could in the next week convince Mr. Price and Mr. Irving of the righteousness of his argument in having an entire new system installed and a new policy defined, I would not go out of the Irving Iron Works Company and engage in business with myself, but stay with them and continue to build up their business.

Q. At this time you considered that the Irving Company was being run in a very slipshod, unscientific way? A. I knew it.

Q. How much business, roughly, or approximately was being done by the Irving Company in a year—what was the volume of business? A. During 1920 I believe they did about a million dollars, probably a little less.

Q. You knew, did you not, that this business had been developed from nothing by Mr. Irving and Mr. Price, didn't you? A. Not alone by Mr. Irving and Mr. Price, but also by Mr. Bunker and many others.

Q. You knew that this business had started from nothing and in the year 1920 had reached the volume of a million dollars' worth of business; you knew that? A. Yes.

Q. To what did you ascribe that measure of success? A. To many things, and in the first place the unprecedented amount of construction going on during that year; and in the second place, it was the culminated effort of the new agents which we had ap-

pointed during the latter months of the year 1919, and to the great intensive effort that was being put back of sales work.

Q. So to a large extent you ascribe the success of the Irving Company to the efforts of the agents who were then representing its product? A. Yes.

Q. And the principal agents were, of course, Demorest, Scarth, Skoning, Schuldt, Kennedy and Moser? A. No, they were not.

Q. Who were they, if they were not? A. The principal agents of the company numbered about fifteen.

Q. Who were those fifteen? A. Mr. Price, of Boston; Mr. Meyers, of Washington; Mr. Schuldt—

Q. I mentioned Schuldt? A. Mr. Smith, Mr. Thaxter, Mr. Patterson, Mr. Vonier, Mr. Suthoff, Mr. Condon, Mr. Skillman, Mr. Westerfield, Mr. Chastain, Mr. Cane, and the ones which you have mentioned, except Mr. Scarth and Mr. Skoning, who were not with the company in 1920.

Q. They came in 1921? A. Yes.

Q. Mr. Prince represented the Boston territory? A. Yes.

Q. Mr. Morris represented what territory? A. Washington, D. C., and vicinity.

Q. How much of the million dollars' worth of business of 1921 had been turned in by Mr. Morris? A. I do not recall; probably five or six thousand dollars.

Q. What territory did Mr. Smith represent? A. He worked in upper New York State as a missionary salesman and agent.

Q. How much business did he turn in during 1920? A. It could never be acknowledged, because Mr.

Smith was a man that was hired chiefly to talk Irving subway grating and not to take orders.

Q. He was a sort of a general missionary? A. Yes.

Q. He didn't take any orders at all? A. No.

Q. Where did Thaxter come in? A. San Francisco.

Q. In 1920? A. Yes; he worked there in 1920.

Q. How much business did he turn in, in 1920? A. I cannot hazard a guess; I don't recall.

Q. As much as $5,000? A. Possibly; I wouldn't say.

Q. It wasn't any more than that? A. I wouldn't say it was more or less; you had better look at your records.

The Court: Don't answer that way.

Q. You have no recollection? A. No, I know he turned in many orders, and I wouldn't hazard a guess on the number of them.

Q. What territory did Patterson represent? A. Kansas City.

Q. How much business had he turned in during the year 1920? A. Twenty or twenty-two thousand dollars.

The Court: Where did this million dollars' worth of work come from; through what agency?

The Witness: Through the Detroit agent, Mr. Skillman.

The Court: Amounting to how much of that?

The Witness: Skillman got about $200,000.

The Court: Who was next; which one?

The Witness: Vonier, Milwaukee.

The Court: What did that amount to?

The Witness: About $160,000. And Demorest came next, and Prince, in Boston.

The Court: How much did Demorest bring in?

The Witness: About $100,000.

The Court: How much was Prince's?

The Witness: Prince ran, I believe, about eighty or eighty-five thousand.

Q. How about Madden? A. Madden—it would be hard to tell the amount of work he turned in, because many orders were coming in from his territory into the office, Madden was working in the Philadelphia territory and he had very few orders; he didn't work the same as the agents did; he had his people mail them in.

Q. Can you tell us about how much work came in through the Philadelphia territory? A. I would say fifty or sixty thousand dollars.

Q. How about Schuldt in New York? A. Mr. Schuldt and Hutchinson, whose name should be in there, too, the Buffalo agents, turned in, between them, between $125,000, of which Hutchison turned in about $40,000.

Q. How about Kennedy? A. About $20,000.

Q. Skillman was the man whose place Scarth took in Detroit? A. Yes.

Q. So then, without bothering to go through all these names you have given me, it is a fact that Skillman, Vonier, Demorest, Prince, Madden, Schuldt and Kennedy, between them, turned in practically the greater part of the orders taken by the Irving Company during 1920? A. Yes, the greater part.

Q. So that when you say that one of the reasons why the company was successful, or as successful as it was, was because of the efforts expended by these

men whom I have just mentioned— A. I wouldn't say that either—these men and others.

Q. But these men principally? A. Yes.

Q. After your first talk with Mr. Bunker, he later reported to you that he got no satisfaction out of Messrs. Irving and Price? A. Yes.

Q. When was that? A. This was New Year's Eve, 1920.

Q. And did he then tell you that he would go in business with you? A. He told me that he would go in business depending upon the state of his health; he was very ill at that time, and his future work in business with anyone depended entirely on his ability to come through the next few months or not, whatever it was, with his health.

Q. But he told you definitely that provided his health permitted, he would be with you? A. Provided his health permitted and provided I could finance the company.

Q. You actually incorporated the Kerlow Company on March 17, 1921? A. Yes, I think that is it.

Q. And the name of that company consisted of a combination of the syllables of your name and Mr. Bunker's? A. Yes.

Q. When did you decide on that name? A. I believe it was sometime before the incorporation; we asked everybody to give us an idea as to the name.

Q. Who is "everybody"? Your friends, you mean? A. Yes.

Q. You didn't ask Mr. Irving or Mr. Price? A. No, I don't believe so.

Q. How soon before the incorporation did you agree on the name? A. I don't recall.

Q. Was it a month? A. There wasn't any agreement on the name. I took that name and gave it

to the people interested in the corporation myself, because I liked the name; it was a good commercial name.

Q. You had procured Bunker's permission to use a syllable of his name? A. I had his permission to use his name in a good many regards.

The Court: Did you in this?

The Witness: Yes.

Q. You had his permission? A. Yes.

Q. You say that you had a list prepared at the request of Mr. Irving? A. Yes.

Q. And that list contained how many names, approximately? A. I don't recall; if the list had been prepared according to my instructions, it would have contained five or six hundred names.

Q. You saw the list after it was prepared? A. No, I don't remember that I did.

Q. Are you sure you didn't? A. I will not say positively; I will say now that I don't remember that I did.

Q. The list, if prepared according to your instructions, contained some five or six hundred names? A. Yes.

Q. What use was to be made of this list? A. It was to be sent to the Field Photo Service, Engineering News Record, the McGraw-Hill Company, for their taking photographs of our various installations around the United States.

Q. For what use? A. The photographs?

Q. Yes? A. They were to be used in catalogue and manuals—or rather photograph albums.

Q. Were they to take photographs in the plant of each one of those six hundred customers? A. No.

Q. Who was to decide which photograph was to

be taken? A. The law of average in getting photographs is about one to one hundred. Ninety-nine people wouldn't let you take one, or you couldn't secure the information to get it, as to the exact location in the plant.

Q. Is it your understanding that this list was to be turned over to the McGraw-Hill people and that they would do the rest, and they would pick out the installations? A. Yes.

Q. And that they were to be given no instructions, but say, "Here is the list," "You take the list"? A. To the best of my recollection, that is it.

Q. When did you actually start to manufacture the product of the Kerlow Company? A. November, 1921.

Q. Do you remember testifying on your direct-examination that you began manufacturing about the tenth or fourteenth of December? A. Yes, I do, but I have since refreshed my memory.

Q. That was a mistake? A. Yes.

Q. What has caused you to refresh your memory? A. I wanted to check it up, to be sure.

Q. Did your cross-examination in the interference proceeding—is that one of the things that refreshed your memory? A. I read Mr. Bunker's testimony and I saw from that that he had testified differently, and I asked him what was the truth, because I recalled having testified to December 10th here, and I checked it up, to be sure.

Q. Then you now say that it is a fact that you began manufacturing in the middle of November? A. About then, yes.

Q. Did the fact that you have seen a copy of your petition filed in the United States Patent Office, verified by you on the first of December, 1921, have any-

thing to do with your changing your testimony? A. No, sir.

Q. I show you a certified copy of that petition; have you seen that recently? A. Yes.

Q. And that states, does it not, that on the day of the verification of that you were manufacturing grating? A. Yes.

Mr. Egner: I would like to have this marked for identification.

Marked Exhibit C58 for identification.

Q. You stated that after you left the employ of the Irving Company you never went there and you didn't call up any of the officers? A. I did not say that.

Q. You didn't go there? A. No, I did not.

Q. After you left did you get any information from anybody with respect to the business of the Irving Company or with respect to what was going on in their plant? A. I have heard various statements.

The Court: Did you get information, is the question.

The Witness: I got no information.

Q. No information whatever? A. I got no information as to—

The Court: As to the business or affairs of the company?

The Witness: As to the business or affairs of the Irving Iron Works Company through anyone employed there.

Q. Through anyone employed there; did you get any information from anybody not employed there? A. I got some information from our patent attorney, Mr. William A. Pritchard.

Q. As to what was going on in the Irving plant? A. Yes, as to what was going on in the Irving plant.

Q. Do you know how Mr. Pritchard got his information? A. I do not.

Q. Referring to Exhibit C58 for identification, I call your attention to this language in the petition: "I am informed on good authority that the Irving Iron Works, with which I was formerly sales manager, a competitor of the Kerlow Steel Flooring Company, has recently, to wit, on or about the twenty-fourth or twenty-fifth of November, taken a rubbing from a sample of the grating now made by the Kerlow Steel Flooring Company and have had shop drawings prepared for the purpose of manufacturing a grating exactly similar to my invention disclosed in the above referred to application." You so stated on December 1, 1921? A. That is right.

The Court: This paper is a copy of his application for a patent?

Mr. Egner: It is a petition filed in the cause, asking for speedy action on the application for his patent.

Q. Who is the good authority who had so informed you? A. Mr. Pritchard, whom I considered the best authority in the world.

Q. And did you consider Mr. Pritchard the good authority on what was going on in the Irving plant? A. I considered him a good authority on patent matters. My patent matters were entirely in his hands and I acted entirely on his advice.

Q. That statement you made in your petition was a statement of fact, was it not? A. On good authority.

The Court: Don't qualify your answer.

Mr. Huck: I object; the witness should not be called upon to characterize it, because the petition does state that it is made upon information which was furnished to him.

The Court: If it states it is so, it qualifies it in that way.

Mr. Egner: The petition says, "I am informed on good authority that the Irving Iron Works, with which I was formerly sales manager, a competitor, etc., has recently, to wit, on or about so and so, done so and so," which is a question of fact. I am trying to find out; he states that he was informed on good authority. I asked him who it was.

Q. I ask you again, did you consider Mr. Pritchard a good authority as to what was going on in the Irving plant? A. I considered Mr. Pritchard a good authority on any patent matters.

The Court: Strike that out.

Q. Do you know anything about whether he was a good authority as to what was going on in the Irving plant?

Mr. Huck: As to that particular matter, I think the inquiry is.

The Court: The inquiry is proper enough.

A. In the Irving plant relating to patent matters?

The Court: Strike it out. Don't you dodge it if you cannot answer it, say so.

The Witness: I cannot answer for Mr. Pritchard.

The Court: Why can't you? He asked you if you considered Mr. Pritchard a good authority for what

was going on in the Irving plant. You say so, in effect, in your petition. You said that to the government.

The Witness: Yes.

Q. And what was your reason for considering him a good authority on that subject? A. It was Mr. Pritchard's business to protect my interests, and I therefore felt that he would secure all information necessary, or take any steps whatsoever to protect that interest, whether or not he went into the plant of the Irving Iron Works Company or any other place whatsoever.

Q. Is that the best answer you can give? A. It is.

Q. Did Mr. Pritchard tell you as to the source of his information on that subject? A. He did not.

Q. Didn't you ask him? A. No, sir.

Q. Sure of that? A. Absolutely.

Q. You mean to say that you swore to this petition on no other authority for doing so other than Mr. Pritchard told you that that was a fact? A. Yes.

Q. And that you didn't ask Mr. Pritchard how he knew that it was so? A. Yes, Mr. Pritchard was—

The Court: You have answered it. "Yes" is the answer.

Q. You didn't even ask Mr. Pritchard how he knew? A. No.

The Court: Prior to the execution of this petition, how many conferences had you had with Mr. Pritchard about your patent matter?

The Witness: Probably fifteen or twenty.

Q. And on how many of those occasions had Mr.

Bunker been there with you? A. Three or four times, possibly six, I don't remember.

Q. And was Mr. Bunker present when you verified this petition? A. No, sir.

Q. Did Mr. Bunker know anything about what the Irving Company were doing, so far as you know?

Objected to.

The Court: So far as he disclosed it to you.

The Witness: No, sir.

Q. Up to this time had Mr. Tarof been present on any of those discussions in your attorney's office? A. No, sir.

Q. When did he first enter into these discussions?

Mr. Huck: I object; there is no testimony that he ever entered into them.

Q. Did he ever enter into them? A. Into what?

Q. The discussions at the attorney's office about these patents? A. Yes, I believe he did.

Q. When did he begin to enter into these discussions? A. Somewhere in May or June, 1922.

Recess.

Q. Mr. Lown, on your direct-examination you told about a trip that you took out west at Mr. Irving's request and upon which you appointed Mr. Scarth as agent in Detroit. That was after May 9, was it not? A. No, sir.

Q. When was it? A. I believe that was about May 1.

Q. How long did that trip continue; how long did it take? A. About four days.

Q. Aren't you mistaken when you say that you received no compensation from the Irving Company after May 9th, with the exception of that one check for $50, which I showed you? A. No, sir.

Q. Isn't it a fact that you remained on the pay roll and received your compensation regularly up to June 4, 1921? A. No, sir, that is not my recollection. I have no records to show.

Q. And isn't it a fact that the check which I showed to you for $50, dated June 6, was for an extra week, beginning June 4, 1921? A. No, sir.

Q. You say that is not so? A. I do not consider it to be so.

The Court: Not what you consider, but you know it to be. Is it so or isn't it? I want what the fact is.

The Witness: No, sir.

The Court: I will consider it after I get the fact from you.

Q. Then your final statement is, that with the exception of this $50 you received no compensation from the Irving Company after May 9? A. To the best of my knowledge.

The Court: Have you any knowledge on the subject? Do you know anything about it? Do you know what you are answering and testifying to?

The Witness: It is so long ago, I don't recall.

The Court: You know whether you got paid or didn't get paid; that is the whole story, and whether it was paid for extra time beyond the ninth of May. I would know it, and I would expect you to know it.

The Witness: I am almost positive that I received my pay up to May 16, or 18.

The Court: That is represented by this check?

The Witness: Yes.

The Court: You were very positive this morning that you had had a controversy with Mr. Price on this subject and talked with him over the telephone, and that as a result of that you received sometime in June this check for $50?

The Witness: Yes.

The Court: That is the way I have the facts in my mind; if I am wrong about it, correct me now.

The Witness: No, that is correct.

The Court: I will let it stand that that is what you are testifying to.

Q. Mr. Lown, I show you this check and I notice that something has been stricken out in ink; did you do that? A. No, sir, I did not.

Q. Do you know what words appeared there? A. No, sir, I do not.

Q. You have no recollection about that? A. No, sir.

Mr. Egner: I offer this check in evidence.

Mr. Huck: I object to it on the ground that it bears an obvious erasure on the face of it.

The Court: You offer it with the erasure and all?

Mr. Egner: Just as it is.

Mr. Huck: I object unless the erasure is explained.

The Court: What is the erasure; is there any?

Mr. Egner: The erasure is something was written up there as to what it covered and

someone struck it out. Mr. Lown said he doesn't know about it.

The Court: You are offering a mutilated paper. Where did you get the check?

Mr. Egner: That is one of our records.

The Court: What was on the check when it was drawn?

Mr. Egner: The word "salary" was on the check.

The Court: Who made the erasure?

Mr. Egner: Our information is that Mr. Lown did.

The Court: Did you make it?

The Witness: I did not make it; I would have no reason to do it.

The Court: Don't argue it.

Mr. Egner: You don't remember?

The Witness: Yes.

The Court: I will admit the check except that part of it that is mutilated by the erasure. I won't admit that as part of the check until it is cleared up.

Marked Exhibit C59.

Q. Look at the ink in which that erasure was made and also your endorsement, Mr. Lown; does that refresh your recollection at all as to whether or not you made it? A. No, sir, it does not.

Q. Going back for a moment, Mr. Lown, to the Christmas Eve conference that you had with Mr. Bunker, did you and he then reach an agreement as to the terms upon which you would go in business provided his health was satisfactory and you could make the financial arrangements? A. Yes.

Q. Did you reduce that to writing? A. No, I don't think we did.

Q. Have you any recollection on the subject? A. No, I haven't. Christmas Eve I know we did not have any written agreement—because on Christmas Eve we didn't come to a definite agreement; it was New Year's Eve we came to a definite agreement.

Q. Did you reduce it to writing on New Year's Eve? A. I believe we did. Yes, we had an agreement to the effect that—

The Court: He didn't ask you that.

Q. Your recollection is that you did reduce it to writing? A. Yes.

Q. You both signed it? A. Mr. Bunker signed it for me.

Q. Where is that writing? A. I never kept it after the company was organized; I don't believe I have it; I can look for it, though.

Q. When did you last see it? A. I don't remember the last time I saw it.

Q. Whom did you turn it over to? A. I kept it myself; I had it in my papers.

Q. That was actually drawn up and signed on New Year's Eve, 1921? A. Yes, sir.

Q. When did you first tell Mr. Irving that you were going to leave the employ of the Irving Company? A. Somewhere in the latter part of March or early in April; I don't remember the date; I can fix the date; it was right after I received notice of the incorporation of the company.

Q. And of course on that occasion you didn't tell Mr. Irving anything about the new company? A. No, I did not.

Q. And you told him you were going to do what? A. I told him I was going to sell securities.

Q. And you gave him the impression that you were going to sell securities for the firm of Rosevelt & Co.? A. Not for Rosevelt & Co.; I left the impression that I was going to sell securities in connection with Mr. Beaver, of Rosevelt & Co.

Q. Are you quite sure you didn't tell him that you would be connected with Rosevelt & Co.? A. I don't say I didn't tell him; I told him I would be connected with Rosevelt & Company through Mr. Beaver.

Q. You gave him the impression that that would be your headquarters, didn't you? A. Yes.

Q. You know that as a fact Mr. Irving tried to get in touch with you there? A. Yes, that is right.

Q. Do you recall that on direct-examination his Honor asked you this question, page 645: "From what you said you gave them the impression that you were going to deal in securities generally?" And you answered, "No, I tried not to leave that impression, but I was, at that time, dealing in bonds in connection with a friend of mine, who was with another brokerage house down there." Referring particularly to the sentence, "No, I tried not to leave that impression," that wasn't strictly true, was it; you did give him that impression, didn't you? A. No, I did not.

Q. Did you in fact try not to give that impression? A. Yes.

Q. I show you a letter dated July 9, 1921, addressed to Mr. Irving, signed by you, is that your letter? A. Yes, sir.

Q. I call your attention, Mr. Lown, to this language in the letter, and ask you what impression you meant to convey by this language:

"The past week saw one of the best markets the financial region has had for quite a while. Bonds and securities rallied nicely, and altho stocks have suffered a subsequent reversal all feel that the turning point has been arrived at and that better days are in sight. For the first time in months bonds of appreciable value are scarce and sought after, which would indicate a withdrawal of capital from speculative investment and a trend toward a more substantial basis. All of which seems to justify the belief that 'Normalcy' is more nearer than ever."

What impression did you wish to give by that language to Mr. Irving, as to what your business was?

The Court: What difference does it make? Why can't you tell the impression to be drawn from it is that he was trying to give it that he was dealing in securities generally? His own honest impression he was trying to create, as you read it to me, I should say he was trying to give the impression he knew all about the security market in general.

The Witness: That was two months after.

The Court: Keep still.

Mr. Egner: I ask to have this letter marked.

The Court: It can go in.

Marked Exhibit C60.

The Court: Why were you writing to Mr. Irving in July about your business; what difference did it make to him about what he knew of your affairs in July?

The Witness: Mr. Irving called up Rosevelt & Co. and also tried to locate me and to find out at least what I was doing, and on one occasion he called up

Rosevelt & Co., and I got the report that he had been prying into my affairs, and asking everyone down there about what I was doing, and I kind of resented it, and that was the occasion for that letter.

Examination by the Court:

Q. So that you put him off the track? A. No, because at the time I wrote that letter I was dealing in bonds with a friend of mine, helping him to sell bonds.

Q. What was your purpose in giving all this information telling about the condition of the market and securities to Mr. Irving? A. He was very much interested about those things at that time and he asked me what—

Q. What did you care whether he had the information or not? A. I merely volunteered it; it didn't really make any difference.

Q. What was your purpose in volunteering it? A. Mr. Irving asked me.

Q. Then you didn't volunteer it, if he asked you. Whether he asked you or whether you volunteered it, what was your purpose in giving him that information? A. I had no definite purpose.

Q. You expressed the fact a moment ago, in interrupting me, that this was written two months after you left. A. Yes.

Q. I was curious to know why you cared what Irving thought about the market or what information you gave him two months after you left? A. He was in touch with me and asked me about it, and I gave him the data.

Further examination by Mr. Egner:

Q. Isn't it the fact that you were trying to keep

him in the dark as to what you were really doing? A. Yes.

Q. At that time when you wrote this letter where was your office? A. I had no office of my own.

The Court: Did the Kerlow Company have an office then?

The Witness: No, sir.

Q. I notice that this letter, Exhibit C60, bears at the upper right-hand corner "30 Pine Street, New York City, N. Y."? A. Yes.

Q. That was the office of Rosevelt & Co.? A. Yes.

Q. Why did you put that address at the top of the letter? A. I didn't put it there, the stenographer put it there.

The Court: Is it typewritten?

The Witness: Yes.

The Court: The address is typewritten the same as the rest of the letter?

Mr. Egner: Yes.

Q. The stenographer put it there? A. Yes.

Q. You saw it there when you signed the letter? A. Yes.

Q. Why did you leave that address at the top of the letter? A. I didn't consider it material; I let it go.

The Court: Why didn't you write on the letter-head of Rosevelt & Co.?

The Witness: I didn't feel justified in doing that. Rosevelt & Co. were not employing me.

Q. Mr. Lown, going to the trips—the trip that you

made after you left the Irving Company, and coming to your interviews that you had with the various agents and sales representatives of the Irving Company, when did you begin that trip? A. The beginning of October, 1921.

Q. Whom did you see first? A. As I recall, I saw Mr. Moser in Washington.

Q. You say that you had known Mr. Moser for some time? A. Yes.

Q. How long had you known him? A. Just friendly, I knew his family, and we were going out once in a while together.

Q. Most of your acquaintance with Moser had been gained during your service with the Irving Company, had it not? A. Yes, I knew him longer with the Irving Company than without it.

Q. Before we take that further—you mentioned some of the reasons why you left the Irving Company, the fact that the business seemed to be run on antiquated methods, and that there were competitors arising who were taking away the business, etc.? A. Yes.

Q. Who were the chief competitors of the Irving Company just before you left—say in March and April of 1921? A. About 2,000 iron shops and five or six bigger companies.

The Court: You mean 2,000 shops were making this grating?

The Witness: Not this type of grating; other type of grating, making gratings.

The Court: Usable for floor purposes and the other purposes for which the Irving grating is used?

The Witness: Yes.

Q. How many companies were making a grating

similar in design to the Irving grating? A. About thirty, I remember.

Q. What were those companies? A. William Klemp & Co., of Chicago; Richmond & Kemp, of Philadelphia; the Universal Safety Tread Company, of Boston, and another company in Boston, which I do not recall.

Q. How many jobs can you now tell us which these companies took away from the Irving Company during the early part of the year, 1921, before you severed your connection with the Irving Company?

The Court: To make that inquiry fully correspond with the rest of his testimony, he became disgruntled in the late summer or fall of 1920?

The Witness: Yes.

Mr. Egner: I will withdraw the question.

Q. Mr. Lown, will you tell us how many jobs you can recall that these companies which you have mentioned took away from the Irving Company in the period beginning August 1, 1920, or beginning with January 1, 1920, up to the time that you left?

The Court: And which caused you to be disgruntled or confirmed in your feeling that the Irving Company was antiquated.

The Witness: Corn Products Refining Company, Chicago, Illinois.

The Court: Name the larger ones.

Q. Approximately how many feet did that involve? A. About 16,000.

Q. When was that? A. The latter part of 1920; I don't remember the month.

Q. Who got that? A. William Klemp & Co.

Q. What kind of grating was installed? A. The same type of grating as Irving, except the bars were all of the same depth.

Q. And other large ones? A. The Lakehurst Naval Hanger.

Q. Who got that? A. Richmond & Kemp, Philadelphia.

Q. How many feet in that? A. I believe six or seven thousand.

Q. How much money involved in that order? A. Probably eight or nine thousand dollars.

Q. And what was installed there? A. Irving type with all the bars the same depth.

Q. What other large ones? A. Those are the only jobs that I can recall with those people I mentioned.

The Court: I am quite interested in your answer; you have stated that you became dissatisfied with conditions as they were at the Irving Company?

The Witness: Yes.

The Court: And as a result of your dissatisfaction you concluded to sever your relations and do something else, whether organize the Kerlow Company or get another job, for that matter. Counsel is trying to find out what actually occurred in the way of loss of business that caused you to become dissatisfied, or confirmed your dissatisfaction.

The Witness: The Ford Motor Company, 20,000 feet.

The Court: The loss of that?

The Witness: Yes.

The Court: When was that?

The Witness: In the early part of 1921—no, latter part of 1920, around Christmas time.

Q. What was actually put in there? A. Metal japanned grating.

The Court: It doesn't make much difference as long as the Irving people didn't get it.

Mr. Egner: It is important to show whether the kind we made was put in or a cheaper kind; if the Irving, through the neglect or failure or mismanagement, failed to get this business, then Mr. Lown said he felt justified in quitting, because he saw no prospect for his future.

The Witness: Kelly Springfield Tire Company.

Q. When was that? A. In the spring of 1920, $23,000.

Q. Who got that? A. Taylor & Dean, of Pittsburgh.

The Court: These jobs you mentioned, were they jobs on which the Irving bid?

The Witness: Yes.

The Court: And lost?

The Witness: Yes.

Q. On the Taylor & Dean job, straight bars were actually installed? A. Yes.

Q. Can you mention any others? A. Universal Portland Cement Company, Chicago, Illinois; five or six thousand dollars involved there.

Q. When was that? A. That was in the late part of 1920.

Q. Do you know what was installed there? A. Straight bar.

Q. Any more? A. Victor Talking Machine Company, Camden, New Jersey; about $6,000.

Q. What was installed? A. Straight bar.

Q. Any others? A. West Penn Power Company, Pittsburgh, Pennsylvania.

Q. How much? A. About $9,000.

Q. When was that? A. That was around the middle of 1920.

Q. What was installed there? A. Straight bar.

Q. Any more? A. That is all I can recall right now.

Q. We were just on the trips, and you say that you saw Moser first? A. Yes.

Q. Did Moser know you were coming? A. No, sir.

Q. Where did you meet Moser? A. In the Sadler Hotel.

Q. In Chicago? A. Cleveland.

Q. Cleveland was his headquarters? A. Yes.

Q. Will you give me, as nearly as you can, the date upon which you saw Moser? A. I think about October fourth or fifth.

Q. What did you tell Moser when you saw him? A. I first called Moser up over the phone and he came over to the hotel; I told him that I had come to Cleveland in the interest of the Kerlow Steel Flooring Company, the company I was connected with, to place an agent, but being that I had been friendly with him all along, I didn't want to come into the territory with a superior article at a lower price, and put an agent on without him knowing the facts fully.

Q. That was the first step you made on your trip, wasn't it? A. Yes—Cleveland.

Q. These various catalogues that have been introduced in evidence today indicate that there is a particular field all over the United States for this product? A. Yes, that is right.

Q. How is it that you decided, in the first instance, to put an agent in Cleveland, where the Irving Com-

pany already had an agent? A. I wanted to take one swing around the circuit of cities that followed in rotation, and the normal rotation of cities are Pittsburgh, Cleveland, Chicago, Detroit, Buffalo, New York; it runs right around in a circle.

Q. In every one of those cities the Irving Company had an agent, didn't it? A. Yes, although I did not call on all of them.

Q. Did you on that first trip stop in any city for the purpose of getting an agent in which the Irving Company had not already its agent? A. No, sir.

Q. And did you not on that first trip, in the first instance, in each city, call upon the Irving agent and see him first? A. Yes.

Q. And you say the idea was to tell them that you were going to go in business with a superior article, is that right? A. No, I did not say that.

Q. What was it? A. I said that I told him that I did not feel justified in coming into that territory with an article that I felt was superior and could be sold at a lower price without first advising them.

Q. Did you have any idea that these agents would say to you that they would like to handle your product? A. I anticipated that they would.

Q. And in every case you had the evidence that you could prove that you had a better article, didn't you? A. I had a sample which spoke for itself.

Q. And you took that sample along specifically to show to them, didn't you? A. Yes, them and other agents, as well.

Q. You also had a larger commission to offer than the Irving Company were paying, did you not? A. Yes, sir.

Q. The Irving were paying ten per cent down and you were paying ten per cent up? A. Yes, that is right.

Q. When you mentioned this to Mr. Moser, did he begin to complain about the Irving Company? A. He told me about his trouble with the Irving Company, and I told him what I was doing, what my purpose in Cleveland was. In each one of the cases I had a general talk with the men.

Q. Did Moser complain about his difficulty in making his collections from the Irving Company? A. No, he did not.

Q. He didn't say anything about that? A. No, sir; his trouble was mainly not being able to get any business.

Q. Did he mention whether or not Irving Company owed him any money? A. No, as a matter of fact he told me that the Irving Company had advanced him a lot more than was really due him.

Q. So that he had no complaint, as far as money matters were concerned? A. No.

Q. Did you say anything to him about his making a formal application? A. Yes.

Q. When did you actually engage Mr. Moser; on that first visit? A. No, he was engaged sometime later.

Q. Why didn't you engage him on the first visit? A. I didn't feel justified in engaging Mr. Moser, in the first place, as he was an Irving man. I wanted him to be clear of the Irving Company before he came to us. And in addition to that, Moser wanted time, as I remember, to think it over.

Q. Why didn't you feel justified in taking him as an Irving man? A. I was afraid of complications.

Examination by the Court:

Q. What kind of complications? A. Legal complications.

Q. What do you mean by that? A. I had had a talk with Mr. Pritchard, our patent attorney, and he gave me a little advice. He anticipated an unfair competition suit long before we went into the business. He said, "You do things right; don't take any letters or do things like that. Go away from the place clean, and if you want to hire an Irving man, you do not want to hire him from the Irving Iron Works Company; he must be a free lance first."

Q. He must sever his relation with the Irving Company? A. Yes.

Q. You had this advice before starting out to see these men? A. Yes.

Q. When you say your object was to call on them, did you undertake to start a competing agency? A. Yes.

Q. Suppose they had objected to your doing it, would you have gone ahead and established such a competing agency? A. Yes.

Q. I don't understand the sole purpose of the call to inform them of your intention, if it wasn't also your intention to get them to act for you as agent. A. My idea was to place an agent; if they didn't want it, I felt justified to hire another man.

Q. You changed the order; your purpose was to get them, if possible, to sever their relations with the Irving and become your agent; if they refused to do that, you felt you had done all you were required to do in common courtesy, and then you were at liberty to go out and get an agent there? A. Yes.

Q. You talked that all over with Mr. Pritchard before you went on this trip? A. Yes.

Q. Did you tell Mr. Pritchard that you were going to call on these various Irving agents? A. No. At

the time I spoke to Mr. Pritchard, I didn't then anticipate taking the trip.

Q. How did he tell you if you wanted an Irving man? A. Mr. Pritchard talked over with me, from every angle, on my various trips to his office, before even the Kerlow Company was financed.

Mr. Egner: You told Mr. Pritchard that you expected to employ some Irving people or that you might employ them?

The Witness: No, not at that time, I did not.

Q. At what time are you talking about? A. At the time Mr. Pritchard told me not to employ Irving people.

Q. That was before you took your trip? A. A long time before.

Q. You told Mr. Pritchard, didn't you, that you might employ some Irving people? A. No, sir, I did not.

Q. At no time, didn't you ever tell him that? A. I did later on.

FURTHER CROSS-EXAMINATION by Mr. Egner:

Q. When did you tell him that? A. I don't remember; probably October or just before I went on the trip; it may have been September.

Q. It was before you went on the trip, anyway? A. Yes.

Q. And that is the time when he told you that you should be careful about any legal complication? A. Yes, he reiterated what he had said once before.

Q. And he told you that it would be wise, in case

you did employ such a man, to have a separate application from him? A. No, sir.

Q. Didn't he tell you that? A. No, sir.

Q. What did he say as to the precautions you should adopt? A. He told me that before I hired any man, I wanted to be sure that he was a free lance, as I was perfectly justified in hiring a man who had no connection; whereas, if I hired a man while he was with the Irving Company, I might be subject to legal criticism.

Q. So that he told you in each instance, before you actually hired these men, they would have to resign from the Irving Company; is that what he told you? A. Yes.

Q. Are you positive he didn't tell you it would be a good thing to have a formal application from them? A. Absolutely.

Q. You did have a formal application from these gentlemen? A. Yes.

Q. Who suggested such applications? A. It was my own idea; I felt very friendly toward these men, and I wanted to have something to show to the Board of Directors, to prove justification.

Examination by the Court:

Q. Did Mr. Pritchard at any time suggest the advisability of leaving these Irving men alone and getting other men entirely independent men? A. Yes, he was angry—

Q. Did he advise you to do that? A. He was angry at me, and so were our Board of Directors angry at me.

Q. For what? A. For getting the Irving men.

Q. Did they want you to get men who had not been connected with it? A. Yes.

Q. Why didn't you do it? A. I felt friendly toward these men and didn't want to go into the territory with a competitive line.

Q. You went in there on the advice of counsel and also the expression from your directors that it was advisable to keep away from legal complications, by not having anything to do with the Irving agents? A. Yes.

Q. And notwithstanding that advice, out of your abundance of friendship for these men, you go in there and consult with them first and tell what you are going to do, and then give them to understand that if they ever severed their connection with the Irving Company, they could get employment with the Kerlow? A. Yes, I took legal advice as far as having separated from the Irving Company.

Further Examination by Mr. Egner:

Q. You went through that form? A. Yes.

Q. After you had seen Moser, you went on to see the next? A. I went on to Chicago and saw Skoning and Demorest.

The Court: The same thing happened there as with Moser, the same request and same result?

The Witness: Not with Skoning.

The Court: How about Demorest?

The Witness: As I said today, the same thing practically happened to him.

The Court: Did he sever his relation with the Irving?

The Witness: No.

Q. Did you see Vonier of Milwaukee? A. No.

Q. Didn't you tell him that you had gone into this new business? A. Not at that time.

Q. When did you see him? A. I saw Vonier this last August.

Q. What year? A. 1922.

Q. Do you mean to say that you didn't tell Vonier about it at the same time you were telling the other agents? A. Absolutely not.

Q. Why didn't you tell him? A. I did not go near Vonier; I had another man in Milwaukee.

Q. You didn't go near him? A. No.

Q. Why didn't you? A. I was sick in Chicago, and I sent our man up to place another man, which he did.

The Court: Was Vonier as much of a friend to you as some of the other agents?

The Witness: No, sir, he was not as friendly with me as were the other men.

Q. Why not? A. I did not make a practice of going out very often in his territory, in the first place; he was very far away; he never came into New York. I had not hired him; Mr. Irving had hired him, and our relations were entirely different.

Q. Didn't you feel under the same obligation to treat him right as you did the others? A. No, sir, I did not.

Q. You actually saw Vonier in Chicago, didn't you, when you saw Demorest and Skoning? A. No, sir.

Q. Did you see him at any time in Chicago? A. No, sir—yes, I did see Vonier in Chicago while I was employed with the Irving Company.

Q. When was that? A. That was in September, 1920. Vonier came down to Chicago to meet me.

Q. You are quite positive that other than in September, 1920, and in August, 1922, you at no time saw Vonier? A. Absolutely, yes, sir.

Q. After leaving Cleveland you went there; to Pittsburgh? A. After leaving Cleveland, I went to Chicago.

Q. You went to Pittsburgh first; and then to Cleveland, is that right? A. Yes.

Q. Who arranged this meeting in Chicago; who asked for the meeting, you or Mr. Demorest? A. Mrs. Demorest did; I told Mrs. Demorest I wanted to see Mr. Demorest, and she wired on to Chicago and told Mr. Demorest where I was staying.

The Court: Didn't he cover all that today?

Mr. Egner: I want to go a little further.

Q. Didn't you at that time send Demorest a telegram asking him to meet you? A. I may have; we were all involved in arranging to see Demorest in Chicago.

Q. I show you a telegram dated October 7, addressed to George M. Demorest, from W. H. Lown, and ask you whether that doesn't refresh your recollection that you arranged the meeting in Chicago? A. That is right; Mrs. Demorest asked me to wire to Mr. Demorest; I remember it clearly now.

Mr. Egner: I offer the telegram dated October 7, 1921.

"George M. Demorest,
Hotel LaSalle.

"Arriving Chicago Saturday morning. Can you meet me LaSalle. Answer Statler, Cleveland.
Signed by MR. LOWN."

Marked Exhibit C61a.

Q. When you met Demorest in Chicago, did you outline the situation to him generally in the same way as you had to Moser? A. Yes, sir.

Q. On that occasion you testified Mr. Demorest was rather angry at the Irving Company because of the way they had been handling him on the commission account? A. Yes, sir.

Q. And you saw and knew about the occasion when Mrs. Demorest came east, about which you testified this morning? A. Yes, sir.

Q. That was in October, 1920? A. Yes, sir, as I recall it.

Q. As I got your testimony this morning, you said that when you met Demorest, he said that his income from that year had amounted to practically nothing from the Irving Company? A. Yes.

Q. And that he hadn't been able to live on it? A. Not living on it—I don't believe I said; I don't remember saying those words.

Q. That it amounted to practically nothing? A. Yes, very little.

Q. And that the Irving Company at that time owed him about $4,000? A. Yes.

Q. As sales manager you had been familiar up to the time you left the Irving Company as to what Mr. Demorest was getting each month? A. Yes, sir.

Q. And you knew what he was getting during the year 1920? A. Yes.

Q. On the occasion of your talk with Mrs. Demorest and Mr. Price and Mr. Irving, in October, 1920, was anything said about how much was owing to Mr. Demorest at that time? A. I don't recall the amount being mentioned, no.

Q. Was it a considerable amount or a small amount? A. If my recollection is right, we owed him about $3,000 at that time.

Q. Don't you know as a matter of fact, Mr. Lown, that as of the month of October, 1920, the Irving Company not only didn't owe Mr. Demorest any commissions, but had actually overpaid him on the commission account?

The Court: Do you know that to be a fact?

The Witness: No, sir.

Q. Will you deny that that was the fact? A. I will say I don't know. I was not familiar with all the figures of the various agents.

Q. But you are very distinct in your recollection that Mrs. Demorest's object in coming on to Long Island City in October was to collect arrears of commissions? A. I am not positive that visit in October; it may have been later.

The Court: You said October this morning.

The Witness: Yes.

The Court: When was it?

The Witness: I really don't recall; I know that at the time that Mrs. Demorest came to New York we owed Mr. Demorest considerable money, because that was the purpose of her trip.

Q. You say the company then owed him money? A. Yes, that was the purpose of her trip.

Q. Are you doubtful as to whether it was October? A. I am; I would not say positively it was October or any other month; I don't remember.

Q. Can't you fix the date now? A. I think it was about October—no, I cannot.

Q. You have no doubt in your mind, however, as to when you saw Demorest in Chicago? A. No, I have not.

The Court: The telegram settles that.

Q. You have no doubt in your mind that Mr. Demorest on that occasion told you that his income had amounted to practically nothing? A. That is right.

Q. And that there was an indebtedness then of about $4,000? A. Yes.

Q. Did you know that up to October 1, 1921, the Irving Company had paid Mr. Demorest $7,989.87 in commissions for that year? A. If they paid him that amount?

The Court: Do you know that they had paid that to him?

The Witness: No, I don't.

Q. You knew what was actually paid to Demorest down to May 9, when you left the Irving Company, didn't you? A. No, I did not.

Q. It was done through your department, wasn't it? A. Sometimes, but I never knew the amount that had been paid in total.

Q. Didn't you know that in the month of January, 1921, Mr. Demorest had received $714.40? A. I didn't know, but I wouldn't be surprised if he had received it.

Q. Did you know that in February, 1921, he had received $675? A. The same.

Q. Did you know that in March, 1921, he had received $1,300? A. The same answer goes.

Q. Did you know that in April, 1921, he had received $900? A. Not to my knowledge.

Q. You wrote the letter forwarding the checks to these agents, didn't you? A. Sometimes.

Q. It was done in your department? A. Sometimes.

The Court: When not done in your department, by whom was it done?

The Witness: In the accounting department. Everybody handled everything there was more or less.

The Court: How long before you left was it that this call was made by Mrs. Demorest?

The Witness: I have been trying to reconcile it, but I cannot by any stretch of my memory; it may have been two month before and it may have been six months. The best I could ever place it was about October, but I couldn't swear to that.

Q. In your department you received every month a tabulation showing what the various agents had earned and stating their commission account? A. Sometimes.

Q. Do you remember having seen the statement of account similar to this which I now show you? A. No, I never received that.

Q. Did you ever see one like it? A. Not to my recollection.

Mr. Egner: I ask to have this marked for identification.

Marked Exhibit C61 for identification.

Mr. Egner: If there is no objection, I would like to offer it in evidence. It is a statement of our books showing the Demorest account during the year of 1921.

Marked Exhibit C61.

The Court: The witness says he never saw a copy of that paper.

Mr. Kraetzer: In view of the fact that we are going into the question of Mr. Demorest's account, your Honor will recall that we deferred that proposition until such time as we might be able to produce these letters that have been supplied to us, and I think we should be permitted at this time, probably, to introduce in evidence the various letters, &c.

The Court: I thought, perhaps, you had better do that on re-direct. It will be just as well to let Mr. Egner finish.

Q. You are quite positive that Mr. Demorest told you that they owed him about $4,000? A. Yes, sir.

Mr. Egner: This exhibit which I have here, I will state the figures now indicate that from January 1, 1921, up to and including the month of October, Demorest had received in commissions, actual payments of $7,989.87.

The Court: These were not mere credits; they were actual payments?

Mr. Egner: Actual payments.

The Court: How much was he earning in that same period?

Mr. Egner: And in the same period he had earned $7,853.76.

The Court: That would make an overpayment.

Mr. Egner: The statement also shows this, that on the first of January he had a balance due him of commission of $1,281.52, and at the end of October he had a balance due, account of commissions, of $1,145.41.

The Court: All his current commissions had been paid and the balance reduced a trifle?

Mr. Egner: Yes. This account also shows that the balance due account at the end of September was $1,274.04, and that the balance due account at the end of November was $1,148.43.

Mr. Huck: Is there any way of telling what the balance due on the open account was any particular month?

Mr. Egner: It is all shown on the exhibit.

Q. Did you tell Demorest that he would have to file a formal application for appointment with the Kerlow Company? A. I don't recall whether I did or not.

Q. And did you also tell him that before you would act on his application he would have to actually resign from the Irving Company? A. Yes, I did, although the conditions involved with Demorest was a little bit different. He told me that—he rather asked me to not place an agent until he made up his mind, and the negotiations were always pending on that.

Q. You said this morning that you and Mr. Demorest had some talk about offering Mr. Irving $100,000 and having him retire from the business? A. Yes.

Q. And did you in your talk discuss the business in the event of his so retiring, of your taking over the Irving plant and continuing to conduct the new business at the old plant? A. No, sir; as a matter of fact, I told Mr. Demorest that we would not want the Irving plant, regardless of what possibilities we had of getting it.

Q. What was Mr. Irving to get the $100,000 for?

Mr. Huck: I object because this witness testified that he was going to pay him $100,000.

The Court: The testimony, as I recall it, is, you framed it in your examination this morning as if it were a contradiction of what someone else had testified to—"Did you say you would give him $100,000 and let him retire to the country and get rid of him entirely as a competitor?"

The Witness: The answer was no, that Mr. Demorest made the suggestion to that effect that I should do so.

The Court: It was suggested that this be done, but not by this witness, is that right?

The Witness: Yes.

Q. What was said as to what Mr. Irving was to be paid this $100,000 for? A. Mr. Demorest said that he would much prefer to see everything settled and done in an amicable way, and he believed that it would be a good plan to offer Mr. Irving $100,000 to get Mr. Irving to retire the Irving Iron Works and take it out of business and then everything would be satisfactory; nobody would be angry. That was the gist of it.

Q. So that what would happen with the Irving plant; did you discuss that? A. We didn't get the sale that far through.

Q. Did your discussion go to the point simply of paying Mr. Irving $100,000 to quit the business? A. That is it.

The Court: To quit business generally, or the grating business?

The Witness: The grating business.

Q. Give up the grating business? A. Yes.

Q. Was anything said as to who would, in case Mr. Irving quit, use his machinery and fixtures and all that? A. We didn't discuss that.

Q. Mr. Irving had on one occasion told you, hadn't he, that if a strong competitor would arise, that he would simply retire to his farm; that he had enough money and he would simply quit if a competitor arose? A. Yes, he did.

Q. He had told you that? A. Yes.

Q. And you told Mr. Demorest that, didn't you? A. I may have.

Q. Did you tell him that? A. I don't remember.

Q. You say you may have told him that? A. Yes.

Q. Didn't you tell Mr. Demorest on this occasion when you saw him, if he didn't accept your agency, that the chances were that he would find that the Irving Company would quit business, and he would have no agency? A. No, I never told him that.

Q. Nothing of that kind whatever? A. No, sir. I told all the men my reason for leaving the Irving Iron Works and starting the Kerlow Company.

The Court: Didn't you tell him that if he didn't take your agency he would be in fact without work anywhere, that Irving would be out of business?

The Witness: No, sir, I did not.

Q. You never said anything like that? A. No.

Q. Did you urge any of these gentlemen to accept your agency? A. No, sir.

Q. Did you ever press any of them for an answer? A. Yes.

Q. You did Demorest, didn't you? A. Yes.

The Court: If I recall your testimony this morning, the last time you pressed Demorest for an answer was in October, is that right?

The Witness: November.

Q. And he wanted you to give him until January? A. Yes.

Q. And he then told you that his reason for being uncertain or unwilling to give a definite answer was that he wanted to stay on with the Irving Company until he collected what they owed him? A. Yes, he held that out all the time.

Q. As I recall now, from what Mr. Egner reads from that last Exhibit C61, there was about $1,100 then due?

Mr. Huck: According to this, there was forty-two hundred and some odd dollars due in October.

Mr. Egner: You don't read it right.

Q. You got the impression there was that money due? A. Yes.

Q. And that is why he wouldn't sever his relations until that was paid?

Mr. Egner: This statement shows that the amount then due was $1,145.

Mr. Huck: You explained before that this was the amount due on an old account, and there was some current account due also.

Mr. Egner: No.

The Court: I didn't understand that; I understood on the first of January there was a balance of $1,200 and some odd due Mr. Demorest; that by reason of the seventy-nine hundred and some dollars payment on ac-

count of seventy-eight hundred and some dollars commissions earned, that $1,200 balance had been reduced to $1,100 and some odd at the end of October. How does it get up to $4,000? That brings it up, Mr. Huck, to $4,000, and the witness says he understood it was.

Mr. Egner: We have satisfied ourselves with respect to this (referring to Exhibit C61), that at the end of November—using that for convenience—the balance due to Mr. Demorest was $1,148.43. This statement also shows that in addition to that amount, there were current bookings of $567.08; that his debit had not yet gone to the point where the agent was entitled to his commission, and that at some later time Demorest would have been entitled to ten per cent on that amount, or $56.70; that was in October. In October the current bookings were $3,120.20 and he would have become entitled to ten per cent when those jobs were paid.

The Court: So it would make a total of about $1,500 in round figures?

Mr. Egner: Yes, in round figures.

The Court: At the time that he and Mr. Lown had the last interview about the agency in October?

The Witness: Yes.

The Court: Is that disputed, according to this exhibit?

Mr. Huck: Not according to the exhibit. That is apparently what the exhibit means.

Q. You say you are quite positive that you never urged Mr. Demorest to go with you?

The Court: That is, to become an agent of the Kerlow. What is the answer?

The Witness: Oh, yes.

Q. Do you remember having written a letter to Mr. Stuart, Mr. Demorest's associate, in which you used the expression that the Irving people were about to "emit their last gasp"? A. No, sir; I do not.

Q. You know that that letter was written, don't you? A. No, sir.

Q. Don't you know that your counsel have conceded the fact that that letter was written? A. No, sir; I do not.

The Court: Is the letter in evidence?

Mr. Egner: Mrs. Demorest testified that such a letter was received, having received it; she telegraphed to her husband, Mr. Demorest, to this effect (C36a for identification): "Received letter from Lown stating that as far as they can learn the other crowd are about to emit their last gasp."

Mr. Kraetzer: We concede that such a letter had been sent.

Mr. Egner: "Advises you better make arrangements as to financial matters now to avoid misunderstanding and trouble in the future. Wallace A. Stuart." I called for the production of that letter, and counsel were unable to produce it, but admitted that such a letter had been sent.

Q. With that statement isn't your recollection refreshed that you did, in fact, send a letter to Mr. Demorest or Mr. Stuart, in which you used the expression that the "Irving people were about to emit

their last gasp"? A. I do not remember having written a letter with those words.

The Court: It doesn't make any difference. They now admit such a letter.

The Witness: The company may have sent that letter.

Q. Who conducted the negotiations with Mr. Demorest? A. I did, myself.

Q. You did everything? A. Yes.

Q. Then if the company sent that letter, you must have sent it? A. Not necessarily.

The Court: Don't waste your time. You have got an admission of counsel that he sent such a letter, either to Mr. Stuart or Mr. Demorest, which contained such an expression.

Q. You say now you have no recollection of having sent that letter? A. That is right.

The Court: Did you ever use that expression in relation to the Irving Company, in your talk with either Mr. or Mrs. Demorest or Stuart?

The Witness: No, sir, I did not.

Q. Did you, in November, 1921, have the opinion that the Irving Company were about to emit their last gasp? A. No, sir, I never had that opinion.

Q. Mr. Lown, isn't it a fact that with the exception of a few isolated jobs that the Irving Company lost, that there was no real competition between the Irving and the other concern? A. Absolutely not.

Q. Don't you recall having time and again in your letters and bulletins to the Irving salesmen practically told them that there really was no competition and

that the Irving Company had the field to itself? A. I did.

Mr. Huck: I object; I think his attention should be specifically directed to the letters referred to.

The Court: He can direct his attention to it generally, first, and then specifically, if necessary.

Q. Isn't that a fact? A. It is.

Q. Do you remember in the bulletin dated April 19, 1920, addressed "To Our Men," having made use of this language: "Irving Subway. 1. What is it? A ventilating—fireproof flooring. 2. Where is it used? Any place where there's a smokestack—and then some. 3. What lines might be considered as competitive to Irving Subway? None absolutely." A. Yes, sir.

Q. "Why? Because no other ventilating flooring is on the market today. And secondly, although Irving Subway will do the work of other types of grating and plates, none of them can do the work or fill the bill as Irving Subway." Did you write what is there? A. Yes.

Q. And was that true? A. Yes.

Q. And is it also true, as stated in the same circular, on page 5: "Competition. You have practically none. Wed yourself to this idea. Irving Subway can be used in place of other types of construction, but no substitute is available where Irving Subway is necessary. In the term 'or equal' part is superfluous. There is no equal. And in most cases where other types of construction such as plate, straight bar, egg crate and so forth fill the bill Irving Subway offers

an economical substitute in addition to being infinitely better. Therefore it is apparent that while Irving Subway metallic flooring is a competitive line against gratings and plates, they are not competitive against Irving Subway. We consider it almost sacrilegious to even compare Irving Subway metallic flooring with straight bar and other types of grating. Ask the big engineer. He knows." Is that true? A. That is true as far as teaching the salesmen goes.

Q. What do you mean by that answer? A. During my association with the company, the straight bar and other gratings were coming in and cutting into our business, and in order to put the men's minds against these other types, and to convince them firmly not consider these other products competitive, so they would be better salesmen on our material, I wrote that, just as I wrote many other things like that.

Q. You qualify it, it was true only in the sense that you wanted them to believe it is true? A. Yes.

The Court: But it wasn't true, in fact?

Q. Did you believe it was true at the time you wrote it? A. True in that sense.

The Court: It is not true in any sense, as I understand you. When was that circular issued?

The Witness: April 19, 1920.

The Court: If they had competition, and you say they had, because you say they lost lots of jobs at lower prices, then, of course, these statements cannot be true.

The Witness: I was trying to talk the agents out of their idea that they take the viewpoint, and it is sales talk.

Q. You stated a moment ago that these statements which I read were true? A. True, with my qualification.

Q. What is the qualification?

The Court: That they are not true; that is my interpretation.

Q. You now say they are not true? A. Yes.

The Court: At the time you wrote that circular you were getting $50 a week?

The Witness: No, sir.

The Court: $40?

The Witness: Yes, I think so.

The Court: Did Irving want you to misrepresent his goods to these salesmen or to tell untruths about them for $40 a week?

The Witness: No, sir; I wouldn't consider it that way.

The Court: Why did you do it?

The Witness: To make the salesmen enthusiastic. We had a form of competition there which was cutting into our business.

The Court: You deliberately, in plain English, lied about the product of the concern that was paying you $40 a week. If you were not hired to do it, why did you do it voluntarily?

The Witness: I was hired to train the salesmen to make the Irving Subway grating.

The Court: But not to train them in a false way?

The Witness: To get them to have a lot of faith in their own material.

The Court: Did you think it was necessary to tell them untruths in order to have them have faith?

The Witness: I thought it was necessary to con-

vince them that these other materials did not have competition.

The Court: Even if you convinced them by telling them what was not true—

The Witness: Just what was not fundamentally true?

The Court: Not whether fundamentally or otherwise, I want the fact. You endeavored to convince them by telling them something that was not true, didn't you?

The Witness: Yes.

The Court: According to your present version?

The Witness: Yes.

The Court: You knew as well then as you know now, if I understand you, that the Irving product was subject to competition, and fierce competition?

The Witness: Yes.

The Court: And that there were other goods on the market just as good, if not better than the Irving?

The Witness: Yes.

The Court: At that time and now?

The Witness: Yes.

Q. You want us to leave the record stand that you deliberately stated at that time what you think now to be untrue?

The Court: He says so.

Q. What excuse can you give; what justification have you to offer for taking that course when you were not hired to do it? A. As I say, I was hired to train salesmen.

Q. I make the point that you were not hired to train them untruthfully; what justification have you for voluntarily doing it? A. I did it, and then Mr. Price and Mr. Irving both approved of it.

Q. They will have to be responsible for their own acts; I am talking about yours now. A. I was not responsible for sending that thing out to the salesmen.

Q. You told me you were? A. I wrote it and gave it to them, and they sent it out; it was with their sanction.

Q. You were the author of it? A. Yes.

The Court: They claim that they were without competitors; there wasn't anything in the market equal to it. They still maintain that; they say that is not true. I can reconcile their stand, because it is consistent; yours is not. Strike it out. If you can explain that, I will give you an opportunity to do it while you are here, because they have already taken the stand and, in fact, say what that circular said is true, and it is still so.

The Witness: Well, I felt at that time that their materials were not as good, those materials that I mentioned there, were not as good as Irving Subway grating. I mentioned plates and straight bar grating, and I tried to get the salesmen to understand through that method that they were not nearly so good as Irving Subway grating, so they could sell the Irving Subway grating better after they were convinced that this competition in the form of plate and grating—straight bar grating type, it was there and doing an awful lot of business, that they should not rightfully be there, and my position today is that training is necessary to go on through engineers and architects, to get them to swing around from these old types.

The Court: I agree with you on the training, but it seems to me the training ought to be truthful and honest.

Q. In that connection I show you "Subway Sales Smiles" of December 15, 1920; that was a publication to which you testified today? A. Yes, sir.

Q. That was also your composition? A. Yes.

Q. I call your attention to this one, on page 2 of that paper of December 15, 1920: "The Old Man Says"; who was the old man? A. That is Mr. Irving.

Q. "Be honest, no matter what the cost, with yourself, associates and employer. Design your life, and mould your character so that your every word will be taken by all as gospel truth, your every action unquestioned. For little do we remember that honesty and truthfulness are as essential parts of our makeups as sturdy limbs and active brains." Had Mr. Irving actually said that? A. No, sir; he did not.

Q. Had he expressed that sentiment? A. No, sir; he did not; those are my words, and he asked me to say that he said them. Through every issue of this paper he asked me to make something up and say, "The Old Man Says," and go on and give one of my discussions on it, which I did.

Q. In using this language you thought at the time that you were truthfully expressing Mr. Irving's sentiments, did you not? A. Not necessarily.

The Court: Did you think you were untruthfully representing him?

The Witness: I found out afterwards that I was.

Q. No, at the time. A. No.

Q. You thought you were truthfully representing him? A. When?

Q. December 15, 1920. A. No; I knew at that time—

Q. What did you know in December, 1920, that these sentiments did truthfully represent him? A. They did not represent truthfully Mr. Irving's ideas.

Q. You deliberately, again, published something that you didn't think was so? A. Yes; that was written for Mr. Irving's benefit as well as the company's benefit.

The Court: Why for his benefit?

The Witness: Because I found him to be unscrupulous in the opposite to what was said to them.

The Court: How did you expect to benefit him by it, then? Mr. Irving would read it?

The Witness: And it would help him out.

The Court: You hoped he would reform?

The Witness: He would live up to what I said that he really was, and I wrote many things like that.

Q. So that you knew that Mr. Irving was all that you say on December 15, 1920?

The Court: He was just the reverse of it.

The Witness: Yes.

Mr. Egner: I would like to have this marked in evidence.

Marked Exhibit C62.

Q. About these various catalogues that have been offered in evidence—that indicate the list of names of large industrial plants and architects, engineers, etc., throughout the country, don't they? A. Yes.

Q. And you had enough experience with the Irving Company to know that the mere possession of a list of that character wouldn't get you very much business, would it? A. It would.

Q. Without missionary work? A. Yes.

The Court: The mere possession of the list wouldn't bring in business?

The Witness: No; you have to have the names, too.

Q. So that with all these lists, the important thing was following up the names, or to make some use of them, and do what has been called missionary work? A. That is not true of all of them; most of them, yes.

Q. Which list is it that you said contained ninety-five per cent of the names which are set up as prominent users of the Irving goods in the catalogue? A. "Sweet's Distribution List."

Q. Will you turn to J. G. White & Co. in this list?

The Court: How is it made up?

The Witness: Territorially and alphabetically.

Q. What does it say? A. White Engineering Company, J. G., 43 Exchange Place, Engineers and Contractors, under New York City.

Q. Mr. Tonnelier's name doesn't appear there? A. No, sir.

Q. Can you find Mr. Singstad in that book? A. No, sir; he is not in here.

Mr. Huck: He is an employee of the Bridge & Tunnel Commission.

Q. Do you find the Bridge and Tunnel Commission? Look for both Singstad and Bridge and Tunnel Commission. A. Mr. Singstad will be found in that office; his name does not appear, though.

The Court: Strike that out.

Q. Does his name appear in the list? A. No, sir.

Q. Does the Bridge and Tunnel Commission appear? A. No, sir.

The Court: Do either of those names appear in the printed catalogue? In the Irving printed catalogue?

Mr. Egner: No, sir.

The Court: Are they on your list?

Mr. Egner: Yes.

Q. After you made that trip in October—the first trip, the occasion upon which you, for the first time, saw these agents, did you shortly thereafter make another circular tour? A. I went around, but I don't believe I touched the same spots.

Q. Do you remember having gone to see Scarth the second time? A. I do not recall; I saw Scarth two or three times after.

Q. Do you recall having seen Scarth just before Mr. Price of the Irving Company got there? A. I don't remember that incident; no, sir.

Q. You remember Scarth telling you on one of the occasions that he expected Price to come? A. No; I do not.

Q. Do you remember his having told you that Mr. Price was going to try to persuade him to stay with the Irving Company? A. Not to my knowledge.

Q. Do you have any recollection about that whatever? A. None whatever.

Q. Scarth had been appointed by you, hadn't he? A. Yes.

Q. When did you see him; did you go to Detroit to see him? A. When I placed him?

Q. No, when you placed him with the Kerlow Company. A. Yes; I placed him in Detroit.

Q. Scarth is the one who sat right down and wired his resignation in, isn't he? A. Yes.

Q. And did you hear him then and there quit it? A. Yes, sir.

Q. Did you take a formal application from him? A. I don't remember whether I did or not; I don't think so.

Q. Wouldn't your records show? A. Yes.

Mr. Egner: Was there a formal application signed? If so, I would like to have it produced.

Mr. Kraetzer: We will let you know tomorrow. Exhibit C60 is the letter from Mr. Lown to Mr. Irving. This letter refers to Mr. Irving's letter of Thursday; the date is approximately July 9, 1921. That is the letter that we have searched for and we haven't succeeded in finding yet. I wonder if counsel will be good enough to furnish us with a carbon copy of that letter; if not tomorrow, then on the next day we come here.

Continuation of testimony in the above-entitled cause, before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Tuesday, April 17, 1923, at 10 A. M.

Present: Counsel as before stated.

The Court: I have gone over the memorandum Mr. Chanalis filed with me, and I must confess I am just as much at sea as I was before I read it. I get the general drift, as I did

during the course of the hearing, as to the theory on which this evidence was pressed as being admissible, but as I understand the memorandum that was to be filed with me and served on counsel, it was to show definitely the relevancy and competency of the testimony of each particular individual, and I had in mind, while I didn't suggest it, and I don't know that it is necessary, that the particular question and answer to which objection was made, or objections to answers, that they should be shown

What I am asked to do by the memorandum, is to conclude that by reason of the charge of conspiracy and all other things contained in the bill, that because one or more or all of these parties had some connection with one or both concerns, that they are entitled to come in and testify to anything and everything that they have knowledge of in relation to the matter charged in the bill. It seems to me that is very general.

Mr. Egner: I thought that the situation was this: I also thought we were carrying out your Honor's suggestion—perhaps I misunderstood it.

The Court: Maybe I misunderstood it. Maybe I didn't express myself clearly enough, and what I had in mind, and I think you will recall, notwithstanding the objection of your opponents, I let this matter go in with the distinct understanding that you would show me its competency and whether it was binding upon one or more of the defendants.

I don't find that in the memorandum.

Mr. Egner: It is, of course, the rule that the oral statements of one conspirator are admissible as against the others.

The Court: Your difficulty is that you are bringing in parties who are not the Kerlow Company.

Mr. Egner: Our bill says in effect that Lown and Bunker conceived a conspiracy; that the conspiracy was to take away our men and to wreck our business, if they could; and if they couldn't wreck our business, take away something to which we were entitled, namely, our trade. That in pursuance of that conspiracy, they formed the Kerlow Company, which is one of the defendants.

The Court: You see that is where you and I differ.

Mr. Egner: Bunker and Lown formed—I was referring to Bunker and Lown—that pursuant to their conspiracy, they being the original conspirators, they formed the Kerlow Company; that in further execution of the conspiracy, they associated with themselves Kennard, Tarof and Roope while they were still in the employ of the Irving Company.

The Court: In regard to Tarof, I am inclined, without hearing the other side, to feel by reason of his position as chief engineer and one of the chief actors in the manner, to let his testimony stand.

You come to Roope—his connection and relation is very much more remote, and his authority to say anything that would be binding upon them is very questionable and doubtful, in my mind.

Mr. Egner: I am quite willing to concede that the evidence with respect to Roope is very slight.

You take Kennard—undoubtedly Kennard

is no longer associated with it; he never became an actual open employee of theirs, but there was, we think the evidence shows very clearly—

The Court: He contemplated joining with them, and there was a period of time during which he actually did things for them, as he says, and we must take his testimony. He says that he sent out notices for them. Where he said he was present at an interview, that is not involved; but when he, in the absence of both Lown and Bunker says or does something, that is different.

Mr. Egner: During a period of time, and we must take his testimony until it is denied—it is evidence in the case—he says that during a period of time I was in consultation with them, I and Tarof gave them information about bids which were being submitted by the Irving Company—

The Court: I think that is all competent.

Mr. Egner: All these things are competent and sufficient, I think, to indicate that he was then acting with them and for the time being was a part of their conspiracy so as to make admissible any statement he made while—

The Court: That is where I have my doubts.

Mr. Egner: After that time he had nothing further to do with them. Anything he may have said after his part in the conspiracy had ceased, is, of course, not competent, but we have the evidence.

The Court: Your memorandum don't point them out?

Mr. Egner: It does; I thought your Honor had a copy of the testimony.

Mr. Kraetzer: The suggestion was made before with regard to this whole testimony by Mr. Egner, that it might be possible for it to remain on the record, subject to such disposition as your Honor would make of it at the conclusion of the case. I think that was substantially his suggestion.

So far as the Kennard testimony is concerned, I am perfectly willing to have that course followed, if it meets with the Court's approval.

In that way, I feel that I wouldn't be binding myself to any admission with regard to Kennard, and at the same time, we will have an opportunity to meet it categorically.

The Court: Let it take that course, then.

What do you say about the witness Tarof? Do you want the same disposition made of your objection to that?

Mr. Kraetzer: I think we can make the same disposition with regard to Mr. Tarof.

The Court: The Court will eventually rule on the competency of the testimony and its admissibility in any aspects.

Mr. Kraetzer: I think it will resolve itself into a question of veracity.

The Court: You want the benefit of your objection and put in proof to meet it, if you wish to do so.

I am in this frame of mind. I am not sure that his relation with the Kerlow Company or with Bunker or Lown was such that in any way whatsoever he was acting as a representative of them in stirring up that trouble. In fact, I am rather sure that there is no evidence to show any such connection, except in a very remote way.

Mr. Kraetzer: As to Roope, the situation is exactly the same as the Tarof and Kennard situation, that we might go on the stand as if the situation was developed; we will have to go on the stand, and naturally the question would be, in effect, did you authorize Roope or did you in any way counsel him or advise him to start this strike?

The Court: You might not have to go so far, if it were shown me that Roope had no connection with this concern, but that was one of his own crazy notions. He will be hard on that.

I will put upon the record that I am going to let the Roope testimony stand and if Mr. Lown and Mr. Bunker are interrogated in relation to it, or any part of it, and if it is not developed as a result of the direct-examination of Mr. Bunker and Mr. Lown, or on cross-examination, of either one or both of them, that Mr. Roope was in any way authorized to act in any capacity as representative of the Kerlow Company or of either Mr. Bunker or Mr. Lown, then Mr. Roope's testimony, or what he is alleged to have said involving them will be stricken from the record, and the objection thereto will be sustained.

Mr. Egner: The testimony of his statement and conduct?

The Court: Yes.

Mr. Kraetzer: Mr. Lown is reported ill this morning and we will be unable to continue with him. We have provided other testimony to go forward with.

The Court: You can suspend your cross-examination until he comes at the next session.

Mr. Egner: I was informed by Mr. Brown at the conclusion of the hearing, that my statement as to the summary of Demorest's account was not quite accurate, and I want to state that counsel for the parties have agreed upon this correction being made as correctly stating the fact.

The summary of account of Mr. Demorest shows that at the end of October, 1921, there was a cash balance then due to Mr. Demorest of $1,145.41, as I stated yesterday. I also stated yesterday that there was three hundred and some odd dollars due, and $56 also on account of orders which had been placed, but not yet filled, making a total balance of about $1,500 in round figures. That was not correct. This statement, Exhibit C61, shows that in addition to the sum of $1,145.41 cash then due, Demorest had made bookings which would entitled him to an additional sum for commissions of $2,818.73, as the goods were actually billed and payments made.

The Court: And was that amount due him at the end of October?

Mr. Egner: That amount was not due him, because the money had not yet been paid to Irving.

The Court: It was due, but it was not payable to him?

Mr. Egner: Yes, but if he had then quit—had Demorest quit at the end of October, he would have been entitled to cash then of $1,145.41, and assuming all these orders went through and were paid, he would at some time in the future become entitled to an additional sum of $2,817.73.

The Court: Making in round figures the $4,000 that has been repeatedly referred to.

Mr. Egner: Yes. In addition to that, while I have it here, I should like to read into the record an extract from Mr. Lown's original affidavit, in answer on the preliminary hearing. It begins at the bottom of page 18.

The Court: What is the purpose of this?

Mr. Egner: To indicate that Mr. Lown swore falsely, or without very much regard for the truth, on another occasion. Here is his affidavit filed in this cause, which has to do with this "emit the last gasp" matter. I think it is rather significant the way he stated that in his affidavit.

The Court: I think it is a fair comment; it is a part of the file, isn't it now?

Mr. Egner: Yes, but I want it in the record, and for the purpose of convenience. I refer to this language, page 18 bottom, from Lown's affidavit, verified February 17, 1922, one of the affidavits served by the defendant in reply, upon application for preliminary restraint:

"I deny that I ever sent Demorest a letter stating that the complainant was about to emit its last gasp, and call attention to the significant fact that although Demorest has annexed to his affidavit all letters from me, he has failed to annex this letter, under pretext that he couldn't find it."

The Court: Mr. Lown persisted in that same statement—

Mr. Egner: Of denial notwithstanding that his counsel admitted that some such letter had been sent.

Mr. Kraetzer: We didn't say the letter had been sent to Demorest.

Mr. Huck: We admitted he sent a letter to Stuart.

Mr. Kraetzer: I would like to read into the record such parts of these letters and telegrams that passed between the Irving Iron Works and Mr. Irving and Demorest at Pittsburgh.

The Court: They all relate to accounts, commissions and dissatisfaction.

In view of the understanding reached yesterday it was agreed that the correspondence between the Irving Iron Works Company and Mr. Irving and Mr. Demorest, and any or all of the agents, could be offered in whole or in part; that counsel for one side could offer such parts as he thought fit or pertinent to his phase of the issue, and counsel for the other side could do the same respecting that portion of the letter, or the whole of it, and that, therefore counsel is at liberty to quote only such part of any of the correspondence as he sees fit or pertinent, and that only the portion of the correspondence so quoted shall be considered part of the record and shall be printed, the rest of the correspondence need not be considered any part of the record, except especially mentioned by counsel.

Mr. Kraetzer: I offer in evidence the following letter:

August 17, 1921.

Mr. George M. Demorest,
Union Arcade,
Pittsburgh, Pa.

My dear Mr. Demorest:

This is just a personal letter from me to you.

I have seen quite a little correspondence from you lately that makes me feel as though you ought to come on here or I ought to go out there again to talk things over, for certainly you do not see things the way we do or we do not see them the way you do. But we have gone over these subjects so many times together—you nod, and assent and acquiesce and then a week or so later it is the same thing all over again.

What the deuce is the matter? Don't you think that we have got a quality product? Do you think we are robbers? Are we damn fools and if so are Scarth, Prince, Vonier, Skoning and Madden all damn fools? You wouldn't think so if you could see them and talk to them as I have done within the past few weeks.

Prince lost a $4,000.00 job to straight bar for $1,600.00 a few months ago. He laughed at the poor fish who took the work and who told them all what profiteers we were. Today he is negotiating with the same company for a bigger job and the $1,600.00 lobster is by this time only a part of the soup. In the meantime Prince has gone right on and doing business for us, with us and of us. Just what would you have done in a case like this? Be honest now. Wouldn't you have said to yourself, if not to Mr. Stuart, and to us, that this was only another and a positive proof that we were all wrong?

Then take Scarth, when I landed there a few days

ago I heard myself being paged (he had guessed that I would come out on the Wolverine—he thinks of everything) and I met him for the first time. Almost the first words he said were, "Say, I am sorry you sent me that 5% discount privilege. We have got a product that they want. If they don't want it we must make them want it. That is all there is to it. What has price got to do with it so long as we are not robbing them? And our price is right. The way I do is to make them figure—figuring the material, the crimping, the assembling, the punching and the riveting. I start off first with the riveting because generally they will put in enough per rivet to bring it up to twice its cost. Then I can tell them to be more conservative and figure the rivets at less per each, and do the same thing all the way down the line because I know about how it will add up. Then when the addition is $2.80 I proudly tell them that our price to them is $1.40."

You may ask, "Does he get everything?" Of course not. "But does he let it worry him?" No, he cannot afford to be worried about what is nothing but an incident.

Now honestly, when you got permission to take off 5% for cash in ten days, what did you think? Didn't you think that that was altogether too little? Didn't you go out and go about your business with that thought continually before you, breaking down your morale, taking away your pep and otherwise unfitting you for the sale of SUBWAY. You must have, because just a little while ago I noticed a letter in which you stated that the reduction was not enough.

It seems to me that the big question is—Are you with us or ag'in us? Darned if I don't think you're ag'in us, because I don't see how one can continually argue that our prices are too high, that it is a buyer's

market, that we ought to do this and ought to do that, without reflecting the same thing to his prospects and certainly, when he does this, he is with them and not with us.

And furthermore he is not a salesman. The best salesman ought even to be able to make a prospect think black is white if necessary. How different the requirements in selling IRVING SUBWAY and yet—

Think this all over and see if you can get me. Try to come with us, not them.

Very sincerely yours,
IRVING IRON WORKS CO.

WEI:RJB

President.

Marked Exhibit D27.

Mr. Kraetzer: Next, a telegram from Demorest to Irving Iron Works Co., dated July 14, 1921:

Last weeks check not received kindly advise at once.

Marked Exhibit D28.

Mr. Kraetzer: Next, same as D28.

Marked Exhibit D29.

Mr. Kraetzer: Next, a letter from the Irving Iron Works Co. to Mr. Geo. M. Demorest, dated July 15, 1921, reading as follows:

My dear Mr. Demorest:

We are in receipt of your telegram of July 14th and will forward your check tomorrow. The delay was due to the preparation of the June statements on which we were a little behind, and we trust that it will not cause you any great inconvenience.

Marked Exhibit D30.

Mr. Kraetzer: Next, a telegram, under date of Aug. 9, 1921, from Demorest to Irving Iron Works Co., as follows:

Commission check for last week not received. Kindly advise.

Marked Exhibit D31.

Mr. Kraetzer: Next, a letter, under date of August 11, 1921, from Irving Iron Works Co. to Mr. Demorest, reading as follows:

Your wire of August 9th is at hand and in reply wish to advise you that your check was forwarded yesterday.

We are forwarding, as per your request, some supplies.

Marked Exhibit D32.

Mr. Kraetzer: Next, a letter on memorandum paper of the Irving Iron Works Co., under date of September 1, 1921, from Mr. Demorest to the Irving Iron Works Co., reading as follows:

Gentlemen:

I wish to kindly call your attention to the non-arrival of checks for weeks of August 15th and 22nd.

If the matter has not been given attention, could you do your best to arrange for something to be here on or before Saturday of this week as family sickness and other unusual expenses make requirements for prompt funds.

Thanking you in advance, I am

Cordially yours,

GEO. M. DEMOREST.

Marked Exhibit D33.

Mr. Kraetzer: Next, a carbon copy of telegram, under date of September 7, 1921, from the Irving Iron Works Co. to Geo. M. Demorest, as follows:

Mailing six hundred today.

Marked Exhibit D34.

Mr. Kraetzer: Next, a letter from the Irving Iron Works Co. to Mr. Demorest, under date of June 25, 1920, reading as follows:

My dear Mr. Demorest.

As a temporary arrangement beginning June 28th, we shall forward to you the sum of $75.00 per week as advance on commissions.

We realize that your finances have been strained considerably due to the conditions which have prevented shipment of your orders and we are making this move to meet you half way in the matter.

We regret that we are unable at this time to do more, as we would like to, but owing to the necessity of investing in great quantities of steel and practically nothing coming in, we are unable to increase the sum.

Trusting that the above will be satisfactory we remain,

Cordially yours,
IRVING IRON WORKS CO.

Marked Exhibit D35.

Mr. Kraetzer: Next, confirmation of a telegram from George M. Demorest to Irving Iron Works Co., under date of June 24, 1921, reading as follows:

Kindly respond to request for funds made in letter June twentieth.

Marked Exhibit D36.

Mr. Kraetzer: Next, a letter under date of June 20, 1920, from Mr. Geo. M. Demorest to Irving Iron Works Co., reading in part as follows:

The last advance about helped me over the grade. I hope that a little more special consideration in my behalf will not be out of range of your accomplishment.

I regret to bring the subject up again, and I trust that shipments will be soon in such volume that my normal income will exceed outgo.

Marked Exhibit D37.

Mr. Kraetzer: Next, is a letter from George M. Demorest to Mr. Paul L. Price, general manager of Irving Iron Works Co., under date of May 8, 1920, reading in part as follows:

Receipt is acknowledged today of your Special Delivery containing check for $200.00, and the temporary relief it affords is quite welcome. It is necessary to anticipate my immediate future needs, and I am therefore obliged to state the situation frankly, and at the same time express full appreciation of your position and the difficult manner under which you are no doubt operating at present.

* * * * * *

Usually the report and balance to my credit is expected about the 10th of the month. If it does not arrive at that time, it is expected any time and through all this year it has usually been 20 to 40 days late and I am, therefore, not in position to know what I am going to be paid by the terms of our agreement or by special consideration.

* * * * * *

Mr. Kraetzer: Then follows a discussion of figures on the statement.

Marked Exhibit D38.

Mr. Kraetzer: Next, a telegram from George M. Demorest to Irving Iron Works Company, under date of May 5, 1920, reading as follows:

Failure to receive funds asked for is demoralizing and forces another request for prompt response to meet bills and resume work. Stop confirmation on Riflaw received this morning.

Marked Exhibit D39.

Mr. Kraetzer: Next, telegram under date of May 5, 1920, from Irving Iron Works Co. to Mr. George M. Demorest, as follows:

Advance not sent due to error. Going special delivery today.

Marked Exhibit D40.

Mr. Kraetzer: Next, telegram under date of April 30, 1920, from Geo. M. Demorest to, apparently, the Irving Iron Works Co., as follows:

Check charged last commission payment has not been received.

Marked Exhibit D41.

Mr. Kraetzer: Next, confirmation of the telegram marked Exhibit D41, but reading as follows:

Check charged on last commission statement has not been received.

Marked Exhibit D42.

Mr. Kraetzer: Next, original telegram, same as D42.

Marked Exhibit D43.

Mr. Kraetzer: Next, is a letter dated April 30, 1920, from George M. Demorest to Irving Iron Works Co., which refers to the fact that there was no check.

Mr. Egner: I object to the admission of that letter on the ground that it is too remote.

The Court: I will receive it. I think it is too remote, however.

Mr. Kraetzer: This letter says, in part, as follows:

There was no check included in the statement which was received this morning.

Marked Exhibit D44.

Mr. Kraetzer: Next, under date of March 10, 1921, a letter from George M. Demorest to the Irving Iron Works Co., reading as follows:

Gentlemen:

I am preparing to go to the Hospital to have a little work done. This will tie me up for a period during which I shall not be generally active, commencing early next week.

I have engaged Mr. Wallace Stuart who is now working, and I hope that activities will justify retaining him permanently.

The comfortable balance on your books in my favor prompts me to ask if it will be possible for you to make a substantial payment to me as my expenses will be quite large.

Marked Exhibit D45.

Mr. Kraetzer: Next, a letter under date of March 3, 1920, from George M. Demorest to Irving Iron Works Co.:

I have heard nothing about the ghost that walks.

Marked Exhibit D46.

Mr. Kraetzer: Next, a letter under date of February 10, 1920, from George M. Demorest to Irving Iron Works Co., which says:

I shall need about $500.00 by the 16th of the month.

Marked Exhibit D47.

Mr. Kraetzer: Next, a letter under date of December 13, 1920, from George M. Demorest to Mr. Walter E. Irving, president of the Irving Iron Works Co., which says:

In your recent correspondence nothing was mentioned as to whether you expected to change the method of payments or not. As the monthly statement for the month of November has not arrived, and no payments have been received since your last check of Nov. 29th I do not know what to expect.

* * * * * *

Would it be possible for you to advise me by return mail what I may expect as with the amount I have been receiving, I am unable to anticipate the unexpected happenings such as today, and which require personal attention.

Mr. Kraetzer: Attached thereto, is a letter, under date of December 16, 1920, apparently from Mr. Irving, to Mr. Demorest, which says:

I am glad you wrote me on the 13th inst. You are supposed to get $75 a week regularly, unless that amount gets to aggregate a total more than what we think we ought to let you get into us for. As I understand it, we have the regular agreement with you, but a long time ago you got us to start a drawing account, which I believe was then $75 a month and it has now gone up to $75 a week.

However, and here is where I feel considerable embarrassment, your last check was on November 29th. It seems that a number of other agents prefer drawing accounts the same as you do, and although it is not in their agreement either, we are glad to humor them so far as it is in our power, and those checks are issued on vouchers from Mr. Lown, and there was some mix-up, not intentionally, in your vouchers between Lown and Moir. But this has been straightened out and a check for the total to date, will go forward today.

Mr. Kraetzer: Then the question of reducing prices is discussed.

Marked Exhibit D48.

Mr. Kraetzer: Next, a letter under date of December 3, 1920, from George M. Demorest to Mr. Walter E. Irving, president of the Irving Iron Works Company. This letter refers to special jobs on which payment is overdue and claims:

A credit in addition to the $488.04 due me Oct. 31st, and which I believed would be paid on or before Dec. 1st, 1920.

The several checks have since arrived and have helped, and if reasonable amounts can be forwarded at specific times to keep work going properly, I shall not be concerned regarding monthly balances until you benefit by your increased production.

Marked Exhibit D49.

Mr. Kraetzer: Next, a letter under date of November 22, 1920, from George M. Demorest to Mr. Walter E. Irving, in which he says:

The matter of delayed payments of my commissions has caused me considerable concern, first, because the money is badly needed to defray current expenses and to continue missionary and sales work, second, the inability to get any definite statement or to get replies to wires or letters written on the subject.

Your frankness and assurance by phone today is much appreciated, as it is always easier to withstand adversity where there is full personal sympathy and co-operation.

* * * * * *

Before phoning you I find that there is a total of close to $70,000 in sales on your books to my credit as of this date. The last report from your controller which I have shown $842.00 due me on commissions, and something over a $1,000.00 as shipped, but not paid and part of this being overdue.

As against this, since October 1st I have received but $300.00 in cash from you, whereas with shipments much improved, I would assume that with reasonable collections that there is at least $2,000.00 actually due me.

Mr. Kraetzer: Then he speaks of he didn't get the facts clearly over the phone:

P. S.—Unfortunately the lump sum of $500.00 received by Mrs. D. in September was all spent beforehand. If a similar amount could be available at once to take care of some notes, insurance and taxes by the end of this week, the weekly installment would suffice for the remainder of this year, if nothing unforeseen happens, and if it is necessary that you retain as much for your use as you can possibly have.

Marked Exhibit D50.

Mr. Kraetzer: Next, telegram under date of September 7, 1920, from George M. Demorest to Irving Iron Works Co.

Marked Exhibit D51.

Mr. Kraetzer: Next, telegram, under date of September 4, 1920, from George M. Demorest to Irving Iron Works.

Marked Exhibit D52.

Mr. Kraetzer: Next, letter, under date of August 28, 1920, from George M. Demorest to Irving Iron Works Co.

Marked Exhibit D53.

Mr. Egner: There is a letter I would like to put in—a letter of September 15, 1921, from Demorest to the Irving Iron Works Co.:

———

September 15, 1921.

Irving Iron Works Co.,
Long Island City, N. J.

Gentlemen:

Many thanks for the check in sum of $600.00; it about lifted me over the grade, anyway it takes care of immediate obligations and meals for the present.

I have not been turning in business at the same rate as payments have been made so my credit balance is decreasing. If the demands of your business require the further use temporarily of as much money as you can get, you may reduce my weekly payments to $150.00 as a minimum, if it is any accommodation.

I can always use money, otherwise than for cur-

rent expenses, to our mutual advantage, which assures holding or getting some stable business on a reciprocity basis. However, production is the essential thing after the sale, so if the small difference is of any assistance, it is offered gladly, and when I need some more I'll howl for it.

Yours truly,

GEO. M. DEMOREST.

GMD/L.

Marked Exhibit C63.

Mr. Egner: Will it be admitted that we have handed to you some hundreds of letters which passed between the Irving Iron Works and Mr. Demorest during this period?

Mr. Kraetzer: Yes, surely, if it is also understood that the vast bulk of that correspondence has to do with specific jobs and orders, and does not deal with commissions in any way, whether by Mr. Demorest or by the Irving Iron Works.

The Court: Can't I assume that if you had anything beneficial or detrimental to the other, you would put it in? I have the claim that Mr. Demorest was dissatisfied and sore, as someone expressed it, at the Irving people, and that is why he entertained the idea of leaving him. That is admitted to be established by these letters running up to the fifteenth of September, 1921, and the overtures made to him by Lown was in October, 1921, to represent the Kerlow Company, according to Mr. Kennard's claim.

Defendant's Witness, Ernest L. Tarof, Direct

ERNEST LIVINGSTONE TAROF, sworn for defendant:

Direct-examination by Mr. Huck:

Q. Where do you reside? A. Port Washington, Long Island.

Q. What is your business or profession? A. Mechanical engineer.

Q. What has been your qualification, experience and education? A. I was graduated from the Cooper Union Day School; I have attended New York University and also the Carnegie Institute of Technology in Pittsburgh.

Q. Are you connected with the defendant, Kerlow Steel Flooring Company? A. I am.

Q. In what capacity? A. Chief engineer.

Q. What are the duties of that position? A. I have charge of the drafting room and the shop.

Q. When did you enter the employ of the defendant Kerlow? A. About the end of January, 1922.

Q. As chief engineer? A. Yes, sir.

Q. Have you any other business? A. I have.

Q. What is that? A. A retail business, known as the Art and Embroidery Shop, conducted at Port Washington, Long Island.

Q. How long have you had that business? A. Since July 3, 1920.

Q. Were you formerly employed by the Irving Iron Works Company? A. I was.

Q. When did you enter their employ? A. Sometime in September, 1920.

Q. What position did you take when you entered their employ? A. Draftsman.

Q. When did you leave? A. I left the Irving Iron Works the fourteenth day of January, 1922.

Q. What positions did you hold in that company between the time that you entered their employ and the time you left? A. About two weeks after I was in the employ of the Irving Iron Works I was promoted to the position of chief draftsman, and in about the end of September, 1921, I became assistant production manager.

Q. What were your duties as chief draftsman of the complainant? A. To look after the drawings which were sent for approval to us; see that the work was properly prepared for fabrication in the shop, and in general, to supervise these draftsmen.

Q. Was it any part of your duties to create any new designs or any new articles? A. No.

Q. What were the duties of your position as assistant production manager? A. To keep track of the work that was in the drafting room; to see that it was properly scheduled for the shop; to keep between the drafting room and the shop, so that the shop order numbers could be identified with the numbers as kept in the drafting room—

Q. I don't want details. A. (Continuing.) —and to keep charge of the shipments, etc.

Q. Came there a time when you made up your mind to leave the Irving Iron Works Company? A. I first thought about leaving the Irving Iron Works sometime in September, 1921.

Q. Did you make known that to anyone in the Irving Iron Works Company? A. I did; I spoke to Mr. Bunker about it.

Q. When did you speak to Mr. Bunker about it? A. About the middle of that month.

Q. Who was your immediate superior at that time? A. Mr. Bunker was.

Q. What was his position at that time? A. He was production manager and assistant general manager.

Q. Did you tell anybody else that you were going to resign at that time? A. I don't remember whether I did or not.

Q. What did you tell Mr. Bunker as to resigning? A. I told him that I had another business out in Port Washington and that—

Q. Referring to this embroidery business? A. Yes; I thought that by devoting myself to the conduct of that business, I could make more money than I was getting from the Irving Iron Works.

The Court: Did you call that Port Washington or Fort Washington.

The Witness: Port Washington.

A. (Continuing.) That I was considering leaving, because I was very much dissatisfied with the way we were conducting our business there; I had made repeated efforts to do away with an old antequated blueprinting machine that we had and had also made investigation on some other machinery to turn out the work in the drafting room, and I told him that was the reason why I was going to leave.

The Court: What prevented you from doing away with this antequated machine?

The Witness: I advocated the purchase of a new one, but it was never done.

Q. With whom? A. With Mr. Bunker.

Q. What compensation did you receive while you were with the Irving Iron Works? A. $50; that was while I was chief draftsman.

Q. When you began how much? A. $45.

Q. And it was increased how much by the time you left? A. Not any more than $50.

Q. Did you tell him then that you were going to resign? A. Yes.

Q. What did he say? A. He said that he was going to leave the Irving Iron Works Company; as a matter of fact he had given his resignation to Mr. Irving or Mr. Price, I don't remember which, and that he might be able to use me in that business, if I—

The Court: What business?

The Witness: He didn't mention the name of any concern whatsoever; just simply said that he was resigning from the Irving Iron Works.

The Court: And going into business for himself?

The Witness: And going into some kind of business.

The Court: For himself?

The Witness: Yes.

The Court: And that he might be able to use you in that kind of business?

The Witness: Yes.

The Court: What else was said by either of you at that time?

The Witness: I—

Q. Do you recall? If you don't, say so. A. I don't recall any more just now.

Q. At that time did you know of the existence of the Kerlow Steel Flooring Company? A. No, sir; I did not.

Q. When did you first find out that there was such an organization in existence? A. I believe that was the first visit that I made with Kennard over to New York and met Mr. Bunker, and that was the first time I knew about the grating business.

The Court: When was that?

The Witness: That was about a week or so after Mr. Bunker left.

The Court: When was that; can you fix it?

The Witness: I should say about the sixth or seventh of October, 1921.

Q. Did you say that that conversation took place a week after he left?

The Court: Which conversation?

Q. Did you say that you found out about the existence of this company a week after Mr. Bunker left? A. Yes.

Q. Between the conversation which you have just mentioned, that is, in September, when you told Mr. Bunker you were going to resign, and this one you last mentioned, did you have any other talks with Mr. Bunker concerning either resigning or a new business which he proposed to go into? A. I don't remember any.

Q. You stated that you met Mr. Bunker and went over to Mr. Bunker with Mr. Kennard; how did you come to do that? A. Mr. Kennard came to me and told me that he was going over to New York to meet Mr. Bunker; he asked me if I would care to go along, and I said I would, and I went with him.

Q. Prior to that time had you had any talk with Kennard? A. I did.

Q. When and what was said? A. It was probably a day before this trip over to New York and he told me that Mr. Bunker was in the grating business, and told me that he was going over there to see him and asked me if I cared to go with him, and we made the appointment that day, and I think it was the next day we went over.

Q. Did he tell you what his purpose was in wanting you to go over and see Bunker?

Mr. Egner: That is a leading question.

A. Yes, he was looking for a job with the Kerlow Steel Flooring Company.

Q. Why did he want your company; did he say? A. No, he did; he invited me to go with him.

Q. Did you then tell him anything about having talked with Mr. Bunker concerning a business that he was in? A. No, sir; I did not.

Q. Where did you meet Mr. Bunker? A. I think the first meeting that we had was in a restaurant—I think in Mendel's, in the Grand Central station.

Q. This was the meeting to which you have referred? A. Yes.

Q. What was said? A. We spoke about looking for a position with the company and also there was some mention of the question of taking stock in this company.

The Court: Who mentioned about taking stock?

The Witness: I think it was Mr. Lown spoke about that.

The Court: Lown was present, Bunker, you and Kennard?

The Witness: Yes.

The Court: The four of you?

The Witness: Yes.

The Court: What did Lown say about the stock?

The Witness: He mentioned the question of stock, and in a more or less casual way, and said that they were giving out subscriptions for this stock, and if we wanted to take it, we could. Mr. Kennard and I got certificates.

The Court: You got them that night, you mean?

The Witness: This wasn't in the night; this was sometime in the day.

The Court: While you were at dinner?

The Witness: Yes.

The Court: Whom did you get the certificates from?

The Witness: Not certificates; some kind of a—

The Court: Paper?

The Witness: A paper applying for a certain amount of stock.

The Court: Subscription blank?

The Witness: Yes.

The Court: Who gave you those?

The Witness: I don't remember whether it was Mr. Bunker or Mr. Lown.

The Court: Go on and tell us all that was said and done there.

The Witness: Each one of us took those, and in discussing the subject of a position we were requested to write applications to the company which would be considered with others, for work with the Kerlow Steel Flooring Company.

The Court: Who requested you to do that?

The Witness: I don't remember who it was specifically; I know it was mentioned while—

The Court: Why was such a formality asked for? Was any explanation given you?

The Witness: I didn't hear of any; I only know we were supposed to send them in.

The Court: Did you fill up your application to your stock subscription blank that day while at lunch or dinner?

The Witness: No, sir.

Q. Did you fill up a stock subscription blank? A. I never did.

The Court: Or the certificate you spoke of?

The Witness: No, sir.

Mr. Egner: Or the application?

The Witness: Sometime later, over at the Irving Iron Works, Mr. Kennard had an application for himself and one for me.

Q. Application for what? A. For a position.

The Court: Specify the kind of a position you wanted?

The Witness: I don't think it did; no, sir.

Q. Did it state his qualifications? A. Yes.

The Court: State yours, too?

The Witness: Yes, education and previous experience; a regular application letter, and he wrote it out on the typewriter, and gave him mine, and addressed the envelopes, and we mailed them together.

The Court: State the amount of salary desired, then?

The Witness: I really don't know; I will have to look that up.

The Court: How long was that after the dinner or lunch in New York?

The Witness: I would say maybe two or three days.

The Court: Were you told to send your stock subscription blank with the application, at the same time?

The Witness: No, sir.

Q. Prior to that time had either Bunker or Lown talked to you about coming with the Kerlow Company with the exception of that conversation that you

had with Mr. Bunker on or about the middle of September? A. Prior to which time; prior to the time of the lunch?

Q. Yes. A. I never knew there was such a company.

The Court: Had either of them suggested about your coming with them?

The Witness: Previous to the luncheon?

The Court: Yes.

The Witness: No, sir.

Q. And except what Mr. Bunker said to you in that September conversation? A. That is all.

Q. Did you have any other meetings with Mr. Bunker and Mr. Lown or either of them? A. We did.

Q. When you say "we," whom do you mean? A. Kennard and I.

The Court: When and where?

The Witness: We went over to the office of the Kerlow Steel Flooring Company, which was at 50 Church Street.

The Court: How long was that after sending in your application?

The Witness: About a week.

The Court: In the interim was your application answered?

The Witness: I never had a reply to that letter whatsoever.

The Court: You were there a week later, you and Kennard?

The Witness: Yes.

Q. How did you come to go then? A. I think it was, again, at the instigation of Mr. Kennard requesting me to take a trip over there with him.

Q. Where did you go? A. We went over to the office at 50 Church Street.

Q. Whom did you see? A. I believe we met Mr. Bunker first and we looked at the sample—some of the samples of grating that they had in the office, and after that I think we went to White's.

The Court: What is White's?

The Witness: White's is a restaurant on Fulton Street, New York City.

Q. What was said?

The Court: Who went then; you and Bunker and Kennard?

The Witness: Kennard and myself; we were again discussing the subject of position.

Q. What was said about the subject of positions? A. We asked them if there had been any favorable action, and so forth.

The Court: You asked whom, Mr. Bunker?

The Witness: Yes, and we got a definite answer on that subject at that time.

Mr. Egner: What did he say?

The Witness: He said that they hadn't considered the matter at all, because they were not—that they didn't need anybody at that time, because they were not doing anything wherein they could employ us or anybody else.

Q. Was anything else said at that conversation? A. There was more or less of a general talk.

The Court: About what, business?

The Witness: No, about the various people whom we had known, and so forth, but there was nothing

definite stated about any further connection with either Irving Iron Works or Kerlow Steel Flooring Company.

The Court: You were still working for the Irving Iron Works Company?

The Witness: Yes.

Q. Did you have any further conversation about that or talk with Mr. Bunker or Mr. Lown? A. We met, as I said before, on several Saturdays, and sometimes in the evening, and there was no definite purpose in our going over there other than to see whether the company had gotten in a position where they wanted us, but there was no particular reason for us going there, just to say "Hello" to them, and so forth.

Q. When you say "we met," whom did you mean? A. Kennard and I went over there, and there were different people there at different times.

Q. Did you meet Mr. Bunker and Mr. Lown on each occasion? A. Yes.

Q. And how many such occasions or visits did you make? A. I should say that we went there about four to six times.

Q. And those visits carried you up to what point of time; what date? A. I should say sometime in the early part of December, 1921.

Q. Prior to the time when Bunker left the employ of the Irving Iron Works Company, what had been the relationship between Bunker and the other men employed there, so far as you could observe? A. I don't quite understand your question.

Q. Was there a friendly relationship or strictly a business relationship between Bunker and the men employed there? A. I know as far as I was concerned,

that my relations with Mr. Bunker were always strictly business.

Q. And as to the others? A. So far as I knew, they appeared to be the same.

Q. This custom of having lunch together, was that had in the Irving Iron Works to a large extent?

The Court: What custom do you refer to? I don't recall any.

Mr. Huck: I withdraw it.

Q. Did there ever come a time when anything was said to you definitely as to whether or not you would have a position with the Kerlow Steel Flooring Company? A. There was.

Q. When was that? A. That was sometime in January of 1923.

The Court: 1923 or 1922?

The Witness: 1922.

The Court: Was that in January before you left Irving or after you left Irving?

The Witness: It was before I left the Irving Iron Works in January.

The Court: About how long before?

The Witness: Perhaps a week or so.

The Court: Who said anything to you? You said something was said; by whom?

The Witness: By Mr. Bunker.

The Court: What was said by you and what was said by Mr. Bunker?

The Witness: I told him that I had told Mr. Price that I was going to resign from the Irving Iron Works, and that I had repeated that desire on several occasions; that finally I had told him that if he didn't get a man in there pretty soon, I would leave

him without anybody in the position, and then he told me that in view of the fact that I had severed my connection with the Irving Iron Works, and had made repeated requests for a position with the Kerlow, he could probably do something for me, but not at that particular time, nor could he pay me the same amount of money that I was receiving from the Irving Iron Works Company.

The Court: Why were you leaving the Irving Company at that particular time? You were getting $50 a week, as I understand you?

The Witness: When?

The Court: In January, 1922.

The Witness: At that time I was getting $55.

Q. Why did you leave at that particular time? A. There was something which happened in November, and during that period directly after that, which convinced me that I didn't want to stay there any more.

Q. What was that that happened in November? A. Mr. Price called me in his office one day and he tried to make a drawing of Kerlow Steel Flooring grating. He had on his desk a card with a picture of Kerlow grating on it, and he told me that he wanted to have dies and a sample made up of a material similar to the one which he was going to draw. He took a piece of paper and he drew a couple of straight bars and then he tried to draw a contour of a crimp bar similar to that used by the Kerlow Steel Flooring Company, with this exception: He said we want to bring the crimp bar away from the straight bar at right angles, and then when we cut it out in the center, we want to run it parallel to the straight bars, but of course we cannot make a ninety-degree bend, so we will have to put a bend in it, and he then drew these

curved bends about an angle of a quarter of inch radius and said that is the kind of a die we are going to make. I took the sketch that he had made and took it to the drafting room, and I gave it to one of the draftsmen there and asked him to make a drawing of that, so I could bring it into the shop, because Mr. Price had given me an I. O. M. to go ahead and have this die made on this grating which he called the new Type M. I took it upstairs and when I brought it down to Mr. Price he told me that I had the contour of the crimp bar incorrect; he took a red pencil out of his pocket and he took the blueprint which I had given him and he marked on that blueprint in red pencil some corrections. I asked him how he wanted that crimp bar to run, and in order to be more explicit, he went into Mr. Irving's office, and he brought out this sample, and he laid it on his desk, and taking a piece of paper he laid it on top, and taking this red pencil which he still had in his hand he traced off the contour of this straight and crimp bar.

Q. What sample are you talking about? A. He brought a sample out of Mr. Irving's office, which was about three spaces wide and about a space and a half long.

Q. And whose type of grating was that? A. That was Kerlow grating.

Q. How do you know it was Kerlow grating? A. Because I had seen samples of grating over in the Kerlow Steel Flooring Company when I had been there before.

Q. When? A. During the month of October and November.

Q. And this instance which you have related took place when? A. Very near the end of November, in that year.

Q. What happened then after you made the tracing —he made the tracing and handed it to you? A. I took it upstairs to the drafting room, and I had another drawing made of it, and I brought that down to Mr. Price, and he said it was all right, and I gave the blueprint and the shop order to Kennard and told him to go ahead and have these samples made. It then occurred to me that there was something strange in his whole action. I had been to the Kerlow Steel Flooring Company, they had shown me a grating identical with the one that Mr. Price was drawing here.

Recess.

Q. Continue with the story from there on.

(Last question and answer read to the witness.)

A. It seemed strange to me that in view of the fact that I had seen a sample identical with the drawing that he was making at that time in the Kerlow Steel Flooring Company, and had been told that that was the property of that company, and also that they had made an application for a patent on the same, that the Irving Iron Works Company should now be making dies for an article identical with this one. In order to find out about this point, I called Mr. Bunker up on the telephone, and I asked him who owned the grating that they were—that he had shown me while in the New York office. He told me that that grating had been invented by Mr. Lown and was the property of the Kerlow Company. I told him that that was very

strange, indeed, and related the story that I have just related and asked him who really owned it. He said to me, "Can't you see that if they are going to have dies made up now that they never had any grating like this before, because if they did, they would have to have some dies around there, in order to make it. This convinced me that it was the property of the Kerlow Company, and I sought to find out more fully regarding this point. In about a day or two I inquired of Lumb, Cook and Siegland, men who had been out in the shop, as to whether they had ever seen a grating of this type before, and they each informed me that they had not, after I had described it to them and made a sketch showing the same. I then became convinced of the fact that this material—this grating was in reality the property of the Kerlow Company, and realized that the Irving Iron Works Company were now going to make up dies in order to copy a grating very much identical with theirs.

Q. At any time did you have a conversation with anyone at the office of the Irving Iron Works concerning the Kerlow Steel Flooring Company? A. I did.

Q. With whom? A. One afternoon—

The Court: With whom?

The Witness: With a gentleman by the name of Bell.

Q. When was it? A. It was sometime in December, and I was introduced to him.

Q. December what year? A. 1921; I was introduced to him.

Q. What connection did he have with the Irving Company? A. I was either told then or later—

Mr. Kraetzer: It appears as a matter of record—Mr. Bell is not with us today; he has

been here, but he is counsel for the Irving Iron Works Company.

The Court: I remember now.

Q. Is that the Mr. Bell you mean, the gentleman who has been sitting here at some of the hearings? A. Yes, I was introduced to him by Mr. Irving and he had a stenographer with him, and he told me that he wanted me to make some statement of what I knew of the Kerlow Steel Flooring Company. This was in the afternoon, and I asked him not to have me make that statement that day, but that I would make a statement later on, and the next day I went over to Mr. Bell's office, in New York, and he asked me many questions about the Kerlow Steel Flooring Company. Among them he asked me about Mr. Lown, and I told him that I didn't know Mr. Lown very well. As a matter of fact I had spoken to the man, perhaps, three or four times in the whole time that he was with the Irving Iron Works Company. I also told him that I did know Mr. Bunker, and he asked me what I thought of him, and I told him that I had always found him to be very honest, and I thought he was a very honorable man, and carried on a conversation in that vein. He asked me what I knew about the Kerlow grating, and I described it to him, and I told him about it having a certain bend in it, which was supposed to eliminate an objection to the Irving product, namely, that it collected dirt in the corners. He then asked me if I would tell him how the Kerlow Company intended to make this grating, and I declined to do so. He asked me why, and I told him that if Mr. Irving wanted to know that, and if he would come and ask me about it, I should be very glad to tell him.

We then discussed Mr. Roope, and I told him I

didn't know anything about Mr. Roope anyway, because I had never talked to him or knew anything else about the man. And that was the result of that conversation.

Q. Was anything said about stock? A. He asked me if I had subscribed for any stock in the company, and also if I had made application to the Kerlow Company. I told him I had made application for a position, but that I had never subscribed for any stock whatsoever.

Q. Did he ask you why you hadn't subscribed for any stock? A. He did.

Q. What did you tell him? A. I told him because I didn't have any money.

Q. Was there anything else that you can recall that took place at that conversation? A. No, there was nothing else.

Q. Now, when Kennard first spoke to you about going over to see Mr. Bunker, did he tell you that he wanted to quit the Irving Iron Works Company? A. Yes, he did.

Q. What did he say? A. He told me he was very much dissatisfied with the way things were being handled, about the way they purchased steel, that they would not make improvements in the machinery in the shop, and a number of other things with which he was very much dissatisfied.

Q. And did you have any talk about Price in that connection, I mean Mr. Price? A. He continually, as a matter of fact from my very first connection with the company, always spoke in a very degrading manner concerning Mr. Price's ability. He referred to him as being a man who would not take any suggestions from anybody else and never spoke to me in any other vein than a very derogatory manner.

Q. Now, did you have any conversation with Mr. Kennard later on in which he gave you reasons for not going with the Kerlow Company? A. Yes.

Q. And do you recall when that was? A. That was some time in December of 1922.

Q. And what was said? That was about a year after you left the Irving Iron Works Company? A. I beg pardon, 1921 is right, it was just before I left.

Q. What was said then? A. He told me that he was having considerable trouble at home—that his mother-in-law had died and that his wife was about to have another child and that he was having considerable trouble with his sister-in-laws and that in view of the chaotic conditions at home he thought it best that he remain at the Irving Iron Works Company, where he was sure of his position, rather than enter on a new venture where the outcome was problematical and he didn't want to have that additional worry on his mind, so he told me he was going to stay with the Irving Iron Works Company for that reason.

Q. Did he tell you he was going to announce that decision to anyone? A. Not that I recall.

Q. Were you present at any time subsequent to that at which Kennard discussed the matter of the Kerlow with any officer of the Irving Iron Works Company? A. I was.

Q. And when was that? A. That was some time in December. It was on a Saturday. I was in Mr. Price's office, discussing the subject of purchase of steel and Mr. Kennard came in the office and during a break in the conversation he told Mr. Price that he came in there to tell him that he had heard that there were rumors about that "we," which was the word that he used, were going to leave the Irving Iron Works Company, and he came in to assure him

that "he" was going to stay with the company, but he continually used the plural, "we." I understood what Mr. Kennard was talking about.

Mr. Egner: I object and move that that be stricken out.

The Court: Strike it out. Just state what was said. State your recollection of what was said.

A. He told Mr. Price that we were going to stay with the Irving Iron Works Company and that he came in to tell him that he was not going with the Kerlow Company and Mr. Price replied that if that was the way he felt about it that he would forget what went before and that they would be willing to take a chance with him from then on.

Q. Did you take any part in that conversation? A. I did not.

Mr. Egner: I think that is a leading question. It calls for the answer that he did not. I think we ought to have the entire conversation.

The Court: If he did take any part the next inquiry will be, "What part did he take?"

A. I didn't take any part in that conversation between Mr. Price and Mr. Kennard, purporting to his remaining with the company.

The Court: Whether in relation to that or anything else did you take part in it?

The Witness: No, sir, I did not.

The Court: You didn't have a word to say while you were there, is that what I understand?

The Witness: No, sir.

Q. Prior to that conversation had you had any conversation with Kennard in which the matter of talking with Mr. Price or anybody else was discussed? A. No, sir.

Q. Now, on the day you left the employ of the Irving Iron Works Company on or about that day did you have a talk with Mr. Price? A. I did.

Q. And what was said at that time? A. About fifteen or twenty minutes before I left I went in to shake hands with Mr. Price to say good bye to him and during the conversation he handed me a paper and I read it over and I noticed that he said in there that I had stated that I was not going with Lown and Company. I simply read the thing over, smiled and handed it back to him and made no comment whatsoever regarding the paper.

Q. I show you Exhibit C56 and ask you if that is the paper to which you refer? A. Yes, sir.

The Court: Was it in the condition it is now in? With the typewritten and pen written parts to it?

The Witness: No, sir.

The Court: What did you see, only the typewritten part of it?

The Witness: Yes, sir, just the typewritten part, with his signature on it, nothing else.

The Court: With Mr. Price's signature?

The Witness: Yes, sir.

Mr. Egner: I think in offering this exhibit we crossed out the pen writing.

Q. Did you have any conversation with Mr. Price concerning that paper beyond what you have testified to when he handed you the paper? A. No, sir.

Examination by the Court:

Q. What did he say when he handed it to you? A. We shook hands, I said good bye to him and he said, "Here is a notice which I sent around," and I read it and handed it back to him and made no comment whatsoever.

Q. Why didn't you tell him at that time that you were going with Lown? A. Because during the period preceding this on many occasions Mr. Irving had come to me and called Mr. Bunker and Mr. , Mr. Lown and Mr. Lowe and had referred to those men in all manner of derogatory ways and I knew right well if I said anything to him it would start a new pot boiling and start a new argument.

Q. Was Mr. Irving present when Mr. Price handed you the paper? A. He was not.

Q. Assuming you had these reasons for not talking to Mr. Irving about these men, I don't quite understand what reasons you had for not talking with Mr. Price? A. Identical with those concerning Mr. Irving.

Q. Had Mr. Price used these remarks talking about these men? A. No, he had not, but the condition was certainly not amicable between the two factions and as it were, there was no use of starting a new argument.

Q. They spoke in a rather commendatory manner about you. I wonder why you didn't reciprocate by saying what you were going to do and be equally frank with them? A. I didn't think it was necessary.

Q. I don't know that it was necessary, but didn't you think it was the fair thing to do? A. No, not under the circumstances.

Q. And the circumstances are that Mr. Irving had denounced these men? A. No, not only that, but the combination of events which I have related for the past few minutes.

FURTHER DIRECT-EXAMINATION by Mr. Huck:

Q. Had you had any conversation with Price concerning Bunker and Lown, do you recall? A. No, I don't.

Q. That was all with Mr. Irving? A. Mr. Price never said anything to me about the personalities of Mr. Bunker and Mr. Lown, whereas Mr. Irving had.

Q. Did he say anything about Mr. Bunker and Mr. Lown, whether their personalities or otherwise? A. No, he had discussed the business in general but he had not referred to these men.

Examination by the Court:

Q. I would like to press that question I asked you. It seems everybody was suppressing from those connected with the Irving Iron Works Company the fact that they were going out and starting a competing business. You seem to have that same position of suppressing information? A. Yes.

Q. Your answer is you suppressed it because of the circumstances you have detailed to me, is it? A. Yes, sir.

Q. And of that cause only? A. Yes, sir.

Q. And no other reason—you had no other motive or reason for such suppression? A. I didn't think it was necessary to give it.

Q. You told me that. That is not a very satisfac-

tory answer to make. I want to see if I can get a better one. I reminded you that you and Mr. Lown have so far told me that you suppressed purposely —he told me that he purposely suppressed from Mr. Irving and others connected with his concern, that he intended to take up with, or be a part of the Kerlow and inasmuch as you had not then a position with the Kerlow and did not contemplate taking one, as I understand it, at that particular time, I don't know why you allowed that statement to be circulated by Mr. Price without some correction or explanation? A. Well, at the time that this notice was handed to me, or shortly before that I had decided that I was going to go with the Kerlow Company.

Q. How long before that? A. Only a few days, possibly a week.

Q. Had you then had an answer to your application for a position from them? A. Yes, sir.

Q. You knew, then, when you permitted Mr. Price to circulate that notice, that he was circularizing a statement that was not true. When he said you were not to be associated with Kerlow and Company, you knew that was not a fact? A. Yes.

Q. Because you had practically agreed to associate yourself with that company? A. Yes, but I didn't know that Mr. Price had caused the notice to be published, or whatever you call it.

Q. Wasn't it a practice to post notices of that character or circularize the department? A. No, sir.

Q. What was the purpose of that notice? A. He told me he had sent it around, but not about any posting of it.

FURTHER DIRECT-EXAMINATION by Mr. Huck:

Q. Whatever was to be done had been done when he showed it to you? A. Yes, sir.

Q. Now, you say that a few days before that you had decided to become associated with the Kerlow Company, did you have any conversation with anybody concerning that, that is, connected with the Kerlow Company? A. Yes, I did.

Q. When did you speak to anybody of the Kerlow Company with reference to your becoming associated with it? A. It was about a week before I left that I told Mr. Price.

The Court: That is not the inquiry. When did you finally agree with somebody in control of the Kerlow Company to go in the employ of that company?

The Witness: About a week before.

The Court: Who was the party?

The Witness: Mr. Bunker.

Q. What did you say to Mr. Bunker when you got in touch with him? A. I think I went over to the New York office and I told Mr. Bunker that I had told the Irving Iron Works Company that I had resigned and I also told him that I was therefore free to do as I wanted, and asked him if he was ready to offer me the final word on a position with the Kerlow, and he told me that he could not use me just then, but he might be able to within a week or so. I had some matters of my own that I wanted to clean up in between. I said, "All right, I will quit over there and straighten up my affairs and then come with you."

The Court: As a matter of fact when you told him that had you actually notified the Irving Iron Works Company that you were going to quit?

The Witness: Yes, sir.

The Court: When did you give them that notice?

The Witness: About the end of December.

The Court: To whom did you give that notice?

The Witness: Mr. Price.

The Court: In writing, or verbally?

The Witness: Orally.

Q. Had you spoken to Mr. Price on more than one occasion about that? A. Yes, sir.

Q. What did he say about your resigning? A. In the beginning when I told him about it, he asked me whether I would give them a week's notice. I gave them the week and when the week was up he asked me not to leave because he wanted time in order to get somebody else to take my place. The last week in December he apparently made no effort to get anybody, and in January the same thing happened and finally I told him that at the end of the first week in January that if he didn't get somebody in there, the following week I was going to leave whether he did or not. It was about Wednesday or Thursday of that week that I left that he got a man over there by the name of Nicholls and I worked with that man for two or three days as hard as I could to break him in before I left.

Q. And you went to the Kerlow Company about a week after you left the Irving? A. That is right.

Q. What salary did you receive from the Kerlow Company when you went there? A. $50.

Examination by the Court:

Q. I would like to ask you again—as I understood you were dissatisfied with your relations with the Irving Company because of such instances as you mentioned such as the blueprint frame and things of that kind? A. Yes.

Q. You were under the control of Mr. Bunker—he was your direct superior? A. Yes, sir.

Q. Or immediate superior? A. Yes.

Q. Your failure to get these things that you desired in the way or improvement then, was attributable to Mr. Bunker? It was his failure to sanction or approve what you wanted which prevented you from getting them, such as this blueprint frame? A. No, sir, as a matter of fact he worked with me on the getting of data relative to a certain machine which was called a ditto machine which did away with the blueprinting.

Q. As I understood you this morning that while you presented these matters to Mr. Bunker that you desired to have approved or changed, that is as far as they ever got, they were never changed or improved? A. That is right.

Q. It was up to him to either sanction the change or obtain it by going to either Mr. Irving or Mr. Price? A. So far as I knew, in my conversations with him, he did sanction that change.

Q. I am trying to find out, if Mr. Bunker did not help you get changes in the old concern, what assurance did you have that he would give you that change in the new one? A. I knew because he had agreed with me on these changes that I wanted.

Q. When was that? A. When I spoke to him about it.

Q. When? A. Some time maybe in September or August of that year.

Q. In the first week in January he had not agreed to employ you at all? A. No, sir.

Q. But he then gave you conditional promise that in a week he might possibly give you employment? A. Yes, sir.

Q. Did he give you any assurance at that time that if you came with the Kerlow Company, conditions as you found them to be unsatisfactory in the Irving would be improved? A. I didn't ask him anything about that.

Q. And he didn't give you any promise of assurance of it? A. No, sir.

Q. And he didn't give you as much money as you were receiving from the Irving Company, $50, when you went? A. That is right.

Q. I don't understand your reason for quitting the Irving Company? A. Because I thought I had a better opportunity with the Kerlow Company than I had with the Irving.

Q. Why did you think so? A. It was a new company starting out.

Q. Did you know anything about its capital and resources? A. No, sir.

Q. You knew something about the capital and resources of the Irving Company? A. I knew from what I had heard in a more or less rumor that it was not very much.

Q. Well, the impression seems to have been given that Mr. Irving was a man of some means? A. Yes, sir, that is right, but that is not the company.

Q. And Mr. Irving did not apparently put up for the company? A. Yes, sir, the Kerlow Company was a new concern and it has been my experience that

if a man gets in with a new concern he has a better opportunity to get near the top.

FURTHER DIRECT-EXAMINATION by Mr. Huck:

Q. With respect to the purchase of these articles at the Irving Iron Works Company, that you requested, did you know what Mr. Bunker's authority was as to procuring them?

The Court: I am not questioning that.

Mr. Huck: Your Honor seemed to indicate that Mr. Bunker had not supplied these things that he was complaining about, was attributable to Mr. Bunker.

The Court: As between him and Mr. Bunker, Mr. Bunker was probably relieved by Mr. Irving or Mr. Price refusing to sanction it. The whole inquiry was as to his reasons for leaving, and the inducements.

Further Examination by the Court:

Q. What was the Kerlow capital, do you know? A. I don't know.

Q. Did you know when you joined them? A. No, sir.

Q. Did you know what plant or establishment they had when you joined them? A. Yes, sir.

Q. What did they have? A. A plant in Long Island City.

Q. What size plant? A. Well, I happen to know today the size of it.

Q. Did you know then? A. No.

Q. Had you seen it? A. No.

Q. Had you had it described to you? A. No, but I knew—

Q. Did you know its production capacity? A. Not for grating, but I knew the size of the shop.

Q. The size of the building as a building? A. Yes.

Q. What size was that? A. 40 by 125.

Q. Did they occupy it all? A. Yes, they did.

Q. Actually use it all? A. Yes.

Q. At that time when you went into their employ? A. I don't know whether they did or not. I happen to know that they do today.

Q. I am not asking you of your knowledge today, I am trying to find out how much you knew of the company's affairs to make you think it was a bright prospect and future before you by joining them? A. I was in touch every day with Mr. Bunker and I had enough.

Q. Well, as a result of that touch, how much did you know about his affairs and the affairs of his company? A. I have enough faith in Mr. Bunker to know that if he started out on something he would put it over.

Q. Then you went in on your faith in Mr. Bunker? A. Yes, sir.

FURTHER DIRECT-EXAMINATION by Mr. Huck:

Q. At the time when you agreed to go with Kerlow, did they, as a matter of fact, own a plant of their own?

Mr. Egner: He said so.

The Court: Let him deny it if it is not so.

Q. Did they own a plant of their own? A. No.

Q. Who manufactured their grating for them? A. Fassler & Klein.

The Court: Did you know that?

The Witness: Yes, sir.

Q. And is that the plant that you refer to? A. Yes, sir.

Q. Well, are Fassler & Klein still manufacturing grating for Kerlow? A. Yes, sir.

Q. And at the time when you went with them, did Kerlow have a drafting room of its own? A. I don't know whether they did or not.

The Court: As a matter of fact he doesn't know much more about the affairs than I did at that time?

The Witness: That is right.

Mr. Egner: Then the fact is that they did not have a plant in Long Island City?

The Court: They had a plant in which the goods were manufactured.

Q. After Bunker left the Irving who had charge of the production? A. I did.

Q. And what change, if any, was there in business and production from the time Mr. Bunker left, in October, 1921, until you left in January, 1922? A. There was practically none.

Q. That is, the amount of business and production were practically the same? A. Yes, sir.

The Court: Were they at the maximum?

The Witness: Why, we had not been running anywhere near maximum for several months previous to that.

The Court: And did you then increase after you took charge?

The Witness: No, sir, we were just about the same all along.

The Court: You continued the system?

The Witness: Yes, sir.

The Court: After Mr. Bunker left and you took his place why didn't you get these things you wished? You were in the position with his authority?

The Witness: I did not have the authority that Mr. Bunker had.

The Court: You succeeded him?

The Witness: I did but I did not have his authority.

The Court: Was there any limitation put on your authority when you took his place?

The Witness: I don't know that there was any limitation.

The Court: How do you know you did not have the same authority that he had?

The Witness: Because I never O K'd papers.

The Court: You never exercised the authority that he did?

The Witness: No, sir.

The Court: Did you ever attempt to?

The Witness: No, sir.

The Court: Did you have anybody tell you not to do it?

The Witness: No, sir, I did not.

The Court: I am wondering after you got his position why you did not remedy these conditions you complained of to Mr. Bunker, or ask Mr. Irving or Mr. Price to remedy them?

The Witness: You don't realize what was going on over in the works there.

The Court: I want you to tell me. I am giving you the opportunity to explain to me why.

The Witness: I knew right well there was no use of my trying.

Q. You were not production manager, were you? A. No, sir.

Q. What was your title? A. Assistant production manager.

The Court: He was the assistant production manager while Mr. Bunker was there.

The Witness: No, sir, after he left.

Q. Did you have any discussion with Mr. Price about the men who had been hired to take the place of the sales representatives and agents who had resigned? A. Yes, sir.

Q. When? A. Some time in November, or the early part of December, I believe.

Q. What did he say? A. He told me that the men that they had hired were better than the men that they had previously in the sales force.

Q. Was there anything else said? A. Not that I remember.

Q. Before Bunker left the Irving Iron Works Company, did you ever see in the office or in the plant of the Irving Company, any drawings, sample machine, die or tool or anything else for the making of what Irving now advertises and calls his Type M grating? A. Before Mr. Bunker left?

Q. Yes? A. No, I never did.

Mr. Huck: I would like to have Exhibit C43.

Q. At any of those talks with Mr. Bunker on the

New Jersey State Library

one side and as one of the parties, and you and Kennard as others was there any mention made of supplying Mr. Bunker with any information from the Irving Iron Works? A. I remember one of the conversations.

Q. Can you remember which one that was? A. I think that was the first one when we were at Mendels, that Mr. Kennard remarked that he had looked over the folder of Liebkert, who was the estimator, and that he had acquired some information regarding the names of some jobs and their square footages and Mr. Bunker told both Kennard and I that he never wanted any information whatsoever concerning any jobs in the Irving Iron Works Company for the simple reason that he did not need them and that it was not the right thing to do.

Q. Now, did you at any time supply any information of any kind from the Irving Iron Works Company to Mr. Bunker concerning any jobs or anything else concerning their business? A. No, sir. I never did.

The Court: Or to Mr. Lown?

The Witness: No, sir.

Q. Did either of them ever ask you to supply any such information? A. No, sir.

Q. Were you ever present on any occasion when Kennard supplied any such information? A. No, sir.

Q. Did you ever have any conversation with Kennard after that in which the matter of obtaining any information for Bunker, Lown, or the Kerlow was discussed? A. No, sir.

Q. Mr. Tarof, do you recall the occasion, in the

late spring of 1922 when you lost a file containing some papers? A. Yes, sir, I do.

Q. Do you remember where they were lost? A. They were lost on the Long Island Railroad train.

Q. And where were you going on that day? A. I was going home.

Q. From where to where? A. From New York to Port Washington.

Q. Do you remember about the date? A. It was some time in May.

Q. And do you recall—

Mr. Kraetzer: It is understood that there would be a description placed on the record, and there was such a description placed on the record at the time that file was offered in evidence. Your Honor will recall that because of the fact that the file had been produced from the office of the District Attorney in Queens County and that that description would take the place of the missing file. Obviously we cannot hand that to Mr. Tarof and ask him if he recognizes it. I believe Mr. Tarof was present at the time it was here. Were you here at the time it was in court?

The Witness: No.

Q. You do recall that you had a certain file?

The Court: There cannot be any doubt about it. You contend it is the file?

Mr. Egner: Yes. I insist it is the file.

Mr. Kraetzer: We are willing to concede that it was.

Q. You did have a certain file with you on that day? A. Yes, sir.

The Court: Let it appear that the file that he mentions is the file that was produced here by Miss Bell, from the District Attorney's office in Queens County, New York, and that by the agreement of counsel and of Court, it was returned and a copy of its contents as far as it relates to this case has been made and is in court and is to be used in place of that file itself.

Mr. Kraetzer: And so far as the contents are concerned with the exception of the letters passing between the Kerlow Steel Flooring Company and Fassler & Klein of Long Island City, which letters are admitted to have been in the file, the rest of the file, copies of which we have before us, will be subject to such testimony as Mr. Tarof may give at this time.

The Court: As he or any other witness may give.

Q. Where had you obtained that folder from? A. From the office of the Kerlow Steel Flooring Company.

Q. On that day? A. Yes.

Q. And where had you been with it? A. That day I wasn't feeling very well and one of the salesmen, Schuldt, asked me to go up to an office, I have forgotten the name, but I think it is in the Flatiron Building. I went up there to take some quantities off a drawing in order to give him the price on this particular job and I took that folder with me in order to have the prices for the various steps and grating which were on the job. I went up to the station and got in the train that day and I had it in

my pocket. When we got to Flushing a young lady who was sitting next to me got up; she passed in front of me and I went forward and went into the smoker and when I got to the end of the line I realized that I had misplaced the folder.

The Court: The end of the line was Port Washington?

The Witness: Yes.

Q. How far is that from Flushing? A. About ten or twelve miles.

Q. Fifteen or twenty minutes later before you discovered your loss? A. About half an hour.

Q. How did you carry this folder, was it wrapped up or in a portfolio? A. It was a regular folder that we used in the office for filing purposes and in it the various letters and it was folded around and I had it in my pocket.

Q. You said there were various letters in it—what letters were in it? A. I had the Kerlow catalogue pasted on the inside face of this folder. I had various figures in there and formulae which I used in determining deflections and load carrying capacities of the grating. I had letters from Fassler & Klein.

Q. Fassler & Klein were the fabricators of your product? A. Yes, sir.

Q. What did the letters from Fassler & Klein give? A. They had the prices that Fassler & Klein Company charged us for our grating which they were manufacturing for us. It also had some letters in there relating to particular jobs on which I had requested prices—prices on retainer guards and discounts for retainer guards and frames in quantities, etc.

Q. How often did you use that particular folder

in the prosecution of your duties in the Kerlow Steel Flooring Company? A. Every day.

Q. And you had used it every day practically since the inception of the business? A. Since I was over there, yes, sir.

Q. Do you recall after the loss of that folder hearing anything about it? A. The first thing I heard about the folder was one day while in the office of the Kerlow Steel Flooring Company a young lady came in there with an older man and asked for Mr. Tarof and I went over to the railing and spoke to her and she asked me if I had lost any papers and I told her yes, I had. She said to me, "Did you lose them on the Long Island train?" and I said, "Really I don't know, but I think I did." "Well," she said, "when you got off at Flushing I ran after you and tried to give them to you." I said, "I didn't get off at Flushing, I got up and went into the smoker." She said, "Well, I found those papers." I said, "Did you?" She said, "Yes, do you want me to return them to you?" I said, "Yes, if you want to," and I went over and took a card and wrote my name on it and handed it to her and said, "Here, you can send them here," and that is all there was to it.

Q. Did you offer her any reward for the return of the papers? A. No, sir.

Q. Had you previously made any effort to find the papers? A. No, sir.

Q. Why not? A. Because there was nothing in that folder which I could not replace and which I have since replaced.

Q. How did you replace it? A. I wrote up to Fassler & Klein and told them to send me all the letters giving their prices.

Q. And you had done that by the time Miss Bell called? A. Yes.

Q. Now, I show you copies of certain letters and ask you to examine them and state whether you ever saw the originals of those letters before, such letters being marked C44, C45 and C46.

Mr. Egner: May I interrupt here? I have been looking at the record and apparently these exhibits were only marked for identification. I thought that they were being offered in evidence.

The Court: Will you offer them?

Mr. Egner: I offer them.

The Court: Let them appear under the same numbers, without the identification mark.

Q. Have you ever seen the originals of those letters before? A. I have.

Q. And when and under what circumstances? A. When I wrote some and received the others from the Portland Cement Association.

The Court: Do you remember if they were in that folder that day—the originals?

The Witness: I do not.

Q. You say that you received all of the letters from the Portland Cement Association that I have shown you and sent all of them that are addressed to them? A. Yes, sir.

Q. How did you happen to write to the Portland Cement Association at that time?

The Court: What time was it?

Mr. Huck: The date of those letters, commencing June 2, 1921.

Mr. Egner: Practically all in June, 1921.

A. There were a series of articles in a magazine called "Grating," which extended from the early part of 1921 up through the fall of 1921 and referred to the proper design of grating slabs. It also had reference to a certain kind of expanded metal which was used in dams and walls, and it occurred to me that we might very well use grating as a reinforcing member, not only in those slabs but also in these walls, because the most economical distribution of the steel when used in bending is to have the greater part of the metal in a direction parallel to the force—

Q. I don't care to go into all that detail. Why did you write to the Portland Cement Association? A. In order to get some information regarding the adhesion of the concrete to the steel. I had previously written to the Lehigh Portland Cement Company, to a Mr. Shields who was the chief draftsman of that company, in order to obtain the information from him, and he wrote back and told me that he didn't have very correct data on that subject, and referred me to the Portland Cement Association in Chicago, and gave me the name, and that is how I wrote to those people.

The Court: In whose interest were you getting the information?

The Witness: In my own, in conjunction with this series of articles which were appearing on "Concrete" at that time.

The Court: Did Mr. Irving or Mr. Price know you were endeavoring to collect this information?

The Witness: No, sir.

Q. Was anything being done or contemplated at the Irving Iron Works at that time in connection

with which this information would have been required? A. Not to my knowledge.

Q. This was purely an investigation of your own? A. Yes, sir.

Q. I notice that some of these letters are addressed to H. H. Bunker, assistant manager; E. L. Tarof, Data Department, Irving Iron Works—I think that is all. Can you explain how it happens that the letters were addressed in that way? A. While I was in charge of the drafting room it was the prescribed rule that I sign the mail with the name of H. H. Bunker; under that came the words, "Assistant Production Manager," and under that "Per" myself.

The Court: Your initials or your name?

The Witness: My name.

Q. Tarof? A. Yes, and not only in reply to these particular letters, but in reply to other personal letters which I forwarded while I was in the Irving Iron Works, I would get replies either to myself, care of the Irving Iron Works; H. H. Bunker, care of the Irving Iron Works, or sometimes Irving Iron Works, attention of Mr. Tarof, all depending on the way the person who got the letter felt like answering it.

The Court: You were collecting this information for your personal use?

The Witness: Yes.

The Court: And not for any person of the Irving whatever?

The Witness: No.

The Court: Why didn't you sign your own name instead of Mr. Bunker's?

The Witness: Because it was a matter of giving

a letter to the stenographer, and the way she put the ending on there never occurred to me to even think about it.

Q. In other words, the letter was dictated to the girl, and the girl followed a certain routine? A. Yes.

The Court: Let him straighten it out; it is entirely too suggestive.

Mr. Huck: I consent to it.

The Court: I don't want the consent.

Q. Did you give any instructions as to the signing of the letters? A. No, sir; it was the method that was more or less prescribed in the works and was followed out by them.

The Court: You wrote a number of personal letters while you were in their employ?

The Witness: Yes.

Q. And during your life in the Kerlow Company? A. Yes.

Q. When you wrote a personal letter you didn't sign the name of an officer of the Kerlow Company to that letter? A. I have.

Q. A purely personal letter? A. Yes.

Q. Why did you adopt any such method as that? A. I have done it when writing to my brother.

Q. Why do you do that; you don't sign it "H. H. Bunker, President of the Kerlow Company, by Tarof," when you write to your brother? A. I don't today. At the present time I happen to sign my own name, but I wouldn't take the trouble to go to the stenographer—

Q. Wouldn't you sign your name? A. In the light

of what has happened in the last few months, I would say at the present time I would, but I didn't do it at that time.

Q. I show you a carbon copy of a letter addressed to the Philadelphia Electric Company, and ask you whether you ever saw that before? A. I did.

Q. The original of that? A. Yes, I did.

Q. Who wrote that? A. I did.

The Court: How is it signed?

The Witness: "Irving Iron Works Co., Chief Draftsman."

Q. Did you write that letter? A. I did.

Q. And in what connection did you write that letter? A. This man Phelps, to whom it is addressed, who was, I believe, the chief draftsman of the company, came to the Irving Iron Works about a job which we were turning out for them; during the conversation we began to discuss a certain condition which they had run up against in their conduits, that is, in their manholes, etc., for their conduits, and which was to the effect that the conduits were not placed on the right angle, and that was the discussion between him and myself, and I told him that I would give some thought to the matter, and try to help him out on it, and I wrote to Phelps after making a study of those conditions, and even wrote to some boiler condenser company in New York, and got books on the velocity of air and all that sort of stuff, and carried on a series of letters—one of which is that one there—relative to that subject.

The Court: When was that letter dated?

Mr. Huck: June 7, 1921.

The Court: Had it nothing to do with the Irving business?

The Witness: No, sir; this man Phelps and I exchanged those various letters.

The Court: On a purely personal matter?

The Witness: Yes. And I cited places where he could get formulae from Kent on the subject, and also about this Condenser Company in New York, where I had gotten this information on the flow gases, due to the change in temperature, and all that sort of stuff.

Q. How did you happen to have those particular letters with you in the folder that day? A. I don't know whether I had them or not.

The Court: It is admitted that they were in the folder, in view of the testimony of Miss Bell.

Mr. Kraetzer: No, sir; it was on that particular ground that I said as to the presence of those particular letters, that they were subject to such testimony as would be brought out by Mr. Tarof.

The Court: The testimony of Miss Bell is that the original of these were in the folder; that is true?

Mr. Kraetzer: That Miss Bell so testified?

The Court: And that now that will be accepted as a fact, except as it may be qualified or established to be wrong by the testimony of this or any other witness. That is the understanding?

Mr. Kraetzer: Yes, and the witness has stated already that he doesn't know if they were in the file.

Examination by the Court:

Q. Why did you have these letters with you in the folder that day—the original of them? A. I don't know whether I had them in there or not.

Q. If you didn't have them in there, do you know where they were? A. The only place I can imagine they might be, is over in the Irving Iron Works.

Q. Did you ever see the original from that day to this? A. No.

Q. Have you looked for them? A. I wouldn't have any place to look.

Q. Anywhere, I don't care; have you made any search or investigation for the original of these letters anywhere? A. Yes.

Q. Where did you search? A. I looked around the house; I thought I might have them somewhere there in my personal effects and books and so forth which I removed from the Irving Iron Works when I left.

Q. Did you have a personal file for your personal correspondence while at the Irving Iron Works? A. I don't recall that I did.

Q. When you removed your effects the day you left on January 14, did you take all your papers and effects away that day? A. Yes.

Q. Did you have a large quantity to remove? A. I had a number of books and rulers and all that sort of stuff.

Q. Did you have letters? A. Yes, I think there were some.

Q. Did you remove them? A. Yes.

Q. Do you know if those were removed among the others that you removed on that occasion? A. No, sir; I never saw those letters.

Q. After you got them, as I understand, this ce-

ment concern wrote you this information that you personally desired? A. Yes.

Q. What did you do with the originals after you received them? You saw them sometime before you lost them. Where were they during the period from their receipt until you lost them? A. While going through this investigation of mine, I finally came to the conclusion that it wouldn't work, because they—

Q. I don't care for the reason; you were no longer interested? A. No.

Q. What did you do with the letters? A. My recollection is that I got rid of them.

Q. How; tore them up? A. Tore them up or threw them away, or something like that, the day I left; there was a lot of stuff which was more or less cumbersome, that I didn't want, and I threw it in the wastebasket.

Q. Do you know of any relation or connection that Miss Bell has with the Irving Iron Works or anyone connected with it? A. No, sir.

Q. Did you ask her why she hadn't returned you that folder when she called to see you? A. No, sir.

Q. Why didn't you? A. It didn't occur to me to ask the girl.

Q. Wouldn't it occur to you that if she was at all honest, she would have found out to whom it belonged and returned it? A. She told me that she just happened to be down that way and dropped in to ask me if I wanted them, and I said, "If you care to, you can return them.

Q. There was some mark of identification on the folder by which she knew it was yours—your name was there and address? A. I don't think it was; I don't remember that it was.

Mr. Egner: She saw some letters in there that referred to the Kerlow and Irving and Fassler & Klein, but she didn't know to whom the file belonged.

Q. I show you this blueprint, which was also produced here with that file, and the testimony was that it was in the file; do you recall whether or not that blueprint was in the file? A. I know that there was a blueprint in the file, which gave decimals of a foot, because I used it.

Q. Do you know if that is a copy of it? Is it a copy of the blueprint that was there? A. I don't know if this is the copy, but I know I did have a blueprint in there, from which I got decimals and giving some information that is on this, because I used a blueprint I found in the file.

CROSS-EXAMINATION by Mr. Egner:

Q. About these letters, Mr. Tarof, you say that the letters to the Portland Cement Association were purely a personal matter of yours? A. Yes.

Q. And had nothing to do with any matter in which the Irving Company was interested? A. That is right.

Q. You have form letters to go out, signed "Irving Iron Works," per assistant manager so and so? A. Yes.

Q. Did you discuss these letters with anybody in the Irving Company—any officer of the Irving Company? A. No, sir; not that I remember.

Q. Did you tell anyone that you were carrying on such a correspondence? A. I think the only man around there who knew anything about the articles

in the paper and what they related to was Van Arden, and I believe I gave him a carbon copy of certain constants which I worked out from the information contained in the paper, and spoke to him about the design of these slabs, etc.

Q. When those letters came in, in the morning, from what source did you get them; did you get them from the mail bag? A. No.

Q. How did you get them? A. They came up in the regular way through the messenger service.

Q. How did you get personal letters that were intended for you? A. In exactly the same manner.

The Court: A messenger would bring them to you?

The Witness: Yes.

Q. A messenger would bring them direct to you? A. Yes.

Q. Would they come through any officer of the Irving Company? A. They would come through Mr. Price.

Q. You had a system in the Irving Company whereby—

The Court: Would they be opened when they passed through him?

The Witness: Many of my own personal letters which were on subjects entirely irrelevant to any business in the Irving Iron Works, would have the stamp "Received by Irving Iron Works" on it, and also this check-off stamp.

The Court: And was that true of all other correspondence as well, addressed to the company or managers?

The Witness: Yes.

The Court: It would pass through Mr. Price's hands before it reached you?

The Witness: Yes.

Q. These letters contained this check-off stamp, did they not? A. That is right.

The Court: The check-off stamps are indicated in what manner?

Mr. Egner: By a stamp containing the letters from "A" to "N," inclusive, with two parallel columns opposite them, for the check-off as to the inspection of the letter.

Q. Do you know whom the letter "A" stood for, Mr. Tarof? A. I think that was Mr. Irving.

Q. And the letter "C" stood for Mr. Price, did it? A. Yes.

The Court: What was your letter?
The Witness: "D."
The Court: The drafting room?
The Witness: Yes.
The Court: What was Mr. Bunker's?
The Witness: I think it was "K."

Q. I call your attention to the letter of June 10, from the Irving Iron Works Company, assistant manager, to the Portland Cement Association, containing stamp with an entry of "6/10/21" opposite "D"; that indicates that on that date the letter was inspected by the drafting department, does it not? A. No, this indicates that the letter—I think that that means that it was written in the drafting room. This column was for whoever wrote it (indicating), and this (indicating) for whoever had signed it.

Q. Who puts in the date on which the latter was written? A. The man who wrote it.

Q. So when you wrote this letter, you put the date "6/10/21" in the first column, opposite the letter "D"? A. Yes.

Q. Indicating that the letter had been written in the drafting room? A. Yes.

Q. When you wrote a personal letter, did you use the same stamp, and put the same indication of the date on it? A. I didn't put any stamp on it. The copies of the letters that we had upstairs were stamped when they came up there.

Examination by the Court:

Q. If you wrote a letter, as I understand Mr. Egner's inquiry, would you then have that thing put on there, that stamp, and then indicate the date when it was written? A. It was on there before it came upstairs.

Q. Stamped? A. Yes.

Q. By the typewriter downstairs? A. No, I mean that when we got the copies—

Q. I am talking about a letter you were sending out to the Portland Cement Company; you sent out one of these special inquiries of yours? A. Yes.

Q. You dictated? A. Yes.

Q. The typewriter went somewhere and wrote it for you? A. Yes.

Q. She brought it back for your signature? A. Yes.

Q. Did you put that stamp on there and indicate by the abbreviation "6/10/21"; that is Mr. Egner's inquiry? A. No, naturally the original wouldn't have any mark on it at all.

Q. Would the copy? A. The yellow copy, every one of them were stamped.

Q. So when the girl put a personal one in the machine, it had a stamp on the same as the rest? A. Yes.

Q. Then when you signed the original, did you fill up this information in the copy? A. You may have, because you would go and stamp all your letters all together and you wouldn't be sorting out that particular letter from any of the rest, and you would check it right out, along with the rest of them.

FURTHER CROSS-EXAMINATION by Mr. Egner:

Q. When the original letter came up from the stenographer or typewriter, did the original letter have the copy attached to it; is that your custom over there? A. Yes, I believe it was.

Q. And the copy would in each instance, have this stamp already on it? A. Yes.

Q. So all you did, you would sign the original letter and make the appropriate notation in the proper place on the copy? A. That is right.

Q. So that in sending out this letter, you put the notation "6/10/21" opposite "D"? A. Yes.

Q. That indicated that the letter was going out from the drafting department? A. And we would also put on a check against "K."

Q. I haven't come to that; I will come to that later. Was it your custom to fill in the notation of that character on copies of your personal letters? A. It wasn't any custom; it might have been done, with the rest of them.

Q. Through inadvertence? A. Yes. As long as they were all in the pile, you might very well put that on there along with the rest of them when you were sending that mail out, too.

Q. Opposite "K," which refers to the production department, I see in the second column, the date "6/10/21"? A. That is right.

Q. What does that indicate? A. That means that if that was on a letter, that someone, whoever was K, which in this case would happen to be Mr. Bunker, had seen that letter on 6/10/21.

Q. That indicates, then, that this original letter before it went out, had been inspected by Mr. Bunker? A. No.

Q. What does it mean? A. It means that the copy was seen by him afterwards.

Q. On the date that it bears date? A. Or whatever date he has on there.

Q. If this was "6/10/21" and his was the same, it would indicate that he saw it that day, too, on the day you wrote it? A. Yes.

Q. Was it the custom of the Irving Company, for letters of that character to be circulated—copies, before or after the letter went out? A. Whenever you got through with it, you put it in the desk and it was taken down to whoever was supposed to see it next.

Q. You were to have his check off on it before the letter went in the mail? A. No, not at all; it would go out long before he ever saw it.

Q. Why wouldn't you take the carbon copy, if it were a personal letter, and didn't go to him or anyone else? A. As it appears in this particular case, I didn't.

The Court: I don't know whether that is so or not. I ask you why you didn't, if you were writing these letters personally.

The Witness: I would in nine cases out of ten.

Q. But you didn't in this case? A. No.

Q. Do you know why you didn't in this case? A. No, I don't.

Q. Look at the letter of June 24, 1921, from the

Cement Association to H. H. Bunker, assistant manager; was that in reply to a letter you had written? A. Yes.

Q. How had you signed that letter you had written? A. "H. H. Bunker, Assistant Manager, per E. L. Tarof, Data Department."

Q. Would Mr. Bunker's name be written in ink or would it be typewritten? A. I think it was written in ink.

Q. So you signed that personal letter with Mr. Bunker's name in ink, did you? A. Yes.

Q. Why did you do that? A. I told you a while ago that it didn't make any difference; I didn't realize at that time that it would make any difference, and I put that on right along with the rest. On the rear of this letter, the last page, there are pencil notations as follows: "A—6/29/21," what does that indicate? A. It indicates that Mr. Irving had seen that letter.

Q. On what date? A. On the 29th.

Q. And "C—6/27/21"? A. Mr. Price had seen it on the 27th.

Q. And "I—6/28/21"; what does that indicate? A. That someone else saw it on the 28th.

Q. Was it usual for your personal letters to come with the notation of Mr. Irving and Mr. Price on them? A. It may very well have been.

Q. Was that the usual thing? A. Yes.

Examination by the Court:

Q. What do you mean, that your personal correspondence came under the eye of Mr. Irving and Mr. Price and someone else who was known as "I"? A. Yes.

Q. Why did you have that sort of system? A. There was a very lax method in the proper observance of personal mail in that company.

Q. Why didn't you have your personal mail go to your home, if you found it so lax at the company? A. I didn't do it.

Q. Will you tell me why you didn't do it? A. No, sir; I cannot give any explanation for that.

Q. I cannot see why you didn't, when Mr. Price and Mr. Irving or anyone else could inspect your personal correspondence? A. I cannot see any reason why they should look into my mail.

Q. Why didn't you discontinue it, by having your personal mail sent somewhere else? A. It was far easier to dictate a letter to your stenographer and have it sent out and have it come back there.

Q. Was it any easier to put on there, when you were dictating, such and such address, your home? A. It was on the Irving Iron Works paper; I didn't make any—I didn't think of it.

Q. I don't know whether you have thought about the answer you gave me a little while ago; I think you told me, as I understood you, that your practice was so careless about signing these letters, that your personal letters, addressed to your own brother, you would sign with Mr. Bunker's name as assistant manager, per you; do you mean you did that? A. Yes, sir.

Q. How often? A. That I never did while I was in the Irving Iron Works.

Q. You told me you did; you are doing that today? A. Yes.

Q. In the Kerlow? A. Yes.

Q. Can you tell me why you do it today? A. Because I don't consider it any reason why I should

not. If I want to write a letter in the works, I don't see any reason why I should not.

Q. Is there any reason why you should address your brother and then sign Mr. Bunker's name to it, per you? A. I don't sign Mr. Bunker's name to it.

Q. That is what you kept telling me you did do. A. The letter comes to me with the name "Kerlow Steel Flooring" on it, under that is "chief engineer," and I sign my name to that, and I send that to my brother.

Q. Whose name do you sign as chief engineer? A. My own, but even if I were in the Irving Iron Works, it wouldn't make any difference.

Q. You said you had written to your brother, "Irving Iron Works, H. H. Bunker, per E. L. Tarof"? A. Yes.

Q. That is your formal way of addressing your brother and signing it, is it? A. I don't make the point; if you are talking about what I am doing right now, I will say, "Yes, I signed it 'Kerlow Steel Flooring Company,'" and sign my own name.

Q. I also mentioned Mr. Bunker's name, because you mentioned it, and then it was the Kerlow Flooring Company, by Mr. Bunker, as president, or whatever his position might be, per E. L. Tarof; you said that is the way you signed? A. We don't do it that way today.

Q. You told me you did it that way today, but not formerly, at the Irving; which is right? A. When I was at the Irving Iron Works, I used to sign the mail "Irving Iron Works."

Q. Did you ever write to your brother while at the Irving Iron Works? A. No.

Q. Did you ever write to any relative or intimate friend while there? A. Not that I remember.

Q. You don't know how you signed the letters then to such parties? A. No.

Further examination by Mr. Egner:

Q. Have you got a brother? A. I wouldn't be writing to him if I didn't have one.

Q. Have you a brother? A. Yes.

Q. Where does he live? A. In Indianapolis.

Q. Referring to the reference on the letter of June 2, that also indicates that the letter had been inspected by the drafting department on June 6, 1921, and by the production department on June 6, 1921? A. Yes.

Q. And referring to the carbon copy of the letter of June 6, 1921, that indicates that that letter was inspected by the drafting department on 6/6/21, and by the production department on 6/7/21, and by M on 6/7/21? A. That is right?

Q. Who is "M"? A. I think that was Kennard.

Q. To whom was that letter written? A. Portland Cement Association.

Q. From the Irving Iron Works? A. Yes.

Q. Mr. Tarof, your department was generally known as what? Drafting department? A. Drafting department, or data department; sometimes one and sometimes the other.

Q. How would the stenographer know which department to put down on the letter? A. I don't know; I suppose she would put down whatever one came into her head.

The Court: Do you mean there was no system about it?

Q. Suppose you dictated a letter, Mr. Tarof, how would the stenographer know how to conclude the

letter? A. She would follow the usual method of putting down "Irving Iron Works Company, per H. H. Bunker"—I think it was "assistant general manager," or something on that order, and put "per" either the "data department" or "drafting department"; or myself, chief draftsman.

Q. How would she know what to put there? A. I never gave her any instructions one way or the other; she put down—

Q. Whatever came to her head? A. It was up to herself.

Q. Do you happen to know why this letter of June 6/21 was written by the stenographer, "Yours very truly, Irving Iron Works Company," "per" blank, "assistant manager," "per" blank, "data department"? A. I don't know why it was that way.

Q. Isn't that because you told her to put it there? A. No.

Q. You have a positive recollection of that? A. Yes; I never told her what to put there.

Q. Who was the stenographer there at that time? A. This one happens to be by Miss Petry.

Q. Is that true of the others? A. This is by Miss Petry. So is that one (indicating).

Q. What indicates that; her initials? A. "FP."

Q. So far as you can see, they were all written by her? A. Yes.

Q. You say you never told her whether to put "drafting department," "data department," or any other? A. No; as a matter of fact, Miss Petry was sending out letters for other people, and she may have used one way in some and a different manner in another.

The Court: Other people in the Irving Iron Works?

The Witness: Yes.

The Court: She wasn't a personal stenographer to you?

The Witness: No.

The Court: She took letters from other officers of the company?

The Witness: Yes.

Q. Did she have any invariable practice for signing letters which you dictated to her? A. Not that I know of.

Q. You left that entirely to her caprice? A. Yes.

Q. Look at the letter of June 7, 1921, to the Philadelphia Electric Company; can you tell me how that letter happens to be signed "Irving Iron Works Co.—chief draftsman"? A. No, sir.

Q. Didn't you tell her to do it that way? A. No, sir.

Examination by the Court:

Q. When Mr. Price got these letters in the morning, or whatever time the mail arrived, and he then through his executives made distribution among the various departments, how did he know that that letter should go to your department, instead of some other department; what determined him to say that belonged for your consideration? A. Mail in general.

Q. Then when he came to these letters, why didn't he send them to Mr. Irving or Mr. Bunker or someone else, instead of to you; what was there about the matter that guided him in the selection of the department to which he would send the letter; this address to the Irving Iron Works? A. Yes. This one is addressed to H. H. Bunker.

Q. That would indicate that Mr. Bunker was the gentleman to receive the letter? A. Yes.

Q. I am trying to find out how they reached you? A. If it was addressed to my attention.

Q. Are they? That is what I am asking. This one says, "E. L. Tarof, Data Department"; that shows to whom that should go? A. Yes.

Q. This one (indicating) happens to be "H. H. Bunker, assistant manager"? A. There is no stamp on here, so I cannot tell what Mr. Price did with it.

Q. They practically all reached you; I am trying to find out what guided Mr. Price; what system you had, if any, which guided him in the distribution of this mail. I presume a great many letters were received in the course of a day? A. Yes.

Q. And he sent them around to the various departments? A. I suppose he glanced through the contents, and if it related to something which was up to me, he sent it upstairs.

Q. Unless your name was mentioned, he would have to read the contents and grasp the department to which it should go? A. Yes.

Further examination by Mr. Egner:

Q. The letter to the Philadelphia Electric Company, "Attention: Mr. Howard S. Phelps," June 7, 1921, was purely a personal matter of yours? A. Yes.

Q. Philadelphia Electric Company was a customer of the Irving Iron Works? A. Yes.

Q. Don't you remember having discussed the contents of that letter with Mr. Price? A. I did not.

Q. Will you say that you didn't? A. Yes, I will.

Q. You swear that you didn't discuss it with him? A. I will swear that I didn't. What that refers to it—

The Court: It speaks for itself, what it refers to.

Q. You didn't discuss it with Mr. Price? A. No.

Mr. Egner: Have you the pay roll book indicating when Mr. Tarof came and the amount of his salary, or will you produce that at the next hearing?

Mr. Kraetzer: Yes.

Q. When you first entered the employ of the Irving Company you entered it as an ordinary draftsman, did you not? A. Yes.

Q. That was in September, 1920? A. Yes.

Q. At that time you got how much salary? A. $45.

Q. And after you had been there two weeks you were promoted to chief draftsman? A. Yes.

Q. And in September, 1921, when Mr. Bunker left, you were promoted to the position of assistant production manager? A. That is right.

Q. When was your salary increased to $55 a week? A. I think that was just before Christmas.

Q. What year? A. December, 1921.

Q. And that was shortly before you left? A. Yes.

Q. Was that after you had given notice that you were going to leave? A. Yes.

Q. Did they state any reason why they increased your salary when they knew you were going to leave them? A. No, no reason whatever. There was a general increase in salary given to all the people in the company, and they included me in with the rest.

Q. Anybody else leaving about the time you did, get the increased salary? A. Not that I remember.

Q. So that you had recently before you left had a promotion, hadn't you, to assistant production manager? A. That is right.

Q. Did you consider that a higher position than chief draftsman? A. I did.

Q. Didn't that look as though you had a future with the Irving Iron Works? A. It did at that time.

Q. And that was in September of 1921? A. Yes.

Q. So that in September, 1921, the situation looked to you as though you had a future with the Irving Iron Works? A. That is right.

The Court: He got his increase in December.

Mr. Egner: He got his higher position in September.

Q. And was your salary increased to $50 a week when you were made assistant production manager? A. No, sir.

Q. It had been increased before that? A. As I said before, it was increased about November, 1920, and not in September, 1921.

Q. In September, 1921, you still thought that you had a future with the Irving Iron Works Company? A. Yes.

Q. Did you ever change your mind in that respect? A. I did.

Q. When? A. When I took over the work of the assistant production manager, I figured that the least that the Irving Iron Works could do was to come around and give a man an increase in salary if he was going to take over that job, but apparently nothing like that was going to happen.

The Court: I don't reconcile that statement with your testimony today, that you first thought of leaving the Irving Iron Works in September, 1921.

The Witness: Yes.

The Court: Was that thought in your mind before you got your promotion or afterwards?

The Witness: Before.

The Court: How long before?

The Witness: Maybe about two or three weeks.

The Court: Then your promotion changed your mind?

The Witness: Yes.

The Court: And then later you changed your mind again?

The Witness: Yes.

Q. Why did you change your mind the second time, when you came to the conclusion that you had no future with the Irving Company?

Mr. Huck: I object to that, because it assumes a fact not in evidence. He didn't testify to that; he thought he had a brighter future with the Kerlow Company.

The Court: I think that is correct; he had a brighter prospect or brighter future.

Q. What conclusion did you come to that you had no future? A. At what time?

Q. In December, 1921. A. I think that was after the occurrence which I related this morning and convinced me that I didn't want to stay with the Irving Iron Works.

Q. The remarks about Mr. Price? A. Yes.

Q. About the blueprint? A. Yes.

Q. That shook you so much that at that time you came to the conclusion that the Irving Iron Works people were not straight and you didn't want to stay with them? A. Yes.

Q. And you wouldn't have stayed with them under any inducement, not from then on? A. No, sir.

Q. And this happened in the latter part of November, didn't it? A. No, sir.

Q. When did that happen? A. Sometime in December.

Q. When in December? A. The original action, to which I referred this morning, took place somewhere near the end of November and through the first part of December, and I tried to verify the ownership of that grating immediately thereafter by conferences which I had with Lumb and Cooke and Siegland in the shop, and it took probably a week or more to get the entire information from these people, to finally convince me that the Irving Iron Works never had that grating before.

Q. While you were conducting this investigation, how many talks on that subject did you have with Mr. Price and Mr. Irving—on the subject of the ownership of this type of grating?

Mr. Huck: He hasn't testified that he had any talks.

The Court: He hasn't testified that he had any.

Q. Did you have any? A. I don't recall that I did.

Q. You talked with Lumb? A. Yes.

Q. And you talked with whom else? A. Cooke and Siegland.

Q. And you talked with Mr. Bunker? A. Yes.

Q. And you talked with Mr. Lown? A. No, I didn't.

Q. You didn't talk with Lown? A. No, sir.

Q. Did you talk with Mr. Pritcher, the lawyer? A. No.

Q. You talked with these gentlemen you have mentioned? A. Yes.

Q. But you didn't talk with Mr. Price? A. I don't recall that I did.

Q. And you didn't talk with Mr. Irving? A. No.

Q. Why didn't you talk with Mr. Irving and Mr. Price on this subject, if it meant so much in the moral standing of the Irving Company? A. Because it was quite evident to me that if these men were going ahead and having these dies made up or if they knew anything about this grating, there would be no necessity for making up any dies; they would have known about it.

Q. Let us talk about that incident a little. The first thing that happened was that Mr. Price called you into his office and said that he wanted drawings made so that dies might be manufactured for this type of grating? A. Yes.

Q. And you recall the incident of his having taken a tracing from a sample of the grating? A. That is right.

Q. You remember that? A. Yes.

Adjourned to Tuesday, April 24th, 1923.

Continuation of testimony in the above-entitled cause, before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Tuesday, April 24, 1923, at 10 A. M.

Present: Counsel as before stated.

ERNEST L. TAROF recalled for further cross-examination:

By Mr. Egner:

Q. Mr. Tarof, at the time of the adjournment we

were talking about this incident in Mr. Price's office, when you saw him take off a tracing from the sample of the grating, so-called Type M grating. You testified that up to that time, in view of your promotion to assistant production manager, you still thought that you had a future with the Irving Company? A. Well—

Mr. Kraetzer: There is no question there.

Q. Did you not? Did you so testify? A. I believe I did.

Q. And that, of course, is correct, is it not? A. If you expect me to—

The Court: Wait a minute. You will have to leave it to these gentlemen representing the Kerlow Company to ask for any explanation they deem necessary. You are here now on cross-examination and you are expected to give a responsive answer. If you cannot answer, the proper thing to do is to say you cannot answer, and I will find out why.

The Witness: I believe that is so.

Q. Previous to that time you had never observed anything in the conduct of either Mr. Price or Mr. Irving to lead you to think that they were anything other than honorable business men, had you? A. No.

Q. And you have stated, have you not, that your reason for communicating with Mr. Bunker at that time was that you wanted to find out whether the Irving Iron Works really had the right to make that grating; didn't you say that?

Mr. Kraetzer: I object to that.

Q. Didn't you testify that your reason for calling up Mr. Bunker was you wanted to find out whether

the Irving Company really had the right to make the grating which apparently they were going to make? Did you so testify?

The Court: You can say yes or no, according to your best recollection.

The Witness: I don't remember whether I did or not.

Q. What was the reason for your calling up Mr. Bunker? A. I had seen this grating.

The Court: Which one?

The Witness: Which is known as Kerlow grating, at the Kerlow Company, and naturally when Mr. Price told me to have dies made up and that they were going to make this grating, the question arose in my mind as to how he could go ahead and make this grating, when it was apparently the property of the Kerlow Steel Flooring Company.

Q. That is the reason you wanted to find out? A. Yes.

Q. Why didn't you ask Mr. Price or Mr. Irving? A. Mr. Price had been talking to me about this grating when he showed me—when he made the rubbing and told me to have the dies made, and told me that he was going to make the grating; if he told me that, why did I need to go and ask him any more about it?

The Court: Don't you ask questions.

Q. At that time did you have any intention of leaving the Irving Company, when you saw this grating in Mr. Price's office? A. I wouldn't say definitely whether I did or not.

Q. I asked you at the time that you saw this grating in Mr. Price's office, did you have any intention of leaving the Irving Company? A. I don't think I did.

Q. As you testified, you were perfectly satisfied, weren't you? A. No, I wasn't perfectly satisfied at all.

Q. But you were satisfied with your job? A. No, I wouldn't say that.

Q. Did you consider yourself at that time a loyal employee of the Irving Company? A. I certainly did.

Q. Now, I ask you again why you didn't ask either Mr. Price or Mr. Irving, if you had any question in your mind as to the true ownership of that grating?

Mr. Huck: I think he has answered that question at least twice.

The Court: He has answered in a rambling way. That is not an answer, as far as I am concerned.

A. To tell you frankly, I cannot give you any reason why now I didn't do it; it probably didn't occur to me.

The Court: Not "probably"; you cannot recall any answer now, is your answer?

The Witness: No.

Q. Did the fact that you had already made an application to the Kerlow Company for a job and that you were contemplating going with them, have anything to do with it? A. It may have.

Q. Did it? A. I don't know whether it did or not.

Q. Will you say that it didn't have anything to do with that? A. No, I wouldn't say that.

Q. Do you recall having testified in the interference proceedings in New York, Mr. Tarof? A. Yes.

Q. And do you recall having been asked this question and giving this answer: "Q42. Why were you interested in getting this information and what busi-

ness was it of yours whether such grating had or had not been previously made or designed by the Irving Iron Works or someone in its employ? A. I had previously made application for a position with the Kerlow Steel Flooring Company, and if I ever thought that they had in any way, or were in any way taking anything which did not belong to them, I certainly never would have gone with that company. Q. That is correct? A. Since there seemed to be some doubt in my mind, due to these incidents, as to who really owned the grating, I determined to find out for myself before I would make any move whatsoever." Do you remember testifying to that effect? A. Yes.

Q. Was that correct? A. It was.

Q. Then it was a fact that the reason why you asked Bunker was you wanted to be sure, before you went with Kerlow, that Kerlow had a right to make that grating? A. But I wasn't sure whether I was going with Kerlow or not.

Q. I ask you to answer my question. (Last question repeated.) A. That is right.

Q. Then why didn't you ask the officers of the Irving Company on that subject, if you wanted to satisfy yourself; why did you go to Bunker? A. I did find out in the Irving Iron Works Company whether they had ever made grating like that before.

Q. You asked some of the employees? A. Yes.

Q. Well, now, you have testified that you made the blueprint, didn't you, for the dies? A. I did not.

Q. You made drawings, did you? A. I did not.

Q. What did you do after receiving this tracing from Mr. Price? A. Which tracing are you talking about?

Q. Of the dies for the new grating.

Mr. Kraetzer: He never said that he received any tracing of the die.

Mr. Egner: The rubbing of the model.

Q. You received a rubbing taken from the sample of the grating? A. That is correct.

Q. When you received that, what did you do? A. I took it up to the drafting room.

Q. And you made drawings? A. I didn't make any drawings.

Q. What did you make? A. I didn't make anything; I gave it to a draftsman by the name of Lawson.

Q. And did Lawson make them? A. He made a tracing, yes.

Q. And what was the purpose of that tracing which was made? A. In order to have blueprints made so they could go to the shop—go on shop order, in order to make up dies.

Q. Were any blueprints actually made? A. They were.

Q. And under your direction? A. That is correct.

Q. And did you hand these blueprints to anybody in the shop? A. No, sir.

Q. What became of the blueprints? A. One copy of the blueprint I pinned to the shop order and sent that out to the shop and the other copy of the blueprint, together with the tracing, was sent to the drafting room.

Q. Who got the copy of the blueprint which you sent out into the shop? A. In the ordinary course of events, Kennard would get that.

Q. Do you know who got it in this particular case? A. Nine cases out of ten—

Q. Do you know; I ask for your recollection. A. No, I don't know.

Q. Were these dies actually made pursuant to this blueprint? A. I know about two weeks after Kennard told me that a man by the name of Thibaud had found dies like that in the crib.

Q. He told you that, did he? A. He told me that, yes.

Q. Who else told you that besides Kennard? A. I believe Mr. Price spoke to me about it.

Q. And Mr. Lumb told you, too? A. Yes, he told me that Thibaud had found the dies.

Q. And they also told you that these dies had been there for several years, didn't they? A. That is what they told me.

Q. Wasn't that any indication, to your mind, that this grating had been manufactured by the Irving Company a considerable period before that? A. No, sir.

Q. Why not? A. Because if they had dies in their place for making grating years before that, certainly Mr. Price would have known about it, and he wouldn't have needed to go ahead and have drawings made and tracings and give me the shop order to go ahead and have them made; he would have known very well that they were out there.

Q. You testified that within two weeks after you sent out this blueprint, Kennard and Lumb told you that the dies had been found in the shop, and that is the fact, isn't it? A. No, sir.

Q. What is the fact? A. There were two drawings made—

Q. Never mind about the drawings; tell me what Kennard and Lumb told you about the finding of the dies. A. Kennard told me—I believe it was one afternoon, as we were standing right outside of the door leading into the shop—that Thibaud had found

some dies in the crib and I asked him "Is that so," and he said, "Yes."

Q. And did he tell you they were dies for this Type M grating? A. Yes.

Q. And Lumb told you the same thing, didn't he, about that time? A. Yes, about that time he did.

Q. And Mr. Price told you? A. Yes.

Q. Did anybody else tell you? A. Not that I recall.

Q. Did you believe these men at that time? A. I did not.

Q. Did you ask him to show you the dies? A. No, I didn't.

Q. Why didn't you? A. I think it was a day or two after I was told about it by Kennard that the dies had been found, that I saw them in Mr. Price's office.

Q. You saw the dies? A. In Mr. Price's office: that is, dies for making Type M grating.

Q. Then they not only told you, but you also saw the dies themselves, did you? A. Dies for making Type M grating.

Q. And still you didn't believe that they had been found there, did you? A. No, I didn't believe that they were found.

Q. I asked you why you didn't believe it? A. For the simple reason, that if those dies had been out there before, they would have known about them.

Q. Is that the only reason you had? A. And the other reason is, that it is very strange that it took two weeks from the time that the first sketch was made up until and after they even got the drawings out in the shop, for them to finally produce dies which they said had been there for a long while.

Q. Isn't it a fact that they told you about the finding of the dies the very same day that the blueprint was sent out into the shop? A. No, sir, it is not.

Q. You deny that? A. Absolutely.

Q. The tracing and blueprint, the very day that they were sent out; isn't that a fact? A. No.

Q. You deny that that is so? A. Yes.

Q. Don't you recall Mr. Price having told you that he had forgotten all about the existence of these dies? A. Yes, about two weeks after these drawings were made.

Q. And didn't you believe Mr. Price then? A. No, sir, I did not.

Q. You had never caught Mr. Price in any falsehood before that, had you? A. No, but the very fact of what was happening there would lead anybody to believe that there was something wrong.

Q. You were convinced, were you not, that there was something wrong? A. Absolutely.

Q. And you have given us all the reasons which you can now recall which made you think there was something wrong, haven't you? A. Yes.

Q. That incident shocked you so much that you decided you wouldn't stay with the Irving Company, is that right? A. That is right.

Q. This happened in the early part of December? A. The entire period, covered by the events, perhaps two or three weeks and started in near the end of November and extended probably two or three weeks after.

Q. You know that on December 10 Mr. Lown filed a petition in the patent office, in which he stated that the Irving Company had done this; you knew that, didn't you? A. I didn't know anything about it; I don't know whether he would know, except from hearsay.

Q. All this happened prior to the tenth of December, didn't it? A. Yes.

Q. Why didn't you leave your job, then and there, if you felt this way about the Irving Company? A. About the last week in December I spoke to Mr. Price and told him I wanted to leave.

Q. I asked you why you didn't leave immediately when you came to the conclusion that your employers were dishonest? A. I didn't leave right then for the simple reason that I wanted to give them a chance to get a man to take my place.

Q. Why did you feel that you owed them that consideration, if they were the type that you thought they were? A. Anybody would do that.

Q. Even though you expected to go with a competitor? A. Absolutely.

Q. You testified, did you not, on your direct-examination that aside from this incident you had become dissatisfied prior to your promotion? A. That is correct.

Q. And you gave as a reason the lack of proper blueprinting machine; you remember that? A. Yes.

Q. Was that a serious lack in your company? A. The shop required seven copies of every drawing, and if you wanted to get a job down to the shop quickly, when we didn't have a great deal of work on hand, it required a passing of this machine seven times over the tracing, and then each one of them had to be washed; we had absolutely no method of drying them, and we used to save newspapers to take off the greater amount of water, and then hang them up in the room and let them dry. Now, that whole process consumed, perhaps, a half hour or more. However, some of the prints, after they were dried off with the paper, could be used in maybe fifteen minutes, but when you had a great deal of work and wanted to get along, it was a great impediment.

Q. Did you feel hampered in that way during the entire time of your connection with the company? A. That wasn't the only thing; there were many others.

Q. In that respect, I mean. A. Yes, I think that that blueprint machine was a decided handicap.

Q. And that was true all the time, was it? A. Yes, more or less.

Q. I call your attention, Mr. Tarof, to your testimony in the interference proceeding, to this effect: "Q69. Was it particularly difficult during this period when these events occurred, to have a blueprint made?" That question related to the Irving plant, did it not? A. Yes.

Q. "A. It was not; we were rushed with work. We had ample facilities to take care of the work then passing through the shop, and could very easily and did map up the blueprints. Q70. Did you have a blueprint machine in the Irving Iron Works, such as is customary to have in all plants of any material size? A. We did. Q71. Do you know whether that machine printed by natural or artificial light? A. It printed by artificial light, which was an arc lamp which moved up and down inside of a glass frame. Q72. Would it have been a long job to have made blueprints on this machine? A. It would require about five minutes for the two impressions, or about two and a half minutes for one impression of the tracing." Did you so testify? A. That is correct.

Q. And that is correct? A. Yes, sir.

Q. So that at that particular time, you were not embarrassed by an antiquated blueprint machine? A. We certainly were. I considered two and a half minutes for an impression entirely too long.

Q. Which is much shorter than you talked about a few minutes ago, though? A. No, sir.

Q. You talked about fifteen minutes to half an hour. A. I said fifteen minutes to take the impression of the blueprint, to wash it off, dry it on a piece of paper and hang it up and dry it.

Q. I ask you whether it is or is not a fact, as you testified in the interference proceeding, that the Irving Iron Works had a blueprint machine such as is customary to have in all plants of any material size: did they? A. It is customary—

Q. Did they have such a machine at the Irving Works? A. We had a blueprint machine.

The Court: Did they have such a machine as he described, as is customary to have at all works?

The Witness: Why, yes.

Q. Do you know whether that blueprint machine that the Irving Company had is any different from the one that Fassler & Klein had in Long Island City? A. I don't know whether they have any or not.

Q. Where is the blueprint work for the Kerlow Company now done? A. We do a small part of it in our own plant and others we sent out.

Q. What kind of a machine have you in your Kerlow plant? A. For certain jobs we use one using natural light.

Q. Is that as good a machine as the one the Irving have? A. It is not.

Q. You mentioned having signed an application for a job in the Kerlow Company? A. Yes.

Q. Is this the application (witness shown paper)? A. Yes.

Mr. Egner: I offer that in evidence.

Marked Exhibit C65.

Defendant's Witness, Ernest L. Tarof, Cross

184 Main Street,
Port Washington, L. I.,
Oct. 4th, 1921.

Kerlow Steel Floor Company,
15 Exchange Place,
Jersey City, N. J.

Gentlemen:

With further reference to the position for which I have applied, the following is a resume of my training, experience and personal qualifications.

After having completed the four years' course and being graduated from the Morris High School, entered New York University. After spending one year there, entered the Cooper Institute of Technology and was graduated with the degree of B. S. in M. E. While working in Pittsburgh, attended the Carnegie Institute of Technology, and was graduated with the degree of B. S. in E. E.

My training has been obtained from the Vehicle Safeguard Instrument Company from 1914 to Sept. 1915, when I entered the Department of Interior, Bureau of Mines as Junior Engineer. Remained with them until Dec. 31, 1916. My next position was with the Karrylode Industrial Truck Company, 100 Mott Ave., Long Island City from Jan. 1, 1917, to Feb., 1920. In Feb., 1920, I went with Perin & Marshall, Consulting Engineers whom I left to enter the employ of the Irving Iron Works Company in Sept., 1920, with whom I am at present associated.

My experience during this period has covered design, shop layout, with experience in design and installation of machinery for quantity production.

I am 30 years of age, married, an American and of Episcopalian faith.

Thanking you for the courtesy of further consideration, I am,

Yours very truly,

ERNEST L. TAROF.

Q. Mr. Tarof, in addition to informing Mr. Bunker of what the Irving Company were doing in connection with the manufacture of this grating, did you give him any other information about what was going on in the shop, or about their business? A. No, sir.

Q. Did you give any other person connected with the Kerlow Company any information? A. No, sir.

The Court: About the Irving business?

The Witness: No, sir.

Q. Do you remember the trip that Mr. Price took to see the agents shortly after the Kerlow Company started business? A. I know Mr. Price took a trip.

Q. You remember the trip? A. Yes.

Q. And do you deny that at that time you sent the itinerary of his trip to the Kerlow people? A. Absolutely.

Q. Do you remember having made an affidavit on the rule to show cause in this matter? A. Yes.

Q. Did you in that affidavit, the last paragraph, swear, "I deny absolutely that I at any time communicated any information with regard to complainant or its business to the defendants, and I deny specifically that I knew anything about the particular job referred to by said Price"? A. Yes.

Q. Did you so swear? A. Yes, sir.

Q. Why didn't you state in that affidavit the fact that you had communicated this information about the Type M grating?

Mr. Huck: I object; he hasn't said that he communicated any information.

A. I asked Mr. Bunker for certain information.

The Court: Don't I understand that you told Mr. Bunker what had occurred in respect to the grating between Mr. Price and yourself and the office? I so understood it. Isn't that right?

The Witness: Yes.

The Court: Isn't that communicating information? I will overrule the objection.

The Witness: It never occurred to me at that time to say anything about that.

Q. Although you knew what you were saying in this affidavit? A. Yes.

Q. Any other reason why you didn't state that in the Irving affidavit? A. No.

Q. It just didn't occur to you? A. No.

Q. You hadn't forgotten about it, though, on March 3, 1922, that you had given that information to Mr. Bunker? A. I didn't consider that I ever gave any information.

Q. You testified that the first time you spoke of your dissatisfaction with Mr. Bunker was in September, 1921, is that right? A. Yes.

Q. And Mr. Bunker at that time told you that he was going to resign from the Irving Company? A. That is correct.

Q. What did he say on the subject of his own resignation? A. He told me that he had given his resignation to the company and that he was going to leave in a short while, and then he asked me what I was going to do.

Q. Did he tell you why he had resigned? A. I think he told me that he wasn't feeling very well.

Q. Did he tell you any other reason? A. Not that I recall.

Q. About what part of September was this? A. I should say about the early part.

Q. Did he tell you that the Kerlow Company had been formed? A. No, sir.

Q. Did he tell you that he was going in another business? A. I think he told me that he was going into another business, yes.

Q. Just what did he say about his ill health at the time? A. He said that he wasn't feeling very well, that he was going to leave the Irving Iron Works. As a matter of fact, I was more or less given the impression somewhere that due to the peculiar conditions that were in the Irving Iron Works, that he thought that was probably why he was feeling ill.

Q. That was the cause of his ill health? A. Yes.

Q. On that first occasion did he tell you what the new business would be? A. No, sir.

Q. But he did tell you at that time that he might be in a position to use you later on? A. Yes.

Q. Did you ask him in what capacity? A. No, sir.

Q. Why didn't you? A. I just didn't do it.

Q. You were interested, weren't you? A. No, not particularly.

Q. You were dissatisfied with the Irving Company? A. That is right.

Q. And Bunker said that he might be able to use you? A. Yes.

Q. But you didn't ask him how? A. No, sir.

Q. Why didn't you ask him how? A. I just didn't do it.

Q. Any reason why you didn't? A. No, it just seems to be a habit of mine—I don't follow things up. I don't look into things; I am not nosey, and it doesn't

interest me if a man tells me something and he says he will do a thing; I don't happen to have that faculty of going ahead.

Q. You did dig into that Type M grating? A. That is a different thing.

Q. You didn't follow your ordinary custom and habit in that connection; you didn't follow your usual custom and habit in connection with the Type M grating? A. In facts relative to matters in which I was interested, I would say yes, I did.

The Court: That may be a very intelligent answer, but I don't know what it means.

The Witness: May I explain?

The Court: The question is you stated you were more or less indifferent; when people made a statement to you, you didn't follow it up; that was your faculty and a habit of yours. Mr. Egner asked you—he says you didn't follow that same habit or trait of yours in respect to this meeting, did you?

The Witness: If a man was—

The Court: Did you follow your habit of being more or less indifferent a thing with respect to this grating?

The Witness: In a particular conversation that a man might have with me—

The Court: No, we don't want illustrations of what you mean; we want an answer. You have given an answer. I don't know what the answer means.

The Witness: About the grating, I did.

The Court: You followed your regular habit?

The Witness: No.

The Court: You didn't follow your habit of being indifferent or not nosing in; don't you know it? Did you follow your habit or not follow it?

The Witness: May I explain?

The Court: No, I want the information.

The Witness: I cannot answer the question.

The Court: That is the proper statement to make, if you cannot; if that is the fact.

Q. You say that you went to Mr. Bunker in New York the first time at the request of Mr. Kennard? A. Yes.

Q. And Kennard told you that he had an appointment with Bunker? A. Yes.

Q. And he asked you to go with him? A. Yes.

Q. Did he tell you what the appointment was about? A. I believe that I learned that there was a company known as the Kerlow Company somewhere around that time, that there was some one going into business, and I believe that he told me that he was going over to see Mr. Bunker.

Q. In other words, Kennard told you that Bunker and Lown had gone into the Kerlow business, which was to manufacture grating, and that he was going over to see them about a job? A. No, I didn't say that.

Q. What did he tell you? A. I don't think he knew that much; I know he told me he was going over to see Mr. Bunker; that he was in the grating business, and asked me if I wanted to go over and see him.

Q. What did you say? A. I said I would be very glad to go over with him.

Q. Why did you go over; merely as a matter of friendship with Kennard? A. No, at that time I would be very glad to go over and see Mr. Bunker.

Q. Did you make a social call on him or find out what he was doing? A. Both.

Q. Did you in going over there have any idea of seeing Bunker about a job? A. Yes, I believe I did.

Q. So you had that in mind, too, didn't you? A. Yes.

Q. That first meeting was the one at which you had lunch at Mendel's restaurant? A. Yes.

Q. And on that very occasion you were told by Mr. Bunker that you would have to file a formal application? A. Yes.

Q. And it was pursuant to that statement that you filed the application which has been marked in evidence as Exhibit C65? A. Yes.

Q. Then a week later you had a meeting at 50 Church Street? A. Yes.

Q. And that was the time you went to White's restaurant, was it? A. Yes, I believe it was.

Q. Including the time you were at 50 Church Street and the time you spent at White's restaurant on that occasion, how long were you with Mr. Bunker altogether? A. You mean the time?

Q. Yes, how long did that visit last altogether? A. I should say that we probably spent an hour at Mendel's.

Q. I am talking about White's. You first went to 50 Church Street on that occasion? A. That is right.

Q. And from 50 Church Street you went over for lunch to White's? A. Yes.

Q. How long did that whole meeting last, from the time you arrived until you parted? A. I would say about maybe an hour and a half to two hours.

Q. What did you talk about during that time? A. We went over to the office and as near as I remember, we shook hands and looked at the sample of grating that was there connected about, the difference between it and the Irving grating, and more or less along that line; then we went out and went over to the restaurant; we sat down and ate; we talked

about getting a job there, and perhaps more about the method of subscription for stock and things like that.

Q. Did you talk anything about the prospects of the Kerlow Company? A. I presume we did.

Q. Did you talk anything about particular jobs that they might get? A. Who?

Q. The Kerlow. A. No, I don't think we did.

Q. Did you talk anything about agents that they might have? A. No, I don't think so.

Q. Nothing said about agents that they were going to have? A. I don't recollect; there may have been, but I don't remember.

Q. They may have said something about that? A. Yes.

Q. Did you say anything about Mr. Lown? A. I think Mr. Lown was with us in White's.

Q. Did Mr. Lown say anything about who the agents of the company were to be? A. I don't think he mentioned any particular names; I know he said that he was going to get men, or something like that.

Q. Did he say anything about the fact that he was going to get Scarth and Moser and Madden and Demorest and Kennedy? A. I don't think he did.

Q. Were the names of these men mentioned at all? A. No, I don't think so.

Q. You don't think so? A. No.

Q. Did Mr. Lown say anything as to how they were going to perfect their organization and what methods they were going to use to get business? A. I don't remember, really.

Q. That was an important matter in your mind, wasn't it? That was rather an important matter in your mind, wasn't it? A. Yes, the agents in the organization, in order to secure the business, would be more or less important.

Q. You knew enough about the grating business at that time, that personnel of the agency force was a very important one, didn't you? A. That the sales force in any organization would be.

Q. In that organization you knew it was very important? A. Yes.

Q. You were contemplating going with the Kerlow Company, weren't you? A. Yes.

Q. And yet you cannot remember whether you asked any questions on this very important subject? A. No, I don't remember that I did.

Q. Isn't it a fact that Mr. Bunker and Mr. Lown, upon that occasion, told you that Lown had seen, or was about to see, the different Irving agents and was going to give them an opportunity to come with the Kerlow Company? A. I don't remember any such conversation.

Q. Will you deny that that was said? A. Yes.

Q. At that time or any other time? A. Yes, sir.

Q. When did you first find out that Moser and Scarth and Kennedy and Madden were going with the Kerlow Company? A. I cannot tell you when I found out that any of those particularly named men went with the company, but I do remember that when Mr. Price was away he gave me the key to the bag, and I opened the mail, and I remember that there were several letters came in, and these men had resigned.

The Court: The question was when you first found out that any of the men he named were going with the Kerlow; no matter how you learned it, when was it?

The Witness: That was while Mr. Price was away.

Q. Did these men in their letters say they were going with the Kerlow Company? A. I don't remember whether they did; I know they were letters of resignation.

The Court: How did you learn it at that time during Price's absence?

The Witness: I don't recall now.

Q. Don't you know who told you they were going with the Kerlow Company? A. To tell you frankly, there was a good deal of rumor about what was happening in the Kerlow Company around there, and just where I got hold of that information, I cannot tell you.

Q. You didn't get it from the letters, as I understand it, from these letters of resignation? A. No, I don't think I did.

Q. You cannot recall now how you found out that they were going with the Kerlow Company? A. No, not specifically.

Q. Generally, can you remember?

The Court: He said not to be certain.

Q. Before you actually resigned from the Irving Company you had been told definitely by Mr. Bunker that your job was ready for you? A. No, sir.

Q. You mean you didn't know you were going to have your job at that time when you resigned? A. There was nothing definite; there was no definite statement to me by Mr. Bunker that I was employed by the Kerlow Steel Flooring Company.

Q. How much before you left the Irving Company did you resign—how long before? A. I cannot say; about three weeks.

Q. So that when you resigned from the Irving Company, you had no assurance whatever that you would have a job with the Kerlow Company? A. That is right.

The Court: Did you have any other job in sight

at that time, or in prospect anywhere, if not with Kerlow?

The Witness: I had my own store.

The Court: Outside of that did you have any other work in prospect?

The Witness: No, sir.

The Court: You intended to devote your energies to that store?

The Witness: I had to.

The Court: You intended to?

The Witness: Yes.

Q. You had had that store for how many years before you resigned from the Irving Company? A. About two.

Q. So that other than that store you had no assurance of any source of income when you resigned from the Irving Company? A. That is right.

Q. You testified to your conference with Mr. Bell, the lawyer, at his office in New York? A. Yes.

Q. And I believe you said, on direct-examination, that you refused to give any information to Mr. Bell on that first occasion? A. That is right.

Q. But that you said to him you would be glad to tell Mr. Irving how Kerlow were to make the grating; did you say that?

Mr. Kraetzer: He didn't say that.

Q. Did you so testify? A. Mr.—

The Court: Did you so testify? Yes or no.

The Witness: Will you please read the question?

(Question read.)

The Witness: No, sir, I did not.

Q. Just what was your answer to Mr. Bell?

Mr. Kraetzer: When was this?
The Court: 1921.

Q. The second time that you went to Mr. Bell's office, and on that occasion Mr. Bell asked you to tell him something about the Kerlow grating, didn't he? A. Mr. Bell spoke to me about Kerlow grating and also about the Irving Iron Works shop.

Q. On direct-examination, you gave your reply to Mr. Bell's request; you told us what you answered, in response to Mr. Bell's request? A. Yes.

Q. What did you say?

The Court: What was Mr. Bell's request and what was your answer?

The Witness: In reference to the way the Irving shop was being run; Mr. Bell asked me to tell him what means I would recommend, and I told him that if Mr. Irving wanted to know that, and he would ask me about it, I would be very glad to tell him.

Q. That was in respect to improvements in the Irving shop? A. Yes, that part.

Q. Did Mr. Bell ask you anything about the Kerlow people? A. Yes.

Q. What did he ask you about the Kerlow people? A. He asked me if I knew what kind of grating they were making, and I told him.

Q. What did you tell him? A. I told him that they were making a grating very much similar to the one that the Irving Iron Works were making, except that both bars were of the same depth, and that they made a double crimp in it to keep it from collecting dirt.

Q. You told Mr. Bell that? A. Yes.

Q. Did Mr. Bell ask you anything else about the Kerlow business? A. Yes, I believe he did.

Q. What else did he ask you? A. He asked me if I would subscribe for stock; he asked me if I had applied for a position. I think he asked me where they were making the grating, and if I knew at that time, I told him.

Q. You told him what you knew? A. As much as I knew, whatever it was.

The Court: I understand he was taking this down stenographically while he was talking?

The Witness: Mr. Bell asked me to make a statement, and told me that on his honor as a gentleman and a lawyer, it was perfectly all right, and whatever I told him he would never use it again.

The Court: Did he take it down stenographically?

The Witness: Yes.

Q. Was that the only thing with respect to which you made this reply, that you would tell Mr. Irving if he asked, which was with respect to the way the Irving plant was run, and any improvements you might suggest in the Irving plant; is that right? A. I don't remember now whether at that time we were referring particularly to the Irving shop or whether it was to the Kerlow grating; I don't remember.

Q. Was that before or after this so-called confession of Kennard to Mr. Price, which you attended? A. I think that was after Kennard's confession.

Q. Let us take up Kennard's confession; that was on a Saturday in December, wasn't it? A. That is right.

Q. Do you remember whether in the early or latter part of December? A. I should say about the first or second week, as near as I remember.

Q. How did you happen to go into Price's office on that occasion? A. It was my custom to take up the subject of the purchase of steel with Mr. Price, and he and I were talking the matter over, about the quantity of steel that we would have to buy, and Kennard came in the office while he and I were in there—it was just a little while before quitting on a Saturday, and on—

Q. And on that occasion Kennard told Mr. Price that you and he had been considering going with the Kerlow Company, didn't he? A. Kennard didn't say he and I.

Q. He said "we"? A. He used the word "we," but he wasn't referring to me.

Q. He wasn't referring to you? A. No, sir.

Q. What makes you say that? A. Because Kennard had told me that he had been talking to Lumb and Cook about having them go with the Kerlow Company.

Q. You knew that? A. He had told me.

Q. Had that ever been discussed in any of your talks with Mr. Bunker at which you and Kennard were present? A. No, sir.

Q. Never mentioned that? A. No, sir.

Q. Go on. A. And therefore when he was talking with us, I at that time and up to the present moment was thoroughly convinced that Kennard was talking about himself and his two men in the shop.

The Court: And not including you?

The Witness: No, sir.

Q. He didn't include you? A. No.

Q. Were you in the room when Kennard came in? A. Yes.

Q. So that you heard the entire conversation between Mr. Kennard and Mr. Price? A. Yes.

Q. What was the first word that Mr. Kennard said when he came in? A. I don't remember.

Q. But he said something to the effect that "we were going to leave, but now we are going to stay with the Irving Company," something to that general effect? A. Something along that line.

Q. Did Mr. Price appear to have known anything about that before? A. I think he did.

Q. Did Mr. Price ask you whom he was referring to by the term "we"? A. No; I think Mr. Price realized whom he was talking about.

Q. Did Mr. Price ask him? A. No.

Q. You sat there and you didn't say a word? A. No, sir.

Q. The reason you didn't say anything was that you didn't understand that Kennard referred to you? A. That is correct.

Q. Prior to that time, however, you had made application for a job with the Kerlow? A. Yes.

Q. But it didn't for a moment occur to you that Kennard had any reference to you? A. No.

Q. In the conversation he told about his trips over to New York to see Bunker? A. No.

Q. Didn't he mention that? A. No.

Q. Sure of that? A. Yes.

Q. Just tell me everything that Kennard said about what had gone before? A. He really told Mr. Price that he had heard rumors that the men in the shop were going to leave and that he had come in to tell them that we were going to stay with the company, and Mr. Price told him that he was very much surprised to hear of any rumor of that kind; that he hadn't heard it, but that if there was anything to it,

they were to stay with the company, he was perfectly willing to take a chance on that.

The Court: When Kennard came in did you accompany him?

The Witness: I was in the office before he came in.

The Court: How long before?

The Witness: About five minutes.

The Court: And he simply walked in and said, "We have come to tell you we have come to stay"?

The Witness: I don't remember just how he started off the conversation.

The Court: Did anybody accompany him?

The Witness: No, he was all alone.

Q. That was at the very time that you were making these investigations with Mr. Bunker about Type M?

Mr. Huck: What investigations?

The Court: It is proper cross-examination.

Q. This was at the time you were having your communication with Mr. Bunker, wasn't it? A. I don't recollect; this thing happened about—yes, that would be right.

Q. And you didn't mention a word of that to Mr. Price? A. No.

Q. Why didn't you? A. I cannot give any reason just why I didn't do it; I didn't, that is all.

The Court: Was there anything said by Kennard to indicate that you were included in the "we" who were going to stay?

The Witness: No, sir, I never took it that way.

Q. Either a nod or anything else in your direction,

aside from any language that was used, that you were included in the "we"? A. I don't think so.

Q. Anything to leave the impression on Mr. Price's mind that Kennard was including you in the word "we"? A. I don't know what he might have taken out of it.

Q. Was there enough said to lead him to believe you were included? A. It might lead Mr. Price to believe that; I don't know what he would think.

Q. Did you think that he was getting that impression while you were listening to the conversation? A. No, I did not.

Q. You didn't say anything to indicate you were not included in the "we"? A. No, because I didn't take it that way.

The Court: As a matter of fact you were not included, because you didn't intend to stay, anyway?

The Witness: Not at that time, no.

Q. You had already made up your mind then that you were going to leave? A. Why, certainly.

Q. Although you didn't tell them until January? A. I didn't say that.

Q. Until about Christmas time? A. All right; that is right.

RE-DIRECT EXAMINATION by Mr. Huck:

Q. You have testified that after these tracings or drawings were made for the preparation of dies, you saw some dies in Mr. Price's office. I show you Exhibit C22, and I ask you whether they are the dies to which you referred? Whether they are photographs of the dies which you saw on that occasion? A. They are.

Q. Are those dies in exactly the same condition that they were when you saw them? A. The lowest or male die, appears— The one marked "A" appears to be exactly the same, but the one marked "B" when I saw it, that one which would make the crimp, the same as this one would make, had a shank on it, and these holes were not in the dies.

Q. Where was the shank? A. Up here in the top.

Q. What kind of a shank? A. A round shank, about an inch and a quarter or inch and a half in diameter and two inches long.

Q. What was the purpose of that shank? A. That was to put it up in the head of the machine and bolt it by means of a fastener to that head.

Q. Do you know the particular machine for which that die which you saw on that day was intended? A. I didn't know what machine it was used for.

Q. There came a time, did there not, prior to the hearing of this cause when you learned that you were accused of having stolen certain letters from the Irving Iron Works? A. Yes, sir.

Q. And did you thereafter take any action with reference to procuring copies of the letters from the Portland Cement Association to you and Mr. Bunker? A. In order to—

The Court: Did you?

The Witness: I did.

Q. What did you do? A. In order to show—

The Court: What did you do?

The Witness: I wrote a letter to the Portland Cement Association at Chicago and asked them to send me copies of the letters which they had written to me relative to the adhesion of concrete and steel, and

these letters that we were talking about before, and they sent me copies of these letters.

Q. And on what paper was that letter to the Portland Cement Association written? A. On the letterhead of the Kerlow Steel Flooring Company.

Q. I show you a letter from the Portland Cement Association dated July 25, 1922, addressed to you, and ask you whether or not that is the reply which you have referred to? A. Yes, sir, that is the reply.

Q. And what is annexed to that reply? A. Copies of the letters that were sent to me while I was in the Irving Iron Works Company.

Q. I show you an envelope and ask you whether that is the envelope in which all this was received? A. Yes.

Mr. Huck: I offer this in evidence.

Marked Exhibit D66.

Mr. Egner: I have no objection.

The Court: What is the purpose of this offer?

Mr. Huck: Merely bearing on the question of the materiality; they claim that—or I suppose the inference is to be drawn, that there was some importance to these letters which are alleged to have been taken by Tarof. I show by this that Tarof simply writes to them and says, "While I was in the employ of Irving, you have certain letters, and I would like to have copies." They freely gave them; they didn't regard it as anything confidential.

The Court: Are these copies addressed to you or to the Irving Company or Mr. Bunker, as assistant manager?

The Witness: They are addressed in various ways.

Q. Where is the copy of your letter which you sent to the Cement Company? A. I kept a copy of it and gave it to Mr. Kraetzer.

Mr. Kraetzer: May I ask that between now and the next time you ask the Portland Cement Company to send one—

The Court: If he wrote and said to the Portland Cement Company, "Give me a copy of the letters that I wrote you"—apparently, he didn't write them any; I don't recall that he wrote them any; they were either signed by Bunker, per Tarof, or the Irving Iron Works, per Tarof. That is my recollection. I am curious to know what he said in the letter.

Q. On the copies of the letters from and to the Portland Cement Association, which were produced here and shown to you, are certain marks and symbols with reference to departments and dates on which letters were sent and received. Have you any recollction as to whether those were on the original letters at the time you saw them? A. I do not know whether they were or not.

The Court: You are referring now to the letters offered the other day?

Mr. Huck: No, I refer now to the letters in the possession of the District Attorney.

The Court: Did you ever make any effort to get these papers back that were found, and now said to be in the possession of the District Attorney?

The Witness: No, sir.

The Court: Did you ever make any request on the District Attorney to return them to you?

The Witness: No, sir.

The Court: Why didn't you?

The Witness: I don't think he would ever give them to me.

The Court: It is your property, isn't it?

The Witness: It certainly is.

The Court: You claim it to be yours?

The Witness: Yes.

The Court: What business has he, whether as District Attorney or otherwise, to retain your property without cause; do you know of any?

The Witness: None that I know of.

The Court: Why didn't you make a demand on him?

The Witness: I don't know anything about that. If that is legally correct, I guess it is up to my lawyers to go ahead and do it.

The Court: Did you ever ask your lawyers whether you had a right to get these papers back?

The Witness: No.

The Court: Why didn't you?

The Witness: I haven't done so. I leave it in their hands; if they think that is the right move to make, we will go to it.

The Court: Do you understand these papers to be your property or the property of the Kerlow Company? Whose property are they?

The Witness: That is a delicate point.

The Court: I don't see that there is anything delicate about it. Either one thing or the other is true; they are either yours or they belong to the Kerlow Company, according to your version, or to the Irving. To whom do they belong, as far as you understand it?

The Witness: I would say the letters—

The Court: The whole file, or if you want to separate the letters from the rest of the file, do so.

The Witness: I think the letters which came from Fassler & Klein belong to the Kerlow Steel Flooring Company. I think the rest of the stuff belongs to me.

The Court: You say your lawyers; what lawyers have you in this matter? Are these gentlemen your counsel, or counsel for the Kerlow?

The Witness: They are counsel for the Kerlow.

The Court: Then you haven't any lawyers here?

The Witness: No.

The Court: What lawyers were you talking about?

The Witness: Naturally I side in with these gentlemen, and whatever they tell me to do, I will do.

Q. Mr. Tarof, you were indicted for taking these letters, were you not? A. Yes.

Q. Are you represented by counsel in connection with that indictment? A. Yes.

Q. Who represents you? A. Mr. Kraetzer.

The Court: Have we been beating around the bush? I don't think anyone has mentioned the fact of an indictment. I haven't, because I didn't know of it.

Mr. Egner: I didn't because I didn't think it was proper to do so. I am not trying to prejudice the Court against this witness.

RE-CROSS EXAMINATION by Mr. Egner:

Q. How did you know what letters to ask for in your correspondence with the Portland Cement Company? A. I think that there was some kind of a paper that Mr. Kraetzer got from the Court, and I think I got the dates from that.

Q. Mr. Kraetzer told you what to ask for in your letter? A. No, he told me the dates; he had some kind of a paper and it had the dates on.

Q. Who wrote that letter, you or Mr. Kraetzer? A. I wrote the letter.

Q. How did you know what letters to ask for? A. I got them from that paper that he got from the Court over in Long Island City.

Q. He gave you the paper? A. No, he gave me the dates from that paper.

Q. And he told you what letters to ask for, didn't he? A. Oh, yes.

Q. Do you remember having testified, on your direct-examination, in response to the Court's question, "Why did you have these letters with you in the folder that day, the original of them? A. I don't know whether I had them in there or not? Q. If you didn't have them in there, do you know where they were? A. The only place I could imagine they might be, is over in the Irving Iron Works." When you wrote to the Portland Cement Association, did you still have doubt in your mind as to whether those letters had actually been in the folder or not? A. There were two sets of letters, and at that time I must have taken that meant all these letters which were sent from the Portland Cement Association to the Irving Iron Works, and naturally they would be in the Irving Iron Works—those that I sent to the Portland Cement Association would naturally be there.

The Court: You are confusing me. I asked you whether you had those original letters from the Portland Cement Company to the Irving Company or Mr. Bunker or yourself, whoever they were addressed to, in your possession on that day, and you appear to

have answered that you didn't know whether you had them in your possession that day. Then I asked you, if you didn't have them, could you tell me where they were, and you said you didn't know of any other place except in the Irving Works. Mr. Egner asks you when you wrote for these copies, which have just been offered, did you still have doubt in your mind as to whether the original letters from the Portland Association to Irving or Bunker were in the folder that day you lost it or not.

The Witness: No, I was always under the impression that the letters which I had sent to the Portland Cement Association were up there.

The Court: You have it wrong again. Strike it out. When you wrote to the Portland Cement Association and got that answer, dated July 22, did you have any doubt in your mind as to whether the original letters from the Portland Company, for which you were asking copies, had been in your file the day you lost it or not?

The Witness: I don't know whether they were in that file or not.

The Court: Did you know whether they were in the file when you wrote asking for copies of them last July? Did you have any doubt whether they were in the file or not?

The Witness: I am confused; I don't get the point.

Q. Do you understand the question? A. No, sir, I do not.

The Court: It is perfectly plain.

Q. What is there about that question you don't understand? A. As I see it, there are two sets of letters, one which I sent to the Portland Cement As-

sociation and one which they sent back to me. Obviously the letters which they sent—

The Court: It is a case of dodging it again. If you want my opinion, I think you understand it very thoroughly, and I don't think you want to give me the answer. That is where I put you. I don't believe you don't understand a question as simple as that. I don't believe him when he tells me that he doesn't understand the question. Let it stand that way, "You have got me confused." The question is clear enough; there is no reason for any man of his intelligence to tell me he doesn't understand that question. I don't believe him. I don't believe he doesn't understand it. He is here to give me the truth. He is not doing it now.

Mr. Kraetzer: I realize if I attempt to go over the story with him, that if we do get the answer, that will not clarify the situation.

The Court: Not in my mind.

Mr. Kraetzer: At the same time, I would like to have an answer to that question.

The Court: If he wants the question read, he can have it read.

Mr. Kraetzer: Then I ask that the question be read again to the witness.

The Court: I will have no doubt but that the question is understandable, and I am positive it is.

(Question read as follows):

"Q. When you wrote to the Portland Cement Association, did you still have doubt in your mind as

to whether those letters had actually been in the folder or not?"

The Court: That is the question.

Mr. Kraetzer: May I call the attention of the witness to the fact that Mr. Egner was referring in that specific question to Exhibit D60, or the letter to which Exhibit D60 is an answer?

The Court: And that I also referred to the same thing and had the letter laid down before the witness.

Mr. Kraetzer: Will you read the question once more?

(Question repeated.)

The Court: What is your answer?

The Witness: I didn't know what letters were in the folder.

The Court: Strike it out as not responsive.

Mr. Kraetzer: I offer in evidence Exhibit D11 for identification, which was a letter, or rather an envelope postmarked February 4, 1922, addressed to Mrs. K. E. McCauley, 341 Fairmount Avenue, Jersey City, New Jersey, containing a newspaper clipping which was marked Exhibit D11a for identification. That has never been submitted to your Honor as an exhibit, but is marked merely for identification, and was identified by Mr. Irving as sent by him, or under his direction, and Mr. Irving also testified to the fact that Mrs. McCauley is Mr. Bunker's mother-in-law. I now offer both of them.

Marked Exhibit D11 and D11a.

I ask for the carbon copy of a letter from Mr. Irving to Mr. Lown, to which Exhibit C60 is in reply. We are not able to find the original letter, and I believe you will be able to give us the carbon copy.

Mr. Egner: We have already made some search for that letter, but have not found it.

Mr. Kraetzer: We would also like to have a letter which has to do with Mr. Demorest, and we should like to have a detailed statement of the individual payments made to Mr. Demorest during the months of September and October, 1920. I mean either to Mr. Demorest or to Mrs. Demorest on his behalf.

Mr. Egner: I wish to state that I am proposing to offer, as part of our rebuttal, a complete statement with respect to each one of the agents during the years 1920 and 1921, that will include what you want.

The Court: Either the commission account and the payments on account of same.

Mr. Egner: Actually what was due and what was paid during 1921 it will be by means of a blueprint. During 1920 we shall have the same information, but in a different form; they had a different system.

Mr. Kraetzer: I ask for a statement of individual payments made, either to Mr. or Mrs. Demorest during those two months.

Mr. Egner: I have a schedule which I will produce.

WALTER H. LOWN, recalled for further cross-examination by Mr. Egner:

Q. Aren't you mistaken when you say that you never returned personally to the Irving plant after May 9, 1921? A. No, sir; I never returned after I left the Irving Iron Works employ.

The Court: And that was when?

The Witness: May 9.

Q. Aren't you mistaken when you say that other than the check which has been offered in evidence, that vacation week, that you got no pay from the Irving Company after May 9th? A. I didn't say I didn't get any pay after May 9th; I said I was paid up until about the eighteenth or twentieth of May, as far as my recollection goes.

The Court: By that one check?

The Witness: That was the last check I received.

Q. That last check you received, was that for salary or vacation week? A. It was for a vacation week.

Q. Up to what date did you receive salary? A. I believe up to May 18, around that time; I cannot remember exactly.

Q. Then the last nine days for which you received salary you were not at the plant; is that right? A. That is right.

Q. I show you a carbon copy of a letter dated May 25, 1921, to the Kansas City Power and Light Company, and ask you whether that doesn't refresh your recollection; that letter was written by you, was it not? A. Yes.

Q. It bears your initials in lead pencil? A. Yes.

Q. Does not that refresh your recollection that you actually were back at the plant after May 9? A. Yes, sir.

Q. You wrote that letter, did you not? A. Yes, I wrote that letter.

Q. Then you were back in the plant on May 25th? A. Yes, sir.

Q. And on that date you wrote a letter in connection with some Irving business matter? A. Yes, sir.

Q. Doesn't that refresh your recollection that you did other things for the Irving Company after May 9th? A. I was continuously employed there after May 9th. My recollection is wrong on the date that I left the company, then. I had May 9th firmly fixed in my mind, but I must be mistaken.

Q. So you are not clear now just how long you stayed with the Irving Company? A. I cannot say positively; I was not there on the first of June.

Q. On that particular date or after that date? A. I was not there after the first of June.

Q. Going back to your talks with Mr. Demorest, did you on any occasion tell Mr. Demorest that if there were any competition, the Irving people would give up? A. No, sir.

Q. Did you ever tell Mr. Demorest of the statements Mr. Irving made to you, to the effect that if any competition arose, that he would give up and retire to his farm? A. Yes, I remember a conversation similar to that.

Q. With Mr. Irving? A. With Mr. Demorest.

Q. You told Demorest that Irving had told you that? A. Yes.

Q. How did you happen to tell Demorest that Irving had told you that? A. Mr. Demorest, as I recall it, asked me why I was leaving the Irving

Company, or why I had left, and I told him that I didn't think Mr. Irving was doing the right thing in allowing his business to go on, or to be run the way it was, allowing competition to come in the field and practically take it away, and I also told Mr. Demorest that Mr. Irving had told me if a competitor came in the field and got too strong, he certainly would give up the business, and I didn't feel that he was doing the right thing in gambling with my life and the life of the other men in taking that attitude.

The Court: Had Mr. Irving told you that he would give up if competition came in the field?

The Witness: Yes.

The Court: When?

The Witness: Back the latter part of 1920, around October.

The Court: How did he come to tell you that?

The Witness: I went in to Mr. Irving on various occasions, telling him of the huge discrepancy in competitors' prices and ours, and Mr. Irving told me to forget about it, that he didn't want to reduce cost; he wouldn't secure his patents any further, and if a competitor came in the field and got too strong, he would just quit; that was his attitude.

Q. And you told that to Mr. Demorest? A. Yes, sir.

Q. And was that in connection with your talks with him with respect to whether or not he would take on the Kerlow agency? A. No, that was all preliminary to it.

Q. I call your attention to your affidavit in this matter, verified on February 17, 1922; do you remember having sworn in that affidavit, as follows: "I deny that I told Demorest that Irving had told me

that if a stronger competitor appeared in the field, that he would liquidate the company." Did you so swear? A. I denied that statement in substance.

The Court: You denied it or deny it?

The Witness: I denied the statement in substance. The words that he used in Mr. Demorest's affidavit were very much different.

The Court: This is your affidavit?

The Witness: Yes.

The Court: He asked you did you swear to those things in your affidavit.

The Witness: Yes.

Q. Why did you so swear in your affidavit, in view of what you now say, that you told Mr. Demorest at the time of your talks with him? Why did you so swear in your affidavit, Mr. Lown, in view of your present testimony as to what you told Mr. Demorest? A. I recalled that in the affidavit which I denied, the wording was entirely different and was not in accordance with what I had said to Mr. Demorest.

Q. Then you made that statement because of the language employed in the Demorest affidavit? A. Yes.

Q. But you did tell him what you now state? A. Yes, that is true.

The Court: I take it Demorest did make an affidavit in the cause at some stage?

Mr. Egner: Yes.

Q. Is the language of Mr. Demorest in his affidavit to which you referred, Mr. Lown, the following: "That Mr. Irving had withdrawn large sums of money from the corporation; that Mr. Irving also informed me sometime previous to this conversation, that if

a would-be competitor would appear in the field, that he would liquidate the Irving Iron Works Company."

The Court: Is that the language you say that your denial is in contradiction of?

The Witness: Yes. I think there is another affidavit of Mr. Demorest's, which I contradicted.

Q. You intended by your affidavit to contradict that you had ever told Mr. Demorest what he states in his affidavit? A. I was trying to contradict the impression that Mr. Demorest tried to give, that the Kerlow Company would eliminate the Irving Iron Works Company, and that the Irving Iron Works Company would give up business. As I got that, he was trying to convey that impression, and that was what I was denying.

Q. But you did tell him that Mr. Irving had said to you that if an active competitor arose he would quit and go back to his farm? A. Not back to the farm, but that he would quit, substantially that.

Q. Coming down to the Irving-Subway, Mr. Lown, when you came with the Irving Company—with Mr. Irving, the use of the grating for a flooring was comparatively unknown, wasn't it? A. No, it was not.

Q. Wasn't it necessary for the agents of the Irving Company to do a great deal of so-called missionary work? A. Yes.

Q. And on that subject you said in your bulletin to the Irving men, under date of April 19, 1920, did you not, the following: "How to 'Clean up a Town.' If you have leads follow them up and then get a Classified Telephone Book and pick out the large consulting engineers and other engineering concerns. Information about factories and industries in the town will readily come through the 'Lobby or office gossip' medium"? A. That is right.

Q. That was correct, was it not? A. Yes.

Q. And you also instructed the agents: "In large office buildings start at the top story and work down. Look in on any one whose name looks like a manufacturer, be it tooth paste or locomotives. Many will be only sales offices but never mind, you have something interesting to show and in so doing you can find out 'Who and Where' "? A. Yes.

Q. Did you also state: "Salesmanship might be called an art or a science. Irving-Subway is never sold by accident but by well directed effort. It is our purpose in these Sales Instructions to show the various channels through which this effort should be directed in order to produce satisfactory results in the selling of our product"? A. Yes, sir.

Q. And did you state this: "Specification. Your work is the means to a big end, and that end is the specification and incorporation of Irving-Subway into plans for every type of construction. To have Irving-Subway specified is as good as a sale. Bear this in mind, and work every prospect toward incorporating Irving-Subway in the plans for his work." Is that correct? A. Yes.

Q. It was true, was it not, that one of the principal functions of these salesmen and sales agents was to endeavor to have Irving-Subway specified in the plans and specifications for contemplated jobs? A. Yes.

Q. These lists that you have mentioned generally showed the job after the specifications had been drawn, do they not?

Mr. Kraetzer: What lists?

Mr. Egner: Brown's list, and Sweet's catalogue and things of that kind.

A. No, sir, they do not, not all cases.

Q. But in most cases they do, do they not? A. No, sir, I will explain that Brown's Service, if you want me to.

The Court: Just answer the question.

Q. Now, you stated that the use of grating as a flooring was not a new thing at that time, in 1920 and 1921? A. Yes, sir.

Q. You say that? A. Yes.

Q. Was it well known? A. Yes, grating was used as flooring considerably for power plant and industrial construction of every type and description.

Q. For how long prior to 1920? A. The farthest I was able to trace back was to installation of about 120 or around 120 thousand square feet in a tobacco house.

Q. When? A. 1899, that was built.

Q. And the flooring installed at that time? A. Yes.

Q. Wasn't whatever knowledge there was of the grating business in existence in 1920 and 1921 due to the efforts of the Irving Company in that business? A. Absolutely not.

The Court: Was this flooring generally known among the engineering fraternity?

The Witness: Grating?

The Court: Yes?

The Witness: Straight bar grating was used as a flooring.

The Court: In common use?

The Witness: Yes, in very common use, and then Irving-Subway grating was used. It is the same as the four-cylinder car makes a six or eight-cylinder

car; it is a development; it is not an original thing.

The Court: It is merely an improvement on the old?

The Witness: Yes.

Q. So that the grating business was a matter of common knowledge at that time among engineers and architects and owners of large plants? A. Yes, the grating business.

The Court: I can recall grating as a boy.

Mr. Egner: As a floor?

The Court: Over areaways and places.

Mr. Egner: But not as a flooring.

The Court: Will you distinguish what Mr. Egner expresses by the word "flooring"?

The Witness: I say that straight bar grating was used as a flooring, and the Irving-Subway grating is an improvement over the old type of grating as a flooring.

The Court: Then back as far as 1899, this grating was in use for flooring purposes?

The Witness: Yes.

Q. And that the use of flooring for grating purposes was well known? A. Yes.

Q. Prior to 1920? A. Yes, although the Irving Company did a lot of development after that. The Irving Company must get the credit for developing the field to a great extent after that on a larger scale.

Q. Who is entitled to the credit for what knowledge there was of flooring—of grating as a flooring at the time the Kerlow Company was started? A. The Irving Iron Works were entitled to a small amount of the credit. The rest should go to straight bar manufacturers and people that made straight bar

grating—any architects and engineers who needed a ventilating flooring or grating in the construction work that they undertook, and not having any better, they used a straight bar grating.

Q. When the Kerlow Company started business was it necessary any more to do missionary work to acquaint the public and architects and engineers with the merits of grating as a flooring? A. Absolutely.

Q. It was or was not? A. It was.

Q. It still was? A. Yes.

Q. I show you a series of papers, from page 1 to page 26; that was a series of instructions which the Kerlow Company issued to its own agents, was it not? A. Yes, to Kerlow salesmen.

Q. And that was prepared by you, was it not? A. Yes, sir.

Q. I call your attention to this statement on the first page of that manual—

The Court: When was that issued—treating it as a series?

The Witness: Around the first of the year, 1922. It was a book—just one book.

Q. The twenty-six pages constituted one book? A. Yes.

Q. And that was prepared by you, in order to acquaint your agents of their attitude to their principal? A. Yes.

Q. I call your attention to this statement, on page 1: "What is the grating business today? You and I, thru our constant association have an idea, but to outsiders it means nothing. There is no centralized industry which fabricates grating. We look around and see every conceivable article we use and eat in the form of industry. We have a certain brand

of food to which we are partial; desks, shoes, implements, bricks and clothes, and so on down the line. These products are standardized in substance and in distribution. But grating stands alone as a product not yet in the industry class." Was that true? A. Absolutely.

Q. Then it was true that the grating business to outsiders meant nothing? A. That is right.

Mr. Kraetzer: That does not say that.

The Court: He says it is right.

The Witness: I mean to the average layman who doesn't use grating in his construction and has nothing to do with it, the grating doesn't seem to be a big thing. As a rule, he only sees small installations along the street, and that is all it means to him.

Q. These agents wouldn't go to that kind of people. You were telling your agents what their duties were? A. Yes.

Q. And what class of people did you expect your agents to call upon? A. The class of people as listed in this pamphlet—architects, engineers, industrial people, municipal, state and federal engineers, various trade journals.

Q. You mean to deny that you had those journals in mind when you said that to the outsiders it means nothing? A. This statement means that to men—

Q. Answer my question.

The Court: Does he mean to state that included in those journals, that grating to outsiders meant nothing?

Q. Do you mean to state that you did not include those journals in the term "outsiders"? A. That

term "outsiders" does not include those journals or men who know anything about the grating business.

Q. So that you were not including in that statement the people whom you expected your agents to communicate with? A. That statement has nothing to do with whom we expect the agents to communicate with.

Q. So that it was just a general observation, by the way? A. A general observation.

Q. But was it true "Grating stands alone as a product not yet in the industry class"? A. Yes, that is right.

Q. What did you mean by that? A. I meant that the bulk of the grating business in the United States at that time was entirely a domestic proposition. There was no large centralized industry that made a business of fabricating grating and shipping it to all parts of the country, such as your furniture factories do, and motor factories, and typical of other industries.

Q. You also instructed your agents to keep lists, did you not? A. Yes.

Q. And send an original list to your office and keep a duplicate for their file? A. I don't believe I said that. I don't recall the exact wording of it. You can refresh my memory.

Q. Did you say in these instructions, page 10: "In order that this office may develop a mailing list for direct advertising and direction of sales work, it will be the duty of every agent to forward complete lists of iron workers, structural people, engineers and architects thruout his territory." Did you say that? A. Yes.

Q. Did you also say: "As we receive these lists, we will make comparisons with our own, and get in

touch with the names in an introductory way"? Did you also say that? A. Yes.

Q. When you are talking about your own lists, what lists were you referring to? A. Engineering lists and mailing lists I had developed myself in New York, through mediums of that kind.

Q. Did you also state: "Original will be sent into this office"—that is C. I. M.—"and duplicate retained for your files. Make out only one of these cards on any prospect, second and later calls to be reported on blank cards of same size and need only bear name and address for identification"? A. Yes, that refers to the agent's report.

Q. C. I. M.? A. No, not C. I. M.

Q. But it was a similar thing? A. It was a real card index.

Q. So that you adopted for the Kerlow Company the system of having an agent report on a card the result of an interview, forwarding the original card to the home office, and keeping a duplicate copy for his file? A. Yes, sir, that is right.

Q. You considered that information of importance, did you not? A. Yes, sir.

Q. Did you also state in this circular: "In the event of these people refusing to use Kerlow, it will be well to make subtle suggestions regarding the Kerlow Company doing extensive advertising and missionary work among architects and engineers"? Is it a fact that your company intended doing extensive missionary work? A. Yes.

Q. Among architects and engineers? A. Yes, and we did it.

Q. Why did you do it, if it was unnecessary? A. I didn't know that it was unnecessary to do missionary work.

Q. Didn't you tell me just now that the architects and engineers knew all about this? A. No, I did not.

Q. What did you say, Mr. Lown? Did you now, just a moment ago, say that the use of grating as a flooring was well known among architects and engineers?

The Court: No, what he said was this: He said that expression "outsiders" did not include those mentioned in the list—architects, engineers and others.

The Witness: Yes, that is right.

Q. Was the use of grating as a flooring well known among architects and engineers in 1920, 1921 and 1922? A. Yes.

Q. Then why was it necessary to do missionary work among architects and engineers? A. They didn't know about Kerlow grating, Mr. Egner.

Q. They didn't know about Kerlow? A. No, sir; we were a new company; we had to do missionary work among those men.

Q. So that the missionary work was to put over Kerlow? A. Introduce Kerlow, the same as Irving Subway had been introduced.

Q. So that all the product they knew a lot about was the Irving Subway, was it? A. No, sir, I didn't say that; I said grating as a flooring.

Q. Did they know about the Irving grating and flooring generally? A. Most of them did, yes, sir.

Q. And that was through missionary work which had been done by Irving? A. Yes.

The Court: His missionary work was to displace Irving and everybody else, if he could, with Kerlow; is that the situation?

The Witness: That is right.

Q. Did you also state in this circular: "At all times we must strive to give complete and worthy service to our prospects and customers. They are the backbone of our company, and without their good will, we would not very long survive." Is that true? A. Yes.

Q. So that the prospects and customers were a very valuable asset of any company in the grating business, were they not? A. I think so.

Q. And the prospects and customers of the Irving Company at the time you left that company were a valuable asset of that company, were they not? A. Very valuable.

Q. When did you first see Mr. Scarth in connection with his going with the Kerlow Company? A. Sometime during October, 1921, as I remember it.

Q. Do you recall having testified that when you saw Mr. Scarth (p. 672): "He told me at that time he was preparing to send a letter to the Irving Iron Works begging them for money. He had not received his commissions promptly. It had been necessary for him to send his wife out to work because he could not get the money. The service was very poor. He could get no attention whatever, cable and telegrams or special delivery letters or anything else. He said he was very much disgruntled. He said, 'I felt like crying for joy when you walked in, because before you left I got consideration from the Irving Company, but I don't any more.'" Do you recall testifying to that? A. Yes.

Q. How long was he with the Irving Company before you left the Irving Company? A. About eight months.

Q. Isn't it a fact that you hired Scarth after you

left the employ of the Irving Company? A. Yes, sir.

Q. Isn't it a fact that you hired Scarth for the Irving Company after you left the Irving Company? A. Yes, after I had resigned and put my resignation in.

Q. How long was Scarth with the Irving Company before you resigned from the Irving Company? A. Eight months.

The Court: How is that; did you resign from the Irving Company eight months before you left?

The Witness: No, sir.

The Court: You hired him after you resigned?

The Witness: Yes.

The Court: You left how long after you resigned?

The Witness: About a month, probably five weeks.

The Court: I don't understand your mathematics.

The Witness: He was with the Irving Company, unbeknown to us. A peculiar situation arose.

The Court: Unbeknown to whom?

The Witness: Scarth was with us and we didn't know about it. I can explain that.

The Court: Do so.

The Witness: Mr. Skillman, who was our agent at that time—he was our agent at Detroit, Michigan, and Mr. Skillman was rather a dishonorable sort of an agent, who made a specialty of selling partnership in the Irving agency out there, and along about June or July, 1920, he sold to Scarth a half interest in the Irving agency for I don't know what—four or five hundred dollars, and he had original letters that he wrote to the Irving Iron Works, telling about this association, acknowledging Mr. Scarth as a partner and violating—he had originally issued them to

Scarth, made believe he sent to the Irving Company, and then filed carbons away in the file, so Scarth had been with us all the time, and we didn't know. Skillman told him he was a partner in the company.

The Court: He was connected in the Irving through the manipulation of Skillman?

The Witness: Yes.

The Court: But he was not employed, so far as any one connected with the Irving Company was concerned, until you hired him?

The Witness: No, he was not employed until after this.

The Court: You hired him when?

The Witness: May, 1921.

The Court: He was working three or four weeks when you quit Irving?

The Witness: Yes.

The Court: He was recognized during the one month as an employee of the Irving people?

The Witness: Yes.

The Court: That was his only and first recognition?

The Witness: Yes.

Q. Is it that time or the previous eight months that he referred to when he said "because before you left I got consideration from the Irving Company"?

Mr. Kraetzer: Can he say?

The Court: If he knows, he can say.

A. I take it for granted that Mr. Scarth meant the entire period.

Q. When you hired Scarth did you tell Mr. Irving or Mr. Price about this connection Scarth had had?

A. When I came back I told him the whole story,

the way I found conditions out in Detroit, and told him about Skillman, and I assume I told him that, too.

The Court: Have you any recollection?

The Witness: I don't remember telling him definitely.

Q. You don't remember telling him that? A. No.

The Court: Do you know if the Irving people ever learned actually before you left the Irving Company of Scarth's connection with Skillman out there?

The Witness: No, sir, I do not, although I know this to be a fact, that in the files of the Irving Iron Works will be found hundreds of these C. I. M.'s that Scarth made out while he was a partner of Skillman's. He thought he was merely a salesman with Skillman. He made them out in his own name and Skillman countersigned.

The Court: So that appeared as coming from the Skillman agency?

The Witness: Yes.

Q. Did Scarth tell you how much the Irving Iron Works owed him at that time when you had this conversation with him, on or about the first of October, 1921? A. I don't remember discussing figures.

Q. Do you recall whether he mentioned how much was owing? A. No, sir; I do not.

Q. Did he complain about the treatment he had received? A. Yes, sir.

Q. Did he tell you that up to the first day of November, he had received in commissions $567.18, beginning with the first of July? A. No, sir; I do not recall him having said that.

The Court: If I gather from your testimony Scarth's criticism against the Irving Company was all in relation to the treatment he had received from that company the seven or eight months preceding the time when you had actually hired him for the Irving?

The Witness: No, after I left.

Q. I understood you to say that he was glad you came in, because he had never got decent treatment until you did get in? A. No, he said he did get decent treatment until after I left, and that he was glad to see me and tell me his troubles.

Q. His treatment referred to after you left the Irving Company? A. Yes.

Q. Between that time and the time of your call in November? A. Yes.

Q. So he was satisfied with the treatment which he received during that period when Skillman was deceiving the Irving Company as to Scarth's status? A. He may have been.

Q. He didn't say anything about it? A. No.

The Court: His complaint was all after Mr. Lown left.

Q. Where was the first office of the Kerlow Company, Mr. Lown? A. 50 Church Street, New York City.

Q. Didn't they have an office at 15 Exchange Place, Jersey City? A. Yes, sir; they were the corporation offices, but we did not stay there.

The Court: The statutory agent?

The Witness: Yes.

The Court: Did you have any desk room there, or the privilege of using a desk?

The Witness: Yes, we had a privilege, but didn't exercise it.

The Court: You held meetings there?

The Witness: Yes.

The Court: And did you have any other right or privilege there?

The Witness: Mail and telephone privileges.

Q. You had some letterheads printed by Kerlow Steel Flooring Company, 15 Exchange Place, Jersey City, New Jersey? A. Yes.

Q. Similar to Exhibit C33? A. Yes.

Q. Exhibit C60, which you wrote to Mr. Irving, that was written on one of these letterheads with the top cut off? A. It may have been; I don't recall.

Q. Look at the water mark in the paper and the water mark in the other paper, and tell me whether they are the same? A. That isn't proof of it, by any means.

The Court: You are arguing about nothing; strike it out.

The Witness: I will grant it is the same, if you want me to.

Q. It is the same paper? A. Yes.

Q. And before writing this letter you cut off the Kerlow letterhead, did you not? A. No, sir; I did not cut it off.

Q. Did you give instructions to your stenographer to do it? A. The girl cut it off, as I remember.

The Court: Under your direction?

The Witness: Yes, I think so.

The Court: Why did you do that?

The Witness: I didn't want to write to Mr. Irving

on a letterhead headed the Kerlow Steel Flooring Company.

The Court: Why not?

The Witness: I didn't want him to know anything about the Kerlow Company.

Q. Is that the same reason why you told her to write "30 Pine Street, New York City, New York," at the head of your letter? A. I didn't tell her to write "30 Pine Street."

The Court: Why did she put that address on?

The Witness: That is where she wrote the letter and she put it on. The girl assumed that I was one of the men in the office.

The Court: Is this the office of Rosevelt & Co.?

The Witness: Yes.

Q. Who did the typewriting in that letter C33? A. That was a stenographer in 50 Church Street.

Q. Is that the same girl that wrote the letter to Mr. Irving, Exhibit C60? A. No, sir.

Q. Was it written on the same typewriter? A. No, sir. On the same kind of a typewriter, I think. I don't—

The Court: If you don't know, say so.

The Witness: It wasn't the same typewriter.

Q. And not the same girl? A. No.

Q. When did you leave the Kerlow Company? A. February, 1923.

Q. Why did you leave?

Mr. Kraetzer: I object, on the ground that it is incompetent and immaterial in this proceeding as to why he left.

The Court: Why do you think it is compe-

tent? I have a thought in mind that might possibly make it so.

Mr. Egner: My thought is Mr. Lown testified of his dissatisfaction with the Irving Company and the fact that he went with this new company to better himself, and that it was a wonderful field, and that the Irving Company was neglecting the field, and it was a great undeveloped field that hadn't been exploited, and they were going to exploit it, and it was a great thing for him, and that he was even the inventor of this type of grating. Apparently he has abandoned all this. It goes to the merits of that.

The Court: I think I shall receive it, having the thought in mind that the witness is now here and presented as a disinterested party in this litigation, in the sense that he is no longer connected with the Kerlow Company, which, if complainant prevails, will be affected probably by a perpetual restraint; therefore his interest would not be affected by a diverse conclusion to the Kerlow in this case. Therefore, he is put in a position before the Court as being so disinterested by reason of that fact. That may be significant, and greater weight can be attached to his testimony than would be attached to the testimony of a party directly interested, as I presume will be admitted Mr. Bunker is in the outcome and success of Kerlow. This gentleman says he has severed his connection and has no interest in it, except wishing it success and prosperity. I think I shall receive it, and I think it is competent, but how much weight is to be attached to it is another story.

Mr. Kraetzer: We press no claim—I have attempted to guard against any claim that might be made here that Mr. Lown is disinterested. I didn't want the Court to draw the inference that Mr. Lown had severed his connection with the Kerlow Company in order to provide a disinterested witness. I want that to be understood.

The Court: Why did you leave the Kerlow Company?

The Witness: The Kerlow Company at the beginning of the year 1923 had an enormous volume of unfilled orders on its books. Its sales organization had been completed and developed to a very satisfactory point. About that time western interests in building tile came to me and offered a very interesting proposition to me, and after dickering for some time I finally reached the conclusion that I would be even more successful in the tile business, and therefore I disposed of my interest in the Kerlow Company and resigned.

The Court: Did you sell it?

The Witness: Yes.

The Court: What did you get for your stock; your price?

The Witness: Yes.

The Court: Nothing is owing to you now?

The Witness: Yes, there is.

The Court: From the Kerlow Company?

The Witness: No, sir, by the individual who purchased my securities.

The Court: And he is still interested in the Kerlow Company?

The Witness: Yes. The amount isn't very great, though; it doesn't amount to very much.

The Court: Do you object to telling us what it is?

The Witness: No, sir; the amount is $3,250.

The Court: Who owes it to you?

The Witness: Mr. Bunker.

The Court: Is Mr. Bunker, so far as you know, financially responsible and able to pay you that sum, regardless of the success or failure of the Kerlow?

The Witness: Yes, sir; he is.

Q. Did you sell all of your stock to Mr. Bunker? A. Yes, sir.

Q. And is that the total purchase price or part of it? A. No, sir, it is not.

Mr. Kraetzer: I object.

The Court: He said he had received all but that balance. Have you any right to redeem or repurchase your stock or any interest in the Kerlow?

The Witness: Yes, I have the option to repurchase it within a year if the balance is not paid.

The Court: And that will not expire until when?

The Witness: On the first of March, 1924.

Q. So that you now have an entirely independent position with some western tile company? A. Yes, sir.

Q. And you sold out your interest in the Kerlow Company to Mr. Bunker? A. Yes, sir.

The Court: Did you personally get this patent allowed you, or did the company get it?

The Witness: No, sir; that is my patent.

The Court: Do you still own it?

The Witness: No, sir; I assigned it to the company.

The Court: You sold it to the Kerlow Company?

The Witness: Yes.

The Court: Anything owing to you on that?

The Witness: No, sir.

Q. So that other than this sum of money Mr. Bunker owes you personally, you have no further financial interest in the Kerlow Company? A. That is right.

Q. Do you remember of the Kerlow Company having gotten the Detroit Edison job? A. The Kerlow Company got dozens of Detroit Edison jobs; I don't know which one you refer to.

Q. The job amounting to about $20,000? A. No, sir; I do not.

Mr. Kraetzer: Is that one of those jobs that is listed on the series of sheets that was provided, Mr. Egner?

Mr. Egner: Yes.

Q. Sometime in the month of November or December, 1921, do you recall having gotten a job from the Detroit Edison Company, through Mr. Scarth, your agent out there? A. Yes, sir.

Q. How much of a job was that, in dollars and cents? A. I believe it was about $12,000, if my recollection serves me.

Q. Do you know when that job first was announced to the public as being in progress? A. As much as eighteen months before it was let.

Q. So there was talk about it at the time that you hired Mr. Scarth for the Irving Company? A. Yes.

The Court: You mean was it mentioned in the trade publications and engineering journals?

The Witness: There was a general rumor about.

The Court: It was common knowledge in the trade?

The Witness: Yes.

Q. Can you refer to either now or later to any of the trade papers or any list which refers to this job? A. I cannot say that I positively could find it, but I believe that it could be found, as all construction projects of any size are in the "Michigan Builder and Contractor." I have never checked that job up.

Q. Will you check that up, and if you find it, advise us later on in the case? A. Yes, sir; I will be glad to do that for you.

Mr. Kraetzer: As to any publication?

Mr. Egner: Any mention of this job at all.

The Witness: There is a reference in the "Sweet's Distribution Engineering Catalog"; you can find the Detroit Edison Company in there.

The Court: This particular job?

The Witness: No, sir, not that job. Just the name of the man—

Q. Did it relate to this particular job? A. No, sir; the same company that built the job, they built power houses all over through Detroit and vicinity.

Q. What did you tell Mr. Demorest as to who was going to finance the Kerlow Company? A. I did not tell Mr. Demorest that anyone was going to finance the Kerlow Company.

The Court: Was it already financed when you talked to him?

The Witness: The financing had been started. There was no plan to get anybody further interested. I told Mr. Demorest also that the vice president of the Lehigh Valley Railroad Company had been interested in the company; that various men in the firm of K., N. & K. were interested in the company.

The Court: Were they, in fact?

The Witness: Yes.

Q. What did you tell him about K., N. & K.? A. I told him that there were two men or three, I forget which, in that company interested in the Kerlow Company, and who were on the Board of Directors and in back of the Kerlow Company.

Q. They were on the Board of Directors of the Kerlow Company? A. Yes.

Q. Who were these gentlemen? Give their names. A. Mr. J. A. Beaver.

The Court: We have had that before.

A. He was formerly general manager of the bond department of K., N. & K. Mr. R. B. Merriam, general manager of the bond department, and Mr. Howard Slater.

The Court: We have been all through this.

Mr. Kraetzer: I should like to state a correction. Mr. Merriam is no longer connected with K., N. & K. He very recently resigned from that company.

The Witness: I didn't know that.

Q. Were these men in fact ever anything other than employees of K., N. & K.? A. I don't know about Mr. Merriam and Mr. Beaver. As far as I know, none of them were anything but employees.

Q. And didn't you give Mr. Demorest the impression that the firm of K., N. & K. was interested in the venture? A. I did not.

Q. Will you deny that you didn't seek to give him that impression? A. Absolutely.

Q. If you did not seek to give that impression, Mr. Lown, why did you use this language in your letter of December 8, 1921, to Mr. Demorest, Exhibit C38,

referring to Mr. Scarth's visit to New York: "The result is that Scarth is now back in Detroit, a better and bigger Kerlow man than ever. Incidentally, he went up to K., N. & K., where he and myself were well received." What impression did you mean to give by that language? A. Mr. Demorest had told me that he had gone up to K., N. & K.'s with Mr. Irving and that no one up there knew anything about it—about us. I resented that attitude on the part of Mr. Demorest, as we were known up there, and these men knew us, and after I took Scarth up and introduced him to Mr. Merriam and Mr. Slater, I wrote that letter.

Q. Why didn't you put Mr. Merriam's name in that letter and Mr. Slater's name in the letter? A. Because I had only told Mr. Demorest that certain men in K., N. & K. were interested in the Kerlow Company.

The Court: Certain men, without naming them?

The Witness: Yes, I did not name them, and Mr. Demorest conveyed the impression to me that we were not known up there, and that no one knew us.

Q. The impression you intended to give Mr. Demorest by this letter was that you had gone up to K., N. & K. and that you had been well received by K., N. & K., did you not? A. No, it is not.

Q. You still want to deny, after having refreshed your recollection by this letter, that you ever gave anyone the impression, or sought to give the impression that K., N. & K. were interested in your business? A. Absolutely.

Q. Do you recall having in November, together with Mr. Kennedy, called on Mr. Nyle, resident of Buck & Sheldon, of Hartford? A. Yes.

Q. What do you say about that? A. Mr. Ken-

nedy wanted an expert opinion on Kerlow grating, and he took a sample which I had with me up to ask Mr. Milcrest what he thought of this new grating.

Q. That was before Mr. Kennedy had made up his mind to leave the Irving Company, wasn't it? A. I do not believe so, although I am not sure.

Q. He didn't say he would go with you until he was satisfied as to the merit of your product, did he? A. I don't remember.

Q. Buck & Sheldon were customers of the Irving Iron Works Company, were they not? A. Not customers, no, sir.

Q. The Irving Iron Works Company had done work for them, had they not? A. Buck & Sheldon specified Irving grating and structural iron companies bought the grating. Buck & Sheldon never bought any.

Q. Didn't you in the course of this conversation endeavor to interest Mr. Milcrest in the Kerlow grating? A. No, sir; I did not.

Q. You went there merely to get his opinion? A. Yes, sir.

Q. Did you tell him that you were manufacturing it? A. I don't remember whether I did or not.

Q. Did you tell him that Mr. Kennedy was going to be the agent of the Kerlow Company? A. I may have. If Kennedy was with us at that time, I probably did.

Q. Had Mr. Kennedy resigned at that time? A. I believe that was right after Mr. Kennedy resigned, although I am not positive—the letter was here.

Q. Don't you recall Mr. Milcrest having asked you whom you were with—having asked Kennedy whom he was with, whether with Irving or Kerlow? A. No, sir; I don't. I was not present during the entire conversation.

Q. Coming down to Madden, when did you first see Madden?

Mr. Kraetzer: At any time?

Q. In connection with going with the Kerlow Company. A. I don't remember the exact date—around November or December, somewhere in there.

Q. In the course of this conversation what did you tell Mr. Madden about the plant you were to have in Long Island City? A. I believe I told him just what we had done regarding manufacturing grating, although I do not recall anything definite that I said regarding the plant.

Q. Don't you recall having told him that you were to have a plant in Long Island City? A. No.

Q. You never told him that? A. No, sir.

Q. Referring to Exhibit C38, your letter of December 8, will you tell us what the "very erroneous information" Mr. Demorest had received through the Carnegie Steel Company was?

The Court: Does it refer to "erroneous information"?

Mr. Egner: Yes; I am quoting from the letter.

A. Mr. Demorest received a report that the Kerlow Company was incorporated for $5,000.

The Court: How much was it incorporated for?

The Witness: $250,000.

Q. And is that the only information you are talking about there? A. I believe there was some other absolutely wrong and false information regarding the stockholders of the company, or the number of shares of stock, and things like that.

Q. Had it anything to do with any statement on your part to Mr. Demorest that the Kerlow Company had placed a large order with the Carnegie Steel Company? A. No, sir; it had not.

Q. Had you told that to Mr. Demorest? A. No, sir; I did not.

Q. What had you said about placing orders with the Carnegie Steel Company, to Mr. Demorest? A. Mr. Demorest told me that the United States Steel Corporation acted entirely on a policy of reciprocity in purchasing steel products; he told me that inasmuch as that policy was in vogue and the Irving Company not purchasing steel from the Steel Corporation, he was having a very hard job to get even one order from the Steel Corporation. He asked me what our policy would be regarding the purchase of steel and regarding going to the United States Steel Company to order tonnage, and I told him that we would undoubtedly place business with the United States Steel Corporation; that we were intending to place some orders for steel in the future, and Mr. Demorest asked me if I would notify him immediately upon the placement of an order with the United States Steel Corporation, so that he could send Mr. Wallace Stuart, his assistant, up to interview Mr. Roeckels.

The Court: Haven't we been all over that?

Q. That is what you had in mind? A. Yes.

Q. When you say in your letter that the Carnegie Steel Company "have fallen all over themselves in expressing regret here in New York, and it is only our desire to remain the regular fellows that we are, which saves a mighty hot situation from embroiling certain parties down in Pittsburgh," you had reference to some erroneous information as to your capitalization? A. Yes.

Q. Nothing else? A. No, sir.

Q. Do you recall having seen Mr. Nederhold, of New York? A. Yes.

Q. He had done foreign work for the Irving Company? A. He said he had.

Q. Expert work? A. Yes, he said he had.

Q. For what purpose did you see him? A. Mr. Nederhold met Mr. Bunker or called on Mr. Bunker at his home, to locate me, and I was out west at that time. When I got back Mr. Bunker told me about it and asked me to go and see Mr. Nederhold. I believe I called him up or he called me up.

Q. What did you talk about when you saw him? A. He wanted to handle Kerlow grating in the far east and in Asia; as he could not get any service from the Irving Company, he felt that the Irving Company was not in a position to handle the business.

Q. So that whatever discussion there was with Nederhold about his representing the Irving or Kerlow product in the far east was entirely at Mr. Nederhold's own suggestion? A. No, I wouldn't say that. When Mr. Nederhold volunteered his services and was very anxious to get in with the Kerlow Company, I naturally saw a good business in it and I went ahead with it.

Q. Did you know at the time that he had done this kind of work for the Irving Company? A. I knew that he had said that he did it, but whether he did or not, I am not sure.

Q. What makes you say that? A. Mr. Nederhold was supposed to take a trip to the far east for the Irving Iron Works Company, and although Mr. Irving thought he was over in China and Siam and other places selling Irving subway grating, I don't believe he was.

Q. You never thought that he went? A. I don't believe he did.

Q. You thought he had deceived Mr. Irving? A. Not necessarily; he told Mr. Irving he was going to go, and some plans came up that precluded his going.

Q. He left Mr. Irving under that impression? A. Yes, and when he left he intended really going.

Q. But notwithstanding that, you were willing to hire him yourself, were you? A. Yes; there was nothing wrong in him doing that.

The Court: Nothing wrong in doing what; leave Mr. Irving under the impression that he had gone abroad as his agent, and then in fact did not go?

The Witness: No, he left Mr. Irving, intending to go when he left him, and something came up—the illness of his wife.

Q. Whatever it was prevented him from going? A. Yes.

Q. And he didn't disclose that to Mr. Irving, that he didn't go? A. Yes; I don't know whether—

Q. You gave me the impression that he was deceiving him. A. I meant Mr. Irving thought he was over there.

The Court: Mr. Irving thought so because of what he had told him?

The Witness: Yes.

The Court: And he never disabused Mr. Irving's mind of that impression, so far as you know?

The Witness: I don't know.

The Court: You led me to believe that this man you thought previously had fooled Mr. Irving?

The Witness: Yes.

The Court: And in fact you qualified your statement that he represented the Irving Company, saying that he claimed to have done so?

The Witness: Yes.

The Court: Where do you justify his conduct?

The Witness: I don't justify it.

The Court: In answer to Mr. Egner's question about your employing him with that knowledge, you said you thought it was all right?

The Witness: Yes, as far as him leaving Mr. Irving with that impression, because Mr. Nederhold then intended to go abroad.

The Court: He is splitting hairs on my question. If you knew this man deceived Mr. Irving, his employer, I cannot see why you approved of his conduct and then hired him.

The Witness: We didn't hire him, and when I found that and other things out we cut negotiations off with him and didn't go any further with him; we stopped; we didn't go through with a tentative contract we had with him.

The Court: Were you influenced in your refusal by his deception of Mr. Irving?

The Witness: Yes, we were suspicious of that and other things.

The Court: When did you find out about Mr. Irving's deception?

The Witness: I don't remember just when it was, but that and some other things came up, and we never would sign a contract or went any further with him.

Q. Whatever you knew about Mr. Irving's experience with Nederhold, you knew when you left Mr. Irving? A. No, sir.

Q. How did you find it out subsequently? A. One

day I went down and had a talk with another man and went up to an office with him and the whole thing was very suspicious, and this fellow kind of winked and said Irving thought Nederhold was over in China for him and he was here in New York at the time, and from that time on we did nothing further with him.

Q. What effort did you make to secure representation in Canada during October? A. I don't remember any specific instance of trying to secure representation in Canada. You mean October, 1921—I don't remember trying to secure representation there.

Q. Do you recall having gotten in touch with the Standard Steel Company in Canada? A. No, I do not.

Q. Standard Steel Construction Company of Canada? A. I don't recall.

Q. Who was Irving's representative in Canada at the time you left? A. We had no representative in Canada except in the western part of Canada. A fellow named Wilson, I think it was—no, McDonald, in Winnipeg, he was the only representative the Irving Company had when I left.

Q. Had you ever heard of the Standard Steel Construction Company? A. No, sir.

Q. You testified, Mr. Lown, that the Tomelier letter, that the address was taken from a page of the list which Mr. Schuldt gave you in his handwriting; how many pages were there of that list that Schuldt gave you? A. Four, as I remember.

Q. And about how many names on each page? A. About twenty-five, possibly thirty.

Q. And that list contained names of customers and prospects of the Irving Company with whom Schuldt had been in negotiation while he was an agent of the Irving Company? A. Yes.

Q. How many other of the agents—of the former agents of the Irving Company, sent such lists to your home office? A. Mr. Kennedy sent a list which he took from telephone books.

Q. Did Mr. Kennedy send you a list? A. A list, but not of that type.

Q. I asked you how many of the agents sent a list of the type of that of Mr. Schuldt? A. I said none.

Q. What other agents sent you any lists? A. Madden, Scarth and Kennedy and all our other agents all around the country; if you want me to go through, it will take a month of Sundays.

Q. Did Moser send you a list? A. I don't believe so.

Q. But Madden, Kennedy and Scarth? A. I know they did.

Q. How many names were on the list that Kennedy sent? A. Maybe seven or possibly eight hundred.

Q. How many names on the list that Madden sent? A. About 3,000.

Q. How many names on the list that Scarth sent? A. About 200.

Q. Was the Detroit Edison Company on the list that Scarth sent? A. Yes.

Q. You testified something about a list of Irving customers that you had prepared at Mr. Irving's direction, and which you say was for the purpose of having photographs of installations made? A. Yes.

Q. About how many names were on that list? A. About 500.

Q. Was that customers, or customers and prospects? A. It should have been just customers, although I cannot verify as to just what it really was.

Q. What was done with that list? A. Mr. McNichol copied it—

The Court: Didn't we go all over that already?

A. (Continued.) And I gave it to Mr. Irving to send to the "Engineering News Record," or sent it myself.

Q. That was for the purpose of having photographs of installations made? A. Yes.

Q. Isn't it a fact, Mr. Lown, that you yourself handled the correspondence at that time in connection with these installations? A. Yes.

Q. And this list was sent to the McGraw-Hill Company, was it not? A. Yes, that is right.

Q. I show you a letter of July 2, 1920, written by the McGraw-Hill Company, Inc., to the Irving Iron Works, attention of Mr. W. H. Lown; is that the letter you received in that connection? A. Yes, sir; that is the letter I received with several more. There were various letters from these people on the subject.

Q. Isn't it a fact that the list which you sent contained only twenty-one installations, and is the list which I now show to you? A. No, sir; this is not the list that you speak of.

Mr. Kraetzer: May we have that list marked for identification?

Mr. Egner: I will have it all marked.

Q. Then when the McGraw-Hill Company say in this letter of July 2, "Of the twenty-one concerns which you listed, six have already refused permission to take photographs, due to long standing rule," were they in error? A. No, that is correct what they said.

Q. So you on that occasion had only sent a list of twenty-one concerns? A. No, sir; that is not right.

Q. Had you actually listed 500, as you testified? A. There were many such lists as this which McNichol had.

The Court: Making an aggregate of about 500?

The Witness: Yes.

Q. Was there one list or a lot of separate lists aggregating 500? A. There was one list on many sheets of paper.

Q. Then you deny that the list which I show you here was the list to which you were referring?

Mr. Kraetzer: At what time?

A. I say it is a part of the list, but not the whole list.

The Court: If I understand him, he says these lists were made up on separate sheets, the aggregate of which was about 500. He started to say that Mr. McNichol sent these sheets from time to time. Is that right?

The Witness: Yes, sir.

Q. Then this page which I show you containing list of twenty-one concerns, in typewriting, was part of a very much larger list? A. Yes, sir.

Q. Containing 500 names? A. Yes.

Q. And that had been prepared by McNichol? A. Yes.

Q. I show you a lead pencil memorandum dated 4/29/20, is that in your handwriting? A. No, sir.

Q. Whose handwriting is it in? A. William Lupkirk, estimator at the plant.

Q. Having refreshed your recollection by this pa-

per, do you still say that the typewritten list which I have shown you was part of a large list of 500 names? A. Yes, sir; I do.

Q. By the typewritten list containing twenty-one names? A. Yes.

Q. Did you ever see this lead pencil memorandum before? A. I do not recall definitely, but I believe I did.

Q. And didn't you in fact have that list copied, in order to send it to the McGraw-Hill Company, with your letter? A. Yes, sir.

The Court: Which list, the twenty-one names?

Mr. Egner: Yes.

The Witness: That is right.

Q. So that the typewritten list which I now show you is a copy of a lead pencil list in Mr. Lupkirk's handwriting? A. Yes, sir.

Q. So that the typewritten list was not, in fact, a part of the larger list of five hundred names? A. It was in fact a part of a larger list.

Q. How do you reconcile that with your statement that it is a copy of Lupkirk's list of twenty-one names? A. Mr. McNichol took the big list and went to the production department and they had some exceptionally large installations of large square footage, and this was an off-shot from the list to be sent to the McGraw Company.

Q. So the fact is that this list of installations was taken from the larger list of customers? A. That is right.

Q. That is a fact? A. Yes.

Q. So that the large list of 500 names was not sent to the advertising people? A. That is not a fact; no, sir.

Q. Did you send both this typewritten list and the larger list of five hundred names to the advertising concern? A. Yes, it went gradually this way; the first one, I believe the most important installation, as I remember, and the rest went along gradually.

Q. Until the entire compilation was sent? A. Yes.

Mr. Egner: I ask to have these letters marked as one exhibit, consisting of a letter of July 2, from McGraw-Hill Company to the Irving Iron Works, attention of Mr. Lown; carbon copy of a letter of July 7, from Irving Iron Works, from Mr. Lown to the McGraw-Hill Company; typewritten list of installations and a lead pencil memorandum dated 4/29/20, signed "W. L."

Marked C66, C66a, C66b, C66c and C66d.

Q. Did you later, in the month of July, prepare this memorandum (indicating) which I now show you, for Mr. Bunker? A. Yes, sir.

Q. You had this second list prepared because of the fact that they couldn't get sufficient photographs out of the first list? A. Yes.

Q. You then, under date of July 31, sent the new list to the McGraw-Hill Company? A. Yes, sir; that is right.

Q. And is this typewritten list which I show you the list which accompanied your letter of July 31, 1920? A. Yes, sir.

Q. That contains how many names? A. About thirty-five.

Q. From what source was that list made? A. The same source.

Q. Also made from the larger list of five hundred customers? A. Yes.

Q. And made by whom? A. McNichol and Lupkirk, as I remember it; they checked back and forth over their customers the number of square feet of installation, and these things came out gradually, and McNichol sent them to the "Engineering News Record" to have them photographed.

Q. You sent them? A. No, at my direction.

Q. You signed the letter? A. I may have signed the letter.

Q. Isn't this lead pencil memorandum which I show you the original list prepared by Lupkirk, from which the typewritten list was made? A. That is right.

Q. So that on the second occasion, namely, on July 31, 1920, you didn't send the list of five hundred names to the McGraw-Hill Company?

The Court: Is there any use of pursuing this? He said they were sent in sections. He never sent the entire list at one time.

Q. You now say they were sent in sections? A. Yes.

Q. So they were sent in different sections? A. Yes, just like this.

Q. So that the files of the Irving Company, if they are complete, ought to show a series of other letters sending additional lists up to the number of five hundred names in all to the advertising agency? A. Yes, that is right.

Mr. Egner: I now ask to have this list marked—this series marked as one exhibit.

Marked Exhibit C67.

Q. Who was Mr. McNichol we are talking about? A. He was a stenographer for myself and Mr. Irving. My assistant in the sales department.

Q. He never sent any letters, did he? A. Yes, he did. He signed my name to a great many of them.

Q. But these particular letters were sent by you personally, were they not? Can you tell who signed the original letters? A. My initials are on here, which signifies that I signed them. Yes, I signed all these letters.

Q. And so all the Irving letters in this series which have just been marked Exhibit C67, were signed by you? A. Yes.

Q. Where were you in the early part of December, 1921? A. I don't remember; I think I was in New York.

Q. You remember having verified that petition in the patent matter on December 10, 1921? A. Yes.

Q. You were in New York at that time? A. Yes.

Q. You had been in New York prior to that sometime during September, had you not? A. Yes.

Q. Prior to verifying that petition what talks, if any, did you have with Mr. Bunker with respect to the Irving Company manufacturing this Type M grating? A. I don't remember any talks where that was discussed.

Q. Do you recall having met Mr. Kennard and Mr. Tarof at luncheon at White's? A. Yes, sir, I do.

Q. Do you remember a conversation at that time? A. Some of it.

Q. What, if anything, did you tell these gentlemen at that time about the agency force of the Kerlow Company, as to what agency the Kerlow Company would have? A. I don't remember any specific talk on agency, but I do recall that I told him we would have agents all over the country, and would employ a sales force.

Q. Did you tell them anything about your propos-

ing to see the agents of the Irving Company and give them this first opportunity that you mentioned? A. No, sir; I did not, sir, discuss that phase, although I might have said that I felt friendly toward some of our agents or salesmen, and was going to see them; that was my feeling at that time, and I told most everybody.

Q. Try to think whether you had any talks with Mr. Bunker prior to December 10 about what Mr. Tarof had told you with respect to the use of the Type M grating by the Irving Company? A. The first knowledge I had of that was one day Mr. Bunker came in the office and told me to go down and see Mr. M. Pritchard, and I went down to see Mr. Pritchard, and that was my first bit of information on that subject.

Q. Did Mr. Bunker tell you why you were to see Mr. Pritchard, for what? A. I don't recall whether he did or not; he probably did.

Q. Then it is a fact, isn't it, that Mr. Bunker told you everything that Tarof had said to him about what had occurred in the Irving plant? A. I would not say that definitely, but I will grant that Mr. Bunker did tell me, although I cannot remember it absolutely.

Q. So that when you testified on the last occasion that you had no information on that subject from anybody else but Mr. Pritchard, you were mistaken, were you not? A. Yes, I will grant that I was.

Q. In fact, you discussed that thing thoroughly with Mr. Bunker? A. No, I don't say that.

The Court: What do you say now; did you?

The Witness: I did not discuss it thoroughly.

Q. But he told you about it? A. Yes.

Q. Did you have any talk with Mr. Tarof about it? A. No, sir; I did not have any talk with Mr. Tarof until after Tarof came with us, and he came and told me—he said, "The thing that made me mad was that gang"—as he put it—"over there, that they were deliberately going out to steal your grating."

Q. Did Mr. Tarof ever say anything to you about your having taken the Irving agents? A. No, sir.

RE-DIRECT EXAMINATION by Mr. Huck:

Q. I show you Exhibit C12b, being the 1921 catalog issued by the Irving Iron Works Company, and I ask you whether you had anything to do with regard to arranging for the insertion of the various photographs contained in that catalog? A. Yes, I did.

Q. What, if anything, did you have to do with regard to those photographs or any part of them? A. Mr. Irving gave me certain photographs he wished to have inserted in the catalog and said I should see to it that that was done by Mr. Wightman.

Q. Can you tell whether or not all of the photographs, or any of the photographs contained in Exhibit 12b represent actual installations of Irving subway? You may answer that yes or no.

Q. Will you indicate so far as you are able to the Court, specifying by page number and whether the upper or lower picture on any page, which of those pictures represent instances where Irving subway grating is not actually installed as shown by the picture? A. On page 66, at the bottom, there is a picture of a car step, which is not an Irving car step, the step being drawn in so as to create that impression.

Q. Create what impression? A. That it is an Irving car step. On page 64 that also appeared.

Mr. Egner: I would like to know just what the fact is, whether the witness means to say that that is not an actual installation, or whether the type of step shown is not an Irving type of grating.

The Court: Whether it is a photograph of an actual installation. I understand him to say that this is not—the one he described is not an actual installation, but a drawing, to indicate that it had been done.

Q. Go on and indicate which is and is not an actual installation. A. On page 64, the loading platform, near the Hahne department store in Newark, is shown Irving subway grating is drawn in.

Mr. Egner: What indicates that that is Hahne's department store?

The Witness: I remember the photograph.

Mr. Kraetzer: If you look at the trolley car, you will see that it has a sign on Roseville and 14th Street on the sign.

The Witness: These loading platforms are solid concrete platforms, and there is no Irving subway grating in them. On the top of 64 another car step is shown, which is not an Irving car step.

Mr. Egner: Which is not an actual installation; it is an Irving step?

The Witness: It is Irving step as shown.

The Court: It is not an actual installation?

The Witness: Yes.

The Court: Keep that in your mind and use that expression.

The Witness: On the top of page 63, picture of a large grain elevator is shown, and Irving subway grating is drawn in.

The Court: Is it an actual installation?
The Witness: It is not an actual installation.

Q. I show you a picture and ask you whether you at any time saw a picture similar to that? A. Yes, I did.

Q. And has that picture which I now show you any connection with the particular picture which you have indicated on page 63? A. Yes, that is the same installation as it really is showing straight bar grating, and in the Irving catalog it is shown as Irving subway grating.

Mr. Egner: I would like to have this particular picture marked in evidence, being in the catalog of Ford, Bacon & Davis, dated September, 1917, engineers, and is headed "Recent Construction Work, Public Grain Elevator, New Orleans."

Marked Exhibit C61.

Q. Continue. A. On page 55 are shown two pictures which are not installations of Irving subway grating; at the bottom of page 51 there is a picture of a paint spray pit, which was originally a straight bar grating, and which is not an actual installation. On page 50, at the top of the page, there is another picture, which is not an actual installation. On page 45 there is another picture of a stock room, which is not an actual installation. Page 27, there is another picture, which is not an actual installation. On the top of page 24 is a picture of a loading platform, which is not an actual installation. On page 64, at the bottom is another picture, which is not an actual installation.

Q. Did you ever at any time discuss with Mr. Irv-

ing the question of the sales policy of the Irving Iron Works Company at or after the time that you came in the employ of the Irving Company? A. Yes, sir.

Q. What, if anything, did Mr. Irving say with regard to the sales policy of the company, with particular respect to its attitude toward competitors?

Mr. Egner: Is this re-direct?

The Court: I will allow it.

A. Mr. Irving continually preached the policy of not recognizing straight bar and plate manufacturers as competitors.

Q. (Last question repeated.) What did he say to you, if anything, with regard to what attitude the company should take in its sales manuals, etc., with regard to competitors? A. He told me not to recognize competition in any shape or form, as he did not consider the articles then on the market as truly competitive.

Q. You have been shown various extracts from certain sales bulletins, which you have said were prepared for you and issued to the salesmen of the Irving Iron Works Company. I don't recall the exact number of that exhibit—C57. Were the matters set forth and which were read to you, were they a matter of your own independent composition, or were they composed after consultation with any of the officers of the Irving Iron Works Company?

Mr. Egner: I object; he has already gone over that, and he said he prepared them.

The Court: I will receive it.

A. These were written and prepared only after consultation with Mr. Irving and Mr. Price.

Q. What can you say as to whether the finished

product was or was not seen by either Mr. Irving or Mr. Price before it was sent out to the various salesmen? A. It was seen absolutely. Mr. Price's direct orders to me were to let no sales instructions or sales letters or other matters going to agents and salesmen leave the plant until he had looked them over fully.

Continuation of testimony in the above-entitled cause before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Monday, September 24, 1923, at 10 A. M.

Present: Counsel as before stated.

Mr. Kraetzer: I will read into the record certain questions and answers that were put to Mr. Irving, who your Honor will remember is the president of the complainant, in the patent proceeding had over in New York.

The Court: Since the last hearing?

Mr. Kraetzer: Either since or before the last hearing, but I consider them in the nature of matters that I shall want to comment on as offering possible contradictions to other parts of the testimony.

The Court: Any objection?

Mr. Egner: I suppose, your Honor, that I had better object as I hear what they are.

The Court: I take it, it is more as a basis for contradiction than anything else.

Mr. Kraetzer: Substantially so.

Mr. Egner: I don't want to object to it.

Mr. Kraetzer: The testimony that I am reading from is the testimony given in the interference proceeding in the Patent Office in this case, entitled Price v. Lown.

The testimony is that of MR. IRVING given on direct-examination, page 499:

"Q11. At the time Mr. Price showed you this sketch did he say anything about the design of the grating therein shown which you can now remember? A. Yes.

"Q12. What was it that he said, that you remember? A. He asked me if in my opinion that design would offer talking points in competition with the egg crate type of grating where the angles were all ninety degrees, and yet present a grating with somewhat the features of our standard types of grating.

"Q13. What reply or comment, if any, did you make on this at that time that you now remember? A. I commented favorably on the grating as to its ornamental design, but I told him that I didn't think it would take well with the class of trade that we had at that time. That our customers and prospective customers were largely engineers, plant managers and so forth, to whom the ornateness of this design would have little effect; that I did not believe that any engineer would prefer it to our standard types because in this design the bracing bar or truss member was already buckled whereas in our design it was straight as a truss member should be. I said that if and when we got to doing considerable work with architects or others of an artistic nature it might be well to put this out as a new number.

* * * * * *

"Q64. Did you advertise grating like Exhibit F or show it in your catalogue prior to 1922? A. No, sir.

"Q65. Why did you not? A. Because that particular grating, as I think I said before, is one that I did not believe would take with engineers, and our efforts to market it with engineers during the past year have proved my contention was right. It is, however, a very pretty grating; I always liked it for its ornateness and it is one that architects who invariably prefer curves to straight lines, would take to, and for several years we have been trying and are yet trying to work up a business with architects where I think that grating could be used in considerable quantities. We have offered this grating as an alternate during the past years wherever we have sold our standard types and while the engineer at first glance liked it on account of its look, upon analysis, he finds out its structural weaknesses and its dirt collecting defect. We have only made during the past years about four sales of this Type M and one of them was for a door mat at the Palace of the President of Haiti where the engineering features were, of course, not considered.

* * * * * *

"XQ126. When did you first commence to make your present type of 'subway' grating? A. I believe it was about 1910 or '11."

Mr. Kraetzer: The testimony I have read before was given on about November 15, 1922.

"XQ158. That is what your answer to 156 inferred? A. That would not be my inference from my answer to 156. I cannot remember at this time

whether the matters of which you speak and which do not to me seem relevant in this interference suit, made such impression on me or not. It is rather that all of it was in the regular run of business and did not produce a lasting impression particularly as I said above our business up to November, 1921, ran along quite satisfactorily."

Mr. Kraetzer: The dates when the active procedure in this case on the part of the defendant started, that is, when the agents began to resign, was in about November, 1921.

Mr. Egner: October, 1921.

Mr. Kraetzer (reading):

"XQ206. (Referring to the type of flooring in issue in the patent proceeding and the type manufactured by the Irving Subway Company.) These floorings take the place of the old-fashioned plank floors in some of the plants, that is, these floors are made under present practice where formerly planks would have been used, is that right? A. These floors function, so far as walking, working and wheeling is concerned, quite the same as any solid floor, and if there is a decided advantage in the floor being open the subway floor might be used in place of planks or any other solid form of flooring.

* * * * * *

(Page 562):

"XQ272. Do you mean to infer that the conspiracy started before Mr. Lown came with the company? A. I mean to infer that the arch conspirator was not Mr. Lown at all but Herbert H. Bunker, and that almost from the time he entered our employ he under-

took in every way possible to undermine the Irving Iron Works Company; I mean that my investigations have proven to me that as far back as 1913 or 1914, that he undertook to poison every single man in an executive capacity in that plant that he could possibly poison, and that he succeeded well in so doing. I do not mean that this particular scheme, plan or conspiracy in all its details had been worked out by him at that time, but that he was only waiting for an opportunity when he could find a man or men whom he could effect a partnership with to effectuate some scheme to put our concern 'on the rocks' and capture the business for his own ends; that he found such a man in Walter H. Lown; that he practiced sabotage to the extent that a very short time after his influence was made null and void the production in that plant increased until now the production per unit of men is one hundred per cent and more greater than it was when his influence was exerted there, and this without the addition of any improved machinery and under the same general methods that were pursued then."

Mr. Kraetzer: I read from the testimony of Mr. Irving given on June 20, 1923 (page 708):

"Q15. Mr. Bunker has testified in answer to RDQ263 and 264 that you sent anonymous letters in regard to him and the Kerlow Company to various persons and that you admitted this fact under cross-examination in the suit in the Chancery Court of New Jersey now pending between your company and the Kerlow Company. What have you to say about this? A. That is absolutely false. I never sent an anonymous letter to anybody in my life. What he refers to probably is a clipping from a newspaper

in regard to the restraining order under which the Kerlow Company are now working. Upon advice of counsel I secured a number of these clippings and sent them to everybody I could think of who might be interested financially or in a business way in the Kerlow Company. Mr. Bunker always represented his mother-in-law as a very wealthy woman, and one of these clippings was sent to her and came into his hands. I sent the same clippings to all the Irving agents whom the Kerlow Company had appropriated, and to numerous others. I believe in all I sent out about 50 of these newspaper clippings."

The clippings referred to have been marked in evidence in this case in an envelope. We present the one which happened to be sent to Mrs. McCauley, Mr. Bunker's mother-in-law.

I should like to offer in evidence this post card purporting to have been sent out by the complainant company, the Irving Iron Works Company.

Mr. Egner: It does not appear when it was sent out.

Marked Exhibit D67.

Mr. Kraetzer: It is a post card bearing the Type M grating which is in litigation here and in the Patent Office, and this statement underneath: "Type not often used; fine for window guards; more ornate, less practical; truss element weakened. Types G and E preferable."

The Court: It is that comment that you desire to call attention to in the exhibit, or are there other features of it as well.

Mr. Kraetzer: The only other features are

the names "Irving Subway" at the top and "Irving Iron Works" at the bottom and "Truss." There is no question but what it was sent by the Irving Iron Works.

Mr. Egner: We sent it out.

HAROLD G. SCARTH, sworn for defendant:

Direct-examination by Mr. Kraetzer:

Q. Mr. Scarth, where do you reside? A. 1918 Lamoth Avenue, Detroit, Michigan.

Q. You have a technical education, have you? A. Yes, sir.

Q. Will you state briefly what your technical education has been? A. I have a diploma of Bachelor of Science, Mechanical Engineering, from the University of Leeds, in England.

Q. What was your connection before you went with the Irving Iron Works Company? Will you state what your connections were, briefly? A. I was associated with Mr. Lee Skillman, who was previously the agent for the Irving Iron Works Company.

Q. Take us further back, before you went even with Mr. Skillman. A. I was with the Ford Motor Company.

Q. How long were you with them? A. I was with them about three and a half or four years.

Q. Prior to that what was your connection? A. With the Packard Motor Car Company.

Q. How long were you with them? A. I was with them twice. The last time that I was with them, I went there just to finish up on the design of what was then known as the Packard Aviation Motor, which was afterwards made into Liberty motors.

Q. How long were you with them? A. I was with them a matter of eleven or twelve months.

Q. You said you were associated with Mr. Skillman; he was the agent of the Irving Iron Works Company at Detroit? A. Yes.

The Court: And in what year were you associated with him?

The Witness: 1921.

Q. Can you tell us approximately when you started with him in 1921? A. I beg your pardon; it wasn't 1921; I started about March, 1920.

Q. What was your connection with Mr. Skillman at that time? A. I was then working for him as a salesman, carrying an account of my own as well.

Q. You were not the agent of the Irving Iron Works Company at that time? A. No, sir.

Q. When did you become the agent of the Irving Iron Works Company? A. May of the same year.

The Court: 1920?

The Witness: I am confused somewhat whether it was May, 1920, or 1921, I don't know—is it material?

Q. If you please, I will show you a letter marked Exhibit D5 for identification, which may serve to refresh your recollection. A. It was 1921.

Q. And thereafter did you continue to work as agent for the Irving Iron Works Company until you left them? A. Yes, sir, I did.

Q. You continued to act as the official agent until 1921? A. Yes.

The Court: The agency was in Detroit?

The Witness: Yes, in Detroit, in the Detroit office.

Q. I notice that the date of the Exhibit D5 for identification is May 24, 1921, and with the Court's permission, I would like to read this, because I am going to offer it in evidence.

The Court: Let it go in now, and let it keep the same number.

Marked Exhibit D5.

(Letterhead of Irving Iron Works Co.)

May 24, 1921.

Mr. Harold Scarth,
401 Washington Arcade,
Detroit, Mich.

My dear Mr. Scarth:

Mr. Lown told you why I was unable to go to Detroit when he did, but I feel that he has handled the matter quite as well as I could and I am delighted that you were available for the job. I had had a letter from Mr. Bambrook in whose judgment I have implicit confidence, and when Lown told me what he had done and started to name your qualifications, I exclaimed that you needed none other than Bambrook's. It was, however, fortunate that you knew something about the workings of the office. The apparent loss of the Ford job was quite a blow. Had our agent there been other than a liar it never would have happened, as anyone of us here could have gone out and saved the day if Skillman had not lulled us into a feeling of security. I understand, however, that there is a slight possibility of our getting it yet

with you on the ground. I understand that it is not only the miserable "Egg Crate," as she is commonly known, our Type H, page 56, that is contracted for, but the putrid "Egg Crate," our Type I, same page. Please open our catalog and have a look. Type I is nothing less than straight bar grating, except that the separators are just a little closer together than usual. There is just as much chance of slipping on this as there is on straight bar. When one slips his feet describe an arc and seven inches to start on is quite as good as a mile for that purpose. The example of a banana peel is a good practical homely one; it only needs to be about four or five inches long. I am sure you see the point. Type I is just as uncomfortable to stand on as straight bar grating for so far as the sole of one's foot is concerned there is just as much unsupported space only in the case of straight bar it will probably be standing on some 3/8" surfaces whereas in this case it would be on 3/16th or 1/8" surfaces, with corresponding reaction.

As to this dovetail patent that these makers of egg crate have so much to say about, that doesn't amount to a hill of beans. To begin with, in actual practice I don't believe it is possible for them to make the crossbars flow into the dovetail. These crossbars are open-hearth commercial steel which is indefinitely harder than anything like rivets which do flow under pressure, and furthermore these people generally have their gratings made up in a shop that is not outfitted with any tremendous presses under which they can be put, and the individual work necessary to swedge each individual intersection would be quite out of commercial bounds. Besides what good does it all do anyway? The truss element is entirely lacking and in case of any concentrated load they would pull out

even as they were put in. I am expecting you to mull over the above and pass it along in your own good way with whatever other additional bad features, and there are hundreds of them, come to your mind. The egg crate, Type H, is not so bad as straight bars but most everything can be said about it that I have said about Type I. We have tried egg crate and honey comb and they are an improvement on straight bars to be sure, but are only one chapter in the scheme of evolution which wound up with SUBWAY. We have it in the catalog believing that all that is necessary for a good engineer to condemn it is to see it. Taking it by large I think it is a good plan. I will admit it didn't seem to work in this case of Ford's, but that was probably because Mr. Turner did not have it shown to him.

Now as to general policy, I do not believe in knocking the competitor; that doesn't mean that I wouldn't like to, but it does not seem to be good business. I want you to know something about these people, however, and will say that there are ways to get things before people without apparently knocking. Evidently you will notice that nobody around here, if they do as ordered, ever mention the personal name, rather say the people who make egg crate, or something of that sort. Their catalog shows a shop purporting to be their own which they have not. They do all kinds of work; centering, water cooling plants, coal handling, tank work and anything else, always as brokers, of course. They cannot give the work of this sort the attention nor can they give the service that they would if they specialized on one thing as we do. Their catalogue is as close as they dare to a copy of ours and the one that I have before me (although I am told by Lown that he saw a new one

out there where they have changed it) gives safe-load tables showing 50% better than ours when a baby would know that this could not be. We have known several cases where, following their usual practice of dogging us rather than getting out and spending money advertising the idea, the discovery of these fake safe-loads has caused them the loss forever of the friendship of several very big engineers, who took it for granted that no honorable concern would think of putting out lying figures and who followed them to the extent of saying on their drawings, "Use Egg Crate 1 1/4" or IRVING SUBWAY 1 1/2"." When this was called to their attention and safeload tables were compared, they said "Good Night!" to the egg crate fellows. It would be an awful good thing if you could lay your hands on one of these old catalogues. We have only one here. If you can get two, I would like to have you send me one. This concern is a sharp practice bunch; straight business doesn't appeal to them and you must keep your eyes open. Frankly and truthfully, however, this is the first time we have ever had them put over anything that amounted to much. In fact before this I would have said that so far as competition with us was concerned we have practically never heard of them. Reviewing the above, I see that I have rather usurped Lown's offices where I only meant to tell you what I thought of our mutual friend Bambrook, but I imagine it will do no harm and if you manage to stir Mr. Turner up one way or the other over this matter to the point of cancelling and giving you the order the drinks are on me.

Cordially yours,
IRVING IRON WORKS COMPANY,
WALTER E. IRVING,
President.

Q. You started in with your official connection with the Irving Iron Works Company about May 21, 1921? A. Yes.

Q. And your duties were to go out and sell the goods of the Irving Iron Works Company? A. I accepted the agency for the Irving Iron Works Company, which gave me the privilege of selling their gratings, and for the sales that I made I was to receive ten per cent commission. I didn't have any duties; it was an agreement whereby I was to receive a remuneration of ten per cent.

Q. That is the work that you went out to do? A. That is, I was making my living doing that.

Q. Can you tell us briefly what the result of your activities were so far as bookings, etc., are concerned?

The Court: How long did you continue to represent the Irving Iron Works in such agency?

The Witness: From May until November.

Q. The same year? A. Yes.

Q. What time in November, do you recall? A. No, I don't remember the date of my resignation.

Mr. Egner: The resignation of Mr. Scarth is an exhibit, and it bears date November 15.

The Court: Does that accord with your recollection?

The Witness: Yes.

Q. During the period of your connection with the Irving Iron Works Company can you tell us approximately what bookings you made; how much they amounted to? A. Approximately $16,000.

Q. And during that period of time, from May until November, 1921, how would you say that $16,000 of

bookings was made; did it occur all in the first month or was it scattered? A. No, it was fairly evenly distributed.

The Court: On an average so much a month?

The Witness: Some months it might have been three or four thousand dollars, and some months it may only have been a thousand dollars.

Mr. Kraetzer: Have we any agreement with Mr. Scarth in evidence?

Mr. Egner: Yes, we had the original agreement in evidence, Exhibit C13b.

Q. What happened with regard to commissions that were to be paid you during the time that you were acting as agent? A. The commissions were in arrears and had been in arrears the greater part of the time that I had been representing them.

Q. Did you receive any payments at all? A. Yes, sir.

Q. Can you give us any idea of how the payments compared with the amounts that were due? A. I would have to refer to my accounts, to do it; I don't carry those things in my head.

The Court: Have you your accounts here?

The Witness: Yes.

The Court: What do you find to be the situation?

Mr. Egner: We have the statement of the account of every agent here, and for convenience, to save his records, if they are the same, I will offer our copy. We were going to show it, anyway, and we have it here.

Mr. Kraetzer: Subject to such correction as

we may find as to any errors there may be, I offer in evidence a summary of the Scarth account.

Marked Exhibit D68.

The Court: This is offered by both sides as the answer of the witness.

Q. This shows total commissions earned during July, $421.42; is that right? A. Yes.

Q. And does it show any payments there? A. It shows $68.55 paid, with a balance due of $352.87.

Q. Then during the month of August it shows $553.42 earned?

Mr. Egner: Let me interrupt you.

The Court: Does that include the balance carried from the preceding month?

Mr. Egner: Yes.

A. $352.87 was due at the end of July.

Q. What was the current commission for August? A. $132 was the current commission for August.

The Court: Was it paid in full or not?

Mr. Egner: Your Honor referred to the fact that $132 had been earned during that month.

The Court: Was he paid in full?

Mr. Egner: He was paid $200, so he got something on account of the balance due him from July.

Q. During September $12.70 was the commissions earned; is that right? A. Yes.

Q. You were paid $284.87, leaving a balance of $12.70? A. Yes.

Mr. Kraetzer: In October $651.65 commissions were earned, against which payment was made $12.70, commissions paid, leaving a balance of $650.59. During November $241.32 was earned, against which there was a payment of $650.59, leaving a balance of $241.32, and during December—

The Court: He wasn't there in December.

Mr. Kraetzer: Some commissions accrued during that time, $47.91, and he was paid right up to date in December.

The Witness: I was not paid up to date in December; there is still a balance owing to me.

The Court: A balance of how much is due you?

The Witness: That I cannot tell, because the Irving Iron Works Company have not given me the final figures on what business was done, nor how much money was paid.

Q. Have you any idea about what it amounts to? A. No.

Q. Is it a large or small sum? A. As near as I could say it would be probably $150.

Mr. Egner: Isn't it shown on your exhibit?

The Witness: No, it is not on mine.

The Court: Do you know what he refers to when he speaks about the exhibit?

The Witness: Yes.

The Court: You have no exhibit here; when counsel refers to the exhibit, he is referring to the blue paper which is marked here, and not what you have in your portfolio.

Q. Referring to Exhibit D68, which is before you now, does that show the situation that you say exists

with regard to your account, of showing balance, you say, of approximately $150 still due you? A. Before I could answer that question, I would have to check the figures with my account for December.

Q. I direct your attention to the figure shown as balance due of $47.91 on your statement of account; is that in accordance with your idea of the balance due? A. No, sir.

The Court: You think it is greater?

The Witness: Yes.

Q. In the course of your work there while you acted as agent for the Irving Iron Works Company, did you handle any other lines at that time? A. Yes, sir.

The Court: Not for the Irving Company?

The Witness: No, sir, for the Irving Forge Company.

Q. The W. Irving Forge? A. Yes.

Q. What was that line which you handled? A. That was handforged ornamental work.

Q. When did you start to do that work; when did you start representing the W. Irving Forge? A. About July.

Q. Of 1921? A. Yes.

Q. And with whom did you make your arrangements with regard to the W. Irving Forge? A. I made them through the mail, with the Irving Iron Works Company's own office, and also W. Irving Forge Company, to a Mr. Jerome.

The Court: Did you continue your relation representing the Forge Company up to November also, or after?

The Witness: After.

The Court: Did you sever your relation in November with the Forge Company at the same time you did with the Iron Works?

The Witness: It was severed at that time, yes, sir.

Q. Sometime in November did you see Mr. Lown? A. Yes, sir.

Q. And where was that? A. In my office, 401 Washington Arcade, Detroit.

Q. You had a talk with him at that time? A. Yes.

Q. Will you state what the conversation was? Tell us what was said by both of you. A. When I got down to the office in the morning Mr. Lown was waiting for me in the office. I was extremely pleased to see him, and told him so.

Mr. Kraetzer: If I may interrupt you at this time, even in the face of no objection, I would suggest something about your testimony. Statements like that. "extremely pleased," ordinarily wouldn't be admitted. Confine yourself to "I said so and so and he said so and so to me."

A. (Continuing.) I said, "Mr. Lown, I am very pleased to see you." He said, "Why?" I said, "Because I am not at all satisfied with the way the Irving Iron Works Company is handling my account." He said, "What is the matter?" I said, "The account is in arrears; my correspondence has not been taken care of properly." Then Mr. Lown showed me a cut, a card showing a photograph or a reproduction of a photograph of a small piece of grating, which I now know to be the Kerlow grating. I asked him where it was being made and who was handling it.

and he told me that he was manufacturing the grating and that he was in Detroit to place an agency. I then asked him if I resigned my agency with the Irving Iron Works Company, would I be eligible for application or for appointment with the Kerlow Steel Flooring Company. He said, "You have not yet resigned." Whereupon, I walked out into the outer office and dictated a letter to my stenographer resigning.

Mr. Kraetzer: Have you that letter?

Mr. Egner: Yes.

Q. I show you Exhibit C17 and ask you if that is the letter that you wrote at that time? A. It is the letter.

The Court: What is the date of it?

Mr. Kraetzer: November 15, 1921.

The Court: And received when?

Mr. Kraetzer: And received by the Irving, according to their stamp, on November 17, 1921.

Q. Go ahead; what happened after that with regard to your conversation with Mr. Lown? A. After the letter had been dictated and signed and mailed—at that point, after I had done this, we went out to lunch and had lunch together. After lunch I asked him if he would give me the agency, and he didn't directly answer my question as to whether he would give me the agency or not, but he made a remark to the extent of what—"Well, we will see"; I took it for granted that it was—

The Court: Not what you took for granted. All we want to know is what was said between you.

Q. Was anything further said about that whether he would place you as an agent?

The Court: Or about anything else in regard to this subject.

A. I inquired into how far they had gone with the manufacture of their material, and they said that it was more or less in the beginner's stage, but that they were in a position to deliver orders and that they were getting a factory at that time in Long Island City to make the stuff for them, but that they would eventually, in the near future, have their own plant.

Q. Anything further said? A. Not that I remember.

Examination by the Court:

Q. Before you parted had you the promise of the agency? A. He said that he would see and that he would confirm as to the findings.

Q. Did you know or ask what he was paying his agents, what commission? A. Yes, sir.

Q. When did you ask him that, before or after lunch? A. After lunch.

Q. Why did you apply for the agency in a business in which you didn't know what the rate of commission was? A. Because I was so discouraged with the way the Irving Company were handling my account.

The Court: What is the balance shown there on that exhibit to be due the witness in November?

Mr. Egner: At the end of November the balance due him on account of $1,217 which had been earned, was $241.

Q. What was the balance due in October? A. In October the balance was $650.

Further examination by Mr. Kraetzer:

Q. Did you after that receive this letter of November 17, 1921, marked Exhibit D6 for identification? A. Yes.

Mr. Kraetzer: I offer this letter in evidence, from Walter E. Irving, president of the Irving Iron Works Company.

Marked Exhibit D6.

Nov. 17, 1921.

Mr. Harold Scarth,
401 Washington Arcade,
Detroit, Mich.

My dear Mr. Scarth:

Your resignation of Nov. 15th is at hand. You do not mention the date upon which you wish it to take effect. No doubt you can arrange that satisfactorily with Mr. Price who is on his way there anyhow from Chicago.

I wish you had waited until he had seen you. To say that I am surprised is putting it mildly. I had a lot of confidence in you but no more than in one other agent who also resigned. Of the rest of them I never expected anything better. You seemed old for your age and I didn't think you would fall for all that has evidently been said. That you would tie up to a concern one partner of which has been all these months getting up the business while the

other partner remained here until the final coup is beyond my understanding. Perhaps I have some old-fashioned ideals, and perhaps I am entirely wrong, but I cannot reconcile this action of yours, and of one other, with what I would have expected of you. That you or anyone else should change position at will is unquestioned but the secret evasion, mental reservation, etc., directed against one who has been as frank, open and honorable as both Mr. Price and I have been, passes my understanding.

I believe even now that you and I could engage in a talk that, while it would not alter our present business relations, would result in much better understanding of this whole proposition on both sides, and the latter is what I am more deeply concerned in than the former. If Lown & Co. took the whole darn works I have no worry about its hurting us much. This is a big country and there is room for all and there are good men aplenty but, by jingoes, there are other things about this conspiracy, particularly the misplaced confidence, and, in certain cases, the ingratitude, that there is no denying hurts.

I wish you would hand this letter to Mr. Price to explain more fully than I can in writing, and talk with him as frankly and fully as I believe you would with me. I am sorry I cannot see you personally at this time.

Yours sincerely,
IRVING IRON WORKS CO.
WALTER E. IRVING, President.

WEI:RJB

Q. Did you see Mr. Price at about that time? A. Yes.

Q. He called to see you at Detroit? A. No, I met him down at the Michigan Central Depot.

Q. Did you have a talk with him? A. Yes.

Q. What was that talk, please?

The Court: How long after the receipt of this letter was it?

The Witness: About a week after.

The Court: What was the conversation?

The Witness: Mr. Price told me that he had come from Chicago or some other place, taking care of an agency which had become vacant, and he was much surprised when I told him that my resignation had gone in—that he was surprised to receive my telegram that I had resigned, and he tried to persuade me that I had made a mistake.

The Court: Tell me what he said, and I will determine whether he tried to persuade you or not. Tell me all that you said about it there as fully as you can recollect it.

The Witness: Mr. Price said to me, "You are making a mistake to go with this new company, and they have not treated Mr. Irving and the Irving Iron Works Company fairly." I told Mr. Price that I had fully made up my mind that my resignation would stand with the Irving Iron Works Company; that I would not consider going back to them, and that if I did not represent the Kerlow Steel Flooring Company, that I would not represent any grating manufactured at all.

The Court: Did you have any further conversation with him on the subject?

The Witness: Yes, I asked Mr. Price to stay in

Detroit, and I said to him, "If you care to stay over, I will drive you down to your hotel and will give you more time tomorrow morning. I cannot give you after lunch—I can take care of you in the morning —because Mr. Donnelly, of the Donnelly Heating System Corporation, whose account I also carry, is in Detroit at this time."

The Court: At the time you resigned had you done any business for the Irving Forge Works?

The Witness: Only one small order.

The Court: Did they owe you any commission on that?

The Witness: No, they did not.

The Court: There was no dissatisfaction, then, between you and the Irving people on account of your relations or work for the Forge Company?

The Witness: No, sir.

The Court: Whatever dissatisfaction you entertained was due to your work in the Irving Iron Works Company?

The Witness: My dissatisfaction was with the Irving Iron Works on account of the commissions being paid later than they should be paid.

Q. Did you thereafter send a letter, which I show you—being a copy—dated November 19, 1921, to Mr. Irving? A. I did.

Mr. Kraetzer: You probably have the original.

Mr. Egner: I didn't seem to find it, but there is a copy annexed to your affidavit, and there is no objection to the use of a copy.

Mr. Kraetzer: I ask that this be marked as an exhibit.

Marked Exhibit D69.

Detroit, Mich., Nov. 19, 1921.

Mr. W. E. Irving,
Irving Iron Works Co.,
Long Island City, N. Y.

My dear Mr. Irving:

Yesterday evening I met Mr. Price and had quite a long talk with him, but unfortunately our dispositions did not tend to aid matters very much. I know that I was extremely tired myself, and suppose that Mr. Price was not as fresh as he might have been.

Unfortunately, yesterday I was tied up all day with the Sales Manager of the Donnelly Heating System Co., and could not get away to meet Mr. Price the moment he arrived in town, although I had made arrangements to meet him on the train which he intended to come in on. But, he took an earlier train and phoned me that he was in town, and this left him with about two hours on his hands.

Our conversation was extremely unsatisfactory to both of us, for we seemed to be talking at cross purposes from the start. I tried to explain to Mr. Price that I did not think that the Irving Iron Works Co. had taken care of me in the manner that they should have. Probably, I spoke with more feeling than I should have done, and when I saw that our conversation was not going to get us anywhere; I offered to take Mr. Price to his hotel which he declined, saying that he did not know whether he would stay over in Detroit or not. But upon leaving him I told him that I should be in the office at 2:00 P. M. today, this being the time that Mr. Donnelly would leave, and that if he wished to get in touch with me I should be glad to see him. But up to the present time, I have not heard from him.

Mr. Irving, I have done all in my power to market your goods successfully and become one of the family, which I had told you I wish to be considered, but on the other hand, have I been treated as such. By you, Sir, "Yes" but by the rest of the present family, I do not think so. And unfortunately it is impossible for you to attend to details for what are important matters in my functioning; to you are details. For instance the answering of correspondence, crediting of sales, and the paying of commissions. Incidentally, will you please see that this last item is brought up to date, for I have obligations to meet.

In justice to Mr. Lown, I would like you to know, that he did not ask me to take the agency for his product in this territory, but that the agency was only given me upon my request.

When a men starts in business on his own account he is bucking the world, not just his former employer and from what I know of Mr. Lown, the missionary work that he intends to do will create a demand for an open metallic flooring in excess of the orders he hopes to book.

Yours sincerely,

HS:S

Q. Had you seen Mr. Price before you wrote that letter? A. Yes, I had seen Mr. Price before I wrote this letter.

Q. From this letter can you approximately tell us, with a closer approximation, when it was that you saw Mr. Price? A. It was on the evening of the eighteenth of November, 1921.

Examination by the Court:

Q. Had you obtained the agency from Lown at that time with the Kerlow Company? A. Verbally.

Q. When did you obtain the agency? A. Not directly, verbally, sir.

Q. I don't care how it was done, when did you obtain the agency? You say under date of November 19th you had the agency. As I have your testimony in mind, you stated that on your interview with Mr. Lown on the fifteenth he gave you no satisfaction and didn't commit himself, but left you with the remark that "I will see whether I will give you the agency or not," or "I will see." I am trying to find out, between the fifteenth and nineteenth, when did you learn definitely from Lown that you were the agent of the company? A. While he was in Detroit.

Q. When was that? A. That was on the fifteenth, the same day as my resignation—on the fifteenth day of November.

Q. You have left your testimony, so far as I recall it, that when you and Mr. Lown parted, all the satisfaction he gave you with respect to your application for an agency in this company was "I will see"? A. Yes.

Q. Did you have anything more definite from him between the fifteenth and the nineteenth, when you wrote that letter? A. Nothing more than what I gathered from the way that Mr. Lown said, "We will see."

Q. Had you any other employment in sight or any other engagement in sight in case Lown did not give you the agency, when you severed your relations with the Irving Company? A. Yes, sir; I still had the agency of the Donnelly Heating System Company.

Q. Was that the only one? A. At that time, yes, sir.

FURTHER DIRECT-EXAMINATION by Mr. Kraetzer:

Q. Did you thereafter receive a letter, dated November 22, 1921, signed by Mr. Irving, now marked D7 for identification? A. Yes, sir.

Mr. Kraetzer: I will offer that letter, D7 for identification, in evidence.

Marked Exhibit D7.

Nov. 22, 1921.

Mr. Harold Scarth,
401 Washington Arcade,
Detroit, Mich.

Dear Mr. Scarth:

Replying to your favor of the 18th inst. I am sorry you and Mr. Price didn't have a more friendly meeting, the details of which he apprised me before your letter came.

It was, however, Mr. Price's understanding that you would take care of our interests for a short time, at least until we are able to place another man in your stead, and I regret that you did not, in your resignation, fix a date.

You understand of course that this whole business has been pulled off after the manner of a strike with some other actions injected which would be expected of no man of character, breeding or education. To say that it took us unawares is to state the truth and

naturally all of these agents quitting at the same time, their respective landlords in come cases throwing us out of their offices simultaneously, has resulted in our having to do some scurrying. It was, therefore, impossible for Mr. Price to stay over and he took the next train home. I expect he will be out there next week. In the meantime I feel sure that with what I have told you and with what you have learned from Mr. Price, our Detroit representation being in no other hands but yours, we will at least have fair play if nothing else.

I might add that yesterday, events transpired so that I felt it necessary to let Mr. Lown's appointee, Mr. Roope go. Naturally this may result in a little added confusion, particularly in the matter of crediting of sales, etc. I will, however, look into this matter today and send you the larger part of the commission due you, retaining the balance only until the equipment, and whatever you may have on consignment from the Forge, is turned over to us.

I wish for nothing more than to retain your good will and my impression of you which frankly has been most favorable anyway until, and I hope after we have had a good long talk, and I hope not to precipitate any arguments nor hard feelings by mentioning the following, but rather that these statements, coming from me, may be believed by you and perhaps put this Company in a more favorable light.

First, neither Mr. Price nor I saw the "insulting letter" written to you until after it was sent. I have not seen it yet. It was dictated entirely by Mr. Roope and Mr. Roope is one of the several you have been directly under who know exactly how business should be run to produce the best results.

Second, you will recall that I warned you that the

New Jersey State Library

Forge had no sales policy, no sales organization, that they made the nice things in the most expensive way, that their business was all direct and that trying to handle their product might be an impossibility. Later on, perhaps, they would evolve an agency policy but it didn't exist then. I attempted to discourage you not only on this account but because I didn't think that two accounts so dissimilar could do aught but result in confusion. I think I related my efforts in the early days to carry the two lines on the same trip and how I discarded the Forge stuff before I had gotten many miles away from New York.

If, after all is said and done, you feel unreconciled to us, our methods or our policies, may I ask you to please believe me when I say that we have always tried to be fair, honorable, upright and decent and if our ability is insufficient, please consider it our misfortune and not our fault.

Certain it is that we are in far better shape than when Mr. Lown was here, the carbuncle bursting itself loose finally from our system. A few incipient boils have been lanced and I believe that this Company's growth, always rapid, with the single exception of 1920 when Messrs. Lown and Bunker held full sway, will continue now more rapid than ever and I am sorry you figure on not being with us.

Remember me kindly to Mrs. Scarth.

Yours sincerely,

IRVING IRON WORKS CO.,

WALTER E. IRVING,

President.

WEI:RJB

P. S. I have before me now your summary of account, blueprint of which you also have and I have gone over the same with Mr. Brown. Will you please

get our copy and bear with me a minute. According to this the first balance due you was $352.87—this was in July when money was extremely tight when the effects of the losses of 1920 had not worn off and when the profits of 1921 were, tho there, hardly recognizable. We paid you $200 instead of $352.87. This left your credit for August $284.87 and on your next payment in September we gave you all of this. This left to your credit in September $12.70 which was paid in full in October. To your credit in October was $650.59. $300.00 of that we sent you last week and the balance was promised next week and accompanies this letter.

Frankly, but little of this is in accordance with your contract but "Hell's Bells" if you had the faith in the company that I know you did have the last time I saw you, you would not think it was all so bad. And never was an agent of the Irving Iron Works Company quarter as hard working as you whom we would not help out with substantial payments did they need it, tho nothing was due them, and if you don't believe this just ask Prince, Demorest or Sutthoff what we did in the early days of their association with this Company. My dear boy, you may not know it but a certain amount of poison has been injected into your system, knowingly and willfully, too. It can be done; I have had it done to me, but the older one gets, the more readily one can recognize the injector. There never was an agent, who, upon such short notice, impressed me as favorably as you with such an old head on young shoulders, unless perchance it was Prince. I still believe that at some future time you will come to realize that the advice of older men, men of established reputation, men upon whom you can put your finger in the same locality

for twenty-five years, men who have been successful. is far better, as a rule anyway, then from young men you do not know and whose only claim to fame is that they are "going to."

WEI.

Q. Did you thereafter write to Mr. Irving the letter dated November 21, 1921, a copy of which I show you? A. Yes, sir.

Mr. Kraetzer: I will ask to have it marked in evidence.

Marked Exhibit D70.

Detroit, Mich., Nov. 21, 1921.

Mr. Walter E. Irving,
Irving Iron Works Co.,
Long Island City, N. J.

Dear Sir:

Supplementary to my letter of the 19th inst., in answer to yours of the 17th regarding my resignation, I cannot see why an amicable agreement should not be made between us, and if you will let me know what you would like to have me do, I shall be pleased to hear from you. And I hasten to add that I am sorry that my actions have caused you displeasure.

Yours sincerely,

HS:S

The Court: What did you mean by that letter; were you willing to continue the agency of the Irving Company if you and Mr. Irving had reached an understanding, as you suggest in that letter?

The Witness: No, sir.

Q. What did you mean by that letter? A. I received a letter from Mr. Irving from Philadelphia, asking me to take care of any business or any inquiries that came in from the Irving Iron Works Company.

The Court: What is the date of the letter?

Mr. Kraetzer: This is the 21st.

The Court: Is there a letter from Mr. Irving from Philadelphia?

Mr. Kraetzer: The last one I have from Mr. Irving is written on the twentieth.

Mr. Egner: Written on the nineteenth. It incorrectly refers to his of the eighteenth, when it should be the nineteenth.

Mr. Kraetzer: The letter, his last word, was dated November 22, 1921, by Mr. Irving, and incorrectly refers to the eighteenth letter.

The Court: You are reading the one that crossed?

Mr. Kraetzer: Yes, and I haven't seen the letter from Philadelphia.

The Court: You say you received a letter from Mr. Irving in Philadelphia?

The Witness: I received a letter from Mr. Irving saying that when he was through with his business in Philadelphia, that he would come to Detroit and at that time appoint an agency.

Q. Did you receive this before you wrote the letter, a copy of which is now before you, Exhibit D70;

had you received the letter from Mr. Irving from Philadelphia before you wrote that letter of November 21, D70?

The Court: I am trying to find out what was in in your mind when you wrote that letter of November 21; it is apparently suggesting that relations might be continued or resumed between yourself and the Irving Company.

The Witness: My reference in this letter was to taking care of their business temporarily until they had selected an agent.

Q. Did you thereafter, after Exhibit D70, the letter dated November 21, written by you to Mr. Irving, which had been referred to by the Court, receive this letter dated November 26, 1921, marked Exhibit D8 for identification, from Mr. Irving? A. Yes, sir.

Mr. Kraetzer: I offer in evidence Exhibit D8 for identification.

Marked Exhibit D8.

November 26, 1921.

Mr. Harold Scarth,
401 Washington Arcade,
Detroit, Mich.

My dear Mr. Scarth:

I was about to mail the accompanying letter when yours of Nov. 21st, reading as follows, came in:

"Supplementary to my letter of the 19th—I cannot see why an amicable agreement should not be made between us and if you will let me know—"

What I would like to have you do is to realize that, having been shot from ambush and taken entirely unawares, conditions have been a little disconcerting and, not being world beaters—work as hard as we might, it has been quite impossible to get around and close up these gaps as quickly as we would like to. Realizing this, perhaps you will take care, I hope so anyway, of our interests in Detroit until the latter part of next week or the first of the following week, by which time I can surely get out there to put someone else on. We have, including those who have heard from you, over two hundred applicants. Alger sounds good, Fralick also and of course Sloane is on the job for the account by wire. But amongst the others there might be some exceptionally good men and I feel, particularly since this letter of Nov. 21st, and as I did after my first and only visit to you, that, while you cannot work as enthusiastically for our product, you certainly will not take any undue advantage of us during the time that circumstances forces us to delay in deciding upon a new appointee.

It would please me to receive these assurances at the Old Colony Club, Philadelphia, Pa., on Tuesday of next week.

Yours sincerely,
IRVING IRON WORKS CO.,
WALTER E. IRVING,
President.

WEI:RJB
Enclosure.

P. S. You will note that I am in the office on Saturday for the first time in about eighteen years, or as Lown once said, "There is many a tune in the old fiddle yet," and it won't be many months before you will hear the music outside the walls of the stadium. I wish you might be occupying a ringside seat.

W. E. I.

Q. With that letter, possibly your recollection has been refreshed as to the date and sequence of the other letters.

The Court: What I don't reconcile in this testimony is this: In your letter of the nineteenth to Mr. Irving, you told him that you had the agency of the Kerlow Works; in this letter of the twenty-first you tell him you do not see why an amicable agreement should not be made between you and him, or you and his company. How were you going to make an amicable agreement between the Irving Company and yourself, if you had already committed yourself to take the agency of the Kerlow Company? I don't quite reconcile that.

The Witness: In this way, that should an inquiry come in from the Irving Iron Works Company, I would turn that inquiry over to the Irving Iron Works Company and let them sell the job if they could. If any missionary work which I was doing, or anything like that, which was for Kerlow, after I got my agreement signed, and after I took over the thing in an active manner, then I would be a downright competitor, and compete for any order which I could hear about, but until Mr. Irving had appointed an agent, he would not consider me as a competitor in the open field. For instance, Smith, Hinchman and Grill, a firm of architects and engineers, had a job for the University of Michigan. At that time Mr. Calamour, one of the engineers there, called me up and asked me for information about Irving Iron Works material.

The Court: About their grating?

The Witness: Yes, and I told Mr. Calamour that I would not enter into any argument as to the merits of the grating, because I was not at that time in a

position to argue, explaining to him that I had already resigned my agency with the Irving Iron Works Company, but that I would give him all the information that I could with regard to the safeloads of the grating, and also the size of the standard panels and the size of the several treads, in order that their layout man may lay the grating out on his steel drawings.

The Court: Did you notify the Irving people at that time that this job was in the market possibly for them?

The Witness: They had been notified, yes, sir.

The Court: By you?

The Witness: Yes, sir.

Q. After November 26th did you send this letter to Mr. Irving, in answer to your letter of the 26th, the letter dated November 28, 1921? A. Yes, sir.

Mr. Kraetzer: I offer that in evidence.

Marked Exhibit D71.

Q. After November 28, 1921, did you see Mr. Irving? A. Yes, sir.

Q. About how long after? A. About three or four days.

Q. Where? A. In the Old Colony Club, in the Tuller Hotel at Detroit.

Q. Did you have a conversation with him at that time? A. Yes.

Q. Will you state what that conversation was? A. Mr. Irving proceeded to go through my accounts with me, and he told me at that time, "Your accounts have not been taken care of properly and you have not earned and made as much profit out of handling our account as what you should have done for the

amount of work that you have done. However, it happens to have been a very, very poor business year, and we would like you to retain the agency and reconsider your resignation," to which I told Mr. Irving that my mind was made up and that I could not handle the Irving Iron Works agency any longer, and that I would not reconsider selling their product to my clients. Mr. Irving invited me to come down to New York with him, saying that, "I will prove to you that you are going in with a company to handle their grating who are not worthy of doing business with, and that Mr. Lown has been away from the company for six months organizing and getting everything ready, and Mr. Bunker has stayed with us up until a month or so ago, faking sickness, but still upon the pay roll, and now they have pulled this business like a strike." I said to Mr. Irving, "If you can prove to me that Mr. Lown and Mr. Bunker have done anything which is unethical in business and which proves that they are not men of honor, I promise you that I will not handle any grating account whatsoever, because I cannot conscientiously recommend your grating, not after knowing that another grating of this type of Kerlow is available for my clients. I make it a business to sell only the best of engineering equipment." At that time I told Mr. Irving that I was in negotiation with the Claridge Fan Company of Kalamazoo to handle their account also, and that I would make it my business, and I felt reasonably sure I could make a good living out of just handling ventilating heating equipment, the Donnelly system being a heating system, and the Claridge Fan Company equipment being a ventilating system and that I felt I could make a good living out of selling heating and ventilating equipment, and that I would not be in a position where I had to sell grating, anyway.

The Court: Did you consider at that time that the Kerlow had the better style of grating?

The Witness: Yes.

Q. Did that influence you in severing your relations with the Irving and taking up with the Kerlow? A. Yes.

Q. What else, if anything, was said between you and Mr. Irving in that conversation? A. Mr. Irving then invited me out to lunch and asked me, saying, "If you will come down to New York with me as my guest, I will take you out and prove to you that Mr. Lown and Mr. Bunker are what I have said before." I then answered Mr. Irving that I did not think it right that I should come down to New York with him as his guest and that—I made up my mind that I would not do it. I called my wife up on the phone, to tell her that I would not be home for lunch—Mr. Irving invited us—invited her then downtown to eat with us. However, my wife prevailed upon us to come home to my house, to my home, to have dinner, and Mr. Irving at that time persuaded my wife that it would be all right for me to go down to New York, and I came down with him on the train that same night.

The Court: Why were you reluctant after having suggested to him in that conversation that if he could convince you that if Lown and Bunker were not acting honorably, or were acting unethically, as you termed it, that you would not have any relations with them, why didn't you take his offer, or why were you reluctant to take his word to come down to New York and investigate and have that demonstrated?

The Witness: I didn't think it right and proper that I should accept his hospitality to the extent of

having him paying my expenses, because at that time I couldn't afford to pay my expenses.

The Court: He wanted you to come down and let him demonstrate to you that these people were what he charged them with being?

The Witness: Yes.

Q. Was there any further conversation as you proceeded—you say you went down—on the trip to New York, or after you got here? A. The conversation which took place in the Pullman, while Mr. Irving was eating his breakfast; he again told me that Mr. Lown and Mr. Bunker had not treated him in a fair manner, saying that Mr. Lown had accepted his (Mr. Irving's) hospitality at his house and that he had quit him six months ago deliberately and with the idea of going into business as a competitor, and Mr. Bunker had stayed with him working all the time with him, until the coup, as I remember it—until the coup was ready to spring, and that they had pulled it off like a strike.

Q. What happened when you got to New York? A. Mr. Irving took me to his home in Connecticut and I spent the evening and night with him, and the next morning I came down to New York with Mr. Irving. Mr. Irving took me to Mr. Wightman's office to prove that Mr. Lown has been planning on starting the grating business while he was yet in Mr. Irving's employ. Mr. Wightman told me that Mr. Lown had been into his office to offer Mr. Wightman an account, an advertising account, but upon my question to Mr.—

Q. Did Mr. Wightman say when Mr. Lown had been in? A. Approximately six months prior to the date of my visit to his office. To my question as to "Did Mr. Lown show you what the product which he

wished you to advertise and hand the advertising agency for—did he show it to you?" Mr. Wightman admitted that he did not know.

The Court: What did he say?

The Witness: Mr. Wightman said, "I do not know what the product is which he wishes me to advertise."

Q. What else happened in New York? A. After leaving Mr. Wightman's office, Mr. Irving and myself parted on Broadway. I went over then to the office of the Donnelly Heating System Company, which is in New York, and spent some time with them going over some of my own business, and I went over to the Kerlow office.

Q. Did you see Mr. Irving again? A. Yes, sir.

Q. When? A. The next day, in the evening, I went over to tell Mr. Irving that I had made up my mind that the Kerlow people were doing business in a clean manner and that I didn't see where he had anything against them, that they had acted to him perfectly honorably.

Examination by the Court:

Q. While you were in New York did Mr. Irving attempt to give you any further demonstration of the dishonorable way he claimed Bunker and Lown had acted, or take you down to satisfy you? A. No, no demonstration.

Q. In any form; he took you down to satisfy you that they were acting unfairly? A. Yes.

Q. He took you to the advertising agency, to demonstrate that fact? A. Yes.

Q. Did he do anything else to show you— A. No, sir.

Q. Did he offer to show you in any other way

how they acted dishonorably? A. No, sir; he advised me to go over and see the plant where they were making the grating.

Q. Did you? A. No, sir.

Q. Why? A. I didn't think it was necessary; if they could make deliveries, that was all that was necessary. Whether the grating was made in a cellar or basement or parlor, as long as it was made properly, I was satisfied.

Q. What did he say when he told you to go and examine their plant? A. Mr. Irving said to me, "I advise you to look into the factory, what sort of a factory they have got, and see if it compares with what they say they have got."

Q. Was anything said to you by Mr. Irving about K. N. & K.? A. Yes, sir.

Q. What was said? A. Mr. Irving suggested that I might call upon the house of K. N. & K. to see what the financial status of the company was.

Q. Did he say anything about the connection of K. N. & K. with the company? A. No, not that I remember.

Q. Had you heard that there had been any connection with the Kerlow Company and this firm of bankers, from Mr. Lown? A. Yes, sir.

Q. And did you in fact go to K. N. & K.? A. Yes.

Q. Mr. Irving was not with you at the time? A. No, sir.

Q. In the course of the conversations that you have described, which you have told us about with Mr. Price—both with Mr. Price and Mr. Irving, did either of them at any time say to you, in words or substance or effect that the grating or the style of grating that was to be manufactured or was manufac-

tured by the Kerlow Company had been originally designed by Mr. Price in Mr. Irving's employ and was the property of Mr. Irving or his company? A. No, sir, that was up to the time before I went over to their office.

Q. Up to the time when? A. Up to the time when I went to the Irving Iron Works office, on the afternoon or late afternoon, when I went to tell Mr. Irving that I was through.

Q. You went to the advertising agency in the morning and after you got through there you parted and went to the heating plant and then you went down to the Kerlow office? A. Yes.

Q. You said you didn't see Mr. Irving until the next day? A. Until the next afternoon.

Further examination by Mr. Kraetzer:

Q. Then what was said by you to Mr. Irving? A. I went into Mr. Irving's office in Long Island City and told Mr. Irving, "Mr. Irving, I have not found anything which causes me to think Mr. Lown and Mr. Bunker are not acting in a perfectly ethical business." Mr. Irving then reached into the drawer of his desk and for the first time mentioned or intimated in any way that—

Mr. Egner: What did he say?

The Court: The first time he ever referred to the subject he is coming to now in any way. Go on.

A. (Continuing.) Mr. Irving reached in his drawer and brought out a sample, saying, "You see the Irving Iron Works Company can make this type of grating."

Q. What did you say to that? A. I did not comment on it, as I remember.

Q. Is that all he said about it? A. That is all I can remember.

The Court: Did he say who had designed that grating?

The Witness: No, sir.

The Court: I thought you said he didn't tell you about Mr. Price designing it until the following day.

Mr. Kraetzer: Yes.

The Court: When did he tell you?

The Witness: He didn't tell me anything about being made or designed; because they had made it, wasn't to say that they had designed it.

The Court: Don't argue with me. I am trying to get what was said. He left me with the impression that on the following day, when he went to Mr. Irving's house, he then for the first time told him about Mr. Price having designed this steel grating. Then that isn't correct, is that so?

The Witness: It is not correct that he told me that Mr. Price had designed the grating.

The Court: Did he tell you that anybody had designed it?

The Witness: No, sir.

The Court: Did you know who had designed the grating before you went there that afternoon?

The Witness: I knew what was claimed by Mr.—

The Court: Not what was claimed. Did you actually know who had designed the grating?

The Witness: No, sir; I didn't actually know.

The Court: You knew it was claimed by whom?

The Witness: I knew it was claimed by Mr. Lown.

The Court: That he had designed it?

The Witness: Yes.

The Court: While working for the Irving Company?

The Witness: No.

The Court: After he had left the Irving employ or before?

The Witness: After.

The Court: How long were you in Mr. Irving's place on this afternoon, the second time, on the New York trip?

The Witness: Thirty minutes—thirty-five minutes.

The Court: What else was said or done while you were there, aside from going into the drawer and taking out the sample grating?

The Witness: Mr. Irving was talking about what Mr. Lown and Mr. Bunker had done, reciting that—

The Court: His same old grievances against them?

The Witness: Yes.

The Court: When you left what did you tell him about your relations with him?

The Witness: I told him that I would proceed to handle whatever accounts looked beneficial to me.

The Court: Whose accounts, his?

The Witness: No, sir.

The Court: Or Kerlow's?

The Witness: No, sir; other people's accounts.

The Court: Had you at that time obtained the Kerlow agency?

The Witness: I hadn't had my articles signed. Through verbal agreement it was understood that I was to handle the agency.

The Court: When did you reach that understanding orally or in writing or in any other form?

The Witness: There was no definite understanding, except what Mr. Lown had said to me when he was in Detroit.

The Court: On the fifteenth of November?

The Witness: Yes.

The Court: So that between that and the twenty-sixth or twenty-seventh or twenty-eighth, on your visit to New York, in fact it was after that, it was in December, you had not then reached any definite understanding with the Kerlow people?

The Witness: It was taken for granted.

The Court: And did you have the agreement at the time you returned from New York to take the agency for the Kerlow?

The Witness: I didn't have any agreement signed.

The Court: When did you have that agreement signed?

The Witness: About ten days or two weeks after the day that I saw Mr. Lown.

The Court: After the date you saw Mr. Lown in New York?

The Witness: Yes.

The Court: Mailed to you, was it?

The Witness: Yes.

Q. To get back for a moment; you were a witness in the patent interference proceeding? A. Yes, sir.

Mr. Kraetzer: We may, for the present purposes refer to Exhibit C20 as being the original grating that was used in the patent interference proceeding and was produced here for one day and then the present exhibit was used as a substitute.

Q. You testified in the interference proceeding over in New York, did you not? A. Yes.

Q. At that time you were shown the original of that grating that appears here as C20?

The Court: Of a grating similar to that?
The Witness: Yes.

Q. And you were shown the original exhibit over there in the patent interference proceeding? A. Yes.

The Court: It is admitted that that was the original exhibit here, that was used here?
Mr. Egner: Oh, yes.

Q. Was that the piece of grating that was shown to you by Mr. Irving over in Long Island City at the time that you say he reached down into his desk and pulled out a piece of grating? A. No, sir.

The Court: Was it a grating of the same design?
The Witness: The grating was of the same design.

Q. What was the difference? A. The piece that this particular piece, C20? A. There was more of the original piece than the photograph itself.
Q. The sample piece was larger? A. Yes.

The Court: How long was it, about; over a foot?
The Witness: I am indicating about fifteen inches.

Mr. Egner: Is this supposed to be the exact scale, C20?
Mr. Kraetzer: No.

Q. When you say that the piece you saw in Mr. Irving's desk was larger than that photograph, are you referring to that photograph or to the original? A. No, I am referring—taking this photograph as representing seven inches from center to center of the arches, which an actual piece of grating would be.

Examination by the Court:

Q. We assume for the purpose of this examination

that this is the piece of grating itself, this photograph, that you testified about in the patent or interference proceeding in New York? A. Yes.

Q. Treating that as if it were before you, was that the same piece of grating that Mr. Irving took out of his desk, the one that was in New York? A. No.

Q. What was the diffeernce? A. The piece that was originally shown to me in New York was a piece three inches to three and a half inches longer than the one I saw in New York, the original of what this photograph was taken from.

Q. In other words, if there was another crimp from there to there, it would be that size? A. Yes.

Q. There are two crimps shown on the photograph? A. Yes.

Mr. Egner: Is that the only difference?

The Witness: No.

Q. What other difference did you notice? A. From this photograph it shows—the piece that I saw in New York was pitted with deep pits, which have only come up from either some acid tests or else age; the piece that I saw in New York in Mr. Irving's office was new.

Q. The one that was aged was the one that was used in the interference suit? A. Yes.

Q. Were there any other differences between the two? A. I don't remember.

Mr. Kraetzer: I want to offer in evidence this letter dated September 22, 1921, addressed to Mr. Scarth and signed by Mr. Walter E. Irving, president of the Irving Iron Works Company.

Marked Exhibit D72.

Sept. 22, 1921.

Mr. Harold Scarth,
401 Washington Arcade,
Detroit, Mich.

My dear Mr. Scarth:

Replying to your favor of the 14th inst., the delay of which has been on account of my having just returned this morning from a trip of several days, would say that I have referred this matter to the Accounting Department and find that while your bookings are approximately $13,000 we mailed you a check on Sept. 20th for $152.87 which cleans up the account to the first of August. Within a very few days you will be mailed another check of $132.00, being commissions earned in August.

Do not hesitate to write me at any time about anything that you think is for the good of the cause, and believe me,

Yours sincerely,
IRVING IRON WORKS CO.
WALTER E. IRVING,
President.

WEI:RJB

CROSS-EXAMINATION by Mr. Egner:

Q. At the time you entered the employ of the Irving Iron Works what other lines were you handling? A. I was connected at that time with the Detroit Safety Council.

Q. What was that? A. A safety campaign, which

was put on for the education of factories, and I was lecturing and handling the membership campaign for them.

Q. Was that under salary? A. No, sir; commission.

Q. Was that a permanent or temporary job? A. It was temporary.

Q. Had that concluded at the time you formed your connection with the Irving Company in May, 1921? A. No, sir.

Q. How much longer did that last? A. It was still on.

Q. What was your average income from that position? A. Very small, indeed, very small.

Q. Approximately how much? A. Probably $100 to $150 a month.

Q. What other sources of income than that did you have when you entered the employ of the Irving Company in May, 1921? A. At the time I took over their agency?

Q. Yes. A. Nothing at that time.

Q. You are a married man, are you not? A. Yes.

Q. And was your wife engaged in any kind of a profitable employment? A. Yes.

Q. She was a music teacher? A. Yes.

Q. And she had followed that vocation even prior to your appointment by the Irving Company, had she not? A. Yes.

Q. You were engaged for the Irving Company by whom? A. I was appointed by Mr. Lown.

Q. And Mr. Lown at that time occupied what position in the Irving Company? A. Sales manager.

Q. So that he was the officer in the Irving Company with whom you had all your correspondence?

Mr. Kraetzer: He wasn't an officer.

Q. As far as you were concerned he was the representative of the Irving Company with whom you had your relations, was he not? A. Yes.

Q. And whatever correspondence you had respecting the affairs of your office, commissions due to you and other matters, you had with Mr. Lown, didn't you? A. For the first three weeks; yes, sir.

Q. And after that with whom? A. Part of it with Mr. Irving and part with Mr. Price and part with Mr. Roope, and part with Mr. Bunker.

Q. Who succeeded Lown as sales manager? A. Mr. Roope.

Q. You say that one of the reasons why you were willing to leave the Irving Company was the fact that you were dissatisfied with regard to different things? A. Yes.

The Court: He has named two things, commissions and correspondence.

Q. Commissions and the way your correspondence was handled. Take up, first, the question of commissions; when did you first become dissatisfied with the way in which you were paid your commissions?

The Court: He named three; later on he named another; he said he always preferred to handle the best product in the market.

Mr. Egner: That came later.

Q. When did you first become dissatisfied with the way in which you were being paid your commissions? A. The first time that they didn't pay me my commissions that were due on the day that they should be paid—

The Court: Let me understand, if you were to earn, in July for instance $350, or up to that time, when was that to be paid, the first of August?

The Witness: No, sir; which were to be paid to me on the tenth of the month following the receipt of the money by the Irving Iron Works Company.

The Court: Receipt of the money from the customer?

The Witness: Yes.

The Court: If you sold $3,000 worth of goods in July you would not be entitled to your commission until the purchaser of these goods had settled with the Irving Company?

The Witness: Yes.

The Court: And then on the tenth of the month following that settlement you would be entitled to have your commissions paid you in full and not on account?

Q. And as an actual fact the commissions were placed to your credit on these blue sheets as of the month in which the customer paid his bill, were they not? In other words, if the customer paid his bill in July, these commissions were included in your July account, although under your contract you were not entitled to them until the tenth of August?

The Court: Is that so?

The Witness: No, sir.

Q. What was the arrangement? A. These blueprints did not come along, not until after I had received another form of statement which set out the amount of business booked, the amount of business shipped, the amount of collections made or paid.

Q. That does not quite answer my question; you recall having received blueprints of this character (indicating), do you not? A. Yes, sir.

The Court: Such as No. what?
Mr. Egner: Exhibit D68.

Q. And referring to Exhibit D68, I ask you whether after that arrangement was begun to be followed and that was about July, was it not, that was first adopted, this plan? A. I cannot tell you when it first came through.

Q. After this plan was adopted, Mr. Scarth, my question is, whether it is not a fact that all commissions to which you had become entitled by reason of the fact that the customers had paid their bills were shown to your credit as of the month during which the payments were received by the Irving Company? A. The summary was sent to me later in my contract on these blue sheets.

The Court: Did they show what Mr. Egner directs your attention to?
The Witness: Yes, sir.

Q. So that when you received these blue sheets you understood that whatever was shown as having been accrued during July, for instance, you were entitled to as on the tenth of August, being the tenth of the following month? A. If that sheet checked with the detailed account which was sent with the sheet, then it was so.

Q. Did you ever have any experience where the sheet did not check with the detailed account which accompanied it? A. I did not check those sheets; I didn't do it religiously.

The Court: I don't care whether you did or not; you never had such experience?
The Witness: I used the detailed account in my bookkeeping.

The Court: Did you find any discrepancy between the two?

The Witness: No.

Q. You said the first time you became dissatisfied was the first time upon which they did not upon the tenth of the month pay you everything to which you were entitled as of that date; is that correct? A. Yes.

Q. When was that; in which month? A. I remember it was in July.

Q. Tenth of July you are referring to? A. Yes.

The Court: How much was due you then that they didn't pay you on the tenth of July?

The Witness: I don't remember what the figure was.

Q. Have you any figures here which would refresh your recollection? A. Yes.

Q. Turn to them; look at them.

The Court: The question is how much was due you on the tenth of July?

The Witness: $421.42 commissions earned in July.

Q. That wasn't due you until the tenth of August, was it? A. Yes, sir.

The Court: Explain what you mean by that; I don't understand you.

The Witness: The payments made during July should have been paid on the tenth of August, which they were not paid.

The Court: In answer to Mr. Egner's question a moment ago, you said your first dissatisfaction was due to the fact that you did not receive what was due you on the tenth of July. Keep your mind away from August for a moment.

The Witness: On the July account.

The Court: That isn't what you answered. Can you tell how much was due you on the tenth day of July that Irving should have paid you?

The Witness: No, sir, I cannot tell how much was due.

Q. Wasn't it a fact that there was nothing due you on that date? A. Yes, sir, it is.

Q. There was nothing due you on that date? A. Not on the first of July.

The Court: You wish to correct your statement that your first dissatisfaction was not in July?

The Witness: That is so.

The Court: It must have been some later date?

The Witness: Yes.

Q. What date do you wish to give now as the first date of your dissatisfaction? A. The tenth of August.

Q. On the tenth of August how much was due to you? A. $343.42.

The Court: And wasn't paid you?

The Witness: No, sir, not at that time.

Q. How much was actually paid to you during the month of August? A. $200.

Q. So that at the end of August there was still owing to you on account of commissions earned in July, $132? A. $152.

Q. You say $152? A. Yes.

Q. Did you write to the Irving Company about that? A. Yes, I wrote to them, asking them for the balance of my account.

Q. Have you a copy of that letter? A. I haven't a copy of that letter with me, no, sir.

Q. And in response to that letter did you get your check? A. Not until the tenth of the month after.

Q. Tenth of September? A. Tenth of September.

Q. When did you next again become dissatisfied? A. As a verbal agreement, the Irving Iron Works—

Q. I want to know the date when you next became dissatisfied? A. I didn't again become dissatisfied, because I stayed dissatisfied.

Q. Even after the July account had been paid in full you were still dissatisfied? A. Yes.

Q. Did you write any further letters evidencing that dissatisfaction? A. Yes, sir.

Q. Have you these letters here, or copies of them? A. May I take the time to look?

The Court: Yes, take the time.

The Witness: Yes, on September 20th I wrote to the Irving Iron Works Company as follows:

Mr. Egner: May I see the letter?

(Mr. Egner shown letter.)

Q. The letter which you now show me is in answer to Mr. Irving's letter of September 22nd, Exhibit D72? A. No, sir.

Mr. Egner: They must have crossed in the mail.

Q. The letter which you now show and which I will read, inasmuch as I have referred to it:

Defendant's Witness, Harold G. Scarth, Cross

September 22, 1921.

Irving Iron Works Company.

Gentlemen:

I am in receipt of your check in settlement of my July account, for which I thank you and wish to state that according to my interpretation of my contract, you were six weeks in arrears with your settlement. Will you please let me have my August statement and check due on September 10th at your earliest convenience.

Yours truly,
DETROIT OFFICE.

That letter apparently crossed in the mail Mr. Irving's letter of September 22, D72, in which he referred to the check and said the balance would be sent in a very few days; is that correct? A. Yes.

Q. I notice, Mr. Scarth, that in the letter of September 22nd, D72, he concludes: "Do not hesitate to write me at any time about anything that you think is for the good of the cause, and believe me, Yours sincerely." Did you after September 22nd write any further letters to Mr. Irving, complaining either about commissions or about anything else in connection with the business? A. Not that I remember.

Q. Did you get a reply to your letter of the 22nd of September? A. No, sir.

By the Court:

Q. Did you get the statement you asked for? A. Yes, sir; the letters crossed in the mail.

Q. So that you have just said, Mr. Scarth, that after September 22, 1921, or a few days later, when you received Exhibit D72, that after that date you didn't write any letters to Mr. Irving complaining either about commissions or about anything else in connection with the business, is that correct? A. On September 14th I wrote direct to Mr. Irving.

Q. After the receipt of the letter Exhibit D72, did you write any further letters? A. No, sir.

Q. Your dissatisfaction continued, however? A. Yes.

Q. Why didn't you write to Mr. Irving about it? A. Because he had the proper departments to write to that I could take it up with. Well-organized companies should have their own department and take care of their business.

Q. You say you didn't get any satisfaction from that department? A. I did not.

Q. Why, in view of that fact, didn't you write to Mr. Irving, in view of the language which he used at the conclusion of Exhibit D72? A. Because I was so dissatisfied with the company that I didn't think it worth while to fight for it.

Q. And when did you come to that conclusion? A. It gradually came to me, starting from around July.

Q. In view of the fact that you didn't think it worth while to write to Mr. Irving, you must have had that conclusion in your mind on or about September 22, didn't you? A. I cannot say that I had that actual thought in my mind at that time.

Q. If you didn't have that in your mind at that time, why didn't you take these matters up with Mr. Irving, as he had invited you to in this letter of September 22nd? A. Because I didn't think it was worth while making a fight about the whole thing. I didn't value the account enough.

Q. So that by September 24, 1921, you not only didn't value the account, but you were so sure that nothing could be done, that you didn't think it worth while writing to Mr. Irving as he had invited you, is that correct? A. That is true.

Q. That being so, why didn't you resign on September 24th? A. I just let things go along until something else came up, or I was always in the market for another line to handle.

CROSS-EXAMINATION by Mr. Egner:

Q. Meanwhile you were trying very hard to sell this product, were you not? A. I was.

Q. And during the month of October you earned commissions amounting to $651, didn't you? A. Yes, sir.

Q. Was that an indication to you that the connection was an unsatisfactory one? A. Considering the amount of work to which had gone before to earn that amount of money in that month, yes, sir.

Q. Other than your income from the Irving Company how much did you earn from all other sources in the month of October, 1921? A. In the month of October?

Q. Yes, from all other sources. A. Approximately $300 from other sources.

The Court: Did that include your heating company?

The Witness: Yes.

Q. So that you made practically twice as much from the Irving Company that month as you made from all other sources? A. Yes, sir.

Q. And yet you didn't think that was a connection

worth fighting for, is that right? A. Yes, sir, considering that September only paid $12.70.

Q. How much did you receive during October from the Irving Company? A. $12.70.

Q. How much did you receive during November? A. $650.59.

Q. You received during November $650.59? A. Yes.

Q. I suppose right on up to the occasion that Mr. Lown came out to see you, you still remained dissatisfied with the Irving Company? A. Yes, sir; more so than at any other time.

Q. In view of this money that was owing to you and the fact that Mr. Irving had written you this cordial letter of September 22, why didn't you write to Mr. Irving calling his attention to the fact that you wanted more money than you had received? A. Because I have never made it a practice of asking for advances.

Q. This money was due to you, was it? A. Yes, it was due to me.

Q. Why didn't you write to Mr. Irving? A. I wrote to the accounting department, thinking that the accounting department could take care of the accounts better and would take care of their business better than Mr. Irving, the president of the company; they were in a position to pass the check along.

Q. Have you any letters that you wrote to the accounting department after September 22nd asking for money? A. I have a letter here on November 21st drawing their attention to the fact that they haven't credited me in the proper manner on the account.

Q. That was after you had resigned? A. November 21.

Q. That was after you had resigned, wasn't it? A. No, wait a minute; yes, it was.

Q. I want you to produce all letters which you wrote either to Mr. Irving or to the accounting department or to the company between September 22 and November 15, 1921, calling attention to the non-payment of commissions. A. On September 22—I produced letter of September 22.

The Court: We have that already marked.

Q. I want all after that date and up to November 15. A. I have no letters to produce.

Q. Then you wrote none, did you? A. No, sir.

The Court: How many letters did you write before the twenty-second of September about the commissions, or business, from May until the twenty-second of September, how many letters did you write?

The Witness: I cannot tell.

Examination by the Court:

Q. Approximately? A. Four or five letters.

Q. How many were unanswered, if any? A. There was none of them actually unanswered.

Q. What do you mean when you tell me that one reason for your dissatisfaction was failure to attend to the correspondence between you? A. Because the checks didn't come through when they should.

Q. You referred to that as another reason; first, you said that your correspondence was not given the care and attention that it deserved and should receive, and secondly, your commissions were not paid you when due. Now, I am trying to find out—that is what Mr. Egner has been examining you on—how many letters you wrote that did not receive immediate

attention from the Irving Company that entitled you to be dissatisfied from May until the fifteenth of November? I want to know what basis there is for your claim, on any and all subjects.

Mr. Egner: Your Honor's question covers the entire period?

The Court: Yes, the entire period of his agency. I will give you an opportunity to take more time; I have counsel waiting in another matter and I will take a recess ten or fifteen minutes earlier. Be back promptly at two o'clock.

Recess.

By Mr. Egner:

Q. Have you found any letters which you wrote to the Irving Company or any employee of the Irving Company during the period of your agency, referring to failure to pay proper attention to your correspondence? A. Yes, sir.

Q. Will you produce it, please? A. Yes (producing same).

Q. You produce a letter of May 26, 1921, for the attention of Mr. Lown? A. Yes, sir.

Q. Have you any others? A. Yes, sir, June 10th, 1921.

Q. Any others? A. June 15, 1921.

The Court: To whom are these other two letters addressed?

Mr. Egner: To Mr. Roope. I will offer

them all and read them; I want to get them all together.

Q. Any others? A. Letter of September 1.

Q. Any others? A. Letter of September 10th, letter of September 14th, telegram of September 19.

Q. The letter of September 14, Mr. Scarth, that you have just produced is a letter answered by Mr. Irving under date of September 22, Exhibit D72? A. It is not an answer, no, sir.

Q. I ask you whether the letter of September 22 was an answer to your letter of September 14? A. May I see the letter of September 22nd?

Q. Was the letter of September 14th that you produce a letter to which Mr. Irving replied, under date of September 22 by Exhibit D72, which I show you? A. Yes, sir.

Q. Then you produce one of September 22? A. Yes, I produce a letter of September 29th.

The Court: Your question was to produce any letters he had to which no attention or negligent attention had been paid by the Irving people; is that true as to all these letters you produce; were they not answered or answered negligently or with delay that was undue? I want to know what the witness's answer is.

The Witness: The letters that I produce are drawing attention or bringing forth negligence in the answering of correspondence and in remitting checks.

Q. You don't mean to imply that all of these letters which you produce here were not answered by the Irving Company, do you? A. No, sir.

Q. You are merely producing letters from your files which indicate criticism of certain kinds that you made during the term of your agency? A. Yes.

Q. And other than the letters which you have now produced, you have nothing in your files indicating any further or other criticism? A. Those are all that I can find in the file that I have here.

Q. Have you your entire file here? A. No, I haven't my entire file.

Q. Will you at some subsequent time produce any other letters of that kind which you have? A. I will go through my file and endeavor to produce what letters I can.

Mr. Egner: I would like to offer these letters, taking them in chronological order.

Letter of May 26, 1921, attention of Mr. Lown, New York office marked Exhibit C68.

Detroit, Mich., May 26, 1921.

Attention: Mr. Lown,
New York Office.

Gentlemen:

With reference to our C. I. M. of May 18th regarding the Detroit Water Commission job, kindly be advised that we have heard nothing from you as yet as to whether or not you got in touch with the Guarantee Construction Company on this matter.

Will you let us have any data you can obtain relative to this job at a very early date? Thanking you, we are

Very truly yours,
DETROIT OFFICE.

HS/M

Q. Did you receive an answer to the letter I have just read? A. Not that I can remember.

Mr. Egner: The next letter is one of June 10, 1921, to W. H. Roope, Long Island City office, which I offer in evidence.

Marked Exhibit C69.

Detroit, Mich., June 10, 1921.

Mr. W. H. Roope,
Long Island City Office.

Dear Sir:

In answer to your letter of June 8th, the information regarding Mr. Lown having left the Irving Iron Works Co., came as a surprise and I am extremely sorry that he did not confirm his conversation with me by letter so that you could refer to same in your files.

I wish to advise you that the understanding I had with Mr. Lown was that the Company would mail a check to Mr. Hinkle of the Oakview Cemetery Ass'n, for the rent and also for my one-third share of Miss Mitchell's salary, the total amount being $61.00 per month. Mr. Lown also gave me to understand that should it be necessary for me to call upon the Company for financial assistance in the near future that undoubtedly you would favorably consider the matter. If these arrangements are not satisfactory I would be very pleased to hear from you immediately.

Owing to the fact that Mr. Hinkle appears to be uneasy with regard to last month's salary for Miss Mitchell, having not been paid, I will write him a

check for $35.00 and as part of the services were received prior to my appointment as Agent I wish, in turn, that you will mail me a check.

I should also be pleased if the Company will give me a letter stating exactly how the commissions are to be split between Mr. L. H. Skillman, my predecessor, and myself, for the two months period of his notice, which is called for in his contract.

I sincerely trust that this tangle can be straightened out at the earliest possible moment for you must realize that any trouble of this nature is bound to take away part of the salesman's efficiency.

Very truly yours,

DETROIT OFFICE.

HS/M

Q. Did you receive an answer to this letter, Mr. Scarth? A. Yes, sir.

Q. Have you that answer? A. I received a letter in answer to that letter and other letters which followed, under date of July 7.

Q. Letter which you now produce? A. Yes, sir.

Mr. Egner: Before reading the letter just produced, I will read the next one in chronological order following June 10, of June 15th, which I will ask to have marked.

Marked Exhibit C70.

Detroit, Mich., June 15, 1921.

Mr. W. H. Roope,
Long Island City Office,
Long Island City, N. Y.

Dear Sir:

The last I heard from you with regard to Miss Mitchell's salary was a letter written June 8th, in which you stated that you were going to get in touch with Mr. Lown.

I solicit the favor of a reply to my letter of June 10th, which was written in reply to your above-mentioned letter.

Very truly yours,
DETROIT OFFICE.

HS/M

Q. In answer to the last two letters you received a letter from Mr. Roope, dated July 7, 1921? A. Yes, sir.

Mr. Egner: I offer that in evidence.
Marked Exhibit C71.

July 7, 1921.

Mr. Harold Scarth,
401 Washington Arcade,
Detroit, Mich.

My dear Mr. Scarth:

We are in receipt of your bill from Oak View Cemetery under date of June 30th for $61.00. This

includes rent from July 1st to August 1st for $26.00 and stenographer's services for June for $35.00.

We are at a loss to know why you forward to us a bill for your stenographer's services as we thought that it was understood as per our letter of June 14th, that we had nothing to do with the stenographer's salary in your case.

Is it that you wish us to advance you this money to be subsequently checked against your commission? If this is the case we probably could do so, but at any rate let us have it clearly understood that we do not assume any obligations as far as your stenographer is concerned. As soon as you reply to this letter a check in payment will go forward.

In looking over last month's business it becomes evident that you got away to a fairly good start and we feel confident that every month will but serve to bring us increased business from your quarter of the world.

Hoping to have the pleasure of your good news soon and often, we remain

Yours sincerely,
IRVING IRON WORKS CO.
W. H. ROOPE,
Sales Department.

WHR:RJB

The Court: Where is the letter of June 14th from the Irving Company?

The Witness: Letter from Mr. Roope of June 14th is produced.

The Court: Then there needs to be a correction on the record, because there was an answer on June 14th.

Mr. Egner: I offer in evidence the letter of June 14th.

Marked Exhibit C72.

June 14, 1921.

Mr. Harold Scarth,
401 Washington Arcade,
Detroit, Mich.

My dear Mr. Scarth:

In reply to your letter of June 10th we beg to advise you that we do not understand that we have anything to do with the stenographer's salary. Further, we do not understand that you have anything to do with it except for a third of it for the time from May 9th. Anything prior to that date is a liability of Mr. Skillman.

Now, as to the matter of splitting commissions between you and Mr. Skillman during the two months period of his notice called for in the contract, we would advise that since more than half of this period has passed with no credits occurring for Mr. Skillman we suggest that the matter be left open until July 9th. In case of a possible credit arising it will be disposed of at that time. Meanwhile, unless otherwise adjudicated, all orders from the Detroit office will be handled as of Mr. Scarth and not Mr. Skillman.

In regard to the office expenses, they will be split in the same ratio as the total commissions may be split during that period.

We feel that you have been making very good efforts to push Irving Subway in your territory and should

it be necessary for you to call upon the Company for financial assistance in the near future, undoubtedly we would favorably consider the matter.

We hope that this will straighten out the apparent tangle which exists between us and enable you to proceed with your work in the full confidence that we are with you in every respect and should your demands upon us be reasonable we will give them due consideration.

We are forwarding you two dozen catalogues today.

Hope to hear from you on this matter further.

We remain,

Very sincerely yours,
IRVING IRON WORKS CO.
W. H. ROOPE,
Sales Department.

WHR:RJB

The next letter produced is one of September 1, 1921, which I will ask to have marked.

Marked Exhibit C73.

Detroit, Mich., Sept. 1, 1921.

Long Island City Office:

Will you be good enough to let me have a statement of my account up to and including August 31st?

A check would be very acceptable to me at this time, and at your earliest convenience.

Very truly yours,
DETROIT OFFICE.

HS/M

Q. Did you have an answer to that letter, Mr. Scarth? A. I don't remember, I cannot find one in my file.

Q. Your account shows, however, Mr. Scarth, that during the month of September you were paid on account of commissions, $284.87, is that correct? A. The account shows that, yes, sir.

Mr. Egner: I offer the next letter, which is September 10th.

Marked Exhibit C74.

Detroit, Mich., Sept. 10, 1921.

Long Island City Office:

Will you kindly have rushed to us at once the following stationery, inasmuch as Mr. R. E. Olin is not on our force as a permanent factor and we are in need of same.

Calling cards (this item is very important).

C. I. M. pads ditto

Envelopes,

Letterheads.

We have written to you several times requesting the above material but we are very sorry to say that we have so far obtained no results. Will you endeavor to do better by us at this time?

Thanking you in advance, we are

Very truly yours,

DETROIT OFFICE.

Q. Was that letter answered? A. I have no copy of any letter received.

Q. Did you receive the supplies? A. I received the supplies later.

Mr. Egner: I offer letter of September 14. Marked Exhibit C75.

Detroit, Mich., September 14, 1921.

Mr. Walter E. Irving,
Irving Iron Works Co.,
Long Island City, N. Y.

Dear Mr. Irving:

I should esteme it a favor if you will personally see that a check for commissions is forwarded to me at once. I am very sorry to have to write you in this manner but shall be glad if you will see that I am taken care of regularly and promptly.

Up to date I have not received a statement of my account with the Company and as there are some irregular credits due me for payments made to be debited against the L. H. Skillman account, I think that the sooner the matter is taken up the less chance there will be for a misunderstanding. I also wish to draw to your attention the fact that since my taking over this territory on May 9th, 1921, I have done approximately $13,000.00 worth of business and have received only $200.00.

Very truly yours,

HS/M

Mr. Kraetzer: Exhibit D72 is an answer to C75.

Q. That is the letter, Mr. Scarth, to which D72 is a reply? A. Yes.

Mr. Egner: I next offer a telegram dated September 19, 1921.

Marked Exhibit C76.

Detroit, Mich., Sept. 19, 1921.

Irving Iron Works Co.
Third & Creek Sts.
Long Island City, N. Y.

Have not received check Why

H. SCARTH

9:25 AM
Paid
M.

Exhibit D72, Mr. Irving's letter, begins with the statement the delay has been due to the fact that he has just returned from a trip of several days.

Next, letter of September 22, which is already in.

Final letter of September 29, 1921.

Marked Exhibit C77.

Detroit, Mich., Sept. 29, 1921.

Mr. W. H. Roope,
Irving Iron Works,
Long Island City, N. Y.

Dear Sir:

Will you please see that we have a supply of Catalogues, Card Index Memos., Calling Cards, Large and Small Envelopes forwarded to us at once.

Messrs. Whitehead & Kale informed me this morning, they have not received the three catalogues which I asked you to send them, I am therefore taking them out myself this morning.

Very truly yours,
DETROIT OFFICE.

HS:S.

Q. Mr. Scarth, what was the first intimation you had that Mr. Lown was in Detroit on or about November 15? A. When I got down to the office he was there waiting for me.

Q. Did you know that he was coming? A. No idea that he was coming.

Q. Tell me, again, what was the first thing that was said by either you or Mr. Lown? A. I greeted him in the ordinary way and told him how glad I was—I said I was mighty glad to see him.

The Court: Had you heard prior to that meeting that he was engaged in manufacturing a grating in opposition to Irving's?

The Witness: No, sir.

The Court: Did you know what his business was at the time you met him?

The Witness: No, sir.

Q. You knew that he had left the Irving Company? A. I knew that he had left the company, as my correspondence will show. I knew that he had left the company about a month before I took over the agency.

The Court: The letter shows that.

Q. What did Mr. Lown say after you said you were glad to see him? A. He wanted to know what the trouble was, that I was dissatisfied with the Irving account.

Q. What did you say which evidenced to him that you were dissatisfied? A. I said that I was very glad to see him, particularly because he was the man who was instrumental in my joining the forces of the Irving Iron Works, selling their product, and I thought when he came in there, that he was still friendly with Mr. Irving and probably he would be able to intercede with Mr. Irving so as to get me better service.

Q. Was it your intention then to ask him to intercede with Mr. Irving? A. Yes.

Q. You hadn't taken the trouble to write to Mr. Irving yourself, had you? A. Yes, sir.

Q. And you haven't produced any letter here to Mr. Irving calling attention to your grievances?

The Court: Outside of the September 14th letter.

Q. You had never written Mr. Irving other than September 14th, had you? A. I don't remember.

Q. Yet you were glad to see Lown because you

thought by Lown you could send a message to Mr. Irving? A. Yes.

Q. You immediately told Mr. Lown what your grievances were? A. Yes.

Q. What did Mr. Lown say? A. He said he was mighty sorry indeed that they hadn't been taking care of me properly.

Q. What else did he say? A. I don't remember.

Q. At what point in the conversation did he first refer to the fact that he was with the Kerlow Company? A. The first that I knew anything at all about anything connecting Mr. Lown with any different grating was that he showed me a small card with a picture of a panel of Kerlow grating on it.

Q. Did he show you that before or after you talked about your grievances against the Irving Company? A. After.

Q. And what did he say when he showed you the card? A. He said, "How do you like that?"

Q. What was said? A. He said, "How do you like that?" And left me with the card in my hand, to look over, to see what I thought about it.

Q. You looked at it? A. Yes.

Q. What did you say? A. I took quite some considerable time and I told him then that the mechanical features of the grating I thought were far superior to the standard design of the Irving Subway.

Q. That was your opinion at that time, was it? A. Yes, sir.

Q. Will you tell us what you base your opinion on? A. On such facts as the arguments which engineers have brought up when I have been out doing missionary work, about the dust-catching corner of the Irving Subway corner, catching the dirt in the corner and not assisting capillary attraction which will

hold moisture and cause the grating to rust out; on account of the narrow angle, would hold moisture in there much easier and more moisture than what a wide angle would.

Q. Any other feature which in your opinion rendered it more desirable? A. Yes, the reversible feature of the grating, because if a man has two openings, one will have to be a right-hand and the other a left-hand piece of grating, with the Kerlow, one piece can be cut and turned over and used and you have the same pattern.

It is not possible for a man to make a mistake by cutting two right or two left; whereas, if he should out one right-hand and one left and save trouble in the field.

Q. Any other? A. Yes, it is a much neater grating; it is a nicer looking job.

Q. How does it compare as far as strength is concerned? A. As far as strength goes, it will carry a bigger ultimate load with more deflection. In other words, in the Irving Subway it slopes off very quickly, this side (indicating), being your pounds in square feet, and this side (indicating), being your deflection; whereas, the Kerlow will take a far more gradual sweep, but it will stand more pounds in weight.

The Court: You reasoned that all out in your mind when he showed you that card that day?

The Witness: No, I didn't.

The Court: How long did it take you to reason these points out?

The Witness: Tests have shown it since then.

The Court: You told us that you immediately realized that the Kerlow product was superior to the Irving product?

The Witness: Yes.

The Court: I am asking you what you had in mind at that time; not what you learned subsequently.

The Witness: The things I had in mind were the reversible features and more ornate.

The Court: Those are the two things you had in mind. So as far as you knew at that time, you didn't know whether the Irving was stronger or weaker than the Kerlow?

The Witness: Yes, I knew that it must be stronger on account of the full depth of the reticulin and zig-zag bar.

The Court: Which was stronger?

The Witness: The Kerlow.

The Court: Any difference in the price at that time, did you learn?

The Witness: As far as I remember, the price was not discussed.

Q. What did you say after you looked at the card? A. Then I asked Mr. Lown—I told him I liked the looks of it very much.

Q. What did he say? A. Well, he said, "I am going to place an agent here in Detroit."

Q. Is that all he said? A. That is all he said.

Q. Did he say anything about thinking it only right that he should tell you first? A. I don't remember.

Q. Try to think; did he say that or didn't he? A. I don't remember.

Q. Did he ask you to suggest someone to take that position? A. No, I didn't give him a chance; I immediately asked him if I resigned my agency with the Irving Iron Works Company if I would be considered.

Q. What did he say? A. He said something to the effect that, "You have not resigned."

Q. Did he tell you why it was necessary for you to resign first before he could talk to you? A. No, sir.

Q. Didn't he tell you that that was his lawyer's advice? A. No, sir.

Q. Sure about that? A. Absolutely, sir. I never anticipated anything like this.

Q. What, if anything, did he tell you about the necessity of your signing a written application? A. He didn't tell me anything.

Q. You did sign a written application, didn't you, for the position as agent? A. I don't remember if I did or not.

Q. You must remember that, Mr. Scarth. Try and think? A. I don't remember whether I ever wrote a formal letter asking for an agency or not.

Q. You don't remember whether anything was said about a formal application being written? A. No, sir.

Mr. Egner: Will you produce Mr. Scarth's application?

Q. So that he said he wouldn't even discuss the subject with you while you were the Irving agent? A. No, he didn't say that.

Q. What did he say? A. What I have already stated.

Q. Tell me again? A. He said, "You haven't made your resignation; you have not resigned."

Q. Is that all he said; didn't he tell you what might happen if you did resign? A. No, sir; he said that I would be considered.

Q. Before you resigned he told you that if you did resign you would be considered? A. Yes.

Q. Before he got that far or at any time that day did he tell you anything about the condition of the Irving business? A. No.

Q. Did he tell you anything about Mr. Irving having told him that if any competition arose he would retire to the farm? A. No, sir.

Q. He didn't tell you that? A. No, sir.

Q. Did he tell you that he thought his product was much better than the Irving product, that they would soon put the Irving Company out of business? A. No, sir.

Q. Didn't say anything of that kind? A. No, sir.

Q. What did he tell you about the prospects of his new company? A. I don't remember that he told me anything about the actual prospects of the company.

Q. So that your present recollection is that all he did was to show you this card? A. Yes, sir.

The Court: What was the purpose of his call on you so far as he disclosed it?

The Witness: The purpose of his call on me was to let me know that he was in Detroit with this grating available for an agency.

The Court: To establish an agency?

The Witness: Yes.

Q. He told you that? A. Yes.

Q. What did he tell you about K. N. & K.? A. He told me that one of the men connected with K. N. & K. was going to put money into it or had put money into it.

Q. Then he did tell you something about the back-

ing of the company, didn't he? A. Casually, but not in detail.

Q. Try to remember all he told you about the backing of the company and the financial resources? A. The two men that I remember him telling me had money in the company was some gentleman who was connected, as I say, with K. N. & K.'s office, and another gentleman who was connected with some railroad company; I don't know whether he was in an official capacity or not.

Q. Refer to K. N. & K. a moment; did he tell you that it was K. N. & K. or someone connected with K. N. & K.'s office; which was it? A. As I remember it, it was someone connected with K. N. & K.

Q. Are you quite positive about that? A. No, sir, I am not.

Q. Isn't it a fact that he told you that K. N. & K. were behind this company? A. I cannot say that it is.

Q. Did you know, then, who K. N. & K. were? A. I didn't know K. N. & K. existed; I don't know whether they do now or not.

Q. Who did he tell you K. N. & K. were? A. Either a banking house or a brokerage house, something like that; I knew that they were a big financial house, but that is all.

Q. Then you did know at that time that K. N. & K. were a large financial house in New York? A. That is what he told me.

Q. Your impression at that time was that K. N. & K. were interested in this business? A. No, sir.

The Court: What was the impression he gave you?

The Witness: The impression I got was that someone connected with K. N. & K. was assisting in the financing of the Kerlow Steel Flooring Company.

The Court: Did he tell you who constituted the Kerlow Company?

The Witness: Yes, he told me that Mr. Lown and Mr. Bunker's names made up the name of Kerlow.

The Court: Who formed the company; who constituted the company or controlled it?

The Witness: I understood that he controlled it himself, he generally, he and Mr. Bunker.

Q. You knew, of course, who Mr. Bunker was? A. Yes.

Q. Had you known Mr. Bunker as being connected with the Irving Company formerly? A. Yes.

Q. Had you ever met him? A. No, sir.

Q. What other agents of the Irving Company had Mr. Lown seen before he met you? A. I don't know whom he had seen, but I do know that he came from Pittsburgh to Detroit, but that I don't know.

Q. Did he tell you he had seen Demorest? A. I believe Demorest's name was mentioned.

Q. What did he say about Demorest? A. I don't remember.

Q. But you must remember what he said about Demorest, Mr. Scarth? A. I am sorry I don't; I cannot recall what the conversation was; I wasn't interested in Mr. Demorest's business.

Q. What were you interested in, in this conversation? A. I was interested in merely knowing that there was a possibility of a company making a better grating than that which I was at present carrying, and that I might get the agency for it, thereby bettering my position and the line of equipment that I was handling.

Q. So that the moment the conversation had approached to that stage you rushed out and sent off your resignation to Mr. Irving? A. Before that.

Q. Before that even? A. Yes.

Q. How far had the conversation gone when you sent off your resignation? A. The conversation really hadn't got started; the moment that he showed me the card is when I asked if my resignation was handed in, if I would be considered.

Q. And he said, "Yes"? A. He said, "You haven't sent in your resignation yet."

Q. So that when you did that, when he said, "You haven't sent in your resignation," you went out and wrote your resignation and sent it? A. Yes.

Q. If I understand you correctly, when you sent in this resignation, you had had no assurance from Mr. Lown that if you did resign you would be appointed the agent? A. No, sir.

Q. At that time, he hadn't told you whatever he said about Mr. Demorest? A. No, not when that resignation was written.

Q. And at that time he hadn't told you about K. N. & K.? A. No, sir.

Q. And at that time he hadn't told you anything about the backing of the new company? A. No, sir.

Q. And he hadn't said anything about what he believed the prospects of the new company were? A. No, sir.

Q. He had done nothing further, as I understand you, then, than show you the card indicating that they had a type of grating as shown on that card? A. That is practically all that I knew, that there was such a thing as the Kerlow Steel Flooring Company.

Q. So that you resigned your position without knowing anything about the new company and without having any assurance whatever that if you did resign you would get a position with them, is that right? A. Absolutely.

Q. Why did you take such hasty action, Mr. Scarth? A. Because I was losing money handling the Irving Iron Company account. It was costing me office and travelling expenses; the travelling expenses were costing me more than I was getting out of it, and I was very glad to get something that held out some prospects of getting more business.

Q. But you didn't know you were going to get it? A. Salesmen always gamble in a case like that.

Q. You were willing to take that gamble? A. Yes.

Q. At that time your rent was $26 a month? A. Yes.

Q. And up to the first of November you had earned total commissions of $1,217, hadn't you? A. From May until December.

Q. From May until the first of November? A. Yes.

Q. So that you considered that a losing proposition, did you? A. Yes.

Q. And you were willing to throw away that, with absolutely no assurance of getting another position, or without any knowledge whatever as to the financial prospects of the new company; is that right? A. Yes.

Q. After you had despatched your resignation, what did Mr. Lown say then? A. We went out to lunch together and it was then while we were at lunch, as I remember, that he told me how the company was being formed and who was in it.

Q. So he told you all that after you resigned? A. Yes.

Q. In the course of that conversation did he ask you what business you had under way for the Irving Company? A. No.

Q. Sure of that? A. I don't remember him asking me anything about it.

Q. What did you tell him about what you had under way? A. I didn't tell him anything; I didn't think it would be honorable.

The Court: Did you have anything under way? What did you have under way at that time for the Irving Company? That is November 15th.

The Witness: I don't remember what the jobs were. There are so many of the jobs that come up that you figure on that fall through, that don't consummate in an order at all.

Q. A great part of your effort as the agent of the Irving Company had been devoted to what was known as missionary work? A. Yes.

Q. And very often a period of months would intervene between your first knowledge of a contemplated job and your actually landing the job, wouldn't it? A. Yes.

Q. And during that time you would do considerable missionary work? A. Yes.

Q. And it was your practice to keep the home company constantly informed by these C. I. M. reports? A. Yes.

Q. On November 15, and particularly after November 15, you had been in considerable negotiation with the Lansing Power House job? A. Yes.

Mr. Egner: Page 530 of the record should read "Lansing Power House," instead of "car house."

Q. At the same time or prior to November 15 there had been considerable negotiation about the Detroit municipal railway job? A. Yes, the order was de-

livered over to the Irving Iron Works Company on that job about that same date, just about the time—two or three days after my resignation.

Q. Was there any job in negotiation at that time which the Irving Company did not get? A. I don't think there was anything on the board in the drafting room at that time.

The Court: Was there anything that you had negotiated for that you afterwards placed for the Kerlow Company?

The Witness: No, sir.

Q. Had you had any negotiations on the Detroit Edison Company job prior to November 15th?

Mr. Kraetzer: What particular job do you mean?

Mr. Egner: Marysville plant.

The Court: Do you know what he refers to?

The Witness: Yes.

The Court: Had you had negotiations respecting that?

The Witness: No, not on any one particular job. The Detroit Edison Company are large buyers of grating all the time and they buy grating the same as drygoods houses will buy yards of unbleached cotton.

Q. Now, referring particularly to the Marysville plant of the Detroit Edison Company, isn't it a fact that under date of August 8, 1921, you sent a C. I. M. into the home office, telling them you had seen Mr. Allen and you will have an order for 8,000 square feet of one-inch, Type G for Marysville power plant in about a week, or so forth? A. Yes, that job was abandoned somewhere around September.

Q. You kept in constant touch with Mr. Allen about that Marysville power house, didn't you? A. Not on that job, on all other grating business.

Q. You remember under date of September 26, 1921, you sent a C. I. M. into the home office, advising them that you had seen Mr. Allen and that he told you that the prospects of the Marysville power house order going through this fall are slim? A. I don't remember.

Q. You won't deny that? A. No, sir.

Q. You say they finally told you that it would not go through that fall? A. On one of my calls—on several of my calls during a period of a week or so that the Marysville power house was abandoned and they said they would not go ahead with the job at all.

Q. At the time that you were told that it had been abandoned, how many calls would you say that you had made in connection with that proposed job? A. I have called upon the Detroit Edison Company almost every week for the last two and one-half years.

The Court: In connection with this proposed job, he said; how many calls did you make on that?

The Witness: I cannot answer the question.

Q. You made a great many, didn't you? A. I called there every week for any of the business that used to come up, whatever they wanted to take up with me. I enter into the thing in this way: If they have a job on the board, I put myself at their disposal to assist them in designing the steel which will carry the grating, to work out the ventilating problems for them as a consulting engineer.

Q. The Marysville power house job was taken by

New Jersey State Library

the Kerlow Company, wasn't it? A. We sold them some grating up there.

Q. Can't you answer my question? A. Yes, we sold them grating for the Marysville power house.

The Court: When was that order placed?

The Witness: I will have to refer to my files, unless Mr. Bunker can tell me.

Mr. Kraetzer: We are looking that up from our records as to those particular jobs that they specified.

The Court: Wasn't that about December 1st?

The Witness: I cannot tell you, without looking into the records.

The Court: Did you place that job with the Kerlow people?

The Witness: Yes, I placed it for the Kerlow.

The Court: How long after your resignation?

The Witness: It must be a month after.

The Court: Was it before your trip to New York with Mr. Irving or after you returned?

The Witness: No, it was after.

Q. Tell us what you know about the specifications on that job having been changed from Irving or equal to Irving-Kerlow or equal. What do you know about that change in the specifications? A. The Detroit Edison Company write their own specifications in their engineering department and I call upon the engineer.

The Court: Did you know such a change was made as counsel indicates?

The Witness: Yes, sir.

The Court: When was it made?

The Witness: I knew when it was made, when they

submitted their specifications to me to give them a figure on it.

The Court: When was that?

The Witness: I think that was sometime about the second or third week in December, as far as I can remember.

The Court: Who made the change?

The Witness: The Detroit Edison Company themselves.

The Court: How did they know anything about the Kerlow?

The Witness: On account of my missionary work.

The Court: On behalf of Kerlow?

The Witness: Yes.

Q. So that the change in the specifications was due to your efforts? A. Yes.

Q. And you in fact got the job? A. Yes.

Q. That was a very large job, wasn't it? A. Yes, it was.

The Court: I notice in this contract, or in your letter of resignation, it refers to a sixty-day period; the period apparently has some express relation to the accounts. Did that also mean that your resignation was not to go into effect until sixty days from the date of the notice? The contract apparently was to run for a year, according to your recital in your letter. Was the resignation to go into effect sixty days from its date?

The Witness: The resignation is to take effect from the day that you resign, but the commissions will be due to the agent on jobs that he has worked on. If they are closed in sixty days, he is to receive commission on these jobs.

The Court: If they are closed after sixty days, he loses the commission?

The Witness: Yes.

The Court: That is your construction of the contract?

The Witness: Yes.

Q. So that your construction of the contract was that if the Marysville power house job had been closed and taken by the Irving Company within sixty days after you left, that you would have been entitled to a commission on that job? A. Yes, sir.

Mr. Egner: We will have the exact date of that contract. I should like to have produced the data prints including the floor layouts, material list and details from which the grating details on the Detroit Edison job were made.

Mr. Kraetzer: Haven't you got that yourself?

Mr. Egner: No, we haven't it. Mr. Scarth had all these papers. He was the agent out there.

Mr. Kraetzer: I object to that statement by Mr. Egner.

The Court: He is making a demand on your side of the controversy for the production of these papers. The demand is purely informal. Mr. Egner's statement that Mr. Scarth had all these papers does not make that a fact, and the witness undertook to say something when he was interrupted. I don't know whether he was going to contradict Mr. Egner or not.

The Court: Did you have all these papers that Mr. Egner has just referred to?

The Witness: I never received any drawings from the Detroit Edison Company to bid on the job.

Mr. Egner: The papers I have asked the production of are the data prints, including the floor layouts, material list and details, from which the grating details on the Detroit Edison job were made.

The Court: Did you have any or all of those papers?

The Witness: There are no details on the job.

The Court: Did you have any or all of those things that he refers to?

The Witness: A bill of material, which calls for a certain number of gratings of a certain size.

Mr. Kraetzer: What was done with this particular bill of materials which you had?

The Witness: As far as I know, they went back with my bid.

Mr. Kraetzer: To whom.

The Witness: The Edison Company.

Q. What did the Kerlow Company get to indicate to them what they were supposed to furnish? A. They received a copy of a bill of material. They received a copy of the bill of material stating the size of the panels of grating.

The Court: Then you are demanding a copy of all papers they received in connection with that bid or job?

Mr. Egner: Yes.

Q. How often had you been to see the Detroit Municipal Railway prior to November 15? A. Perhaps once a month, approximately.

The Court: For how many months, from May?

The Witness: Yes, from May.

Q. After November 15th did you get any work from the Detroit Municipal Railway for the Kerlow Company? A. Yes, I did get an order from the Detroit Municipal Railway.

Q. How long after the fifteenth? A. I don't remember.

Mr. Kraetzer: That is also one of the jobs we have been asked to furnish information on, and that will be furnished.

Mr. Egner: Have you that information now?

Mr. Kraetzer: Not as yet.

Q. You also got the Louisiana power house job for 10,000 feet? A. Yes.

The Court: You don't remember when you got that?

The Witness: I think the following June it was.

Q. And when had you started to work on that job for the Irving Company? A. Before I was appointed the agent for the Irving Iron Works Company, during Mr. Skillman's agency.

Q. Was that contemplated job dated back as far as Mr. Skillman's agency? A. The first one which was abandoned, and then it was reopened up and redesigned so the final job that went through was about three-fourths as much as the original job. When we started working on that job it hadn't been bonded or authorized by the tax boards.

Q. You sent in numerous C. I. M.'s from time to time with respect to that job while you were with the Irving Company, did you not? A. Yes.

Q. After you got back to your office after luncheon, what assurance, if any, did Mr. Lown give you as to

your appointment as agent? A. It was more in the manner of the way that he said, "We will see" about handling the application, than it was in the words.

Q. Then he did refer to an application, did he? A. Yes, he referred to an application.

Q. Was there a written application? A. No, sir, there was no written application.

Q. Merely your oral application? A. That is it.

Q. I would like, if possible, to have you tell me the exact words he said about your appointment? A. You mean the words that I—

The Court: No, what he said to you after he came back from lunch or before, either one.

The Witness: I don't remember.

Q. What he said that led you to believe that you would have the agency? A. He said, "Well, we will see."

Q. Just like that? A. Yes.

Q. Who did you understand he meant by "we"? A. His company, he and whoever his associates were.

Q. Did he tell you when you would find out? A. No.

Q. Whether you became agent or not? A. No.

Q. Did you ask him? A. No, I didn't; I don't remember asking him.

Q. When did you actually begin work for the Kerlow Company? A. Just after Mr. Irving had been here.

Q. Had been where? A. I mean to say had been to Detroit. Mr. Irving came to Detroit and appointed a new agent.

The Court: He came to Detroit the first part of December?

Mr. Egner: No, the latter part of November.

Q. How long after that? A. When he appointed his new agent, which was the first of December.

Q. You were in New York on the first of December? A. Yes.

Q. Had you been working for the Kerlow Company before your trip to New York with Mr. Irving? A. No, sir.

Q. You had not? A. No, sir.

Q. You mentioned a telephone talk you had with Mr. Colamour of the University of Michigan, the architect? A. Yes, he is an engineer.

Q. When was that; was that before or after your trip to New York? A. That was in the meantime, between Mr. Price's visit and Mr. Irving's, as I remember it.

Q. Was that before you went to New York? A. Yes.

Q. You had had some missionary work with Mr. Colamour respecting work contemplated by the University of Michigan? A. Yes, sir.

Q. Mr. Colamour called you up about that? A. Yes, and he wrote in to the Irving Iron Works Company for information regarding the Irving grating, and the Irving people wrote to me asking me to take care of that inquiry, which I did and left him catalogues.

Q. Do you know whether the Irving people actually got the job from the University of Michigan? A. Yes, sir, they did get it.

Q. You in your direct-examination said that you said to Mr. Colamour that you were not going to enter into any argument with respect to the merits of the Irving grating? A. Yes.

Q. Did you tell him about the Kerlow grating? A. I told him that I was not in a position to tell him about any other line that I was handling, that I wanted to handle that in a perfectly ethical manner and give him the information that he would need in regard to the Kerlow grating—I mean in regard to Irving grating.

Q. Did you mention the fact that there was another grating known as Kerlow grating? A. No.

Q. But you told him you were no longer with the Irving Company? A. Yes, that I had resigned my commission agency with the Irving Company.

Q. On what occasion did you say you would not enter into any argument regarding the merits of the Irving grating? A. Because I thought I was discharging my obligations to Mr. Irving when I gave him the information to lay out his drawings and take care of Mr. Colamour as a theoretical and a very good engineer who can see the merits of grating without their being pointed out to him.

The Court: Did he have the Kerlow grating called to his attention at that time?

The Witness: Yes, since that time he has.

The Court: Do you know why he selected Irving in preference to Kerlow?

The Witness: It was all selected by them; it was written in the specifications later that either Irving Iron Company or Subway or Kerlow, and then it came up for a price competition and the Irving Iron Works Company got the job.

The Court: And this man is a very competent engineer?

The Witness: Yes.

Q. He made the specifications read "Irving, Kerlow or equal"? A. Yes.

Q. And in fact that is the way the engineers have been doing quite frequently since the Kerlow is in the field? A. Quite often they will specify Kerlow flat; quite often they will specify Irving flat, or they will put it "Kerlow or equal."

Q. So far as you have been able to find out, the chief competition has been on prices between Kerlow and Irving? A. Yes, it has been on price with both, excepting in some cases where they will not use the Irving.

Q. And other cases where they will not use Kerlow? A. Yes, but in my territory I don't know of a place where they refuse to use Kerlow.

Q. I don't quite understand yet why you felt it necessary to tell Mr. Colamour that you would not enter into any argument about the merits of Irving grating. Did he ask you about the merits of the grating? A. I don't remember what called forth the remark.

Q. But you are very positive that you did not tell him that you were handling another grating? A. I am positive that I didn't tell him anything at all about Kerlow grating.

Q. You had become acquainted with Mr. Colamour while you were handling the Irving product, had you not? A. Mr. Colamour belonged to the same group that I belonged to, both the social club downtown and the same golf club, and I have known him for probably five years before I ever heard of the Irving Iron Works Company.

Q. I mean in a business way you had come in touch with him while you were acting as agent for

the Irving Company? A. Yes, and also in a social way.

Q. And subsequently you prevailed upon him to specify Kerlow at the same time that he was specifying Irving? A. You don't do your missionary work that way; you have got to prevail upon the specification writer after you have got by the engineer.

The Court: How do you prevail upon him; how do you persuade him?

The Witness: You show them the merits of your product; that is as far as I go. I do not discuss the merits of anyone else; I am not out doing missionary work.

Q. The engineer generally designs and prescribes, I realize, the material that is to go in; then does he turn over to some subordinate the preparation of the specifications? A. No, he does not go into detail as far as that; as a rule he does not specify each particular job the equipment that shall go in; he leaves the details to—

Q. Is the specification writer an engineer, too? A. Yes.

Q. Always? A. No, not always; sometimes he happens to be a draftsman.

Q. Are specifications in printed form ordinarily? A. Some of the architects have standard forms for specifications; others write their own form for each job.

Q. Who was Mr. Colamour's specification writer at that time? A. Mr. Clarence Gray.

Q. You had become acquainted with him while working for the Irving Company? A. Before I was an agent of the Irving.

Q. Do you know him socially, too? A. Yes, I have

taken him out to lunch and I have also driven him home several times from the office; he used to have offices in the same building with me.

The Court: How did you get these specifications changed? I don't understand yet.

The Witness: By calling upon Mr. Gray.

The Court: What did you say to him that caused the change to be made?

The Witness: I showed him a sample of Kerlow grating and gave him the templet which shows the loads per square foot, etc.

The Court: Do you know why he didn't strike out all reference to Irving in as much as the Kerlow had so much greater merit, according to your view?

The Witness: Yes, because if you write a specification flat for Irving and you don't permit Kerlow in there, there is nothing to prevent the Irving or Kerlow, who are specified flat, from getting $5 a square foot for the stuff, when it is only worth $1.25.

The Court: That isn't true where the words "or equal" are used?

The Witness: Yes, it is. When you get the words "or equal"—when the words "or equal" are written in, it is necessary for the contractor to go to the engineer to get him to say that such and such a thing is equal.

The Court: But there is competition when you have the words "or equal"?

The Witness: There is if the architects have to have competition.

Q. On this first occasion, Mr. Lown told you that they were manufacturing the grating, didn't he? A. They were manufacturing themselves? No, as I understand, they were having it manufactured, and that they would be in their own plant.

Q. He said they were having it manufactured? A. Yes.

Q. Did he tell you where? A. I don't remember whether he said where the factory was or not.

The Court: Did you get the same commission from the Kerlow that you got from the Irving?

The Witness: No, sir.

Q. What was the difference? A. The Irving Iron Works Company paid ten per cent for the first forty or fifty thousand dollars' worth of business, then seven and one-half per cent after that, and then there was another adjustment after you got beyond that point.

Q. What is the Kerlow? A. The Kerlow paid ten per cent for the first thirty thousand dollars and then twelve and one-half per cent up to a certain point, and then fifteen per cent beyond that.

Q. What had been said about commission arrangement of the Kerlow before you resigned? A. Nothing.

Q. So that when you resigned you didn't know what your compensation would be, even if you got the agency? A. No, sir.

Q. As I understand it, the only thing you got out of Mr. Lown on that day was a statement that, "We will see"? A. Yes.

Q. When after that did you have any further word, either written or oral, on the subject of your appointment from the Kerlow Company? A. After Mr. Lown had told me that the stuff has been either made or they were making it themselves, I remember details came up as to how much it cost.

The Court: Was this at the interview on the fifteenth of November?

The Witness: Yes.

Q. I don't think you understood my question; you haven't answered it. (Last question repeated.) After November 15th? A. I don't remember.

Q. Did you get any further word from them before you went to New York? A. I received a letter from Mr. Lown from New York; what was contained in that letter, I don't remember.

Q. Will you produce that letter? A. No, I haven't it here.

Q. Where is that letter? A. I think it is in my file at the office.

Q. You haven't brought it with you? A. No.

Mr. Egner: I would like to have that letter produced.

The Court: Have you a copy of it?

Q. Pending the production of the letter, can you give us your recollection of its contents? A. It was merely more of a social letter, telling me that he had got back to New York and that everything seemed to be going along favorably; there was nothing specific in it. It was more of a friendly letter, such as you write after being on a visit.

Q. Was there anything in it about your being the agent? A. That I don't remember.

Q. Was there anything in it about the Detroit Edison job? A. I don't think there was anything in it.

Q. Are you positive of that? A. Yes, as far as I can go—no, I am not positive of it; I am not positive of anything that was in the letter.

Q. Under date of November 17 I think it was, you wrote to Mr. Irving and told him unequivocally that you had gone with the other company and that you were to be their agent; didn't you have any

other justification for that statement than you have related here on the stand? A. No, sir.

The Court: Have you any financial interest in the company now, any investment?

The Witness: Yes, sir.

The Court: Are you a stockholder?

The Witness: Yes, sir.

The Court: To what extent?

The Witness: Two shares.

The Court: When did you acquire them?

The Witness: Last Christmas.

The Court: Pay for them?

The Witness: No, sir.

The Court: A gift to you?

The Witness: Yes.

The Court: From whom?

The Witness: The letter was signed by Mr. Bunker.

The Court: In the nature of a bonus?

The Witness: In the nature of a Christmas present.

Q. When you had your first talks with Mr. Lown, was there anything said about your being financially interested in the company as a stockholder? A. I asked him, as I remember, if it would be possible for me to buy in at a later date.

Q. What did he say? A. I don't remember.

Q. What were the motives which induced you to ask the question; why did you want to know whether you could buy into the company? A. I am doing that with any and all the companies that I represent. It is part of my policy. It makes me stronger with the company that I am representing. The Claridge Fan Company, I am pleased to say, I shall have a block of their stock this November.

The Court: Did you ever attempt to buy in the Irving Company?

The Witness: No.

Q. Did you ever ask? A. No, sir.

Q. You didn't have that policy at that time? A. I didn't have the desire.

The Court: Why not?

The Witness: Because I was not satisfied with my commissions.

The Court: You mean the company didn't strike you as a prosperous one, in which you would have a good investment?

The Witness: No, I don't mean that.

Q. The first person you saw from the Irving Company was Mr. Price after your resignation? A. Yes.

Q. And the way you heard that Mr. Price was in Detroit was that he called you up and told you he was at the station; is that right? A. The way that I heard he was in Detroit, yes, sir.

Q. Why wouldn't you allow him to come to your office that afternoon? A. I was engaged with another gentleman, a Mr. Donnelly, all afternoon.

Q. And was Mr. Lown at your office that afternoon? A. No, sir.

Q. Sure of that? A. Absolutely.

Q. You finally did see Mr. Price down at the station? A. Yes.

Q. What conversation did you have with Mr. Price? A. Mr. Price told me that Mr. Lown and Mr. Bunker had gone and formed the Kerlow Steel Company with the direct idea of wrecking the Irving Iron Works Company, and that that was their prime motive—to ruin the Irving Iron Works Company, to which I took exception.

Q. Why did you take exception to it? A. Because I think if people are going into business, they are going in for their own business and not to do someone else harm.

Q. Did Mr. Price tell you that all the time that Mr. Lown was organizing this company and financing it and so forth, that Mr. Bunker was remaining in the employ of the Irving Company? A. He told me that Mr. Bunker had remained with the company after Mr. Lown had quit.

Q. Did he tell you that that was after Mr. Bunker had determined to go with the Kerlow Company? A. No, he didn't. He told me that Mr. Bunker had pretended to be sick and pretended to be up in the woods somewhere and all the time that he was supposed to be up there, he was working on promoting the Kerlow Steel Flooring Company's business.

Q. What did he tell you about the type of grating which the Kerlow Company were using? A. I don't remember him mentioning it.

Q. Please think carefully, Mr. Scarth, don't you remember Mr. Price telling you that they were using the type of grating which he had perfected, the so-called Type M grating? A. I am positive that he did not.

Q. Are you positive that no mention whatever was made of the kind of grating which the Kerlow people were using? A. I am positive that Mr. Price didn't make any direct reference to the grating being an Irving grating.

Q. Did he make any indirect reference? A. No.

Q. Why did you use the word "direct" reference? A. Because it would have been natural that the men, if they were going into the grating manufactory, that they were going to make grating.

The Court: I don't follow you on that.

(Last question and answer read to the witness.)

The Court: You said Mr. Price made no direct reference to the grating of the Irving Company. Why do you use that word "direct"?

The Witness: Because if Mr. Price referred to a grating that they were going to manufacture—

The Court: That who was going to manufacture?

The Witness: The Kerlow was going to manufacture, that he must have referred to a grating that they were going to manufacture.

The Court: There is no doubt about that; I think that follows.

Q. Did he refer to a grating that they were going to manufacture? A. No.

Q. Neither directly nor indirectly? A. Not specifically; not giving the design or anything else.

The Court: If he didn't tell, say how he did refer to it.

Q. What did he say about the grating that they were going to manufacture? A. He merely said that they were going to manufacture.

Q. You knew that already.

The Court: Didn't he say they were going to manufacture grating that he had improved?

The Witness: No.

The Court: He didn't mention that?

The Witness: No.

Q. Nothing of that kind? A. No.

Q. You are very positive of that? A. Absolutely.

Q. Did he say anything to you about taking care of the Irving business until they could get a new agent? A. I don't remember whether he put it that way; he said that I would not take undue advantage or any advantage.

Q. Did you think that in resigning on the fifteenth of November to take effect at once, that you were doing a very honorable thing against the Irving Company? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. What made you think that that was an honorable course to pursue? A. Because I was in business for myself, selling whatever product I had to sell, and I was under no moral obligation to keep on selling the grating when my agreement permitted me to resign. The missionary work which I had done was part of my stock in trade and belonged to me just as much as doctor's practice belongs to him.

The Court: Suppose they had discharged you on the fifteenth of November—

The Witness: Yes.

The Court: Without any time to elapse, what good would your missionary work have been to you?

The Witness: I would immediately have manufactured grating myself in Detroit.

Q. So that you considered the missionary work as your own property? A. Absolutely, yes, sir.

Q. And is that the reason why you felt justified in turning over the Lansing power house job and the Detroit Edison job and the Detroit Municipal Railway jobs to the Kerlow Company? A. I didn't turn them over.

Q. What did you do with those jobs? A. When I started to work for the Kerlow, I tried to sell Ker-

low grating. I proceeded to sell grating to anybody that the court injunction would permit me to call upon.

The Court: In the agency for the Kerlow did you have a larger territory than you had with the Irving, or was it the same?

The Witness: I think the Kerlow is larger, taking in part of Canada, but the American territory is the same.

The Court: Did you have that territory assigned you, all of it, when you first had your agency given you, or was that enlarged?

The Witness: It was enlarged later.

Q. So that as far as territory was concerned, the two propositions were the same at the outset when you sent in your resignation? A. Yes, sir.

Q. The general result was that you didn't believe Mr. Price's story about the undue advantage these gentlemen had taken? A. I did not.

Q. You thereupon told him that you were firm in your determination to stick with the Kerlow people? A. I told Mr. Price that if I did not sell Kerlow grating, that I would never start to sell Irving again.

Q. And that was because you had come to feel that the Irving product was so inferior that you couldn't as a conscientious business man sell it to anybody? A. Yes, the way they were dispensing their business.

Q. What was it; was it the way they were running the business, or was it the character of the product they were turning out? A. The whole service that they were giving their customers.

Q. I would like to have a little more definite answer; just what was it about the Irving Company or its product which made you feel that you couldn't conscientiously sell the Irving product any longer? A. I

could not conscientiously go out and say to a man—if I was speaking of the Irving grating, I couldn't go out and say, "This is the best grating which is on the market."

The Court: In your opinion is the Kerlow grating a better one?

The Witness: Yes.

The Court: What do the engineers mean when they write, "Irving, Kerlow or equal grating"; how can they be equal if one is superior to the other?

The Witness: I don't know, sir.

The Court: I don't know either. Would that indicate that others didn't have your opinion, then?

The Witness: No, sir.

The Court: About the superiority of Kerlow over Irving and others?

The Witness: No, the way that my interpretation was given would be that they merely wanted competition.

The Court: Competition among equals? That is what it says.

The Witness: Regardless of the equals.

The Court: Regardless of the specifications?

The Witness: Yes.

Q. In your opinion, then, the Irving product was so far inferior to the Kerlow product that you felt you couldn't conscientiously handle it? A. Yes.

Q. And therefore rather than to do violence to your conscience, you were willing to let your connection with the Irving Company go and all that it meant to you, were you? A. I didn't desire their agency, under the condition.

Q. And you were so convinced that their product was inferior, that you were willing to give up the grat-

ing business entirely, if you couldn't handle the Kerlow? A. Yes.

Q. So that the only reason why you went to New York with Mr. Irving was to find out whether you would represent the Kerlow or anybody at all? A. Absolutely.

Q. And when you went on to New York with Mr. Irving, he knew very well that no matter what the result of your trip might be, you would never again work for him? A. I told him so, so he should know.

Q. So that the only reason he went to the expense of bringing you on to New York was to learn whether or not you would continue to sell Kerlow or drop out of the grating business entirely? A. Yes, sir.

Q. When did you see Mr. Irving in Detroit? A. I will have to refresh my—it was somewhere around about the end of November.

Q. At that time did Mr. Irving tell you about what he termed a conspiracy that had been in operation against him? A. Yes, sir.

Q. And did he tell you about Mr. Bunker pretending he was sick and remaining on the pay roll? A. Yes.

Q. He told you all that? A. Yes.

Q. Did he tell you about Mr. Wightman having been asked to take the advertising work for this new Kerlow Company? A. I don't remember.

Q. Did he tell you about the kind of grating that they were manufacturing—the Kerlow? A. I don't remember him saying anything at all about the type of grating that they were manufacturing or going to manufacture.

Q. What did you say in answer to Mr. Irving? A. I didn't say any more than I had to say because I was not convinced.

Q. What did you say? A. I don't remember.

Q. Don't you remember a thing you told him? A. No.

Q. Don't you remember your saying to Mr. Irving that if they were that type of people you wouldn't have anything to do with them? A. Yes, I did.

Q. And don't you remember saying to Mr. Irving, "Well, would you take me back after what I have done?" A. No, sir.

Q. You are positive of that? A. Absolutely.

Q. But you did agree to come to New York with Mr. Irving? A. Yes, against my better judgment.

Q. What was your purpose in going to New York? A. To go down there to learn whether these men were such rascals as Mr. Irving had painted them.

Q. Do you remember saying this to Mr. Irving, "If I thought that those fellows had been putting anything like that over on you, I wouldn't sell any grating if I had to go into a ditch to earn a living"? A. I don't remember it.

Q. Did you say that in substance? A. I don't remember.

Q. You don't remember? A. No, I don't remember saying anything about going into a ditch to earn a living.

Q. You did come on to New York with Mr. Irving? A. Yes.

Q. You stopped off at his home in Connecticut? A. Yes.

Q. The first night? A. Yes.

Q. Do you remember Mr. Irving showing you a telegram from Mr. Demorest that evening? A. I do.

Q. What was the purport of the telegram? A. I don't remember.

Q. Wasn't it a telegram from Mr. Demorest telling Mr. Irving that information about his territory had come into the hands of the Kerlow people and was being used? A. I don't remember.

Q. Don't you remember a thing that was in that telegram? A. No, sir, I don't.

Q. Do you remember shaking Mr. Irving's hand after reading that telegram and saying, "Well, that proves it and I am with you"? A. No, sir.

Q. You deny that? A. I don't remember ever shaking Mr. Irving's hand while I was in his house.

Q. Don't you remember a thing about that telegram, why it was read to you? A. I remember he had a telegram and that is all that I remember.

Q. You remember it was from Mr. Demorest? A. No, I wouldn't even have known it was from him.

Q. Whom was it from? A. I don't know; I remember his reading a telegram; that is all I remember.

Q. You don't remember anything about what was in the telegram? A. No, sir, I don't.

Q. You stayed overnight at Mr. Irving's house and left your baggage there? A. Yes.

Q. You came down to New York in the morning and went to Mr. Wightman's office? A. Which morning are you speaking about? The morning that I left my baggage at Mr. Irving's house, I went with Mr. Irving to Mr. Wightman's office.

Q. And you talked about the Kerlow Company? A. Yes.

Q. Don't you remember Mr. Wightman showing you the card with the illustration of the Kerlow grating on it? A. I remember that Mr. Irving or Mr. Wightman had a card, yes.

Q. And didn't Mr. Wightman tell you on that occasion that it was for that grating that Mr. Lown had sought his assistance as an advertising man? A. No.

Q. What did he say about this card with the grating? A. They were discussing the merits and demerits of the grating, but—

Q. But what? A. But as far as Mr. Wightman saying that Mr. Lown or Mr. Bunker had approached him to advertise that product, he denied that; he couldn't say that they had asked him to.

Q. What did he say about it? A. He said he was not aware what the product was which he was to advertise for Mr. Lown—which Mr. Lown was going to get him to advertise some previous time before this —quite a while before.

Q. You remember, however, their having stated to you that you ought to go over and look at the place where this Kerlow grating was being manufactured? A. Yes.

Q. Didn't you think it was important for the protection of your customers, that you should know what the financial resources of the Kerlow Company were in the manufacture of its product? A. So long as they could make delivery, and that would mean possibly in a very short time, it didn't concern me whether it was made in an alley or in a palace.

Q. Wouldn't the place of manufacture have a little bit to do with their power to make delivery? A. No.

Q. So that you were willing to give up the Irving connection and take on this new connection without any information whatever or any first hand knowledge as to the resources of the Kerlow Company in the manufacture of the grating? A. Yes.

The Court: Did you know what capital the Kerlow Company had?

The Witness: No, I didn't. I didn't know how much they had.

Q. And you didn't ask them? A. No, I didn't.

The Court: I don't quite follow you. You were a man of considerable experience, from what you tell me, up to that time. These men had never been in the manufacturing business before, had they, except under Irving?

The Witness: Not that I knew of, no, sir.

Q. Wasn't your reputation as a salesman and resident among the engineers, known as you were more or less at stake in offering a product of another concern? A. No.

Q. Suppose you couldn't fill your orders that you solicited? A. I could fill them in Detroit.

Q. From whom? A. From eight to ten different iron shops.

Q. Did you have such a remote contingency in your mind at the time you thought of taking this agency over? A. I beg your pardon; I had considered it very seriously about going into the business myself.

Q. Designing a grating of your own? A. No.

Q. There was nothing to prevent you from doing that, but what I have in my mind, you had an established concern, and according to the way you have recited it here, apparently you made no inquiry of Mr. Lown as to what his facilities were or his ability was to turn out grating and fill orders that you were about to solicit as his agent, if he gave you the agency? Is that the story? A. Knowing what I knew about the two men.

Q. What did you know about them? A. While Mr. Lown was yet answering my correspondence—

The Court: I think the only one I saw is a letter that made complaint that Mr. Lown has not answered your correspondence; that is all I find that you have offered me here; am I in error about that?

Mr. Egner: That is right.

Mr. Kraetzer: The correspondence that has been offered here was—

The Court: His first letter I have written to Mr. Lown, and I have received no reply, and that was received by Mr. Lown's successor; he had then left the employ of the Irving Company; that is one of the thoughts that is in my mind.

Mr. Egner: Your Honor is right on that.

The Court: How did you know anything about Mr. Lown or Mr. Bunker or their ability to carry out what they said they would do?

The Witness: I haven't presented all my file here and there are many letters which were written to the Irving Iron Works Company and taken care of by Mr. Lown, which I have not presented.

Q. Had you ever met Mr. Lown before this visit on the fifteenth of November, in person? A. Yes.

Q. Where? A. In Detroit.

Q. When? A. When he gave me the agency for the Irving Iron Works Company.

Q. And between May and November had you ever met him? A. No, sir; I had had correspondence with him, while he was handling the assistant sales managership of the Irving Iron Works Company, and his

business was taken care of very, very nicely, so long as I was getting letters from Lown.

Q. You impress me as a man of sufficient intelligence and sufficiently alive to know your own interest, not to sacrifice an apparent certainty for a thing that appeared to be up in the air, so far as you had information about it, as you recite that information to me. That is what I don't understand why you were willing to give up your position and take up one with a concern that you didn't make any inquiry to learn anything about. A. The agency that I had was not paying me; I was actually losing money through handling it.

Q. Was it because you didn't get the commission or what? A. Because I was not getting the business nor my commissions.

Q. And was that because of the inferiority of the material? A. No, it was not because of the inferiority but because, partly, of the poor handling of the business from Long Island City.

Q. Let me get that in my mind; did you actually lose any order because of the neglect or failure to make deliveries or attend to your orders and correspondence? Can you point out a single instance where Irving caused you to lose anything? A. Lawrence, Taylor & Co. were one.

Q. Were one? A. In the first place he was getting a matter of about twelve cents a pound for iron, regardless of it, and he would not cut; he would not cut, not until it was too late.

Q. What specific case did that policy cause you to lose an order and therefore the commission? Name a specific job that the Irving policy, whatever it was, good, bad or indifferent, caused you to lose an order and to lose a commission in consequence; what particular one was there by name; or if there were more

than one, name them. A. There was one job with Berry Brothers, they used straight bar grating in preference to using ours, because you could get the straight bar grating more cheaper.

Q. That was, then, merely a question of price and not a question of neglect or poor policy; it was a question of price? A. It was their power to reduce the price and still make a good profit.

Q. And they wouldn't do it? A. They wouldn't do it.

Mr. Kraetzer: May I show a letter that I think will refresh his recollection, so he will be able to answer your question?

Mr. Egner: I think this should be done on re-direct.

The Court: I will allow it in this question.

Mr. Kraetzer: The question I want to put is substantially the question that his Honor put to you, and that was as to whether there were any specific instances of unsatisfactory service that you can point to with regard to the losing of jobs or something of that kind?

The Witness: Yes, sir, there was one case with Owen, Ames & Kimball, of Grand Rapids; this letter was written May 7, 1921.

Mr. Kraetzer: What were the particulars of that circumstance?

The Witness: I bid on an order for Owen, Ames & Kimball and received the order from Owen, Ames & Kimball. Owen, Ames & Kimball wrote directly to the Long Island City office.

The Court: Under what date?

The Witness: I cannot tell you, sir. The Long Island City office quoted them direct contrary to the price

list which I had. They cancelled my order and gave it to the home office.

Q. Did you get a commission in that case? (No answer.)

The Court: I will have to take a recess now.

Adjourned to Tuesday, September 25, 1923.

Continuation of testimony in the above-entitled cause, before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Tuesday, September 25, 1923, at ten o'clock A. M.

Present: Counsel as before stated.

HAROLD SCARTH resumes the stand.

Mr. Kraetzer: Yesterday after the close I asked Mr. Chanalis if he would arrange to have the file of correspondence with Mr. Scarth produced from the Irving Iron Works Company, and I understand that they are on the way over now.

Mr. Egner: We gave those instructions, but the man hasn't arrived yet.

Re-direct examination by Mr. Kraetzer:

Q. At the closing yesterday we were dealing with the story of—

Mr. Egner: I thought I was cross-examining.

Mr. Kraetzer: You were, but I interrupted

you by the permission of the Court, and we were dealing with this situation arising from what these two letters brought to Mr. Scarth's mind.

The Court: I think the interruption arose—I asked myself if he could name any particular concern whose job he lost and therefore lost his commission as a result of the neglect on the part of the Irving people to attend to his correspondence promptly, and he could not recall it for a moment. Then, you refreshed his memory by showing him one or two letters, and at that time I took a recess. I am limiting this interruption of your examination to these two letters.

Q. Referring to these two letters, Mr. Scarth, if they will serve to refresh your recollection, will you tell us the incidents connected with the matters dealt with in these letters?

The Court: Isn't that going afield? You can take that up later. What I want him to do, if he can tell by looking at these letters, say whether they refresh his memory regarding the name of any concern whose job was lost through neglect. That is where I interrupted Mr. Egner's examination. Can you tell by looking at these letters before you—

The Witness: Can I have the question?

The Court: Can you tell me any job that was lost, any job that you had been working on, that was lost through the neglect or failure of the Irving Company to promptly answer your correspondence respecting that matter, or any commission that you lost on any job because of the Irving Company's neglect?

The Witness: No, sir.

The Court: These letters do not refresh your memory in that respect?

The Witness: Not with regard to the loss of a job, no, sir.

Mr. Kraetzer: I ask to have marked for identification, the two letters examined by Mr. Scarth, one dated May 7, 1921, addressed to the New York office, and one dated July 19, 1921, addressed to Mr. Scarth from the Irving Iron Works Company, signed H. H. Bunker, assistant manager, per W. Luebbert.

Marked Exhibits D73 and D74 for identification.

FURTHER CROSS-EXAMINATION by Mr. Egner:

Q. I suppose that on the occasion on or about December first, when you went to the office of the Kerlow Company in New York, after leaving Mr. Irving you saw Mr. Bunker there, did you? A. I did.

Q. Had you met Mr. Bunker prior to that time? A. No, sir.

Q. Had you ever corresponded with him? A. With the Irving Iron Works Company, not with Mr. Bunker direct.

Q. Had you ever corresponded with the Irving Iron Works for the attention of Mr. Bunker? A. Yes, sir.

Mr. Egner: Have you produced any application signed by Mr. Scarth?

Mr. Kraetzer: We have none.

Q. On thinking the matter over, overnight, can you tell us now whether you in fact made a written application for the job? A. I don't remember making any written application for the job.

Q. You simply have no recollection on that subject? A. No, sir.

Q. You did, however, enter into a written contract with the Kerlow Company, didn't you? A. Yes, sir.

Mr. Egner: Is that contract here?

Mr. Kraetzer: No.

The Court: I think he referred to it yesterday; it was here in his files.

Q. Have you a copy of the contract? A. No, sir, I have not the contract in my file.

Q. You haven't it with you? A. No.

Q. You had a copy of it? A. No, sir.

Q. Haven't you ever had a copy of that contract? A. Not here in this room.

The Court: In your possession?

The Witness: Yes, I have a copy of it.

Q. How was it that you brought part of your file with you and not all of your file? A. I brought the part with me which I thought would be useful in the case.

Q. Useful to your side of the case? A. Useful to refresh my memory and anything which pertained to the case.

Q. You didn't think a copy of your contract would be useful in the case? A. No, sir.

Q. Give us your best recollection as to when this contract was signed between you and the Kerlow Company? A. May I refer to my file?

Mr. Kraetzer: We will produce the contract.

Mr. Egner: I want his recollection.

The Court: If you can remember it, give it when it was actually signed, and if you have anything in your file to refresh your recollection, I have no objection to your looking at it.

Q. Can you answer that? A. Yes, sir, November 29th.

Q. So that when you came to New York with Mr. Irving, you had already entered into a written contract with the Kerlow Company? A. Yes, sir.

Q. And did you tell Mr. Irving that you had entered into that contract? A. I don't remember.

Q. How soon after leaving Mr. Irving on that occasion in New York, did you go to the office of the Kerlow Company? A. About three or four hours after leaving Mr. Irving.

Q. Whom did you see there at that time? A. Mr. Lown and Mr. Bunker.

Q. Did you tell them of the charges Mr. Irving had made? A. I did.

Q. Did you that afternoon go to the office of K. N. & K.? A. Yes, sir.

Q. What happened there? A. I talked with two gentlemen in the office of K. N. & K., who gave me their opinion that the Kerlow Steel Flooring Company was a sound company and, as one of them expressed it, was better financed and taken care of than any small company which had come to his attention in the last year or two.

The Court: Who were they; do you recall their names?

The Witness: I don't remember their names.

Q. Whom did you ask for when you went to K. N. & K.? A. I went there with Mr. Lown and he introduced me to those gentlemen.

Q. K. N. & K. had all the appearance of being a large banking office, did it not? A. Yes, sir.

Q. And the main room consists of a large room with a great many desks in it, does it not? A. There is a large room with a great many desks in it.

Q. Where were these gentlemen sitting that you saw? A. They were sitting in the private office, that I spoke to.

Q. And did either of these gentlemen tell you that K. N. & K., the firm, were interested in this business? A. No, sir.

Q. What particulars did they give you with respect to the financing of the new company? A. That they had money in it themselves.

Q. Did they tell you how much they had in it? A. No, sir.

Q. Did you ask them? A. No, sir.

Q. Did they tell you anything about the arrangement made for manufacturing by the new company? A. No, sir.

Q. Did they give you any figures or facts, other than the fact that they had some money in it, to justify their opinion that the company was in sound financial condition? A. Yes.

Q. What facts did they give you? A. They came in contact daily with propositions for both investment and speculation, and that they had picked this out themselves to put their money into.

Q. Did any of the gentlemen say whether they had any experience with the manufacture of steel grating? A. No, sir.

Q. Did they tell you any other facts upon which their opinion was based? A. Not that I can now remember.

Q. And they didn't tell you how much money they had in it? A. No, sir.

Q. You didn't ask them? A. No, sir.

Q. Did they tell you whether anybody else had any money in this company? A. No, sir.

Q. Did you ever ask either Mr. Lown or Mr. Bunker or anybody else how much money in all had been invested by anybody in the Kerlow Company? A. No, sir.

Q. And you never knew that? A. Yes, sir.

Q. When did you find that out? A. At the time.

The Court: What time?

The Witness: At the time that I was in New York.

Q. From whom? A. Mr. Lown volunteered the information.

Q. You didn't ask it; he volunteered the information? A. Yes.

The Court: What did he tell you was the amount?

The Witness: He showed me a balance sheet showing the amount of money which was to be paid in.

Q. Which was to be or had been? A. Which was to be paid in.

Q. It was to be or had been? A. It was to be paid in.

Q. What did that amount to? A. I don't remember.

Q. You don't remember that? A. No, sir.

Q. Have you a good memory, Mr. Scarth? A. I have a good memory for where to find information, but not for remembering dates and figures.

Q. You have no recollection whatever as to how much money that was? A. No, sir.

Q. Did you get any information later, whether that money that you had seen on this sheet had been paid? A. I have received a balance sheet—a prospectus from the Kerlow Steel Flooring Company, which was sent out to the stockholders at the year end.

The Court: When did you receive that?

The Witness: Approximately November—January, the middle of January.

The Court: This year?

The Witness: Yes.

The Court: You were then a stockholder, weren't you?

The Witness: Yes.

Q. Why didn't you go back to Mr. Irving's house that night? A. Because when I got through with my dinner and talking with Mr. Lown, it was too late to go out there.

Q. How late did you stay in conference with Mr. Lown? A. Until about one o'clock or one-thirty.

Q. Oh, you did? A. Yes.

The Court: In the morning?

The Witness: Yes, in the morning.

The Court: Where did Mr. Irving live at the time?

The Witness: Near Stamford, Connecticut.

Q. What time had you gone into conference with Mr. Lown and Mr. Bunker? A. About two o'clock in the afternoon I met Mr. Lown and Mr. Bunker.

Q. And you were with him from two o'clock in the afternoon until one o'clock in the evening? A. Yes, sir.

Q. What did you talk about during that time? A. General conversation and about Kerlow business.

Q. Did you discuss the prospects which were open at that time in Detroit for business? A. I don't remember.

Q. You don't remember that? A. No, sir.

Q. Did you talk about the Detroit Edison job? A. I don't remember.

Q. You don't remember? A. No, sir.

Q. Did you talk about the Detroit Municipal Railway job? A. I don't remember.

Q. Did you talk about the Lansing power house job? A. I don't remember.

The Court: Why do you answer that question so promptly, "I don't remember," without taking time to remember?

The Witness: I don't remember any part of the conversation.

Q. You talked for eleven hours and don't recall anything that was said during that period; that is what you told me, you talked from two o'clock in the afternoon until one o'clock the next morning. A. I don't remember anything specific that I can say definitely.

The Court: You answered Mr. Egner's question so promptly, with a stereotyped answer, that you don't remember, that you hardly took time to remember before you answered it. Are you able to tell me anything you talked about during those eleven hours?

The Witness: We talked about the prospects for doing business and also the prospects of the men who are representing the company, being the company more or less of a family affair.

Q. And you cannot remember whether any word was said during all this time about these three jobs which I have mentioned? A. No, sir.

The Court: Any reason why they should not have been talked about?

The Witness: No reason at all why they should not have been talked about.

The Court: There was every reason why they should be, wasn't there; there was three prospects that the Kerlow would like to have, if they could get them; they were three good jobs, were they not?

The Witness: Yes.

The Court: Any reason why the Kerlow people should not want them?

The Witness: No, sir.

The Court: Was there any reason why you should suppress information about them from the Kerlow Company?

The Witness: No, sir.

Q. During that time did you talk about who the other agents of the company would be; did you talk about Demorest? A. Yes; we mentioned Demorest.

Q. What did you say about Demorest? A. I didn't know Demorest; I didn't mention Demorest myself at all.

Q. What was said about Demorest? A. Mr. Lown told me that Mr. Demorest had been down to New York.

Q. What else? A. And that he did not know whether Demorest was going to represent us or not.

Q. Didn't he tell you he had been out to see him in Pittsburgh? A. When he was in Detroit he told me that.

The Court: In this New York conversation?

The Witness: I don't remember, sir.

The Court: Keep your mind on this interview which lasted eleven hours.

Q. You recall that when he was in Detroit he told you he had seen Demorest in Pittsburgh, did he? A. That he came from Pittsburgh, yes.

Q. What did he tell you about having seen Demorest in Pittsburgh? I am referring now to when you saw him in Detroit. A. He told me that he expected that Mr. Demorest would represent the Kerlow Steel Flooring Company.

Q. You didn't remember that yesterday. So that he did tell you in Detroit, on the first occasion that you saw him, that he had seen Demorest and that he expected Demorest to represent the Kerlow Company in Pittsburgh? A. He said that he had come from Pittsburgh and that he expected to have the representative in Pittsburgh that had been representing the Irving Iron Works.

Q. Did he tell you that before you resigned? A. No, sir.

Q. What time of the day did he tell you that? A. I don't remember.

Q. Then, how can you say that it wasn't before you resigned, if you don't remember? A. Because I know definitely that I resigned immediately.

The Court: Immediately what?

The Witness: Immediately after I had seen the card.

Q. You told us yesterday that the card was the thing that did the trick as far as your resignation was concerned, is that right? A. What I inferred from the card.

Q. In these eleven hours in New York, did you mention Moser? A. I don't remember.

Q. Did you mention Mr. Madden, the gentleman at Philadelphia? A. I don't remember Madden.

Q. Did you mention Kennedy, the agent at Hartford? A. No, sir; I don't remember his name.

Q. Did you mention Schuldt, the agent in New York City? A. Yes.

Q. What was said about him? A. Mr. Lown introduced me to Schuldt in the afternoon, and he asked me what I thought of Schuldt.

Q. Other than Demorest, what other agents of the Irving Company were mentioned on the occasion of your first conference in Detroit; did he mention Skoning; he had just come from Chicago? A. I don't remember.

Q. What agents do you remember, other than Demorest, he mentioned in the course of your first talk in Detroit? A. I don't remember any other than Demorest.

Q. Are you able to tell us anything else that you recall that was said during these eleven hours that you were with these gentlemen in New York? A. Yes, sir.

Q. What do you remember? A. I remember that Mr. Lown was telling me the possibilities of manufacturing other things besides grating.

Q. What else do you remember? A. I remember him telling me that the company would be run not just for a certain number, one, two or three, or, we will say, a small number of people that had their money in it, but it would be run as a co-operative company for the people that stayed with it and worked with it and showed themselves worthy of it. When they showed themselves worthy of it they would receive recognition.

Q. And he told you, didn't he, that the Irving Company had never been run that way, didn't he? A. I don't remember.

Q. The next morning you went up to Mr. Irving's house in Connecticut and got your bag, didn't you? A. I did.

Q. You had arranged to see Mr. Irving that next day at his plant, hadn't you? A. Yes, sir.

Q. What time did you finally get there? A. About four o'clock in the afternoon.

The Court: Did you see him when you went to his home that morning for your bag?

The Witness: No, sir.

Q. And you got there at four o'clock? A. Yes.

Q. And you had arranged to take what train back to Detroit? A. I had arranged to take the five o'clock train back.

Q. Five o'clock train from the Grand Central? A. Yes.

Q. And the Irving Company plant is where? A. Over in Long Island City.

Q. So you didn't allow very much time for your conference with Mr. Irving, did you? A. No, sir.

Q. Why not? A. Because I had definitely made up my mind what I was going to say to Mr. Irving.

Q. So that you had definitely made up your mind that you were going to stay with the Kerlow people? A. Yes.

Q. Whom did you see at the Irving plant? A. I saw Mr. Irving and I saw Mr. Price, and, as I remember it, I saw a bookkeeper.

Q. Tell us again what was said about this piece of grating Mr. Irving showed you. A. Mr. Irving showed me a piece of grating.

Q. Where did he get that piece of grating? A. Out of a drawer in his desk.

Q. What did he say about it? A. He showed it to me and he said, "You see, we can make the same type of grating the Kerlow people are making."

Q. You had no doubt in your mind that the Irving Company had the physical equipment to make that type of grating, had you? A. I knew they would have.

Q. Then, what significance did you attach in your mind at that time to the fact that Mr. Irving showed you this piece of grating, if you already knew that they had the physical power to make that kind of grating? A. They must think enough of the competition of it, to consider making it.

Q. At that time you thought this was the patented property of the Kerlow Company? A. I thought the patents were applied for; yes, sir.

Q. You thought at that time that the Kerlow people were the only ones that had the legal right to make that type of grating, didn't you? A. Not until the patents were issued.

Q. Didn't you know at that time that a person is protected on a patent, on a new invention, from the moment he makes his application? A. No, sir.

Q. You thought at that time until the patent is granted nobody could make it? A. Yes.

Q. Did you handle that piece of grating at the time? A. I don't remember whether I had it in my hands or not.

Q. How long did you talk about that grating altogether? A. Not more than a few minutes at the most.

Q. And at the conclusion of those few minutes did Mr. Irving put it back in his desk? A. As I remember it, he put it back in his desk.

Q. Don't you recall in Detroit having made a little sketch of the Type M while you were talking with Mr. Irving? A. I remember drawing it; yes, sir.

Q. Then, you did talk about that out in Detroit, didn't you? A. Yes.

Q. You didn't remember that yesterday?

Mr. Kraetzer: I beg your pardon.

The Court: The witness can answer without your assistance.

Mr. Kraetzer: May I object? I object on the ground that the question contains a misstatement of fact that the witness did not state.

The Court: The witness is capable of stating whether he did or not. He does not need counsel's assistance. If he is being examined improperly, I will stop him. He may answer the question.

A. No, sir.

The Court: The question is that you didn't remember yesterday talking about it; is that correct or not?

The Witness: That is correct; I don't remember talking about it.

The Court: He makes the same answer today; he remembers making the sketch, but doesn't remember talking about it.

Q. You made a sketch, but don't remember having discussed the sketch? A. I don't remember the conversation.

Q. You do remember you did have a conversation about that sketch? A. I remember the sketch was drawn.

Q. You remember you talked about it? A. No.

The Court: He doesn't remember whether he did or did not talk about it.

The Court: Is that what you mean to say?

The Witness: I remember distinctly making a sketch, but don't remember the conversation.

Q. So you not only don't remember the contents of a conversation, if there was one, but you even don't remember whether you even had a conversation; is that right? A. Yes.

Q. How is it that you have such an accurate memory of the length of the sample which was shown to you by Mr. Irving at his office in Long Island City for these few minutes that you were there in December of 1921? A. Because my memory remembers that, and the reason for it I don't know.

Q. Can you mention any circumstances which served to impress that on your memory? A. No, sir.

Q. This Owen-Ames-Kimball job that you referred to, the Irving Company in fact got that job, didn't they? A. Yes.

Q. And you, in fact, got the commission on it, didn't you? A. I don't remember.

Q. You mean to say that you didn't get your commission? A. I don't remember.

Q. Will you look at your records and tell us whether you got your commission on that job? A. Yes, sir. (After examining record.) I did receive my commission on that job.

Q. You said yesterday that in your opinion you were entitled to the benefit of all missionary work which you had done while you were with the Irving Company? A. Yes.

Q. In other words, that that was your property? A. Yes.

Q. Did you base that on your contract with the Irving Company? A. No, sir.

Q. You recall that there was a provision in your contract to this effect: "Promotion and Missionary Work: You agree to promote and thoroughly introduce Irving-Subway products throughout the allotted territory, to fill our outstanding C. I. M. on all prospects interviewed and to abide by the policies of the company in dealing with prospects and customers"? A. Yes.

Q. What was your understanding as to what that meant with respect to the ownership of information gathered? A. To give the information to the company, which I gained while I was trying to sell their product.

Q. At the same time, although you gave that information, it continued to be your property, is that right? A. Yes.

Q. While you were agent you got information from the home office from time to time as to prospects, didn't you? A. Yes.

Q. Whom did you consider that information belonged to? A. To me, after they had given it to me.

Q. So that was the theory on which you worked after you left their agency and became the agent of the Kerlow Company? A. Yes.

Q. You kept in your office duplicates of the C. I M.'s that you sent to New York? A. Yes, sir.

Q. And you still have those duplicates? A. No, sir.

Q. What have you done with them? A. I handed over the ones on live propositions to Mr. Froelich when I handed over the rest of the samples.

The Court: Was he your successor as agent?

The Witness: Yes.

Q. Did you hand him over the Detroit Edison C. I. M.'s? A. Yes.

Q. And you had kept copies of all of them for yourself? A. No, sir.

Q. If you thought that you were entitled to all that information, why did you hand over these C. I. M.'s to the corporation? A. I keep a card index memorandum of my own, as well as any C. I. M.'s which I would send in.

Q. So you had all that information in another form? A. Yes.

Q. If it was your property why did you hand these over to Froelich, even though you had another set of that information? A. Because I tried to give Mr. Froelich all the assistance that I could.

Q. You didn't feel, however, that you were obligated to keep off the jobs that you had been working on for the Irving Company? A. No, sir, not at the time, not immediately.

Mr. Egner: I asked yesterday that the material sheets on the Detroit Edison job be produced; are they here?

Mr. Kraetzer: The material sheets, which I am informed is the only form of data that we have on this particular job, are to be produced; we are trying to get them at this time.

Mr. Egner: So that they will be produced together with a copy of Mr. Scarth's contract?

Mr. Kraetzer: Yes.

Mr. Egner: And I would like also to request that Mr. Scarth remain available until these can be produced.

Mr. Kraetzer: I cannot promise that.

The Court: Why not serve a written notice?

I will not excuse Mr. Scarth until I am through with him. Why don't you serve a written notice for the production of the things you want? You have been doing it more or less informally and satisfactorily. If there is any question, Mr. Scarth is here under subpoena and he will not be relieved from this subpoena until he is through. There is nothing stated definitely when these material sheets are to be produced; when do you expect to have them?

Mr. Kraetzer: The thing is this: We have to get them from Fassler & Klein. Mr. Bunker tells me that he has already phoned over—he did that yesterday—to have them sent over. As soon as they turn up, they will be sent over.

The Court: It is a matter of convenience to Mr. Scarth; if he finishes his examination today or before the close of the afternoon, he may desire to leave. If it is necessary to have him examined in connection with these sheets, I will keep him. It is his own convenience that I am talking about.

Mr. Kraetzer: When I made the statement, I didn't feel like having Mr. Scarth wait. I was going on the assumption that the material sheets would not require any further cross-examination. If Mr. Egner desires to cross-examine, of course, he will have to remain.

The Court: Mr. Egner says he desires him here for cross-examination.

Mr. Egner: I may and may not. I would like to see them before he is discharged. Where is the contract?

Mr. Kraetzer: The contract is in Jersey City.

Mr. Egner: I will serve a formal notice, if counsel desire it.

Mr. Kraetzer: I don't desire anything of the kind.

Mr. Egner: Then, I would like to state on the record I also wish produced, as I stated yesterday, all letters written by Mr. Lown or the Kerlow Company to Mr. Scarth in the interval between November 15 and December first, when they went to New York. I mentioned that yesterday. Are any such letters here now? And also the original order covering the Detroit Edison job.

Mr. Kraetzer: I am not trying to quibble; which Detroit Edison job?

Mr. Egner: Marysville plant, covering—I want the large order, eight thousand odd square feet.

Mr. Kraetzer: We will produce that original order. Is that to be in conjunction with Mr. Scarth?

Mr. Egner: Yes.

The Court: Is it in connection with Mr. Scarth's examination that you desire these papers?

Mr. Egner: Yes. As far as the correspondence is concerned, I will be satisfied with their office copies, because I assume the originals are in Mr. Scarth's file in—

The Witness: I am not sure that those letters are in my file.

The Court: They will be content with copies that are in the file of the Kerlow Company.

Mr. Kraetzer: May I ask for the production of the Scarth folder?

The Court: If you prefer to defer his examination, you may do so.

Mr. Kraetzer: I shall defer any cross-examination of Mr. Scarth and call another witness.

HARRY H. SCHULDT sworn for defendant.

Direct-examination by Mr. Kraetzer:

Q. Where do you reside? A. 209 20th Street West, New York.

Q. You were at one time connected with the Irving Iron Works Company as its agent? Or one of its agents? A. As one of its salesmen.

Q. Just so we get the distinction; what distinction do you make between a salesman and an agent? A. An agent is one that works directly on commission basis; a salesman is on a salary basis.

Q. You were on a salary basis? A. Yes.

Q. When did you start your connection with the Irving Iron Works Company? A. March 19, 1920.

The Court: How long did you remain?

The Witness: I remained with them until the latter part of November, 1921.

The Court: As a salesman?

The Witness: Yes.

Q. During that period of time did you meet Mr. Lown? A. Yes, sir; I did; I was employed by him.

Q. Had you known him before that? A. Yes, sir.

Q. For how long a period of time? A. Perhaps seven years, I guess.

Q. Did you at any time have a conversation with Mr. Lown about the formation of the Kerlow Steel Flooring Company and your employment by that company? A. Yes, sir.

Q. And when was that conversation? A. The latter part of October, or the first part of November, 1921.

Q. And when was the first time that you heard of the Kerlow Steel Flooring Company? A. The latter part of October or the first part of November, 1921.

Q. What was the first time that you heard of Mr. Lown going into the steel flooring business? A. At the same time, the latter part of October.

Q. Had you heard of Mr. Lown and Mr. Bunker going into that business prior to that time? A. Yes.

The Court: Where was your territory as a salesman?

The Witness: New York.

Q. New York State or city? A. It took in part of the state, the metropolitan district.

Q. Where was your home office; where did you make your headquarters? A. Long Island City, at the main office.

Q. Will you state the circumstances when you heard about the beginning of the Kerlow Company, which you placed about the latter part of October? A. Yes; I was visiting a friend with my wife at the time, and around about ten o'clock that night Mr. Lown came in and I was a bit dissatisfied with my present employment.

The Court: In the Irving Iron Works?

The Witness: Yes—and I asked him what he was doing, and at first he wasn't inclined to tell me, and he finally did tell me that he already had formed this company and expected to manufacture shortly—the Kerlow Steel Flooring Company.

Q. What was your salary with the Irving? A. I was making $38 a week.

Q. What did you begin at? A. $35.

Q. And when you left in November, what was it? A. $38.

Q. Anything in addition to salary? A. In addition to salary I got $10 weekly, which was considered lunch money.

Q. A sort of expense money? A. Yes.

Q. So in all you got $48, out of which you paid your lunches? A. Yes.

Q. Go ahead with the conversation. A. He finally told me that he was in this company, and I asked him what—

Mr. Egner: I would like, as far as possible, to have the exact conversation, what he said and what you said.

A. (Continuing.) I asked him what he was doing; he told me that he had formed this Kerlow Steel Flooring Company and was about to start their operations; I asked him at the time under what basis the New York men would work, and he told me a strictly commission basis of ten per cent. I asked him what the chances were for a job, as I was dissatisfied with the Irving people.

Q. What did he say? A. He told me that he didn't consider anybody for the job as yet which was a territory nearby. "If you want, you can write a letter or an application, and I will consider it," and that I did.

The Court: When?

The Witness: A few days after that.

Q. In October or November? A. Yes, the early part of November.

Mr. Kraetzer: That letter has already been marked as Exhibit D22.

Q. That is the letter you are referring to, is it, Mr. Schuldt? A. Yes.

Q. It is dated October 30, 1921? A. Yes.

Q. Whose composition was that letter? A. This was mine.

Q Did Mr. Lown suggest in any way what you were to say in that application? A. No, absolutely not.

The Court: Did you write the letter that night while you were calling there?

The Witness: Either a day or two after—no; I didn't write it that night.

Q. You have stated that you were dissatisfied with your position with the Irving Iron Works Company. Will you state what the cause of your dissatisfaction was? A. My inability to secure a raise in salary.

Q. When you say that, had you spoken to anybody at the Irving Iron Works Company about getting a raise in salary? A. Yes; I had spoken to Mr. Lown in the spring of 1921, and he said he had taken it up for me, but it was at that time impossible, and later on when Mr. Roope came I approached him on it, and he said he also looked it up for me, but it was impossible at that time.

Q. Did you ever talk with Mr. Price or Mr. Irving about it? A. No, sir.

Q. When did you hear, in reply to the letter, D22, dated October 30, 1921? A. I think it was around the middle or twentieth of November—about that time, I believe, as near as I can remember.

Q. Did you continue working for the Irving Iron Works Company up to that time? A. Yes, sir.

The Court: When did you actually leave the Irving Company; you say the latter part of November?

The Witness: Yes, around the twenty-eighth.

The Court: How much notice did you give the Irving that you were going to quit?

The Witness: I gave them notice on Monday that I was resigning, and when I told them with what concern I was going, they didn't want me to stay any longer. I said I would stay a week.

The Court: So you left on the day you gave the notice?

The Witness: Yes.

Q. Did I understand you told them what concern you were going with? A. Yes.

The Court: And when he did, they didn't want him to remain any longer.

The Court: They didn't want any further notice; is that correct?

The Witness: Yes.

Q. Whom did you speak to about that? A. Mr. Price.

Q. At the time that you left the employ of the Irving Iron Works Company, did you have any copies of C. I. M.'s or list of customers, or anything of that kind? A. No, sir.

Q. Did you keep copies of your C. I. M.'s? A. No.

Q. In the course of your work for them? A. No, because I always had access to them in the office.

Q. Did you thereafter make up a list of customers or of prospects for the Kerlow Steel Flooring Company? A. Yes.

Q. And where did you get the information from, from which you made up that list? A. From memory and from a few calling cards that I had in my possession.

Q. I show you this pencil list annexed to the affidavit of Walter H. Lown, verified the fourth day of March, 1922, forming part of the answers to reply affidavits on the application for the temporary injunction in this case, and ask you if that list is in your handwriting? A. Yes.

Mr. Kraetzer: That has already been marked as an exhibit—D26.

Q. Do you recognize that as the original list that you gave to Mr. Lown? A. Yes, sir.

Q. I direct your attention to the entry on that list, "J. G. White, Kng. Co., N. Y. C," followed by a name, and I ask you if you wrote that? A. Yes.

Q. Where did you get the information from with regard to that particular name? A. From memory.

Q. So far as you recall, had you reported that name of the J. G. White Engineering Co. to the Irving Iron Works Company? A. Yes, sir.

Mr. Kraetzer: You have the original C. I. M., Mr. Egner, of the J. G. White Engineering Company.

Mr. Egner: My recollection is that what we offered was a card index memorandum.

Mr. Kraetzer: You also produced the orig-

inal C. I. M., at my request, written by Mr. Schuldt; it was marked Exhibit D13 for identification. May it appear as a matter of record that it is offered now, if it shall appear that it has not been heretofore marked?

The Court: Yes.

Exhibit D13 for identification offered in evidence and marked Exhibit D13.

Mr. Kraetzer: Can you produce the addressograph plate for that, of the J. G. White Engineering Co.?

Mr. Egner: Yes. There may be a question as to whether we still have that, but if we have, we will produce it.

Mr. Kraetzer: The only additional point I want to direct your Honor's attention to is the fact that the C. I. M., Exhibit D13, and the card C26a for identification, bear the address 43 Exchange Place. The list, Exhibit D26, and the envelope, C26, bear no street address except what has been written in, in red ink, and there is—I think I may say this—there is no indication that that was put on by us, that red ink.

Q. Mr. Schuldt, did you ever meet a man by the name of Singstad? A. I was talking to him; I was never introduced to him.

Q. Where did you see him? A. In his office, in the Hall of Records.

Q. When? A. Probably the latter part of December, 1920, or the first part of January, 1921.

Q. That was after you left the Irving Iron Works Company? A. It should have been the latter part of December, 1921, or first part of January, 1922.

Q. After you entered the employ of the Kerlow? A. Yes.

Q. Will you state the circumstances under which you saw Mr. Singstad? A. I went to see Mr. Davis, who I understood to be an engineer for the Tunnel Commission.

Q. He was formerly in the employ of the Irving Iron Works Company? A. I don't know that. I have since heard it; at any rate, I went to see him, and while I was explaining the grating to him—he had already known about it—a man comes walking through and he says—he calls him over, he says, "Mr. Singstad, this is the grating I was telling you about," and then he goes on explaining to Mr. Singstad, and every once in a while I spoke in and explained it to him, and after Mr. Singstad left I asked him who he was, and he told me that he was a man that would have a whole lot to do with what kind of grating would be used on that job—on the tunnel, on the vents. I made a note of that, and on getting back to the office, we sent him a letter and some literature.

Q. Did you speak to Mr. Singstad as to how you should address him? A. I was right in Mr. Davis's office, and he apparently had an office that led off from Mr. Davis' office; there was a door that led right off of Mr. Davis' office into his office.

Q. Where was that? A. In the Hall of Records.

Q. What did you do with the information that you say you made a note of? A. I made a report of it when I got back to the office.

Q. Report to whom? A. To the Kerlow Steel Flooring Company.

The Court: Did you enter the employ of the Kerlow on a commission or salary basis?

The Witness: On a commission basis.
The Court: What was the commission?
The Witness: Ten per cent.

Q. Are you at present employed by the Kerlow Steel Flooring Company? A. Yes.

CROSS-EXAMINATION by Mr. Egner:

Q. Is that straight ten per cent, or did it increase beyond a certain amount? A. Over a certain amount we were to get a larger commission.

The Court: A certain amount of sales?
The Witness: Yes.

Q. You had the same arrangement that all the other agents of the Kerlow had? A. I believe I had.

Q. When you first came with the Irving Company in March, 1920, you came at what salary? A. $35 per week.

The Court: Did you also have the arrangement about the $10 lunch money at that time?
The Witness: Not at that time; no, sir.

Q. So that the only compensation you got was $35 a week? A. Yes.

Q. Out of which you had to pay your own lunches? A. Yes.

Q. You received your compensation whether you got any orders or not? A. Yes.

Q. You spent quite a bit of your time in doing so-called missionary work? A. Quite a bit of it; yes, sir.

Q. And at the time you left, in the latter part of November, 1921, that is practically a year after your employment, you were getting in all $48 a week? A. That is a year and a half after my employment.

Q. How did your compensation come to be increased in that interval from $35 to $48? A. At the time I took the position, Mr. Lown told me that my increases would be very rapid, and in June of 1920 they gave me the three dollar raise, which brought my salary up to $38.

Q. Had you asked for it? A. Yes, sir.

Q. Whom did you ask on that occasion? A. Mr. Lown. I think it was around September; I am not sure of the date. It was around September of 1920 that I told Mr. Lown that all the other salesmen when they went on the road, they would have all their expenses paid; their salary was clear to them, and I had expenses around New York City, coming to and from my residence to the shop—to the office, and had dinner moneys to pay, so he took it up and he made an arrangement whereby I was to get $10 a week to cover that expense, so as to bring me on more of an even par with the rest of the salesmen.

Q. You say that at the time Mr. Lown came to speak with you, in the latter part of October, you were dissatisfied with your employment by the Irving Company? A. Yes, sir.

Q. And the ground of your dissatisfaction was that you were not getting enough salary? A. Yes.

Q. You had spoken to Mr. Lown about it? A. I had spoken to Mr. Lown and his successor, Mr. Roope.

Q. How often were you over at the main office of the company in Long Island City? A. Sometimes two times and sometimes three times a week.

Q. You were there very frequently? A. Yes.

Q. You saw both Mr. Irving and Mr. Price quite frequently? A. Yes, sir.

Q. Why didn't you mention either to Mr. Price

or Mr. Irving the fact that you thought you ought to have more salary? A. Because both Mr. Lown and Mr. Roope told me they took it up for me, and I thought that was sufficient.

Q. What did Mr. Lown tell you as to the result of his having taken it up? A. It would be impossible at this time; that is about all he told me.

Q. Did he tell you whether he had spoken to either Mr. Irving or Mr. Price about it? A. He said he had spoken to Mr. Price.

Q. What did he say? A. He said he spoke to Mr. Price about getting me an increase and Mr. Price said that at the present time it was impossible.

Q. When was that that you had that talk with Mr. Lown? A. That was around January, 1921.

Q. You were on perfectly friendly terms with both Mr. Price and Mr. Irving? A. Yes.

Q. Why didn't you go over Mr. Lown's head and talk with these gentlemen yourself? A. I thought if my immediate superior couldn't get an increase for me, it was impossible to get it.

Q. Then, your dissatisfaction didn't go to the extent of inducing you to take it up directly either with Mr. Price or Mr. Irving? A. No, sir.

Q. When was it that you had your talk with Mr. Roope? A. Around August, 1921.

Q. That was shortly after Mr. Roope came there? A. I believe he came in July; I am not sure.

Q. What did he tell you about your request? A. My first request, he said he would take it up for me, and a few days later I asked him, and he said he had spoken to Mr. Price about it, and Mr. Price said there wasn't anything doing at that time, he would see what he could do for me some time in the future.

Q. That was in August? A. Yes.

Q. After August did you again renew your request? A. I spoke to Mr. Roope about it several times, yes, and he did; he said, "Well, I took it up for you; I don't think there is anything doing; I will see what I can do," and he would pass it off; he said he had spoken to Mr. Price about it, and there was really nothing doing. There were several other salesmen that he wanted to get more money for, too, and he would take it all up.

Q. As far as you knew, however, Mr. Roope never spoke to Mr. Price about it, except in August, did he? A. That is the only time that he told me he spoke to him about it.

Q. You let it go with Mr. Roope's opinion, that there wasn't any use? A. Yes.

Q. You say that you had known Mr. Lown for a good many years? A. Yes.

Q. How intimate had your relations been with him? A. Only that he worked for the same company for about two years, I think.

Q. You say that he appointed you to this position with the Irving Company? A. Yes, sir.

Q. How did he come to appoint you to that position; did he send for you? A. He didn't send for me, no. I met him on the street and I asked him what he was doing, and he said—he told me that I was more or less confined to my job—my previous position had been in the office; he told me I was more or less confined in the office and that they needed salesmen there, and he thought I would make a good man, and asked me to come over and take a crack at it.

Q. During your association with the Irving Company did you have any social relations with Mr. Lown? A. During my engagement with the Irving Company?

Q. Yes? A. At times on Saturday afternoon we would go out to dinner together or shoot pool or something of that kind.

Q. Did you visit his home? A. Once in a while, yes.

Q. And he visited your home? A. Very seldom.

Q. But you were very friendly? A. Not so very friendly; it was only through our association with the Irving Iron Works that we got together, because the war started it, and before that it was only our business relations; we never met at night before that time.

Q. You are very positive that until this conversation in the latter part of October Mr. Lown never mentioned a word to you about the fact that he had been organizing a grating company? A. No, sir; I am positive of that.

Q. And you didn't know a thing about it? A. Absolutely not.

Q. Coming down to the occasion you did have your first talk—that was at your home? A. No, at the home of a friend.

Q. How did you happen to be there? A. I went visiting with my wife; we were at his place and Mr. Lown dropped by that night; he just happened in; I asked him what he was doing.

Q. Did Lown know that you were to be there that night? A. I don't believe he did, because we dropped in on this friend ourselves.

Q. You asked Mr. Lown what he was doing? A. Yes.

Q. What did he say? A. He told me that he was organizing this Kerlow Steel Flooring Company and that they were soon ready to begin operations.

Q. Did he tell you who was in it with him? A. I don't remember.

Q. Try to remember, Mr. Schuldt; did he tell you about Mr. Bunker being in it? A. He may have, but I cannot say for sure; I don't recollect.

Q. You knew Mr. Bunker very well, didn't you? A. Mr. Bunker and I were never very friendly.

Q. You knew he was production manager in the Irving Company? A. Yes.

Q. You mean to say you cannot remember whether Bunker's name was mentioned or not that evening? A. As I say, I am not sure; he may have said it in the course of conversation, but we were at a friend's house and we didn't discuss business very long at that time.

Q. Did he mention anybody else's name as having anything to do with the company? A. No, sir.

Q. Did he mention K. N. & K.? A. No, sir.

Q. Did he mention, as far as you can recall now, any other associate of his in this new business? A. No, sir; I cannot recall of anybody.

Q. Did he tell you what the name of this new company was? A. At that time, no, sir.

Q. You didn't know that, either? A. No; I didn't know that either; he said he was going in this business.

Q. Did he say whether he was ready to start or not? A. He said he would soon be ready.

Q. Did he tell you what capital he had? A. No, sir; I spoke about capital, and he said, "Oh, we are fixed all right," and I had a whole lot of faith in Mr. Lown and I let it go at that.

Q. You didn't ask him any of the particulars about it? A. No, sir.

Q. When he told you that he was in this new business, what did you say? A. I asked him on what basis the New York men would work, and he told me strictly commission, and I asked him what the

chances were for a position, and he said, well, he hadn't given the territory much consideration as yet, as far as locating a man, he said, "but if you want to write me a letter—an application, I will consider it."

Q. Have you got that application here? You say you wrote this application on or about the date of this talk? A. About a day or two after; it wasn't that same night, I know that.

Q. So that the letter being dated October 30, 1921, you must have had that talk about the 28th or 29th of October? A. Yes.

Q. Mr. Lown suggested that you write the application, did he? A. After I suggested that he give me the position, he said that I should write a letter of application and he would consider it.

Q. Did he say anything about your having to resign first from the Irving Company? A. No, sir.

Q. He didn't tell you that? A. No, sir.

Q. Did he tell you why he wanted a written application? A. No, sir.

Q. As far as you knew at that time, he was the whole company, wasn't he? A. He was the whole company; yes, sir.

Q. And did you think it strange that you should write an application to him when he was your friend and you discussed the whole matter with him? A. No, not necessarily; I didn't look at it in that light at all; it may have been that I thought that he was busy with a whole lot of details and perhaps would forget about me if I wasn't on record.

Q. Were you married at that time? A. Yes, sir.

Q. Have you any family? A. No, sir.

Q. Just you and your wife? A. Yes.

Q. Did you have any other means of support, other

than your earnings? A. Yes; my wife was going to business.

Q. Mr. Schuldt, I notice that this application is dated at the top, "353 Forest Street, Jersey City, October 30, 1921"; is that your home? A. Yes.

Q. Did Mr. Lown say anything to you about resigning from the Irving Company, on that occasion? A. No, sir.

Q. And, of course, you didn't resign? A. No, sir.

Q. Did he tell you how much business they were expecting to do in the new company? A. No; he couldn't tell me that very well.

Q. So you didn't know anything about that? A. I didn't know anything about that.

Q. And your wife's income—was she making at that time as much as you were? A. No, not quite.

Q. How much was she making at that time? A. Around $28 a week.

Q. How soon after the first conversation did you again talk to anybody with respect to your prospective employment by the Kerlow Company? A. It may have been a week or so after that I met Mr. Lown.

Q. By appointment? A. No; I went to his house at night, and asked him if he had received my application, which he had, and whether he considered it favorably; he said he didn't have time to go into it as yet; he would let me know, and he would let me know by letter.

Q. Did he let you know by letter? A. Yes.

Q. Have you that letter? A. No.

Mr. Egner: I would like to have that letter produced.

The Court: Have you preserved it?
The Witness: No.
The Court: Did you destroy it?
The Witness: Yes.

Q. When did you destroy it? A. When I started to work with the Kerlow Company.

Q. What is your recollection of what that letter said? A. It was just a formal letter of acceptance; I don't know just the wording.

Q. How long after October 30 was that? A. I should say maybe two weeks or so.

Q. That was about the fourteenth of November? A. Approximately that, between the fourteenth and twentieth; I don't know exactly.

Q. When did you tell Mr. Irving that you were going with the Kerlow Company? A. Around the twenty-seventh, I believe, of November.

Q. Why didn't you say anything to him between the fourteenth and twentieth or the twenty-seventh? A. The reason I didn't is because I needed my salary, and I was working with him, and I wasn't prepared to go with the Kerlow Company until the latter part of November.

Q. When was it that you gave Mr. Lown this list of names to get in touch with? A. Approximately two weeks after I came with the concern, I guess.

Q. How long did it take you to make up that list? A. It took me several nights working it out, not altogether steadily, but when I would think of a new name, I would write it down.

Q. And you say that this list was written in dribs and drabs covering a period of two weeks? A. Yes.

Q. The original list? A. Yes.

Q. That is the list which you handed over to the Kerlow Company? A. Yes.

Q. And it is a copy of that list prepared in that way that is attached in your affidavit that was produced? A. That is a sheet of the list.

Q. Before you left the Irving Company you asked for a vacation, didn't you? A. Yes.

Q. Why didn't you tell them before you asked for a vacation that you were expecting to leave them at the end of that vacation? A. It was two weeks before that I had asked for that vacation; it was really a day's vacation, that was all; it was two weeks before that that I asked Mr. Roope for that vacation.

Q. When you left the Irving Company and went with the Kerlow Company did Mr. Lown make any guarantee to you as to what your commissions would be? A. No, sir.

Q. So that, as far as you knew, you wouldn't get anything unless you succeeded in placing orders for the company? A. Arrangements were made for a drawing account.

Q. What drawing account were you to have? A. I was getting at that time $40 a week.

Q. So you were getting $8 less drawing account than you got from the Irving Company? A. Yes.

Q. Did you have a written contract with the Kerlow Company? A. Not immediately, no.

Q. Eventually? A. Yes.

Q. Have you that contract? A. I have it home.

Q. Have you a copy of the contract?

Mr. Kraetzer: Not here.

Mr. Egner: I ask that it be produced.

Q. When did you get that contract? A. I don't think it was until the following May—April or May, I think it was.

Q. May of 1922? A. Yes.

Q. On this list that you mentioned, Mr. Schuldt, which you say took you about two weeks to make out, what did you do with that list? A. I turned it in to Mr. Lown.

Q. Your office is with the home office of the Kerlow Company? A. It was at that time.

Q. Do you know whether that list is still in the possession of the Kerlow Company? A. No; I don't know.

The Court: This is the list?

Mr. Egner: No; this is a page of it. Will you produce that list?

Mr. Kraetzer: The rest of it?

Mr. Egner: Yes.

Mr. Kraetzer.: If we can find it.

Mr. Egner: I would like to know formally that we ask you to produce that list.

Q. Approximately, how many names were there on this list, Mr. Schuldt? A. Approximately four or five; I don't remember exactly; they are written like this sheet (D26); there should be between 100 and 150 names.

Q. You say all of those names were written down by you from memory? A. From memory and from cards—business and calling cards that were given me.

Q. Cards that were given you while you were an Irving agent? A. Yes, salesman.

Q. How did you happen to have these cards after you left the employ of the Irving Company? A. They were just business cards, calling cards. I had never been asked to turn them in; I had them in my pockets and lying home in my desk and one place and another.

Q. What other things besides these calling cards did

you retain after you left the employ of the Irving Company? A. That is all; I turned my bag, with all the literature in it, in the day I resigned.

Q. How often did you call upon Mr. Tonnelier while you were with the Irving Company? A. Possibly four or five times.

Q. How recently before you left had you called on him? A. That I cannot say; I cannot remember.

Q. Can you give me the address of the Bellis Wire Works Company? A. No, sir.

Q. Will you give me the address of the Galaxy Crown W. Co.? A. No, sir.

Q. Do you know what city they are in? A. No, sir.

Q. Can you give me the address of the International Mercantile Marine Company? A. At the present time they are down 11 Broadway; at that time I think it was 17 Battery Place or 45 Broadway.

Q. What is the address of Sexauer & Lamke, Inc.? A. I think Herkimer Street, Brooklyn, Greenpoint; I am not sure; I could take you there, but I don't know the address.

Q. The person that you saw there at different times was Mr. Sexauer? A. I don't recall now; there are two or three men that I have seen.

Q. What men did you put down on this list that you ought to see? A. That I don't recall.

Q. What is the address of the Rapid Transit Company? A. Is that the Brooklyn Rapid Transit or just Rapid Transit Company?

Q. Rapid Transit Company; what do you mean by Rapid Transit Company; what is the full name of that company? A. There is a Brooklyn Rapid Transit.

Q. What is the address of the company that you

placed on this list as Rapid Transit Company? A. I don't know.

Mr. Kraetzer: I think he should be shown the list.

The Court: I do not; I think it is a perfectly proper examination. If he doesn't know and doesn't remember, he can say so. If he does, say so; he is asked to give the information.

Q. Do you know their address? A. No.

Q. Who is the gentleman to whose attention the communications for that company ought to be addressed? A. I don't know that.

Q. What is the address of the Federal S. B. Co.? A. Federal Shipbuilding Company—they are over in Staten Island somewhere.

Q. Who is the gentleman to see in that company? A. I don't know.

Q. What is the address of the Isbell-Porter Co.? A. I don't know.

Q. Who is the man to see in that company? A. I don't know.

Q. What is the address of the Dairymen's League? A. I don't remember.

Q. What is the address of Babcock & Wilcox? A. The lower part of Broadway; I don't recall the number.

Q. Who is the man to see in that company? A. I don't remember.

Q. What is the address of the Eastern Potash Corporation? A. I don't remember the exact address.

Q. Who is the man to see in that company? A. I don't remember.

Q. Who is the man to see in the Standard Oil Company of New York? A. I don't remember.

Q. Who is the man to see in the Turner Construction Company? A. There are several men in all these concerns to call on from time to time.

Q. Name one of them? A. I don't recall at the present time.

Q. What is the address of the Jeffrey Manufacturing Company?

The Court: Is it necessary to go through the entire list?

Mr. Egner: I guess not; I think I have gone far enough.

The Court: I don't mean to stop you, but I think the purpose, which is apparent, and which you have in mind, has been accomplished.

Q. You say that going to see Mr. Davis you happened to meet Mr. Singstad? A. Yes.

Q. Had you ever met Mr. Singstad before that time? A. No, sir.

Q. Did you have a conversation with Mr. Singstad with respect to the Kerlow grating? A. Yes, sir.

Q. Did you ask Mr. Singstad for his card or his name? A. I don't recall.

Q. How did you get his name? A. Through Mr. Davis.

Q. You do recall that you asked Mr. Davis for his name? A. I asked Mr. Davis who the gentleman was, and he told me.

Q. What did he say? A. He said Mr. Singstad, and I asked him if he was interested in gratings and he said yes, he would have a whole lot to do with the grating that was placed on the Tunnel Commission job.

Q. Did he tell you that Mr. Singstad was his superior? A. I believe I asked him that and he told me he was.

Q. And you thereupon wrote down Mr. Singstad's name? A. I don't make it a habit of writing the name down in the office; I did when I got downstairs, yes.

Q. Did you ask him how to spell Singstad? A. I don't recollect; I believe I did ask him.

Q. Did you ask him what his first name was? A. I don't recall whether I did or not.

Q. Why didn't you? A. I say I don't recall whether I did or not; I may have.

Q. You didn't write it down, did you? A. I may have written it down when I got downstairs.

Q. Is it your custom in writing to the people to address them as plain "Mr.," without the addition of their first name? A. If I haven't the first name, I will send it that way.

Q. Ordinarily, when you inquire a man's name for business purposes, do you inquire his first name as well as his last name? A. Either his name or his first initials.

Q. You have no recollection as to whether or not you made inquiry on this occasion? A. No, sir.

Q. It is not, then, your usual habit in dictating a letter or an address, to indicate merely the gentleman's last name? A. No; it is not.

Q. Did I understand you to say that you directed this envelope to be sent out? A. I made out a list and the envelopes were written up from the list.

Q. Which was it? I understood you to say on your direct-examination, after your talk with Mr. Davis you went back to the Kerlow office, mentioned this conversation and directed that they send out the literature to Mr. Singstad; is that correct? A. Yes, sir.

Q. Then, you ordered it sent out to Mr. Singstad? A. Yes, sir.

Q. And in doing that, you departed from your usual custom in addressing letters, did you not, in that you didn't include his initials or his first name? A. I don't remember whether I did include it or not.

Q. You don't know whether the stenographer carried out your instructions? A. No, sir.

Q. Mr. Schuldt, when Lown told you in May that he couldn't get you a raise, what steps, if any, did you take to get another position? A. I wasn't discouraged at that time and I asked Mr. Lown—it was in January—I think I said January or February—I didn't take any steps at that time, because I felt perhaps the company wasn't financially fixed, and if I waited around I would possibly get it.

Q. Did you, at any time before your talk with Mr. Lown at the end of October, take any steps to get another position? A. No, only that I spoke to friends.

Q. You took no active steps to get another position? A. I didn't make any applications out, no, sir.

Q. Of course, your financial resources were such that the receipt of $48 was a very material item in your life, wasn't it? A. Well, yes; it was.

Q. Mr. Schuldt, have you kept the various cards and other memoranda which you say you used to help you in making this list up? A. I don't know whether I have it home yet or not.

Q. Will you produce whatever cards you have? A. Yes, sir.

The Court: Did you turn any of them over to the Kerlow Company?

The Witness: No, sir.

Mr. Egner: We have referred to this list which is attached to an original affidavit on file.

The Court: One page of it.

Mr. Egner: Would it be possible for your Honor to make an order, with the consent of all hands, that that be detached from the affidavit on file and kept with the other exhibits? We may want to refer to it, and it would be very much more convenient.

The Court: Why can't you have a copy of it made without mutilating the affidavit?

Mr. Egner: I would like to have the original here.

The Court: I will have the original in the files.

Mr. Egner: The point about it is, I don't think that the appearance of the list indicates that it was written in dribs and drabs, as the witness says; it seems to be a list copied from something.

The Court: Where are the other five pages?

Mr. Egner: I have asked to have them produced.

The Court: They can be marked as an exhibit in the cause, and then the same comment you desire to make about these pages will apply to this also.

The Witness: In connection with that list, I haven't been connected with the Kerlow Steel Flooring Company, actively engaged, for the last three and one-half months, and my mind has been entirely occupied with a new business. Naturally, at the time this list was made up, my mind was occupied with that sort of business, and they would be more fresh in my memory than at the present time.

The Court: You mean your failure to recall these

addresses and the persons on whom you had called is due to the fact that you have not been actively participating in this business for the last four or five months?

The Witness: No.

The Court: You said you have not been actively connected with the Kerlow Company; what do you mean?

The Witness: I was occupied in another business.

The Court: Are you in their employ?

The Witness: I came back last Saturday.

The Court: What other business were you engaged in?

The Witness: Managing bath houses at Edgemere, Long Island.

Mr. Egner: Wasn't that in the line of a summer vacation?

The Court: When did you go to work at Edgemere?

The Witness: I went to work at Edgemere around the twelfth of June.

Q. And returned last Saturday to the Kerlow Company? A. Yes.

Q. In that period have you done any work for the Kerlow Company? A. Absolutely none.

Q. Or been in their offices or headquarters? A. No, not even heard from them.

Q. Drawn any salary or commission? A. No, sir.

Q. When you left you expected to return at the end of the summer? A. Yes.

Q. So that you really had a leave of absence? A. Yes; that is the idea.

Mr. Kraetzer: I would like to offer in evidence letter dated November 14, 1921, now

marked Exhibit D3 for identification, identified by Mr. Walter K. Irving and signed by him—letter addressed to Mr. Joseph Madden.

Marked Exhibit D3.

Nov. 14, 1921.

Mr. J. M. Madden,
1039 Real Estate Trust Bldg.,
Philadelphia, Pa.

Dear Joe:

A good mason left here six or seven months ago to organize a grating business and another good mason stayed until a few weeks ago to keep track of what was going on here. Three others, agents all, have curiously resigned, one for one reason and another for another. I asked none of them to stay, although I knew their resignations were coming before they sent them. Your resignation has not come in yet and I don't know that it will, but if it does I am going to send it back to you. In other words, Joe, I want you to be the "he" man I think you are and if you contemplate anything of this sort come and talk it over with your friends. Real ones are few and far between.

Price is out in Chicago and Cleveland this week putting on new men so that I don't feel I can get away, but probably next week I will be in Philadelphia and see you.

With best wishes, I am,

Sincerely yours,
IRVING IRON WORKS CO.,
WALTER E. IRVING,
President.

WEI:RJB

Recess.

Mr. Kraetzer: I am about to use the file of correspondence passing between the Irving Iron Works Company and Mr. Scarth at Detroit, produced at our request, and in order to refresh the Court's recollection, I desire, as a preliminary, to read from page 503 of Mr. Price's direct testimony:

"Q. Did you have anything to do with respect to correspondence down there? A. I did; my date is on here, opposite my letter, on the reverse side of this letter; opposite my letter C is the date there in handwriting."

The Court: The date of the receipt is that?

Mr. Kraetzer: Then it says:

"Q. And your department as general manager is what letter? A. Letter C.

"Q. Is that the original notation indicating that you had read the letter? A. Yes, it is."

Mr. Kraetzer: As a general proposition I have gone through all of the papers in this regular voluminous correspondence—anyone's approximation of the number is as good as mine, but I should judge that there are altogether at least a hundred, if not a hundred and fifty letters in this file.

Mr. Chanalis: At least that.

The Court: Can the file be offered as one exhibit?

Mr. Egner: The only thing about that is, that we have such an enormous number of letters in that record now, I would very much prefer only to offer letters that counsel think have some bearing on the case.

The Court: He has identified from his remarks, these are practically all the letters that bear the letter C, indicating they have been read by Mr. Price. Now, I understand that out of this number of letters, it is not the intention, possibly, to use all of them, only such as have material bearing on the issue here. The thought I had, instead of making the voluminous record and having to print a hundred odd letters as exhibits in the case, if you ever have to, that you offer the page which Mr. Chanalis has gone over, reserving to both of you to make any objection to any of the letters, on the materiality or competency, and then you can take such of them as you please or all of them.

Mr. Kraetzer: That is why I invite a criticism of my statement, first, as to the number, and we have substantially agreed as to that; second, as to the fact that each one of these letters, both originals and carbons bears the file stamp on the back or on the front of the letter, and that opposite the letter C, in practically every instance, is a date, which according to Mr. Price's statement, indicates that the letter was read by him.

The Court: Then for the present purposes, I will receive them, reserving to both of you the right to object, if you find it necessary to do so, and they will all take the one number.

Mr. Egner: There are other letters which we have taken out, and I should like to have those included in the folder.

The Court: Why not?

Mr. Kraetzer: I have no objection.

The Court: They are stamped C and with the date also?

Mr. Egner: The same kind of letter and they came from the same file and I desire them to go in under the same number.

Folder marked Exhibit D75.

(See notation on this exhibit.)

Mr. Egner: Because the matter is still fresh in our minds, I should like to read one of those letters.

The Court: What is the object of it?

Mr. Egner: The object is this: It has to do with the issue as to whether or not Mr. Scarth was really dissatisfied with his employment. Your Honor will recall that we produced yesterday a letter written under date of September 22, from Mr. Irving to Mr. Scarth, in which he said, "If you have anything further to say to me, I would be glad to hear from you."

The Court: Why not wait and recall Mr. Scarth, if necessary, and have that letter identified? Unless it is admitted, you would have to recall him on your side of the case.

Mr. Kraetzer: I would admit it, but I very much prefer to pursue my own course.

Mr. Egner: This is a reply from Mr. Scarth to Mr. Irving and is dated September 24, 1921.

The Court: The right will be reserved to Mr. Egner to read that letter either on recalling Mr. Scarth or, if his counsel doesn't desire that, independently of recalling him.

Mr. Egner: I would have called his attention to it if the letter had been here when Mr. Scarth was on the stand.

The Court: You will be given the opportunity.

Mr. Kraetzer: I desire from this Exhibit D

75 to refer specifically to a letter dated June 18, 1921, addressed by the Detroit office to the Long Island works, bearing a notation, with the initials "P. L. P." on the back, "We want to send them what is reasonable for about a month's supply. With 40 agents we cannot afford to have too much capital invested in stationery lying in their drawers."

The Court: It is admitted to be Mr. Price's? (After examination of paper by Mr. Price.) That is admitted to be Mr. Price's notation.

Mr. Kraetzer: I desire also to call attention to letter dated August 8, 1921, from the same exhibit, addressed to Mr. H. H. Bunker, Long Island City, signed by Mr. Scarth, and having a received stamp of the Irving Iron Works Company dated August 10, 1921, and bearing on the reverse side, opposite the letter "J," the date, "8/10/21," and opposite the letter "I, 8/15/21," and no other file reference.

The Court: The letter "I" indicating Mr. Irving?

Mr. Kraetzer: That indicates the sales department; the letter "C" indicates Mr. Price. I am also informed that Mr. Bunker's letter was "K."

I also direct attention to letter dated August 9, 1921, bearing the received stamp "August 11, 1921," addressed to Mr. Walter Irving, Irving Iron Works Company, and signed by Mr. H. Scarth, showing the file reference on the back against the letter A, "8/11/21"; against the letter C, "8/11/21"; against the letter I, "8/11/21"; opposite which are the words "Ack. and say I appreciated his faithfulness or something to that effect."

Also, to a letter dated August 22, 1921, stamped, "Received August 24, 1921," addressed to Mr. H. H. Bunker, Long Island City, signed by Mr. Scarth, and bearing the file reference on the back, opposite the letter C, "8/24/21"; opposite the letter I, "8/30/21," and no other file reference.

I call attention to the letter dated September 1, 1921, stamped, "Received September 3, 1921," addressed to the Long Island City office, signed by Detroit office, H. Scarth, which says: "Will you be good enough to let me have a statement of my account up to and including August 31? A check would be very acceptable to me at this time and at your earliest convenience."

The Court: We have had that letter.

Mr. Kraetzer: My particular reference is to the file and I want to identify it. Showing the file reference "B, 9/14/21," opposite which is "July 31, Stat. mailed 9/14/21, W. J. B.," who I suppose is Mr. Brown. Opposite the file reference "C" is "9/3/21," and opposite the file reference "I" is "9/18/21."

Letter dated September 22, 1921, stamped, "Received September 23, 1921," addressed to Irving Iron Works Company, Long Island City, New York; signed, Detroit office, H. Scarth, bearing the file reference "B, 9/23/21; C, 9/23/21; I, 9/24/21."

A letter dated October 17, 1921, addressed to Mr. Walter Irving, Irving Iron Works Co., Long Island City, signed by Mr. H. Scarth, Detroit office. No receipt stamp on it. Bearing the file reference "I, 10/25/21; C, 10/27/21; A, 11/1/21."

Mr. Egner: At this point I should like to call attention to two letters specifically in this folder, if I may.

I call specific attention to a letter dated September 24, 1921, Mr. Scarth to Walter E. Irving, which I should like to read now; this is in answer to the letter of September 22, which was offered yesterday:

My Dear Mr. Irving:

Many thanks for your very kind letter of September 22nd which makes me feel more friendly disposed toward the cause than ever and shall avail myself of the opportunity of writing you personally upon any subject which I think might be of benefit to the Company, for I should like you to feel that I am one of the I. I. Works Company's family.

At this particular time I was unfortunately pressed for ready cash, whereas I have to find a new home, buy winter coal, clothes, etc., and all this coming at a time when my bank account had been severely taxed.

The prospects for business in this territory do not look as if they would come up to 1920's record but I can assure you that mighty few possibilities are getting by without my giving them a real good battle. I am also doing, as you will see by my C. I. M.'s, a considerable amount of missionary work.

Yours faithfully,

H. SCARTH.

And I also call attention to a letter of August 17, 1921, from Mr. Scarth to the Irving Iron Works Company.

The Court: Both of these letters are from the same exhibit, D75?

Mr. Egner: Yes, and particular reference to this statement:

"While this job was larger than I had expected, I was somewhat disappointed for I learn that altho the Marysville Plant is going ahead they have decided to hold off ordering the 'Subway' until next spring or summer as it would have to be stored in the open, there will be about 8,000 sq. ft. which will make a very nice order and would at this time help to keep you out of mischief.

"The order that you are now working upon was sold without much talk about price. I merely assured them that 'the price is right.' And did not mention the discount that Mr. Price wrote me about some time ago."

At this time I should like to refer your Honor's attention to the fact that the Marysville job referred to in the letter I have just read, is what is known as the Detroit Edison job.

The Court: Do you wish to recall Mr. Scarth?

Mr. Kraetzer: I have nothing further on my re-direct. I offer Mr. Scarth for further cross-examination. I may say, for the purpose of the record, that I have produced and handed a contract between Mr. Scarth and the Kerlow Steel Flooring Company, and I have also produced the data that we had with regard to

the Marysville job, that was requested in connection with Mr. Scarth's testimony. I also handed to Mr. Egner the contract with Mr. Schuldt, and I offer these in evidence.

Mr. Egner: No objection.

Mr. Kraetzer: I offer in evidence contract between Harold Scarth and Kerlow Steel Flooring Company, dated November 29, 1921.

Marked Exhibit D76.

Mr. Kraetzer: I offer in evidence contract between Messrs. Schuldt and Wolthers of New York and the Kerlow Steel Flooring Company, dated 8/27/22, together with two supplemental letters signed by Mr. Schuldt and Mr. Wolthers, having to do with the return of moneys advanced to them and forming part of their contract, these letters being dated June 2, 1922, and I ask that they be marked as one exhibit.

Marked Exhibit D77.

Mr. Egner: With respect to these papers which have been produced on the Marysville plant, Detroit Edison Company, which I hold in my hand, counsel have produced the original order, which bears date December 19, 1921, and I should like to have counsel check off whatever I say about this, and perhaps we can avoid putting all this in.

This contract calls for the delivery of all three-fourths inch grating for the sum of $7,805.26; all one-inch grating for the sum of $638.70; all 1 1/2-inch grating for the sum of $1,823.21, less 8 per cent discount and special discount of $400, F. O. B. Jersey City, New Jersey, as per your quotation of December 19, 1921.

Accompanying this order have been produced eleven blueprint pages constituting the structural bills of material on this job. They all refer to Kerlow grating of different sizes. They all indicate that the bills were written by Neville, dated November 22, 1921. The first three sheets have that notation. The next eight sheets have the notation, "Bill written by Neville, dated November 23, 1921."

If counsel are willing to stipulate, I should like to have it agreed that this structural bill of material sets forth information which previously appeared on detailed drawings regarding this job. In other words, that the information on this bill is taken from precedent drawings.

Mr. Kraetzer: That is not in accordance with my information. Mr. Bunker shook his head at me; that is how I am able to answer that.

Mr. Egner: That is all I care to state. The significance of this is that the date November 22 and 23 appears on that.

The Court: This is a bill of material and the order for the material given by this company to the Kerlow Company.

Mr. Egner: Yes, and produced by them on my demand.

Mr. Kraetzer: I should like to also state that each of these blueprint sheets bears after the word "date" printed, and stamp date beginning December 10, 1921, stamped on all of the sheets.

The Court: And what does that mean?

Mr. Kraetzer: That means that this blueprint was made on December—

The Court: This particular copy you have in your hand?

Mr. Kraetzer: Let me lead up to that date December 10, 1921. I find that the last date in this list of dates, reference to which was made by Mr. Egner, is approved, "Construction Engineer, 12/9/21."

The Court: As I see the situation, if these have any significance at all, it is a contradiction of Mr. Scarth to the extent of showing that while he was still in the employ of the—he had not definitely quit the employ of Irving, and had not received his formal contract on November 29, from Kerlow, somebody had furnished this Marysville Electric Company with detailed information, so that the Electric Company gave the order to Kerlow.

Mr. Egner: That is what I contend for. It goes a step further. Your Honor will recall that Mr. Scarth, on the stand, thought he had supplied that information, and it was only a question of when it was done. The only significance of this is that these things were written then and that they must have been before that date supplied by Kerlow.

HAROLD SCARTH, recalled for further direct-examination.

By Mr. Kraetzer:

Q. Mr. Scarth, you heard the statement that was made with regard to the inference to be drawn from these sheets that I have placed before you, which were

produced by us, consisting of the bills of material. Will you explain what the various dates on these sheets mean, first?

The Court: Did you have anything to do with the preparation of these sheets or the data that appears upon them? Look at them and tell me.

The Witness: Yes, sir.

The Court: When?

The Witness: When the final tracing of these bills of material were made.

The Court: And that was when?

The Witness: The final tracing had to be made before the blueprint could be made from it.

The Court: The blueprint bears the date—three of them, at least, November 22; that would indicate that the final tracing had been made at least on those dates or prior thereto, according to your answer?

The Witness: Yes. The final tracing had been made prior to the date of December 10.

The Court: I am directing your attention to November 22. If the tracing wasn't in existence, they couldn't make a blueprint from it.

The Witness: No, but this date on here is taken from the date that the original bill of material is written.

The Court: How do you know that?

The Witness: Because I follow more than half of the business through the Detroit Edison Company, and in many cases I actually write the bill of material myself in the rough draft.

The Court: Did you write this?

The Witness: No, sir.

The Court: Then I ask you again what did you have to do with it, if anything—with these eleven sheets before you?

The Witness: I checked—

The Court: I mean in their preparation; not in checking them, but in preparing and making them up, what, if anything, did you have to do with them?

The Witness: I didn't have anything to do in the actual preparation.

The Court: I don't see how you can tell me then when they were prepared; if you can, I would like you to tell me how you can do it, and tell me.

The Witness: Because the copy that I hold in my hand, or one identically like it, was given to me by Mr. Allen of the Detroit Edison Company, to take over to my office to check over there and to give him a bid, and the one that I had with me, your Honor, was yet wet out of the blueprint machine.

The Court: It was practically a duplicate of these sheets?

The Witness: Yes, it was this original sheet; I can identify it by my figures on the sides.

Mr. Kraetzer: May I interpose this: Mr. Egner has made the statement of the date November 22, 1921; I am going to offer this in evidence, because they are not before the Court, and the Court hasn't seen it, and I will ask you to look at how these dates appear.

Marked Exhibit D78.

Q. When did you receive this or a copy of it? A. December 9 or December 10.

Q. And had you anything to do with the preparation of that bill of material prior to that time? A. Not of the actual tracing as it appears here in the original one that is here.

Q. What did you have to do with it? A. May I say that the tracings go out and it is necessary to go

all over these tracings and take the pieces off the different tracings.

Q. When did you get these drawings? A. I worked on these drawings around the seventh and eighth of December, to check the bill that this was actually traced from.

Mr. Egner: I call your attention to the fact that the sequence of dates appears to indicate that the list was made first by the man who wrote them, and then checked off by various parties at different dates, December 2nd, &c., received, final prospect on December 9th, and approved on December 10th, but the significant thing is that the word "Kerlow" apparently was in there from the beginning and remained right through.

Mr. Kraetzer: There isn't anything to indicate that the word "Kerlow" was in there from the beginning.

The Court: All right; it is a fair subject of comment.

Mr. Kraetzer: May I ask whether Mr. Scarth is to remain any longer?

Mr. Egner: The only thing that I have asked for, your Honor, that has not been produced, are any letters written by Mr. Lown to Mr. Scarth in the period between November 15 and December 1. Have you any such letters, Mr. Kraetzer?

Examination by the Court:

Q. When did you last bring the subject of the Irving grating to the attention of the Detroit Edison Company; when did you last call on that company

with respect to the Irving grating? When as a representative of the Irving Company did you make your last call on the Detroit Electrical people or communicate with them in any way with the idea of getting the job for the Irving people, the Detroit Edison? A. I called there, I am positive, in the same November in which my resignation was handed in.

Q. When did you first call on the Detroit Edison people as a representative of the Kerlow Company, with the idea of getting the job for the Kerlow? A. About the first of December.

Q. When you say "about," do you mean prior or subsequent to the first? A. It was immediately after the date that I came back from New York.

CROSS-EXAMINATION by Mr. Egner:

Q. You wish the record to remain, then, that between November 15 and December 1st you gave no intimation whatever to the Detroit Edison Company that you were handling a new type of grating, known as the Kerlow? A. I did not call upon the Detroit Edison Company to that effect.

The Court: I didn't limit it to a call; I limit it to a call or communication in any way so as to bring to their attention the fact that you were then acting as a representative of the Kerlow grating. You might have telephoned or written a letter.

The Witness: I did not call upon the Detroit Edison Company for the purpose of soliciting business from them prior to after my return from New York.

The Court: Did you in any way inform them prior to your return from New York that you were representing the Kerlow Company?

The Witness: No, sir.
The Court: In no way?
The Witness: No, sir.

Q. As far as you know, did the Detroit Edison Company know of the Kerlow grating or the fact that you represented the Kerlow grating, at any time prior to your informing them after December first? A. They did know about the Kerlow grating, yes, sir.

Q. How did they know about the Kerlow grating? A. I cannot answer the question.

Q. How do you know they knew? A. Because Mr. Allen of the company told me that he knew that there was a new grating on the market.

Q. When did he tell you that? A. The first time that I called on him.

Examination by the Court:

Q. Did he know it as the Kerlow grating? A. I don't remember.

Q. When did you first call on him? A. I called on him about the second of December, right after I got back from New York.

Q. Did he know anything of the Kerlow grating while you were negotiating with them for the Irving grating? A. Not through me.

Q. Did he know; did he inform you that he knew there was another grating on the market, or another grating? A. Yes.

Q. When did he first tell you that he knew anything about it? A. The first of December.

Q. Oh, no, you don't understand me, or I don't understand you. You said the first time you called on him was to solicit the business of the Irving Company; when did you first learn from anyone connected with

the Detroit Edison Company that they had knowledge of the existence of the Kerlow grating? A. On the first of December.

Q. After the first of December? A. After the first of December.

FURTHER CROSS-EXAMINATION by Mr. Egner:

Q. And they told you that they had known about it prior to your call? A. Yes, sir.

Q. Did you make any call at the Detroit Edison between the 15th of November and the first of December? A. Yes, sir.

Q. How often were you at the Detroit Edison office in the interval? A. Three times, to my knowledge.

Q. As a representative of Irving? A. No, sir.

Q. In what capacity? A. With the Donnelly Heating System; Mr. Donnelly accompanied me there, calling upon a separate department from the one that handled the grating.

Q. Did you call on the Detroit Edison any time between November 15 and December 1, on the subject of grating? A. No, sir.

The Court: No reason why Mr. Scarth should remain any longer?

Mr. Egner: I should like to see those letters. I don't want to inconvenience Mr. Scarth.

Mr. Kraetzer: We have been unable to find any letters of that kind. Mr. Bunker has the office over there still looking, and he doesn't want to give a final answer until he gets a final report, but his own impression, and even

Mr. Scarth's impression, is that there were no such letters.

Mr. Egner: Mr. Scarth testified that there were.

Mr. Kraetzer: We have been unable to turn up any such letters. There may be one letter from Mr. Lown to him, Mr. Scarth thinks.

The Court: Do you want to examine him as to the contents of the letter or merely have him identify it?

Mr. Egner: I cannot tell until I have seen the letters. I understood there was more than one letter. It is rather difficult to say whether I do want to do more than offer the letter; there may be something I want to ask the witness about.

Mr. Kraetzer: It is very probable they won't be able to conclude by tomorrow afternoon, and I should like to release Mr. Scarth, because he has a rather pressing business engagement in Chicago, at a subsequent date.

Mr. Egner: I will leave it in this way: I am willing to have Mr. Scarth go, with the understanding that if the letters are produced and there is anything I can convince your Honor I ought to examine about, your Honor will say that they will bring him back.

The Court: Unless counsel admit that you are endeavoring to develop it so.

Mr. Kraetzer: That is agreed to.

ALBERT ROTHMAN, sworn for defendants.

Direct-examination by Mr. Kraetzer:

Q. Mr. Rothman, you are connected with Fassler & Kline of Long Island City? A. Yes, sir.

Q. Is that a corporation or a copartnership? A. A corporation.

Q. And are you an officer of the corporation? A. Yes.

Q. And you did some work for the Kerlow Steel Flooring Company, did you? A. Yes.

Q. Before you went into the business of Fassler & Kline you were employed by the Irving Iron Works Company? A. Yes.

Q. As a draftsman? A. Yes, sir.

Q. And how long were you connected with them? A. About eight years.

The Court: What is the business of Fassler & Kline?

The Witness: Iron works. In fact, the name is Fassler & Kline Iron Works, Inc.

Q. Do you know the first time that you heard of the Kerlow Steel Flooring Company? A. Yes.

Q. What was the approximate date? A. It was about October 18, 1921.

Q. And what was the circumstance of your hearing about it; from whom did you hear about it? A. I heard it from Mr. Bunker.

Q. Where did you see Mr. Bunker? A. I met him at the Grand Central station in New York.

Q. And did you do any work for Kerlow Steel Flooring Company prior to the meeting? A. No, sir.

Q. Did you do any work for them after the meeting? A. Yes, sir.

Q. How soon after? A. Immediately after.

Q. When you say immediately, what do you mean, a day or a week? A. A day, the next day.

Q. What did you do? A. Made some grills and dies for our machine; I made some dies for our machine and made some grills.

Q. When did you first manufacture the Kerlow type of grating? A. Within a short time after I saw Mr. Bunker.

Q. About how long a time? A. About two weeks.

Q. When I say first manufacture, I mean of a commercial order? A. That is what I refer to; I think it is about two weeks.

Q. And thereafter you continued to manufacture for them? A. Yes.

Q. And you still do? A. Yes.

No cross-examination.

HERBERT H. BUNKER, sworn for defendants.

Direct-examination by Mr. Kraetzer:

Q. You reside in Jersey City? A. Yes.

Q. And you originally came from California? A. Yes.

Q. And when you came on here sometime ago, did you go right into the Irving Iron Works Company then? A. Within a few days after I arrived here.

Q. About what year was that? A. 1912.

Q. And what was your position with the Irving Iron Works Company in that year? A. I was engaged

by Mr. Price as a draftsman and developed at that time, shortly afterwards, into a designer, and did a great deal of advertising work. In fact, I believe at that time, I know that they started to advertise grating and hardware and I made most of the postal cards and such literature of that kind that was sent out.

Q. What was your salary when you were taken on? A. I believe it was $30 or $32.50, I don't quite recall.

Q. How long did you continue as draftsman? A. I was there a few months.

Q. And what was the next step in your connection with the Irving Iron Works Company? A. When I was engaged, Mr. Price was chief draftsman, and my next step which I started, was within a few months, I was made chief draftsman, Mr. Price going downstairs as assistant manager or manager of some sort.

Q. And did you get any raise in salary at that time? A. I think it was. No, not at that time, but shortly afterwards.

Q. You said something about designing cards, etc. I show you this catalogue or price list dated 1915; is that a sample of the work that you did at that time? A. Yes, this is a small portion of the kind of work that I did at that time.

Q. And does it represent the kind of goods that the Irving Iron Works was handling at that time? A. That is one of a great many items that they handled at that time.

Q. You mean these are some of a great many? A. Some of a great many.

Q. The description work on this book is what you did? A. Yes, and also illustrations on the pages and the front, these sketches and the cover.

Q. When was it that you became assistant production manager; was that the next step? A. Yes, sir, I was made production manager about the middle of 1918; it was just—Mr. Davis resigned during the war, and I recall that there was a notice put up that I was made production manager, and that position covered the shop—the drawing room, the purchasing department, the stenographic service—in fact, there was a circular notice put up at that time. I don't remember all the jobs I was supposed to cover.

Q. Who was your immediate superior? A. Mr. Price.

Q. Who was over Mr. Price? A. Mr. Irving.

Q. What year was that? A. 1918; it was when Mr. Davis left; I believe it was 1918.

Q. What was the extent of your association with Mr. Price and Mr. Irving during the time that you were employed over there, beginning with your employment as draftsman? A. When I was employed as draftsman, Mr. Price, as I have mentioned before, was chief draftsman, and it seemed at that time—I had more experience in what is known as the ornamental iron game, which was the chief line of the Irving Iron Works, and Mr. Price and I devoted a great deal of time to this end.

Q. Was the W. Irving Forge started by that time? A. No, sir; what time do you mean?

Q. At the time you are speaking of, 1912? A. No, when Mr. Irving discovered that I could draw a little bit, he also became very friendly and we spent a great deal of time in consultation over advertising work and hardware and all that sort of thing, which was known as 572, and was being developed at the Irving Iron Works shop at that time.

Q. Just when did the Irving Iron Works start its production on a large scale of the subway grating? A. The first catalogue covering grating was issued in 1916. Prior to that time the grating business had not amounted to very much, but after that time it commenced to grow. As I recall, the first large job of any magnitude was the Solvay Process Company, Syracuse, New York, and it is my remembrance that from the time of this job on, the thought of grating as a floor for interior purposes in industrial plants was started and pushed.

Q. And then did that continue on from 1916, the work of pushing the flooring—grating? A. In 1917 the Irving Iron Works put on their first manufacturer's representative, Mr. Demorest, of Pittsburgh, and the grating gradually developed from that time on. There was, of course, during these years considerable competition over other gratings of a similar nature.

Q. When you say "similar," what kind do you mean? A. I mean gratings that were of an open type, skeleton type, both reticulated and egg crate, which were approved by the Transit Commission, or rather Public Service of the City of New York for subway work, and I recall that at the time of issuing the first catalogue of the Irving Iron Works Company covering grating lines, that a great deal of discussion was caused by the appearance of a catalogue issued by a man named Albee from Pittsburgh. This was the famous egg crate type, afterwards taken hold of and pushed by Mitchell Tappen Company of New York City. I recall that incident, because there was this argument between Mr. Irving—

Mr. Egner: I don't think we should have all this.

The Court: It is not material why you recall it.

Q. During the year 1917 or prior to that time, had you had any social relations with Mr. Irving? A. Not that I recall prior to 1917.

Q. Did you have any during 1917 that you recall? A. No.

Q. When did you first have any social relations with Mr. Irving at all? A. I could not state the exact dates, but I believe I visited Mr. Irving at his house perhaps three times.

Q. You mean three times during the year you were employed? A. I would say so, yes; that is all I recall. There may be another visit one way or the other.

Q. Can you recall approximately when the first occasion was? A. I would say it was about the latter part of 1918.

Q. Going back, before we leave 1917, did you have anything to do with regard to the administration of the shop there at that time—the Irving shop in 1917? A. Not prior to 1917.

Q. During 1917? A. When Mr. Davis left—no, that was 1918; no, not during 1917.

Q. When did you begin— A. In the middle of 1918.

Q. Again, with regard to 1917, there has been testimony here with regard to the design by Mr. Price of the type known as Type M of the Irving Company, which corresponds to the form of design manufactured by the Kerlow Company. Do you recall the incident that has been described by Mr. Price, wherein he says that he showed you a design and you and he discussed the design, which became Type M? A. No, sir.

The Court: You don't recall it?
The Witness: No, sir.
The Court: Or it didn't occur?
The Witness: It didn't occur.

Q. Did you at any time during 1917 discuss with Mr. Price or with anyone else the form of grating manufactured by the Kerlow Steel Flooring Company and known as Type M of the Irving subway? A. No, sir, not at that time.

Q. What was the first time that you have any knowledge of that form of grating? A. The latter part of January or first of February, 1921.

Q. There have been produced here pictures of dies or a sample purporting to have been made in 1917, representing types of grating—from which types of grating similar to the kind manufactured by the Kerlow Steel Flooring Company could be made. Did you see any of those dies or any of those samples during the year 1917? A. In 1917 or at any other time, but I can assure you that if I had—

The Court: No, answer the question.

Q. During 1918 you had charge of the shop over there, did you? A. Yes.

Q. And can you tell me who was your superior at that time? A. Mr. Price was my superior during my entire stay at the Irving Iron Works.

Q. With regard to the management of the shop from 1918 on, did you independently determine matters with regard to the management of that shop? A. No, sir.

Q. How were those matters determined?

The Witness: May I ask a question?

Q. Don't you understand what I mean? A. There were all kinds of matters—internal and external matters.

Q. With regard to the method production, we will say in 1918, and thereafter, did you determine what methods were to be followed without consultation with Mr. Irving or Mr. Price? A. No, sir, I was in full conference with Mr. Price, and occasionally Mr. Irving regarding the shop practices, as well as the drawing room, and all sorts of things of that character, and when I thought of an idea, or Mr. Price had an idea, we would get together on it and decide whether or not anything should be done.

Q. How did you get along with Mr. Price?

The Court: Amicably or otherwise?

Mr. Kraetzer: Yes.

A. Mr. Price was at all times my superior, and I got along with him very well.

Q. Did you have any occasions when you had to take up business with Mr. Irving? A. Yes, sir.

Q. From 1918 on? A. Both before 1918 and after 1918.

Q. How did you get along with Mr. Irving? A. I got along with Mr. Irving satisfactorily as long as I did not intrude on any of the policies of the company.

Q. Did you ever intrude on the policies of the company? A. I did on a great many occasions.

Q. Starting when? A. Starting practically from the time that I took over the shop and was made production manager.

Q. That was in 1918? A. Yes.

Q. What kind of matters did you intrude into, as you say, on the policy of the company? A. The sys-

tem in force at that time was what I might term a military form of government, Mr. Irving being the commanding general, Mr. Price next, and so on down to myself. Anything that came up, I took up with Mr. Price, and he in turn took up with Mr. Irving, and back down the line again. I was continually making suggestions for improving not only the shop, but sales methods and everything else, and it was very seldom that I was able to convince Mr. Irving of my ideas, Mr. Price saying that it was impossible to get anything done, and he did not know how to get around some of Mr. Irving's ideas.

Q. Can you recall any specific cases of that?

The Court: Is it necessary to go into it?

Q. Did Mr. Irving ever discuss with you any questions of what was to be done with regard to the methods or anything of that kind of the Irving Company? A. Quite often, while I objected personally to going over Mr. Price's head to Mr. Irving, and Mr. Irving often came to me; on several occasions I suggested such things as automatic riveting, multiple punching, and a great many other plans for improving production. For instance, all the grating made at the Irving Iron Works was hand driven. This never appealed to me and during—particularly when production became so large that the skilled force of hand riveters who were skilled, had to be increased, this very increase, of course, lowered the production per man, and it was my idea to do away with men entirely, and to do this, in consultation with the men in the shop, we decided that the riveting could be done with air hammers, and in fact we borrowed some from the Thaw Manufacturing Company, and put them in operation, and proved to our satisfaction that one

man with an air gun, with three men to help him, could rivet up as much grating as four of the best teams in the shop.

Q. Teams consisting of how many men? A. Each team consisting of two men, making eight men as against four, and over a given period, over an afternoon's work, the four men would do just as much work as the eight men. I was very much elated over this, and took Mr. Price out in the shop to show him. Nothing ever came from it. The only answer I got was that it was easy to lay off men, but you could not lay off old guns, and that they cost about $75 or $80 apiece, and I would probably want about ten guns or more, and that was too much money to tie up in it.

The same way with multiple punching; we made at that time from three to five holes in a bar at a time; with multiple punching we could make anywhere from twenty to thirty holes. When I suggested this to Mr. Irving he told me it was a very good idea, that he had seen all sorts of automatic machines, and for me to go ahead. I asked him if he would take this up with Mr. Price so that Mr. Price would give me orders to have these machines investigated. He told me he would, but he never did, and when I asked him about it again, he told me to go right ahead over Mr. Price's head, and it was at that time that I told him that Mr. Price was my boss, and as far as I was concerned I would do what he instructed me to.

Q. Were there other incidents of the same kind that you have described? A. There were a great many other instances.

The Court: I don't care for too much of this; the whole question in this case is whether

there was a conspiracy to steal the Irving ideas. I don't care for too much of this, except as it leads up to this situation. Mr. Bunker was dissatisfied and discontented; he didn't leave, to steal their ideas, but to better himself; that is the thought that is in my mind, to tell you frankly; that is what I gather from the whole theory of the case, on your side. I don't mean by my remarks to stop you from putting in what you think is proper.

Mr. Egner: We never contended that they didn't have a right to leave, but we say they had no right to take our ideas with them.

Q. Why did you leave or why were you in a mind to leave the Irving Iron Works Company at the time that you did? A. Because I felt at that time that I had exhausted every known method of trying to make improvements around the place without any satisfaction or even any tendency to improve. This puzzled me for a long time, and in fact, this subject was openly taken up in conference between Mr. Irving, Mr. Price and the one time accountant, Mr. Click, in regard to making a real organization out of it.

Q. Anything come out of that conference? A. Objections were raised by both Mr. Click and myself regarding the manner in which the place was run, regarding the board of directors being only a nominal one, and Mr. Irving told me after that, that he was having changes made in the by-laws, and that Mr. Click, Mr. Price and myself would become directors. I recall another incident at that time that caused a great deal of dissatisfaction; it was on the manner and method of paying the yearly compensation or bonus; Mr. Click and I maintaining that we would

prefer to have this money distributed weekly, together with the regular weekly compensation. Mr. Irving held out against that and said, "It is our policy to pay you fellows all right; you will get it, but it will be paid the August of the year following the year in which the bonus was declared." I recall distinctly Mr. Click saying that $400 a week was too much salary to be drawn at this time.

Q. Who was getting $400? A. Mr. Irving, as salary as president, and after trying on numerous occasions to overcome these apparent objections to doing anything at all, I concluded that Mr. Irving owned the company and that he was satisfied with the return he was getting from it, and it was, of course, his business, and he could do that, and that just so long as the combination of this machine—the personnel that went to make up this machine, kept it going and kept this money coming in for him, why he would not disturb it. It took me a long time, a great many years, to reach that conclusion, but when I did, I knew that I might just as well get out.

Q. When did you first discuss with Mr. Lown the proposition of getting out and forming another company? A. The last part of December, 1920.

Q. What was the nature of your discussion at that time? A. Mr. Lown came to me and said that he had had difficulty in putting his ideas over and that he had come to the conclusion that he knew how to improve sales and he thought that I knew how to manufacture grating, and why not get together. He also stated, or said words to this effect, that he was putting his life in my hands, because I could hang him, but that he relied on me, and at that time I told him that I was pretty near ready to get out, but that I would like the opportunity of one more chance, because I

believed there was a great future there, if someone would start something and wake it up.

Q. Did you thereafter decide to leave? A. Yes, sir.

Q. How long after that was it? A. My desire to leave had nothing to do with it.

Q. I said when did you come to your final decision to leave? A. For what purpose?

The Court: When did you decide to quit?

The Witness: In June, 1921.

Q. In the meantime had you made any other effort to get things settled to your liking in the Irving Iron Works? A. Yes, sir.

Q. And were you successful? A. No, sir, I had an instance there that came up; a great many dies are used in these machines; the Irving Iron Works, unlike the Kerlow Company, at that time had a great many small second-hand punch presses and the crimping presses at that time required an individual set of dies, and these dies wore out regularly. In fact, they were used too long in each machine. As soon as we had about three or four dies ruined, the variation in the dies would cause trouble in riveting these units together. In order to keep these dies, we had countless repairs, and they were redressed. We had no facilities to make repairs, and they were sent out.

The dies cost about $75 a pair, and $9 to redress them, and they were redressed quite often. It was suggested by the shop in conference that we do this redressing ourselves, and we could at that time have purchased what they call a Universal grinder, second-hand, for $100. I sent Mr. Lumb—in fact Mr. Lumb suggested, we worked together—down to Center Street in a second-hand market and he discovered a

Universal grinder, for $100. When I put this matter up to Mr. Price he said the company couldn't afford it. I went over his head to Mr. Irving, and he also said it was there, go ahead, "Go right ahead on it." I asked him to please advise Mr. Price to that effect, but he never did, and we never during my time bought this Universal grinder which for $100 would have saved him a tremendous amount of money. I even offered to buy the machine myself.

The Court: Why didn't you go right ahead on it when Mr. Irving told you to?

The Witness: Because Mr. Price had a great deal of difficulty in keeping Mr. Irving, as he put it, where he belonged. In other words, we had a very efficient military proposition; Mr. Irving would go over everybody's head to get things done, and Mr. Price was continually coming to me and saying we have to do something to stop this, and I recall, if I might state, that Mr. Lewis, in testifying here, said that I gave him instructions when I hired him, "By all means, don't go to Mr. Irving," which is perfectly right; I told him absolutely in those words. Mr. Lewis came back from the war—he was a lieutenant of some sort—and Mr. Price brought him into my office—I had never seen the man before—a nice looking boy—Mr. Price said, "This is a young man, a friend of Mr. Irving's; see what you can do for him," and left him in my office. I asked him what he could do, and he said he was willing to do anything, he had various experiences, and he needed a job. I said, "All we have got open is a job as yard boss, that pays $22.50 a week"; he said, "I would like very much to try it." I said, "All right, be in Monday." The man was here. That same afternoon Mr. Price came into my office and said, "Did

you get rid of Lewis?" I said, "No, sir, I hired him." He said, "Mr. Irving didn't want him here; he just passed him along to me and I passed him along to you." I said, "For God's sake, why don't someone say something?" And that happened not once, but a hundred times, and Mr. Irving had a great many friends as engineers, and he would send them to me to look them over, and I generally got instructions to turn them down, but in this particular case they didn't get to me in time, and I put the man in.

The Court: Was he retained?

The Witness: He was retained, and is there yet as purchasing agent.

Q. We have had some testimony here from Mr. Kennard to the effect that you discussed this proposition of going into the business with Mr. Lown, as I recall it, early in the summer or spring of 1921, and that Mr. Kennard in his testimony referred to the fact that he and you and Lown were part and parcel of this company that was to go out. Do you recall when you first discussed the matter with Mr. Kennard? A. Very clearly.

Q. When was it? A. The last day that I was at the Irving Iron Works, which was October 1, 1921, Saturday afternoon, as I recall it.

Q. Prior to that time had you discussed plans and the proposition with Mr. Kennard? A. Neither with Mr. Kennard nor anybody else.

Q. Mr. Kennard has testified here, and I am going to follow out that line, to the effect that for some time after you left, while you were conducting the office in Church Street, he and Mr. Tarof made a practice of gathering together information with regard to bids, etc., and came over and gave that to you

or to someone else over there. Did you at any time receive any information of that kind from Mr. Kennard? A. No, sir, not at that time or any other time.

Q. Did you receive any such information from Mr. Tarof at that time or at any other time? A. No, sir.

Q. Did you have anything to do with the hiring of Mr. Roope at the Irving Iron Works Company? A. No, sir; I had nothing to do with the accounting department or the sales department, except to watch their moral when Mr. Irving or Mr. Price was away.

Q. Did you at any time instruct or suggest or intimate to Mr. Roope in any way that he should ferment a strike at the plant of the Irving Iron Works Company and attempt to disrupt the employees of the Irving Iron Works Company? A. No, sir, not in any manner, shape or form.

The Court: Was there such a strike attempted?

The Witness: I don't know anything about it, except what I have heard here.

Q. Is that the first time you ever heard of it, when it was testified in court here? A. Yes.

Q. Did you, or to your knowledge, did anyone else, on behalf of the Kerlow Steel Flooring Company or otherwise, take any list of customers or of prospects belonging to or from the plant of the Irving Iron Works Company, at or before the time you left the employ of that company? A. No, sir, we never took any list of any kind, or cards, or anything else; it was not necessary to do so.

Q. Did you see any such list in the possession of the Kerlow Steel Flooring Company after you had left the employ of the Irving Iron Works Company? A. No, sir, not in any shape or form. In fact, I

recall at this time that is one of the things that was taken up, or rather Williams & Pritchard, our patent attorneys, took up. That is one of the questions that Mr. Pritchard asked me when I asked him—

Q. What is one of the questions? A. Did we take any list of the names of customers, because if there was any remote possibility of a large corporation getting after a small one, that was one time part of it, that is the way they started, and I assured him we didn't, and assured him why it wasn't necessary.

Q. Did you take any information from the Irving Iron Works Company concerning the grating business other than what you have learned as a matter of your experience there? A. No, sir, not in any manner. In fact, I didn't need to.

Q. That is what I want; how extensive was your knowledge of the grating business?

Examination by the Court:

Q. When did you first have any knowledge of the grating business; before you went with the Irving Company or after? A. Before, but not of this type of grating.

Q. How long before? A. I had been in this game since 1900, and during all that time.

Q. By "game," you mean this business of grating? A. Grating and miscellaneous iron works since 1900 in California.

Q. What concern? A. Rudgear-Merle Company, and before that time I was with the Risden Iron Works.

Q. And did both concerns manufacture gratings? A. The Risden Iron Works did not. That was a foundry, but the Rudgear-Merle did; they had a very large plant, the same as Irving did.

Q. Including gratings? A. Yes, not of that particular type, but they made gratings which were used for other purposes, where Irving Subway could be used.

Q. They made a grating, but not of the same type? A. Yes.

Further examination by Mr. Kraetzer:

Q. During the year 1920, or at any other time were you in sole charge and control of the business of the Irving Iron Works Company? A. I believe I was on two occasions, for about a period—I think for half a day; that is the way Mr. Price took his vacation for a while, and one time when both Mr. Price and Mr. Irving were away for a week. I would like to say that at that time I was in a most embarrassing position. Mr. Irving went away prior to—

Mr. Egner: I think we should have things brought out by question and answer.

Q. Did you at any time, in the course of your connection with the Irving Iron Works Company, conceive the idea and endeavor to carry it out, of taking the business of Mr. Irving, or of the Irving Iron Works Company, over for yourself? A. Not at that time in any way; the Irving Iron Works was then, or is today, one of the best assets the Kerlow Steel Flooring Company has; the more people that are in the grating business, the better it is.

Q. Did you at any time during the period that you were connected with the Irving Iron Works Company do anything to disrupt, or with the purpose or intent of disrupting the business or interfering with the business of the Irving Iron Works Company, or, as it was characterized, practising sabotage with regard to the

business of the Irving Iron Works Company? A. Sabotage was practised, but not by me.

The Court: Did you instigate it?

The Witness: Not in any way.

Q. There was testimony here by Mr. Kennard that you stated to him that the first sample of Kerlow Steel Flooring Company's product was made by you from pieces of steel which you had taken from the Irving Iron Works Company, and with a breast drill that you had also taken from the Irving Iron Works Company; is that so or is it not so? A. No, sir, it is not so.

Q. Did you ever take any pieces of steel from the Irving Iron Works Company? A. I had pieces of steel sent to my home in the same manner that Mr. Irving had plows, and Mr. Price had a garage built—a courtesy that was extended to me, and there was a regular way of handling it on their accounting system. I think it was charged to furniture and fixtures

Q. What did you do with the steel? A. I built a trellis for a grape vine at my home and it is still there.

Q. Is this a photograph of the trellis which you built (indicating)? A. Yes, that is a portion of it.

The Court: When did you build it?

The Witness: At the time the bars were sent home.

The Court: When?

The Witness: Mr. Irving gave me some grape vines; I don't know when that was.

The Court: What year?

The Witness: 1918, I believe. It was after Kennard came.

Mr. Kraetzer: I offer this photograph in evidence.

Marked Exhibit D79.

Q. With regard to the make-up of the last catalogue, the 1921 catalogue which is Exhibit C12b, containing the various pictures, etc., did you write the copy for that catalogue? A. No, sir.

Q. Who did? A. Either Mr. Irving or Mr. Wightman.

Q. Did you have anything to do with writing the captions that appear under the various pictures in this catalogue, C12b? A. No, sir; all that I did in connection with that or any other catalogue, was to make the drawings that were in it.

The Court: Did you make the drawings that are in there?

The Witness: Yes, the pen and ink line goods.

The Court: Are they drawings of pen and ink sketches of gratings?

The Witness: In some cases they are washed drawings. (After examining catalogue.) No, not in this catalogue, but the catalogue before.

Q. That is not in this catalogue? A. There are no washed drawings in this.

Q. Are there pen and ink sketches of gratings in that catalogue? A. No, sir, not in this catalogue; it is in another catalogue.

Q. The former catalogue? A. One of the former catalogues.

Q. During all the time you were connected with the Irving Iron Works Company what was the course of handling the correspondence that came there? A. Up to within the last few months that I was there Mr. Price personally opened all the mail.

Q. Did he distribute it then? A. Not then. This mail was sent to the sales department, where a young lady stamped it up with the departmental stamp, it

was then returned to Mr. Price for checking, and he indicated on it the various departments who were to take part in taking care of answering this correspondence.

Q. During the summer of 1921, did you have anything the matter with your health? A. Yes, sir, not only at that time, but the year before it started.

Q. And had you consulted any physicians? A. A great many.

Q. And were you under treatment at that time, in the summer of 1921? A. Yes, I had been from the summer of 1920.

Q. Under more or less regular treatment by a physician? A. Yes.

Q. And did you during 1921 go away? A. Yes, sir.

Q. Did you say anything to Mr. Price or to Mr. Irving about getting a leave of absence? A. I spoke to Mr. Price.

Q. Did he give you permission to leave? A. I endeavored to resign.

Q. What was your conversation with Mr. Price with regard to leaving?

The Court: When was it, first?

The Witness: It was about the first of June, as near as I can recall, 1921.

Q. What was said? A. I told Mr. Price the result of some X-rays that I had taken, and that on my physician's advice I was going away for a rest and did not know when I would be back. I asked him if I could have a couple of weeks' salary to tide me over, as I had spent considerable money on doctors, and he said he couldn't do that. I said, "I have a year's bonus due me yet." He said, "You go away, I will see what I can do for you," so I went away.

Q. Where did you go? A. I went to Digby, Nova Scotia. I intended to stay there for some time; the weather wasn't very good, and I went down to Yarmouth, Maine, for a couple of weeks, and returned about the last of August. I was incorrect, perhaps, when I stated I went away from the city; I was still—after this June, I was still under the doctor's care, and Mr. Price said, "You have seen about every doctor, I think; why don't you try my osteopath?" So I went to see him also, and he treated me for some time there, and I finished up that matter the last of July and went away to Nova Scotia about the first of August.

Q. During the time that you were away did you send any letters or write any letters to Mr. Price at the Irving Iron Works Company? A. Yes, I wrote Mr. Price from St. John, New Brunswick—

Mr. Kraetzer: Have you that correspondence, Mr. Egner?

A. (Continuing.) —reiterating my desire to resign.

Mr. Egner: Did you write more than one letter, Mr. Bunker?

The Court: He said he wrote one letter from St. John, from New Brunswick.

Mr. Egner: We haven't any letter from there.

The Court: Did you write any other letters than the one from New Brunswick?

The Witness: I said I don't know where I wrote it from.

Q. How many letters did you write? A. One letter.

The Court: Is that all you wrote?

The Witness: Yes.

The Court: They ask for that letter, wherever it was written from.

Mr. Egner: I produce one letter.

Q. Is this the letter that you spoke of?

Mr. Egner: Don't you know whether that is your letter, without reading it?

The Witness: Any objection to reading it? I wrote this letter.

Q. Is this the one you referred to? Read it please.

The Court: You say you only wrote one; is there any question about that, that is or is not the letter?

The Witness: No, I wrote that letter.

Q. And that is the one, so far as you now refer to, as having been sent by you to Mr. Price? A. Yes.

The Court: If you find you are mistaken, you can easily correct it.

Mr. Kraetzer: I offer that in evidence.

Marked Exhibit D80.

The Court: How long were you away altogether?

The Witness: Pretty near a month—the month of August.

Mr. Egner: How long were you away from the shop?

The Witness: I was away longer than that; I was away off and on from about the first of July; I was away off and on for the month of July and month of August.

The Court: About two months altogether?

The Witness: Yes.

The Court: Were you paid for that time?
The Witness: Yes, sir.

Q. When you got back from Nova Scotia, did you go back to the Irving Iron Works Company? A. I called up Mr. Price—yes, I went back.

Q. Did you speak to Mr. Price at that time? A. I called him on the phone.

Q. What was the conversation? A. I told him that I was back. He asked me to come over and see him, which I did.

Q. And what happened then? A. He asked me what I was going to do, and I told him that I was going to resign; I still insisted upon resigning and he asked me to stay for a while, as he had had no vacation, which I agreed to do.

Q. And you did stay how long? A. I stayed until the first of October. Two weeks prior to that I told Mr. Price that I was going to be through, and it was at that time that he told me regardless of anything else, "I know how you feel, but I wish to God I was your age, I would do the same thing."

Q. Did you at any of those times talk to Mr. Irving about resigning? A. Mr. Irving spoke to me and said that Price had told him that I was going to resign, and there was very little said about it, as I recall it.

The Court: Did he ask you why you wanted to resign?
The Witness: Not at that time; no, sir.

Q. Later on did you have another conversation with Mr. Irving about resigning? A. Not about resigning, no, sir. This was October first I left; I had several conversations with Mr. Irving after that time, after I had resigned.

Examination by the Court:

Q. Go back to June a moment. When you first suggested about getting a leave of absence to Mr Price, or about resigning, that was in June? A. Yes.

Q. And that was solely prompted by the condition of your health? A. In every way.

Q. No other idea in your mind? A. I had talked to Mr. Lown about going in business the first of the year—the first of that year.

Q. Had you the thought of resigning with the purpose of going in business, either with Mr. Lown or anyone else, in June when you spoke to Mr. Price? A. No, sir, at that time all I had in mind was getting back my health. Prior to that time I said I was with him, if my health permitted, but I didn't care what happened at that time as long as I got well.

Q. Then your idea of suggesting your resignation in June was not for the purpose of joining Lown, but for the purpose of getting away from work so you could regain your health? A. Yes, sir, in every way.

Q. And then if you hadn't succeeded in regaining your health you had formed no plans as to your future? A. Not in any way whatsoever.

Further examination by Mr. Kraetzer:

Q. In June did you have any agreement with Lown at all as to what was to happen? A. No, sir; prior to June, after this final session with the doctor when these X-rays were taken, I immediately told Lown I did not know whether I would be with him or not.

The Court: In January had you and he reached a definite plan on which you would go in with him?

The Witness: I agreed to go with him, but there was nothing definite.

The Court: The purpose was, go in and start a manufactory to manufacture gratings?

The Witness: Yes.

The Court: Exclusively?

The Witness: Yes, and I told him I would be with him provided the money could be raised.

The Court: Were you to raise the capital?

The Witness: No, sir, it so happened that I did.

The Court: Who was to raise it?

The Witness: Mr. Lown was to take care of the entire financing of the company.

Q. On or about October 1, 1920, had you at that time decided to go into the grating business with Mr. Lown? A. I was willing to go in, provided the money was raised, and told him that.

Q. Had the money been raised and had you made up your mind that you were going into it at that time? A. No money had been raised at that time.

Q. Had you made up your mind that you were going into it? A. Yes.

Q. Before that time? A. Yes.

Q. Despite the fact the money had not been raised? A. Provided the money was raised, I told him I would be with him.

The Court: Had your health improved at that time?

The Witness: Yes, sir, and has ever since.

Q. When was the improvement noticeable; when did you first notice the improvement in your health, before you returned from your vacation? A. It was previous, that I had this osteopath.

Q. That was before you went away on your vacation? A. Yes, that was in the latter part of June—or rather July.

Q. What was your ailment, if you have no objection to stating? A. I cannot tell you, but I can tell you what happened.

The Court: I wondered when you recovered to go into this competing business.

The Witness: I am still under the doctor's care, but nothing like I was then.

The Court: I don't care to prove it.

Q. Did you see Mr. Irving after October 1, 1921? A. Yes, sir.

Q. You had had some correspondence with him before that, had you? A. Not before October, no; after October first, during the month of October.

Mr. Egner: In the first place, we would like to have the written agreement which Mr. Lown testified he and Mr. Bunker entered into on December 31, 1920, New Year's Eve.

Mr. Kraetzer: We have not got it.

Mr. Egner: Then I would like to have Tarof's letter to the Cement Association calling for the copy which he got.

Mr. Kraetzer: I will try to get that.

Mr. Egner: Then I want the copy of the "Michigan Builder," which contains the advertisement of the Detroit Edison job Mr. Lown referred to in his testimony on page 1013. Then I want the Kerlow pay roll showing the Tarof account.

Mr. Kraetzer: That we will produce.

Mr. Egner: And the letters from Lown to Scarth from November 15 to December 1.

Adjourned to tomorrow morning, Wednesday, September 26, 1923, at 10 A. M.

Defendant's Witness, Herbert H. Bunker, Direct

Continuation of testimony in the above-entitled cause, before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, September 26th, 1923, at 10 A. M.

Present: Counsel as before stated.

Mr. Kraetzer: For the purpose of completing the record, I have run over some exhibits that we offered. I find that they were marked merely for identification.

The Court: I will make this suggestion to counsel, that any of these exhibits that have been marked for identification, after you can go over the list, you can offer them before the close of the case.

Mr. Egner: Suppose that we agree that all exhibits so marked may be offered.

The Court: And retain the same identification number.

Mr. Kraetzer: That will be satisfactory. We will consider all exhibits marked for identification will be considered in as exhibits, and will retain the same exhibit number.

I asked yesterday to have the addressograph plate for the J. G. White Engineering Company produced; has that been done?

Mr. Egner: I am told we have it in our papers. If so, I will find it. I thought we had it out in Long Island City.

HERBERT H. BUNKER recalled.

Further direct-examination by Mr. Kraetzer:

Q. There has been some statement here by both

Mr. Irving and Mr. Price, as I recall it, to the effect that the year 1920, in the Irving Iron Works Company was a year in which there was a great volume of orders, but very little profit made. I think that summarizes the situation, as it was described by those two witnesses. First of all, were you and Mr. Lown in sole charge of the plant and the sales organization during 1920? A. No, sir, neither in 1920, nor any other year.

Q. Were Mr. Price and Mr. Irving both in attendance at the plant during that year? A. Yes, sir, with perhaps the exception of a few days now and then.

Q. Are you familiar with the situation with regard to production, and so forth, in the Irving plant during that year? A. Yes, sir.

Q. Do you know what the cause of failure to make profits during that year was? A. Yes, I know of several reasons.

Q. Will you state to the Court what those reasons were? A. Business began to pile up during the first quarter of the year 1920, and I recall about May we had something—we had approximately ten or twelve hundred tons of steel on order. At a conference with Mr. Price and the other department heads about the same time, Mr. Price instructed me that it would be necessary to quadruple production. We were at that time turning out about a thousand square feet a day, and his instructions meant that we were to turn out four thousand square feet a day as soon as possible. At that time I made a prognostication sheet on steel and recommended the purchase of at least two thousand additional tons of steel, part of which was placed and part of which was not placed. We at that date had considerable tonnage on order with the Bethlehem Steel Company. Steel began to go up and

up at a premium, and when we endeavored to get in some of this tonnage on order, particularly with the Bethlehem Steel Company, we were advised by them that they could not make delivery and did not know when they could, as their mill for rolling hoops and bands had been broken down and they were too busy on heavier stuff to bother with it. This situation took us entirely unprepared. There was a great controversy between the Irving Iron Works and the Bethlehem Steel Company regarding their meanness in not advising us ahead of time, so we could be covered on the uprides of steel. I got together with the purchasing department and we lined up, as I recall, 128 possible sources of supply. Steel was climbing all the time and very difficult to get.

Q. To summarize the thing, it was because you had to pay more for steel? A. Steel went at that time up to at least seven cents a pound, and I remember buying sheets and shearing it up, paying a cent a pound to have these sheets made up into strips. At the same time quadrupling the work, depending on hand-riveting, it was necessary to put on more riveters—break in green men; these green men had paired with the old men, in order to become competent, and just as soon as that was done, as the old original teams were broken up, the production on riveting average dropped from a little over a hundred square feet to around sixty square feet per day, per team. I then started a school in the shop to train these riveters, so that they could become better and more competent. I started a shop conference with the various department heads and shop superintendents and foremen, in order to see that there was no time lost, to put over this idea of quadrupling production, and in the latter part of July we had, by having men go as far south as

Alabama, coming in on cars of steel to get them in, and Portland men, by the latter part of July, the production had risen from a thousand square feet to pretty nearly four thousand—three thousand and some odd square feet. We were running night and day.

At that time I had been working more or less night and day, and was pretty nearly fagged out, developing a nervous affliction in the head, and I went away for the month of August—about the month of August in that year. But before I left I asked Mr. Price if he would take care of the shop conferences while I was away. I at that time acting as a sort of a chairman. He said he would. I received a letter from the—

Mr. Egner: I think the question has been answered.

The Court: Mr. Bunker stated there were several reasons. The question is, state the reasons. I presume that is what he is doing. He has stated several. If there are more, he is entitled to state them. You have charged by reason of his and Lown's management during that year, inefficient management, the company lost money. He is trying to show—

Mr. Kraetzer: We didn't go quite to that extent.

Mr. Egner: The inference to be drawn from our testimony is that his management wasn't competent. We did not say that the reason why 1920 was an unprofitable year was on account of his mismanagement.

The Court: What do you say?

Mr. Egner: We say on account of general conditions in the business world.

The Court: You don't charge him with being responsible for it?

Mr. Egner: No.

The Court: I thought you charged this was part of their scheme of laying down on the job.

Mr. Egner: We do say that.

The Court: In order to affect the standing of the Irving people with the trade, that was all part of their plan and scheme, which they eventually consummated by establishing the opposition concern.

Mr. Egner: We do say that. I have no objection to their denying that, but we on our own case showed that the year 1920, was an unusual year, and for that reason, although they had a great volume of business, they didn't make any money.

The Court: I think in fairness—you have left the record in such condition, that I have drawn the impression, as far as I have drawn any, that if they were in charge, these two men were responsible for the conditions, aside from the abnormal situation due generally in business.

Mr. Egner: That is what we charge.

The Court: He is trying to show that that is not true.

The Witness: I received a letter from the superintendent of the shop at that time.

Q. Who is he? A. Mr. Fred May—telling me how—

Mr. Egner: I object to the letter.

The Witness: I haven't the letter.

The Court: What became of it?

The Witness: I don't know; it is so long ago. Is the contents material?

Mr. Kraetzer: I don't think so.

The Court: Don't take up any more time than you have to in reciting the facts, but tell me all the essential facts.

Q. As a result of that letter, did you do anything? A. I was away. I naturally couldn't do anything.

Q. When you came back, did you do anything? A. Yes.

Q. What did you find the situation when you came back? A. Before I left production had got to practically four thousand square feet; when I came back from my vacation it had fallen away considerably. Upon investigation I was advised—I was told that this shop conference when Mr. Price took hold of it, he said that the production was fine, but the boys should not work too hard to keep it up as the company was in financial straits, his exact words being "their backs were against the wall."

The Court: This is Mr. Price's statement?

The Witness: Yes.

Mr. Egner: To the shop meeting?

The Witness: To the shop meeting. This situation had so dampened the morale of the shop that it was very difficult to get them going again.

Q. Did you speak to Mr. Price about that? A. I am coming to that. I then went to Mr. Price and asked him if he had made such a statement to this conference, and told him that Mr. Kennard and Mr. May had told me of the difficulty they had to get the

men on their toes again. He said he had not. I asked him if he would meet these men, as I could not do anything with them as long as they were laboring under this understanding. He said he would, and we arranged several dates, but at no time could I get Mr. Price to deny that he had made these statements.

Q. When you say you couldn't get him to deny it —he had denied it to you, hadn't he? A. In front of those men, in the presence of those men.

The Court: What other reasons were there that you have to advance to account for the lack of profit in the 1920 operation, if you have any others?

The Witness: I would like to make one more statement: Between this period and the end of the year, we managed to get going again, and the last two months of the year 1920 were the largest months in regard to production in the history of the company. The shipments for the last month of December being over one hundred thousand dollars.

The Court: Have you any other reasons to add to what you have stated?

The Witness: It was not necessary for the Irving Iron Works to show a profit.

The Court: Strike that out. You might not think it was; Mr. Irving, as the owner, might think it was very necessary. The question is, if there wasn't any profit in 1920, were you responsible for it?

The Witness: No.

The Court: You say there were other reasons that were responsible. You have named several. Are there any others that you wish to state upon the record? If so, do so. That is what I want.

Mr. Kraetzer: If there are no further reasons, say so, and we will pass on to something else.

The Witness: At this same time there were several suggestions made to improve the production, riveting, installation of more machine units, and upon my taking them up with Mr. Price—

Mr. Egner: We had all that yesterday.

The Court: He is making it specifically apply to 1920.

The Witness: This was in 1921.

The Court: 1920.

The Witness: As well as other years.

The Court: Counsel has directed your attention to 1920. Did you make any suggestions as to new machinery, applying to 1920?

The Witness: Yes.

Q. State them briefly. A. Additional machine units.

The Court: State what they were.

The Witness: Additional machine units.

Q. Were they acted upon? A. No.

The Court: Was the failure to act upon the suggestion in any way responsible for the lack of profit in the 1920 operation?

The Witness: Yes.

Q. What was the purpose of the suggestion; what I mean is, what was this additional machinery designed to do? A. Increase the machining capacity of the company.

Q. Was there any question of a night shift during 1920? A. Yes, sir.

Q. Did that have any effect on production? A. It increased production.

Q. At whose suggestion was the night shift put on, do you recall? A. The night shift was put on as the result of a conference.

Q. Between whom? A. Mr. Price and myself.

Q. Yesterday you spoke of the suggestion that you made with regard to buying a die dressing machine, a milling Universal grinder to dress dies, and you said that machine would cost about $100. Figuring on the basis of nine dollars to redress the dies, what was the total amount approximately spent in the Irving Iron Works Company for redressing dies?

The Court: During what period?

Q. Say for the year 1920 or 1919, or the average yearly expenditure. A. I would say considerably over $10,000.

The Court: For dressing dies only?

The Witness: Die upkeep.

Q. Does that mean dressing or redressing dies? A. No, and buying new dies.

The Court: He didn't ask you about buying new dies; he asked you about dressing.

Q. Would the purchase of the Universal grinder have any effect on the necessity for buying new dies? A. No, sir.

The Court: Why doesn't he answer the question you asked. He included two statements, one of which you didn't ask for at all.

Q. Eliminating the purchase of new dies, tell us how much approximately was spent, average yearly expenditure for dressing dies; confining yourself to that alone. A. Approximately $4,000.

The Court: Do you mean to say that that could have been saved by the purchase of this $100 machine?

The Witness: A large proportion of it.

The Court: What proportion?

The Witness: Seventy-five per cent.

The Court: You could save $3,000 by the investment of $100 and they refused to do it?

The Witness: Yes.

Q. Passing to the question of competition: We have had testimony here indicating that the Irving Iron Works Company considered that there was no competition for their product. Do you know of any other firms that were manufacturing a similar product designed for a similar use? A. Yes, sir.

Q. Will you state what those were?

The Court: Name the firms.

A. Mitchell-Tappen Company, the Klemp Company in Chicago, Richmond & Kent, Philadelphia, Arrowhead Iron Works.

Mr. Egner: Is this in 1921?

The Witness: No, it was—

The Court: What period are you covering?

The Witness: All periods.

Q. From the time you went with the company? A. Yes.

Q. And these are competing concerns that produced some sort of grating? A. Yes, that would be considered equal to this.

The Court: Competing, he called it; that would mean equal, the same class of grating, and used for the same purpose.

Q. Hopkins Iron Works? A. Yes; Mark & Mohl of New York; Hubbard & Wenz.

The Court: Do all of these people manufacture on a fairly large scale?

The Witness: Yes.

The Court: Have you named them all?

The Witness: Yes, all that I can recall now.

Q. Did any of those or do any of those various people that you have named manufacture a grating in any way similar in design and construction to the grating manufactured by the Irving Iron Works Company? A. Yes, sir.

Q. Which one in particular, or ones? A. The Klemp Company in Chicago manufacture a grating identical with the Irving Subway Type G, with the exception that the crimp bars are full depth. Richmond & Kent, in Philadelphia, made considerable grating of this same Type G.

Q. With the bars full depth? A. The same construction.

Q. The same construction as Irving? A. The same design; the only difference being the crimp bar being full depth.

Q. Any others? A. No, sir.

Q. Who was the Arrowhead? A. The Arrowhead Grating Company was a man by the name of Patterson, who at one time was the sales representative of the Irving Iron Works in Kansas City.

Q. Mr. Bunker, was there any discussion at the Irving Iron Works Company between you and Mr. Price and Mr. Irving or any two of you with regard to competition? A. There was a great deal of discussion at various times.

Q. Briefly, what was the attitude of Mr. Irving

with regard to competition; did he recognize that there was or was not competition? A. Both Mr. Irving and Mr. Price recognized that there was competition.

Mr. Egner: That is a conclusion.

The Court: He is asking that question on my suggestion, not to go into the detail, but to state the fact. You are both at liberty, if you think it important enough, to go into all the detail, but counsel is acting on my own suggestion, to eliminate all these unnecessary details.

Q. You said they both recognized competition, that there was competition? A. Yes, and told me, in my inquiries, that they did not dare to go into court to fight this competition, as their patent was too weak, and the less said, the better, because if they went into court, it would only be advertising for the other fellow.

Q. How did Mr. Irving and Mr. Price's attitude toward competition reflect, in so far as the salesmen were concerned? A. The salesmen were not advised of any competition, except as they ran across it themselves.

Q. During the course of doing business over there and making bids, what forms of floor coverings—and I just want you to run over the different types briefly—were included in these jobs that Irving bid for?

The Court: Designate them by letter, if you can.

Mr. Kraetzer: I have particular reference to forms other than the Irving subway type of grating.

Mr. Egner: Before he answers that question, I would like to cross-examine as to what he had to do with the making of bids. So far as appears, he is merely production manager.

The Court: Do you want the question to stand in that form? I will allow cross-examination.

Mr. Kraetzer: Mr. Egner can cross-examine.

CROSS-EXAMINATION by Mr. Egner:

Q. What, if anything, did you have to do with making bids on new work? A. I was in entire charge of all estimating and submission of all bids on grating.

Q. Did you make the estimates? A. My department made them and submitted them to me.

Q. By whom were they made in your department? A. They were made out one time by Mr. Rothman and later by Lupkirk and his assistant and turned over to me. If there were any difficulties I always took them up with Mr. Price.

Q. To whom did you hand them over; did you mail them out to the customers? A. Yes.

Q. Without the approval of either Mr. Irving or Mr. Price? A. If it was a straight away job.

Q. What do you mean by "a straight away job"? A. No complications as to intensive competition, or not a personal job that Mr. Irving or Mr. Price was personally interested or intimate with.

FURTHER DIRECT-EXAMINATION by Mr. Kraetzer:

The Court: Now, you may answer the question, if you still have it in mind.

Q. (Repeated.) During the course of doing business over there and making bids, what forms of floor coverings—and I just want you to run over the different types briefly—were included in these jobs that Irving bid for? I have particular reference to forms other than the Irving Subway type of grating? A. All those gratings that I gave the manufacturers of before, as well as checkered plate straight bar grating, and in some cases wood floors—wood slats.

Q. Can you state the approximate proportion of jobs that were won by Irving on which bids had been made by Irving?

The Court: In any particular time?

Mr. Kraetzer: I think during the whole period.

The Court: If they bid on one hundred jobs, how many out of the hundred did they get?

Mr. Egner: He is an extraordinary man if he can do that.

Mr. Kraetzer: This is intended and is directed toward the statement made by Mr. Irving to the effect—in his affidavit, to the effect, that during the whole course of his business career he lost about half a dozen jobs.

Mr. Egner: He referred to competition between his and the same kind.

Mr. Kraetzer: He didn't qualify it at all.

The Court: Whatever he said is there. What do

you say was the approximate percentage of successful bidding?

The Witness: When I was in charge of estimating this question often came up—

The Court: Stop talking so much. I can sit here for a month, if you are going to explain everything. Can you give the approximate percentage of successful bids that the Irving Company made? That covers practically the entire period of your connection with the company. If you want to qualify your answer to any particular year or period, you may do so.

The Witness: From ten to forty per cent of the jobs quoted upon were obtained by the Irving Iron Works.

The Court: In other words, your answer would be that the Irving Iron Works did not receive more than forty per cent of the jobs when they bid on them; is that correctly stated?

The Witness: To my knowledge.

The Court: That is what you are asked; we don't know how extensive your knowledge is, except as you have told us.

Q. Passing to the question of your call at the office of Mr. Prince: Did you call at the office of Mr. Prince in Boston, during the summer of 1921? A. Yes.

Q. And at whose request, if anyone, was that call made? A. At Mr. Prince's request.

Q. When did he make that request? A. Shortly before I left.

Q. What was the purpose of your call there? A. To endeavor to straighten out a tangle on a job.

Q. Do you recall when the W. Irving Forge Company was organized; when it started business? A. No, sir, I do not recall the date.

Q. Do you recall that at a certain period that did happen? A. Yes, sir.

Q. Can you state what amount of time Mr. Irving gave to the W. Irving Forge business after the commencement of that business? I just want an approximation. A. A great deal of his time.

The Court: More than half of it?

The Witness: During some periods.

The Court: Was that located also in Long Island City?

The Witness: No, sir, that was in East 38th Street, New York City.

Q. Were you connected with the W. Irving Forge Company? A. Yes, sir.

Q. In what capacity? A. I was secretary of it, I believe, for about a year before I left.

Q. Were you a stockholder? A. Yes, sir.

Q. Where did you get that stock? A. Mr. Price gave it to me.

Q. Did you pay for it? A. No, sir.

The Court: How many shares?

The Witness: Two shares.

The Court: Par value $100?

The Witness: I don't know.

Q. What did you do with that stock? A. I gave it back to Mr. Price.

Q. When? A. Christmas of 1921.

Q. At whose request did you return it?

Mr. Egner: Has this anything to do with the case?

Mr. Kraetzer: The question of value of the present.

The Court: It didn't have any value in his mind.

The Witness: Yes, it did; Mr. Irving tried to take it from me before I gave it back.

The Court: How long before?

The Witness: In October.

The Court: What did he offer you?

The Witness: He said, "How much do you want for it?"

The Court: Why didn't you sell it?

The Witness: I told him he didn't have money enough to pay for it. At the proper time I would sell it for what I saw fit.

The Court: Was there a feeling between you and Mr. Irving at that time?

The Witness: Yes.

The Court: I would judge so, from the answer that he didn't have money enough to buy it. Why did you make that reply?

The Witness: At the meeting prior to that he intimated blackmail.

The Court: Blackmailing whom?

The Witness: Him.

The Court: Did he say how you were blackmailing him?

The Witness: Yes.

The Court: How?

The Witness: He said, "I know you know all about the Blackstone Hotel and the stenographer mix up," and he said, "It looks like blackmail."

The Court: What looks like blackmail?

The Witness: My request for the money that was due me.

The Court: Wages?

The Witness: Yes.

The Court: Were they finally paid you?
The Witness: No, sir.

The Court: The only thought I had in mind, whether there was a feeling between himself and Mr. Irving in October, when he refused to sell, and said Mr. Irving didn't have money enough to buy.

Mr. Kraetzer: This was after he left. I would like to complete that story; that was part of our case, and you have part of it; I would like all of it.

Q. After you left the Irving Iron Works Company did you write that letter to Mr. Irving (indicating)? A. Yes.

Q. I refer to the letter of October 11, 1921, addressed to the Irving Iron Works Company, attention of Mr. Walter E. Irving. A. Yes.

Mr. Kraetzer: I offer this letter in evidence Marked Exhibit D81.

Jersey City, October 11, 1921.

Irving Iron Works Co.,
Third and Creek Streets,
Long Island City,
New York.

Att. Mr. Walter E. Irving.

My dear Mr. Irving:

I would like to suggest something advantageous to you in that it will make certain expenditures unnecessary and avoid any misunderstanding.

That is, at the time of my leaving the Irving Iron Works Co. there were two machines equipped with the block dies invented by me. If you should contemplate equipping any further machines with my dies I request that before doing so you communicate with me in order to save the expenditure that an unauthorized use would entail.

It is my hope that the spirit in which this is written is not misunderstood as it is certain that I am not requesting anything unreasonable.

With kindest regards to you and Mr. Price I remain

Yours very truly,

H. H. Bunker,
2545 Boulevard,
Jersey City.
HHB-P.

The Court: When did he leave the Irving Company?

Mr. Kraetzer: On the first of October, 1921, and this is October 11.

Q. That letter was signed by you, Mr. Bunker? A. Yes.

Q. Did you also on October 12, write this letter dated October 12, addressed to the Irving Iron Works Company, attention of Mr. Irving? A. Yes, sir, that is a copy.

Mr. Kraetzer: I offer in evidence carbon copy of a letter of October 12, 1921.

Marked Exhibit D82.

Defenadtn's Witness, Herbert H. Bunker, Cross

Jersey City, October 12, 1921.

Irving Iron Works Co.,
Third and Creek Streets,
Long Island City,
New York.

Att. Mr. Walter E. Irving.

My dear Mr. Irving:

We have been together too long, uphill and down, for it not to be difficult for me to regard the fact of my resigning from the Irving Iron Works Co. as reason for withholding the parts of my salary earned but as yet unpaid.

I am sure I will be pardoned if I suggest that in viewing my request for the additional compensation due me that my years of association with all phases of the company be given careful consideration. Not to be too egotistical, but I gave my best, if I ever fell short, still it is certain "that the workman was worth his hire" and should not be misjudged nor yet classed with some others.

The facts are these. The item of additional compensation has always been interpreted for and by me as that part of my salary which, for administrative reasons, was paid yearly. Therefor as there had been no reduction in my salary, there is at least due me the sum of $1,300.00, it being the difference between the $300.00 as accrued throughout the year 1920, due Dec. 31, 1920, payable August, 1921, and the $1,000.00 paid on account, also the sum of at least $1,700.00, it being the part of the additional or accrued compensation for the year 1921, up to the time of my resignation. This sum being due Dec. 31, 1921, and payable August, 1922, according to custom.

Frankly, if differences of opinion exist on the above they are certainly from a misconception of facts on the part of others. It is hard to believe that the company would knowingly withhold anything due me. At the same time I would not ask for anything that I did not firmly and honestly believe belonged to me. So I request that the first sum be paid me as soon as possible and the second sum be credited to my account.

This request is made after a careful consideration of both sides of the question. It is fairly made and without prejudice and I feel sure will be acted upon in the same way. Trusting that you will let me hear from you at your earliest convenient, I remain,

Yours very truly,

H. H. Bunker,
2545 Boulevard,
Jersey City, N. J.
HHB-P

The Court: The additional compensation you refer to in that letter, is that what you called the bonus yesterday which was payable in August?

The Witness: Yes.

Mr. Egner: May I ask whether all compensation other than this bonus had been paid up to the time of your leaving?

Mr. Kraetzer: I think that is a matter of cross-examination.

The Court: Leave it out.

Q. Did you thereafter receive this letter from Mr. Irving, dated October 18, 1921? A. Yes.

Mr. Kraetzer: I offer this in evidence.
Marked Exhibit D83.

Oct. 18, 1921.

Mr. H. H. Bunker,
2543 Boulevard,
Jersey City, N. J.

My dear Mr. Bunker:

With your letters of Oct. 11th and 12th in my hand and my answer of Oct. 17th before me, I have come to the conclusion that it would be better to read rather than send this if the same is agreeable to you.

Yours very truly,
WALTER E. IRVING.

WEI:RJB.

Q. Your answer is on the reverse side of Exhibit D83, dated October 19, 1921; is that a copy of the letter which you sent in return? A. Yes.

Mr. Kraetzer: I offer that copy in evidence.
Marked Exhibit D84.

Defendant's Witness, Herbert H. Bunker, Cross

Jersey City, October 19, 1921.

Irving Iron Works Co.,
Third and Creek Streets,
Long Island City,
New York.

Att. Mr. Walter E. Irving.

My dear Mr. Irving:

I thank you for your note of Oct. 18th, in acknowledgment of my letters of Oct. 11th and Oct. 12th.

If it is your desire to discuss my requests with me I will be only too glad to do so upon reasonable notice.

Naturally, however, I would not care to read any letter that it would be better not to send through the mails.

Thanking you for your interest in these matters, I remain

Yours very truly,

H. H. Bunker,
2543 Boulevard,
Jersey City, N. J.
HHB/P

Q. Did you thereafter, and on October 25, send that letter, a copy of which I show you, dated that day? A. Yes, sir.

Mr. Kraetzer: I offer that in evidence.
Marked Exhibit D85.

Defendant's Witness, Herbert H. Bunker, Cross

Jersey City, Oct. 25th, 1921.

Irving Iron Works Co.,
Third and Creek Sts.,
Long Island City,
New York.

Att. Mr. Walter E. Irving.

My dear Mr. Irving:

I am wondering when I may expect to hear from you, as I have had nothing in reply to my letters of Oct. 11th and 12th, other than your note of acknowledgment of Oct. 18th, which I answered Oct. 19th.

I do not want my seeming impatience to be misunderstood. Of course, you may have been away and have not had the chance to find out the correctness of my requests. If so, I'm sorry. You appreciate they mean a great deal more to me than to you.

Another thing, though not much of a letter writer I want you to appreciate that my attitude is entirely impersonal.

Yours very truly,

H. H. Bunker,
2543 Boulevard,
Jersey City,
New Jersey.
HHB/P

Q. Did you thereafter, under date of October 25, 1921, receive this letter from Mr. Irving? A. Yes, sir.

Mr. Kraetzer: I offer that letter in evidence. Marked Exhibit D86.

Q. Did you communicate with Mr. Irving after that? A. By mail? I don't believe I did.

Q. Did you telephone him? A. I met him at the

Q. You talked to him then? A. Yes.

The Court: When was that meeting?

The Witness: The last part of October, as I recall it.

The Court: Was that the occasion when you told him he didn't have money enough to buy your stock?

The Witness: Yes.

Q. Did you discuss the question of a die at this meeting with Mr. Irving?

Mr. Egner: Why not have the conversation?

The Court: I don't want all the conversation if it has no bearing on this issue. If you go into part of the conversation Mr. Egner is entitled to go into it.

Mr. Kraetzer: I am willing to have him go into the whole conversation.

The Court: Anything relating to the case you can ask him about. How long were you talking there?

The Witness: About half an hour.

Q. Let us have the substance of the conversation. A. In addition to what I have said before?

Q. Yes. A. I asked Mr. Irving at this meeting if I would receive the approximate $3,000 which I wrote him for, and he told me that I would not. I asked him if I had stayed with the Irving Iron Works would I have received it, and he said I would. I also asked him what disposition was to be made about my die,

and he told me that he had heard something about dies, but did not know much about it. It was then that I reiterated my request for the compensation due me, that he mentioned the blackmail incident and the stenographer incident, which I knew absolutely nothing about.

Q. Had you designed a form of die that was being used by the Irving Iron Works Company? A. Yes, sir.

Q. And was that this form of die? I show you Exhibits C24 and C25? A. No, sir.

Q. Was it this form of die marked Exhibit C22? A. No, sir.

Q. Will you indicate to the Court the difference between the form of die that you were referring to and these dies? You might make a sketch of them if you will.

(Witness does as requested.)

Mr. Kraetzer: The witness has sketched the form of die which he says he invented or designed. We will have it marked as an exhibit.

Marked Exhibit D87.

Q. Will you explain it to the Court? This (C22) is the form of die that has been testified to was originated and made in the Irving shop in 1917 to make up the form of Type M, as they called it. I want you to show to the Court how a die of this type on D87 could be used to make the form of grating indicated on C22.

(Witness does as requested.)

The Court: By placing four inserts in your design as you have indicated by the word "inserts" and the marks?

The Witness: Yes.

The Court: And these inserts are interchangeable?

The Witness: These inserts and the blocks are reversible and interchangeable.

Q. What is the advantage of that type of die shown on D87? A. They are far longer lived; there is an absence of friction and the cost is about a comparison between twelve and seventy-five dollars.

The Court: Seventy-five the one used by the Irving and twelve the one designed by you?

The Witness: Yes, and used for a short time at the Irving Works.

Q. Let me ask you: That type of die shown in Exhibit D87 is used by the Kerlow Steel Flooring Company to manufacture its grating? A. Yes.

Q. And do you hold a patent on that form of die? A. Yes.

Q. Did Mr. Lown at any time after he left the employ of the Irving Iron Works Company in 1921, call back at the plant of the Irving Iron Works Company to see you? A. No, sir.

Q. Referring again to the so-called bonus, did you at any time receive any instructions from either Mr. Irving or Mr. Price or someone connected with the concern there, with regard to how that bonus was to be handled in preparing your income tax report? A. Yes.

Q. What instructions were given to you?

Mr. Egner: By whom?

Q. First, who gave the instructions? A. Mr. Price.

Q. What were they?

Mr. Egner: I object to anything Mr. Price said on that subject.

The Court: How do you claim it is binding on the company?

The Witness: Mr. Price was general manager of the company.

The Court: Was that within the scope of his authority telling him how to evade income tax? Suppose Mr. Irving had told him, would that be material or competent in this issue?

Mr. Kraetzer: It only may have this bearing in connection with a letter which he wrote in which he refers to it as an additional compensation, and although it had been termed a bonus and paid in the following August.

Mr. Egner: The point I make is, I don't see how it is within Mr. Price's powers as general manager of the plant to characterize what this was; that was up to the Board of Directors.

The Court: Possibly that may be true. I am merely passing on the competency of the question in view of Mr. Bunker's demand on Mr. Irving for the payment of what he termed additional compensation, and which he said he had always treated as ordinary compensation. although he doesn't say—which is to be gathered from his letter—although it has been termed bonus payable the following August. Now, if Mr. Price as general manager and only responsible to Mr. Irving, says, "This is to be compensation, but we will call it bonus," I think that is competent to go in; I will receive it.

Q. What were the instructions? A. That I was to report the bonus as income and pay tax on it.

Mr. Kraetzer: I am in this situation: I have before me the testimony of Mr. Irving and Mr. Kennard and Mr. Price, which contains a great many statements with regard to conversations and statements between them by Mr. Bunker, &c.

The Court: Are they at all material to this issue?

Mr. Kraetzer: I, in my humble capacity, cannot pass final judgment on a situation of that kind. I cannot read what is going to be in your Honor's mind when you come to read the record.

The Court: In my mind, I have narrowed this thing down to a very compact situation. These men worked for Mr. Irving; while working there or for his company, they obtained necessarily a certain amount of information. As I understand his charge, he claims they left his employ under certain conditions, concealing their real motive and purpose, and just before they left, for months they were endeavoring to obtain further secret information, or if not secret, information wholly the property of the Irving Company; that they took that information with them and started an opposition company; they stole his idea, stole his list, stole his prospects, and in fact, and did everything else to establish themselves in business at his expense and at the expense of his company, with his ideas and his property. That is in substance your charge?

Mr. Egner: Yes.

The Court: And they continued to do that

for months before they left to establish the Kerlow Company.

Mr. Egner: And took our agents.

The Court: That is one of the features that you charge as an evidence of conspiracy, one of the overt acts. You have met that by the testimony of the agents that it was never done; they voluntarily joined the Kerlow staff because of dissatisfaction with the Irving. Whatever it may have established in your judgment you are entitled to meet, if you have anything to meet it with. That is a matter you must determine.

Mr. Kraetzer: So far as presenting the facts that is true, but then we have the long statements that have been made on the record—I tried to cover them by blank questions, for instance, as to Mr. Kennard, whether he received any information and give a denial.

The Court: Such a denial I will regard as a complete denial, as if it had been mentioned in detail as to that feature. What significance I will attach to the denial afterwards remains to be seen, but it is just as effective as if you had taken up each item of Kennard's statement and had him specifically deny it. I am treating his denial as broad and general enough to cover everything that Kennard said, which the denial relates to.

Mr. Kraetzer: That simplifies things immensely with us.

The Court: That does complete justice. If I believe his denial, that disposes of Kennard's testimony. If I do not believe it in any particular, I do not believe it at all.

Mr. Kraetzer: With that in view, will you give me a few minutes to think over this situation.

The Court: I don't want counsel to be misled by anything I have said. I am merely endeavoring to limit the volume of testimony I will have to consider in this case. I do not want by what I say to have you leave out anything that is of importance in the interest of your client.

Mr. Kraetzer: You may cross-examine.

CROSS-EXAMINATION by Mr. Egner:

Q. How old were you in 1912, when you went with the Irving Company for the first time? A. Twenty-two, I think.

Q. You had come from what employment? A. I was employed by the Rudgear-Merle Company at San Francisco.

Q. What was their type of business? A. The same as the Irving Iron Works.

Q. What was it? A. Ornamental iron, light structural gratings.

Q. When you say the same as the Irving Iron Works you mean the same as the Irving Iron Works at the time you left the Irving Iron Works Company? A. No, sir, when I came to the Irving Iron Works.

Q. It is a fact, isn't it, that when you left the Irving Iron Works, practically the entire effort of that plant was devoted to the grating business, steel flooring business, was it not? A. Just at that period, yes, sir.

Q. And in that respect the business of the Irving

Iron Company during the time of your connection with it changed and was getting away from diversified kind of manufacture, and concentrating on the steel floor manufacture? A. Only that last year or so, I would say.

Q. How was it in 1919? A. In 1918, there was a great deal of variety.

Q. I said 1919. A. I said 1919.

Q. What proportion of the work of the plant during the year 1919 was devoted to the steel flooring interest? A. I would say sixty or seventy-five per cent.

Q. In 1919? A. Yes, the latter part.

Q. And this California concern you mentioned, what proportion of its trade was devoted to the steel flooring industry when you were there? A. Very small, I should say about ten per cent.

Q. As much as ten per cent? A. Yes.

Q. What kind of steel flooring did they make? A. Straight bar; either made it or had it made for them.

Q. Did they make any steel flooring? A. Yes.

Q. How much? A. I would say about ten per cent.

Q. In addition to what they made, they had others made for them by other factories? A. Yes.

Q. That was straight bar grating? A. Yes.

Q. In your opinion, does straight bar grating serve the same function as the Irving grating and the Kerlow grating? A. Under certain conditions, yes.

Q. Under all conditions? A. Not under all conditions, no.

Q. You don't think that the straight bar grating is as efficient a flooring as either Kerlow or Irving grating, do you? A. No, sir.

Q. And when you came with the Irving Company

you had never known of the use of a type of grating similar to either the Kerlow or the Irving grating as a flooring, had you? A. No, except through my own personal observation. I don't mean in connection with any business I was working in I never saw it, but I had seen it before.

Q. Where had you seen it? A. In New York.

Q. Where in New York? A. Over the subways.

Q. Other than the subway, had you ever seen a grating used as a flooring? A. A grating?

Q. Yes? A. Yes, sir.

Q. Of any kind? A. Yes.

Q. Where? A. In San Francisco, in grain elevators.

Q. Straight bar grating? A. Yes.

Q. What grain elevator? A. I think it is at the Hunter's Point grain elevator—I don't recall the exact name of it.

Q. What was your salary before you came with the Irving Company, in your last job? A. $35 a week.

Q. So you came with the Irving for five dollars less than you had had in California? A. Yes.

Q. Starting with $30 a week, will you tell us how much you received from the Irving Company in the way of salary or bonus or any other way, Christmas presents and all included, during the year 1920? A. I received $70 a week part of the time.

Q. Will you take a piece of paper and figure out the total? A. I should say roughly about $6,000.

Q. Did that include a Christmas present of $500? A. I did receive a Christmas—

The Court: Does that sum include a Christmas present of $500? He asked you to include everything

which you received, Christmas presents and so-called bonus.

The Witness: I don't know whether I got a Christmas present or not.

The Court: Whether you did or not, does that sum include it?

The Witness: No.

Q. You do know that on several occasions you got a Christmas present of $500? A. Two occasions.

Q. You are not counting that in the $6,000? A. No.

Q. It was a fact that in the middle of that year 1920 your weekly salary was raised, was it not, from $60 to $70? A. There was a raise.

Q. In the $6,000, however, you do not include this so-called bonus, whatever that was? A. Yes.

Q. You stated on your direct-examination that you had more experience than Mr. Price, I believe you said is ornamental iron, but it is not called that.

Q. You meant by that, that you were a competent man in connection with design as related to ironwork, were you not? A. I meant connection with ornamental iron; that is a different branch of the trade entirely.

Q. What do you mean by ornamental iron? A. Ornamental ironwork in the trade is that part of building construction other than the structural steel jobs. If you speak of design of hardware and period stuff, that is something different again; it happens it is ornalmental iron, but it is not called that.

Q As far as artistic quality of any kind of ironwork was concerned, you had more experience and were more competent than Mr. Price? A. I didn't mean that when I testified.

Q. You were handy? A. I could draw a little, not very much.

Q. Take the knowledge gained and the knowledge and experience you had when you came with the Irving Company and the work which you did with the Irving Company, you were a thoroughly competent steel flooring expert by the time you left the Irving Company, were you not? A. Yes, and long before I left.

Q. And you were thoroughly familiar with the details of the construction of it, the way it ought to be done and also thoroughly familiar with what the finished product ought to be were you not—steel flooring?

The Court: He doesn't ask you to be too modest; he wants to know if it is the fact.

A. The details of the construction were the same as any other floor.

The Court: He asks you if you were familiar with all that.

The Witness: Yes.

Q. And in fact you have testified that on several occasions you suggested the manner in which the methods of manufacture might be improved in the Irving plant? A. Yes.

Q. Did you ever make any suggestion, either to Mr. Price, or Mr. Irving, or anybody else at the Irving plant, with respect to improvements in the type of grating, either design or with respect to the depth of the reticulated bars? A. No, sir, unless you mean in regard to patent.

The Court: If you want to qualify your answer, you may do so.

The Witness: No, sir; I don't want to qualify it.

The Court: You say you did not make any suggestion, unless it be in regard to patent?

The Witness: Yes.

Q. Hadn't any such suggestions occurred to you while you were with the company? A. No, sir.

Q. So that, as far as your judgment went, up to the time you left the Irving Company, the best type of grating that appealed to your judgment was that which was being manufactured by the Irving Company? A. Yes, sir, in every respect.

Q. So that if the type which Mr. Lown says that he invented was an improvement, that improvement had never occurred to you? A. No, sir.

Q. And, in fact, it didn't occur to you, or you had no intimation of it until Mr. Lown told you about it? A. No, sir.

Q. When was it that Mr. Lown told you about it? A. The first part of 1921, either January or February —along in February, I think it was.

Q. So that after you made the agreement to go into business with him, if he could finance you— A. That was after I had agreed to go in with him.

Q. So that when you agreed to go in with him, you didn't even then know that he had this superior type of grating? A. No, sir.

Q. And that in no way entered into your willingness to go into business with him? A. No.

Q. And he didn't tell you about it before you made your agreement? A. Oh, no.

Q. Now, what other types of grating are there on the market which, in your opinion, are of a similar nature to the Irving and Kerlow grating? A. Miteo grating.

Q. What is the design of that? A. That consists of a series of parallel bars, with bars crossing these bars in opposite direction.

Q. That is the so-called egg crate? A. Yes.

Q. In your opinion, is egg crate grating adaptable to the same uses and all the uses that the Irving and Kerlow grating is, as a flooring? A. Do you mean personally?

The Court: Yes, in your opinion.

A. Yes, sir.

Q. And then you think it is just as good as either Irving— A. No; I don't think it is as good.

Q. In what respect isn't it as good? A. I don't like it as well.

Q. Is it a matter of like or a matter of ability to do the work; which is it? A. It apparently does the work just as well.

Q. You don't like its appearance? A. I don't like the grating and never did.

Q. So that aside from the matter of appearance and design, in your opinion as an engineer, egg crate grating is just as good as Kerlow or Irving grating? A. In the first place, I am not an engineer.

Q. Then, in your opinion, whatever you are, egg crate grating, except for the question of looks and design, is just as good as either Irving or Kerlow grating, is that right? A. Yes.

Q. What other types of grating are there which, other than design, are just as good as either Irving or Kerlow grating? A. Klemp, in Chicago.

Q. What kind of grating do they make? A. Similar to Irving's Type G, except the bars are full depth.

Q. What others? A. Arrowhead, in Kansas City.

Q. This Arrowhead Company, in Kansas City, is

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owned by a man named Patterson who used to be an Irving agent? A. Yes; he has a lot to do with it.

Q. How many jobs can you mention which during your entire experience with the Irving Company you ever knew of the Arrowhead actually doing? A. While I was at the Irving Iron Works?

Q. Yes. A. I don't know of their doing any business during that time.

Q. Then, in giving this list, you were not purporting to give a list of concerns that were in competition with the Irving during the time of your employment by Irving? A. I believe the question covered my knowledge.

Q. Did you intend to include all concerns that were or are now in competition? A. Yes, for the whole time.

The Court: When was the Arrowhead organized, after you left Irving?

The Witness: I heard about it after.

Q. You heard about it after? You hadn't heard about it before? A. No.

Q. How much do you know about the extent of their business? A. Not an awful lot, but I do know that they have beaten us out—that is, Kerlow and Irving, on quite a few large jobs.

Q. Name these jobs, please. A. The recent power house job, Kansas City, I think out of McClellan & Jaegersfeld's office. I believe Irving Subway was specified on that job.

Q. Do you know? A. No.

Q. I wish you would testify to what you know. A. I will be glad to.

Q. Tell me the jobs that you know? A. I know that this job awarded to the Arrowhead Grating Company—

Q. Tell me jobs that you really know were awarded to the Arrowhead. A. The Fleming stills, one job of eighteen stills from the Kellogg Company, Jersey City, on which Kerlow was specified outright.

Q. Any others? A. There were two still jobs; I don't remember the other.

Q. That is all you remember? A. Yes.

Q. Are there any other designs which are just as efficient as Kerlow and Irving? You don't recall any others? A. There is a grating made by the Hopkins Iron Works, I believe it is, and there is a grating—

Q. Is that the egg crate? A. I believe that is the brick type—what we used to call the brick type.

Q. What is the brick type? A. A series of parallel bars separated by small pieces staggered and shouldered and riveted to the straight bars. There is a grating constructed a trifle different by the Sherborn Iron Works.

Q. What is their design? A. It looks something like egg crate, but is not made that way.

Q. That is also just as good as Kerlow and Irving, except with respect to the looks? A. I don't like them as good as these others, as I said before, but other people do.

Q. Then, your opinion as to the looks isn't shared by everybody? A. Oh, I should say not.

Q. So that lots of people like the egg crate type? A. Apparently; they buy it when we are specified.

Q. Is the egg crate as expensive to manufacture as either the Kerlow or the Irving? A. In my opinion, yes.

Q. Why do you qualify it, in your opinion? A. Because I heard a great deal of discussion over it; I don't want to go into a discourse. I will, if you want me to.

Q. Now, referring to Exhibit C22 and the dies contained thereon, did you ever see these dies in the Irving Iron Works while you were there? A. No, sir.

Q. You are positive of that? A. Very.

Q. You are also positive that those dies were never made or were never used during your entire connection with the Irving Company? A. Yes, sir.

Q. You are positive about that? A. Yes.

The Court: Did you ever examine the dies that were used?

The Witness: Daily.

Q. Then, will you testify that these dies were not used in the Irving Company at any time while you were there? A. Yes, sir, to my knowledge.

Q. You would know if they had been used, wouldn't you? A. I think I would, but I wouldn't swear to it.

Q. The dies shown on Exhibit C25, they were in use while you were at the Irving Company, were they not? A. Yes, sir.

Q. And that was called the new type of die, wasn't it? A. No. sir; this was the old original die that was discarded (C25).

Q. When they referred to the new type of die, did they refer to the type of die invented by you? A. At what period?

Q. During 1920 or 1921? A. 1921 they called my die the block dies.

Q. I ask you whether the type shown on Exhibits C24 and C25 was during any time known as the new type of die? A. Not to my knowledge.

Q. You say they called your type of die in 1921 the block die? A. Yes.

The Court: Whom do you mean—"they"?

The Witness: The shop foreman, the people around the shop.

Q. Did Mr. Price and Mr. Irving ever refer to it as a block die? A. Whenever we talked about it, that is, to identify it.

Q. Your type of die was actually used in the Irving Company? A. Yes.

Q. And with your permission? A. To try out, yes, sir.

Q. Then, you were not quite correct in your affidavit filed on the order to show cause, when you said that this die was not used with your permission, were you? I call your attention to page 16 of your original affidavit, in which you say: "Referring to the final paragraph in the affidavit of said Kennard, with regard to the dies, I admit that certain dies invented by me were in use by the complainant during the time of my employment with it, but said use was without my permission and contrary to my wishes." You were not correct in that statement, were you? A. The dies were used, yes.

The Court: I don't quite understand. He asks you if that statement is true, in view of your present testimony. You just testified that the dies were used with your permission, and now in your affidavit that he quotes from, you say that they were not used with your permission, and against your protest—"contrary to my wishes." He asks you if that statement in your affidavit was a correct statement of the fact.

The Witness: No, sir.

Q. I call your attention to what purports to be an interoffice memo of the Irving Company 23355, Ex-

hibit C55 in this matter; does that refer to your type of die? A. Yes, sir.

Q. And that office memo contains your endorsement, does it not? A. It contains my signature that I had seen it.

Q. Does it bear a date? A. Yes 5/19/21.

Q. And that, in fact, was a memorandum for the authorization of one pair of K dies, new block type; is that right? A. Yes, sir.

The Court: What does that mean, an authorization to have them made?

The Witness: Yes.

Q. Authorization to have them made in the shop? A. Yes.

Q. Now, then, you are quite positive that you never discussed with Mr. Price the so-called Type M grating? A. I am quite positive.

Q. And you are also quite positive that the grating which was produced here in court, which I shall call your attention to in a moment, was never manufactured by the Irving Company prior to your leaving, and I call your attention now to Exhibit C20? A. Not to my knowledge; I never saw it.

Q. You never saw it? A. No, sir.

The Court: Could it have been manufactured and you not see it?

The Witness: I hardly think so; it might have. There were lots of things made that I never saw—odds and ends around the place.

The Court: If it had been made in quantity at all?

The Witness: Oh, no; if it had been made in quantity, I would have seen it.

Q. You had the key to Mr. Price's desk, did you not? A. Yes, sir.

Q. And the key to Mr. Irving's desk was kept in Mr. Price's desk, wasn't it? A. I cannot say for sure; I believe it was at one time; not continually, I don't think. I don't know.

Q. Now, you told us the improvements which you suggested in the methods of manufacture in the Irving plant, and you mentioned particularly automatic riveting and multiple punching. You did, in fact, have, did you not, tests as to the automatic riveting that you referred to, in this plant? A. Yes.

Q. What kind of riveting is employed now by the Kerlow Company in their manufacture? A. Hand riveting.

Q. Then, you haven't put that improvement into effect in the Kerlow office, have you? A. Yes, sir.

Q. You told me just now that you are employing hand riveting? A. Yes.

The Court: As distinguished from automatic?

The Witness: Yes, sir.

Q. Then, you are using the same kind of riveting now that the Irving Company used when you were with the Irving Company, aren't you? A. Yes, sir.

Q. Multiple punching that you referred to; to an extent the Irving Company employed multiple punching when you were there? A. To an extent—three or four holes.

Q. Three, or four, or five holes? A. Yes.

Q. And your suggestion was that they secure machines which would punch a greater number of holes? A. Yes; that was one of my suggestions.

Q. What kind of punching do you employ now in the Kerlow Company? A. We employ multiple punching; it makes twenty-five or twenty-six holes at a time.

Q. Were any tests made of multiple punching in

the Irving Company while you were there? A. A large quantity of holes?

Q. Yes. A. Not that I know of.

Q. What reason, if any, did either Mr. Price or Mr. Irving give you for not employing multiple punching? A. Because the company couldn't afford the expense of a machine at that time.

Q. Don't you remember their telling you that in their opinion it wasn't accurate, because of the variations in the material that was used? A. No, sir. As a matter of fact, the variations wouldn't affect it.

Q. You don't remember their telling you that that was the reason why they didn't think it was practical? A. No.

Q. How many holes do you punch now in the Kerlow Company? A. Twenty-five or twenty-six—around in there—maybe twenty-seven, for all I know.

The Court: Do you do any manufacturing yourself now?

The Witness: Yes, in Jersey City.

Q. In addition to what these other concerns did for you? A. Yes; before we got our plant built, we hauled our stuff from Long Island City.

Q. Fassler & Kline did work for you? A. Yes, heavy stuff.

Q. They did all your work until quite recently? A. Up until the middle of last year.

Q. What kind of punching do they employ? A. Multiple punching, just the same as the Irving Iron Works; Mr. Rothman used to be with the Irving Iron Works.

Q. So up to a year ago, as far as punching was concerned, your work was done in the same manner in which it had been done at the Irving plant? A. With some exception.

Q. As far as punching was concerned? A. Yes.

Q. The first talk you had with Mr. Lown was on or about Christmas, 1920? A. The last of the year; I don't recall the time.

Q. And at that time did you have any source of income, other than your earnings from the Irving Company? A. Not to amount to anything.

Q. Had you accumulated any property? A. Yes.

Q. The property that you had saved out of your earnings? A. The Irving Iron Works.

Q. Yes. A. No, sir; I should say fifty-fifty.

Q. You had no other source of income other than what you had of the Irving Company? A. Yes, my wife had.

Q. Your wife owned property? A. No, sir.

Q. I don't want to be inquisitive, but approximately how much was your wife's income, as distinguished from your income? A. I would say she individually had a little over a thousand dollars a year.

Q. Had you prior to your talk with Mr. Lown ever suggested either to Mr. Irving or Mr. Price, that you were so discouraged with the situation that you were contemplating leaving the company? A. Yes, sir.

Q. When was that? A. Mr. Price and I were in daily contact, and I would say without fear of contradiction, that the causes of discouragement were discussed at least once a week.

Q. I am not talking about that.

The Court: Did you inform both Mr. Price and Mr. Irving that because of your discouragement over conditions there, you desired to quit?

The Witness: No, sir.

The Court: Or intended to?

The Witness: No, sir.

Q. You never made that suggestion? A. Not until I left.

Q. Why didn't you make that suggestion to him prior to your talk with Lown? A. Because here was one of the most wonderful situations in the world, that is, business and everything else, and there was no reason why it should not be built up to a wonderful corporation, and in spite of all the times that I fought for these supposed ideas of mine, they may not have been any good, I was endeavoring and hoping that the time would come that we would all get together on it.

Q. What was so wonderful in this business, Mr. Bunker; what was so wonderful about the Irving business? A. Nothing particularly with the Irving business—the idea.

Q. What was wonderful about the idea? A. The idea—

Q. You stated there were a number of companies making a thing that was just as good? A. Yes.

Q. What was wonderful about the Irving idea? A. The grating idea.

The Court: The business of selling the grating?

The Witness: Yes, and manufacturing.

The Court: The various uses for which it could be put?

The Witness: Yes.

Q. In other words, you felt that this was practically a virgin field and that a company making that grating had an enormous future before it, didn't you, if they were run right? A. Not necessarily.

The Court: What did you mean then? You said one of the most wonderful things in the world; that is a very broad statement.

The Witness: I meant that this grating idea was a mighty good idea; there were half a dozen people, roughly, making it, and a man that put the money into it and developed the industry would make a mighty fine thing out of it.

Q. Did you know any other concern in the United States that up to the early part of December, 1920, had spent as much money as the Irving Company or any missionary work to spread the gospel of this type of grating as a flooring? A. No, I did not.

Q. You know, in fact, that no one else had done it? A. I don't know anything about it. How do I know what they did?

Q. As far as your knowledge goes, you never saw any literature of any other concern? A. Yes, considerable of it.

Q. As far as your knowledge went, you never knew of anybody who had made a specialty of this as the Irving Company had, did you? A. A good many of them were trying to make a specialty out of it.

Q. To the extent that the Irving Company had? A. The amount of money put in or what?

Q. Yes, the amount of money or effort to put in, to spread the gospel of this type of grating as a flooring? A. I really cannot say.

Q. However, you felt that this was a wonderful proposition? A. Yes, sir, the idea.

Q. And that is the reason, therefore, why you had never suggested that you would resign or get out if they didn't follow your ideas? A. I didn't think my ideas were the most wonderful in the world.

The Court: Is that the reason you didn't suggest you get out or resign if they didn't follow your ideas? You don't answer the question.

The Witness: Read that question.

The Court: If you don't understand the question, don't answer it, and tell me.

(Last question repeated.)

The Court: The reason being that it was such a wonderful thing?

The Witness: Yes, sir, that is one of the reasons.

Q. What other reasons were there? A. Because I considered that I had a very good position there.

Q. Any other reason? A. Those are the two, a good idea and a good position.

Q. Prior to your talk with Mr. Lown had it ever occurred to you that you might go into business yourself to exploit this idea? A. Not particularly; people had approached me, but I hadn't given it much thought.

Q. Who had approached you? A. Mr. Kennard, Mr. Roope.

Q. When did Mr. Kennard approach you on that subject? A. 1920, just before I went away on my vacation.

Q. The summer of 1920? A. The summer of—some time before I left and went away on a vacation; that was in August, 1920.

Q. What conversation did you have with Kennard on that subject? A. Kennard came to me and told me that he could not understand the way the Irving Iron Works was run; he did not think that Mr. Price was competent, and he suggested that I knew, in his opinion, a great deal about the grating business and wanted to know whether we couldn't get together and go out in business and make grating.

Q. At that time how much was Mr. Kennard making? A. I should say about $40 a week—I don't know exactly.

Q. Did he tell you whether he had any capital behind him? A. No, but he told me that he had been in business before and had some very strong friends, and that he thought it was a good idea.

Q. That conversation was wholly at the instance of Mr. Kennard, was it? A. Yes.

Q. And what reply did you make to him? A. I told him that I was not interested in it; that this place was the place where we could put over these ideas. If I can say why I didn't have any claims, or as you have suggested, put my ideas over; I didn't go into anything like that with any of the men under me in any way whatsoever.

Q. So that up to the time that Lown spoke to you, you really hadn't seriously considered leaving the Irving Company? A. Not seriously.

Q. Where did you have this first talk with Lown? A. At the Commodore Hotel, New York City.

Q. What time of the day was it? A. I think it was Saturday afternoon.

Q. Ordinarily was Saturday afternoon a holiday in your business? A. Yes.

Q. And how did you happen to meet Lown? A. We went over from the shop and stopped and had lunch there.

Q. How did you happen to go over there together? A. Every Saturday or any other time when the place closes, there were always groups going over together.

Q. Had you gone there with Lown before that? A. Lown and several others.

Q. So that you had been on quite friendly terms

with Lown? A. I wouldn't say that; I had only met him there.

Q. Prior to this time had you ever mentioned to Mr. Lown the fact that you were rather discouraged about the way your ideas were being met? A. I didn't talk with anybody along those lines with the exception of Mr. Price.

Q. And prior to that time had Mr. Lown ever mentioned to you the fact that he was dissatisfied with the way his ideas about the dies were being handled? A. Yes, a great many times.

Q. He had mentioned that a great many times? A. Yes, he and others; lots of others.

Q. So you had discussed that with Lown? A. I had discussed what?

Q. The fact that Lown wasn't satisfied.

The Court: That Lown was not satisfied; had you discussed that with him?

The Witness: Yes, I had discussed it with him.

Q. And in the course of any of those discussions did you ever, either of you, refer to the possibility of a new concern making a good thing out of this kind of a business? A. No, sir.

Q. There had been nothing said about that? A. About what?

Q. About a new concern taking this idea up and making something out of it? A. With Mr. Lown?

Q. Yes. A. No, sir, this was cold. It came cold; I never heard any intimation of it before.

Q. You and Lown went over to New York together alone? A. I wouldn't say we went alone; there might have been others there; we ate alone.

Q. But when was the first suggestion made about your going into business? A. At that lunch.

Q. Who opened up the topic? A. Mr. Lown.

Q. What did Mr. Lown say to you? A. He told me that he wanted to talk to me about an idea he had; he said that he had become discouraged in his efforts to put over, as he termed it, the big idea in the Irving Iron Works.

Q. What was the big idea? A. His big idea.

Q. What was the big idea? A. I don't know.

Q. You didn't know what the big idea was? A. No, not his big idea; everybody had a big idea.

The Court: Everybody wanted to run the works?

The Witness: I would say so, to a certain extent.

The Court: So when he mentioned about his big idea, you didn't know what he meant, did you?

The Witness: No.

Q. So, he was discouraged about something that you didn't understand? A. And he proceeded to tell me what he was discouraged about.

Q. What did he say? A. He said that he didn't like the way the sales were run, and he saw no reason why with the proper manufacturing methods, that the company could not double or quadruple its production, and suggested that he knew that I felt more or less the same.

Q. So you had expressed dissatisfaction to him? A. No, not in any way.

Q. How did he know? A. He just said that; he is a salesman.

Q. How would that give an inkling of how you felt? A. A salesman is a thing apart from the average business man.

Q. He has got more imagination? A. To a certain extent—hitches his liking to a situation, and all that sort of thing.

Q. Lown had a pretty good imagination? A. Very good, and other salesmen.

Q. He intimated that you hadn't been satisfied? A. Yes. I didn't talk to anybody about this, with the exception of Mr. Irving and Mr. Price, that is, knocking or anything like that.

Q. Prior to that time what experience had Mr. Lown had in connection with the manufacture of grating? A. Not a bit, not that I knew of.

Q. But yet he criticized the methods of manufacture of the Irving Company? A. As well as other things, yes.

Q. Go ahead; what else did he say? What did he criticize?

The Court: No, confine yourself to the Irving Company.

A. At this luncheon—that is about all there was to it; he asked me if I would go with him, and I told him that I wasn't sure what I would do, but I would let him know.

Q. When he said, "Go with him," what did he tell you about what he proposed to do? A. He proposed to go into business, engineering business. He was to handle the sales and I was to handle the mechanical end of it.

The Court: What were you to do, organize and go and manufacture gratings; is that it?

The Witness: At that time I didn't pay much attention to it. He had a boiler cap he was going to put on the market.

Q. Then you didn't specifically talk about gratings? A. There was some talk about gratings, too.

Q. Was it a general engineering business or a busi-

ness to do practically what the Irving Company did? A. It was more or less of a general business.

Q. Of all kinds of engineering? A. Yes, that is right, engineering sales.

The Court: What does that mean?

The Witness: There is a business already known as a manufacturing sales representative throughout the country; they have offices in all sorts of cities; these people handle several lines; Mr. Lown's idea, as he told me then, was, while we were making grating or pipe clamps, or whatever the case might be, that he would organize a sales proposition throughout the country to handle these various lines.

Q. You would act as sales representative for anything you could represent? A. To a certain extent.

Q. That was his proposition? A. Yes, it was very vague as regards details.

Q. Did he tell you anything about having any backing at that time? A. No, he said that he could get backing.

Q. What did you reply to this? A. I have already stated I told him that I might be interested at some later date; the substance was that I still felt that there was no chance at the Irving Iron Works. I didn't want to throw up a good proposition until I was sure that there was no need of—it wouldn't do any good to stay there, as far as I was concerned, if I didn't like the way they were doing, and I couldn't convince them; I felt it was up to me to get out and go my way and work on my own responsibility.

Q. Mr. Lown testified that this was Christmas Eve, the day before Christmas; is that your recollection? A. About that time; I wouldn't specify the date.

Q. It was very close to Christmas? A. Yes.

Q. How long did you spend with Mr. Lown that afternoon? A. Perhaps two hours.

Q. Did you talk any details as to how you would put the thing over? A. No, sir.

Q. It was just his idea that he thought of doing this? A. Yes.

Q. You say it was very vague and you merely said that you might be interested if you couldn't put over your—you would take another chance with the Irving Company? A. Yes, and if the money was raised and the finances were taken care of.

Q. You did talk about finances? A. I said that before.

Q. What did you say on the subject of finances that day? A. He said that he thought they could take care of that; that is all that was said.

Q. How much did you think was necessary? A. No amounts were mentioned or even discussed by anybody.

Q. Anything said about the necessity of having a factory? A. No, sir.

Q. Nothing about that? A. No.

Q. When did you next talk to Lown after that first conversation about this proposition? A. I don't exactly remember; it was around the first of the year or shortly after he came to me and asked me if I had made up my mind.

Q. Mr. Lown has testified that on New Year's Eve you and he signed a written agreement relating to your going into business together; is that right? A. I don't recall such an agreement at that time. There was an agreement later on.

Q. You don't desire to deny Mr. Lown as to the date of the signing of it, do you? A. I was telling you what I know of the situation.

Q. But you do remember that there was a written agreement? A. Between Mr. Lown and I? Yes, there was one signed, but not at that time.

Q. Then your recollection differs from his as to the time? A. Apparently.

The Court: When do you say it was signed?

The Witness: October 14.

Q. What year? A. 1921.

The Court: And this occasion New Year's Eve was December 31, 1920?

The Witness: Yes.

Q. In other words, if Mr. Lown said that within a week after your first talk, you signed a written agreement, he is mistaken, is that right? A. In my estimation, yes.

Q. Any estimation. A. I don't know anything about it. I don't recall anything about it; I know there was an agreement signed, and that is the only agreement I know anything about.

Q. Where is that agreement? A. The agreement I signed?

Mr. Kraetzer: I have that.

Mr. Egner: Will you produce that agreement?

Mr. Kraetzer: That agreement of October 14, 1921, which was prepared by me relates to the anticipation of the stock ownership of the Kerlow Steel Flooring Company as it was organized at that time; it refers to the prohibition against hypothecating or disposing of stock as between Mr. Bunker and Mr. Lown and as to nothing else.

The Court: What do you want the agreement for? Anything more than it states?

Mr. Egner: In view of the statement that Mr. Kraetzer makes about that agreement, I don't want that. I am talking about an agreement which Mr. Lown said he wrote down and which was signed by both parties. I want to examine as to whether there was the type of contract Mr. Lown said.

The Court: You ask about an agreement which you have described, and he states he signed no such agreement. He says the only agreement he signed or knows about was one made in October.

Mr. Egner: I don't care about that.

The Court: You have just asked for the production of it.

Mr. Kraetzer: I am giving my statement as to that agreement.

Mr. Egner: Counsel has apparently not developed it. May we have that admission in view of his statement?

Q. You just referred to an agreement which you say you signed in October? A. Yes.

Q. And was that the agreement prepared by Mr. Kraetzer, your lawyer? A. Yes.

Q. What I am asking you is this: Whether or not you and Mr. Lown signed an agreement which Mr. Lown wrote out and which was signed on or about December 31, 1920? A. I don't recall any such agreement; I would say there was not, not to my knowledge.

Q. Was there any paper that you two signed at that time? A. No, it was all talk.

Q. So that when Mr. Lown said that you did sign such a paper on December 31, 1920, he is mistaken? A. As far as I know, he is mistaken.

Q. When did you definitely tell Mr. Lown that in case he succeeded in financing the company that you would go with him? A. Shortly after the first of the year.

The Court: That is the year 1921?

The Witness: Yes.

Q. You said either January or February? A. Yes.

Q. So that before the end of January, 1921, Mr. Lown knew definitely that in case he financed the company you would be with him, did he? A. Yes, that is right.

Q. So that you at that time had fully made up your mind that you would leave and the only condition was that Mr. Lown would finance the new company? A. I don't even think the financing was talked of much at that time; I told him I was with him.

Q. So that he thoroughly understood in January that as soon as he was ready to start you were with him? A. That is right.

Q. You knew in January that Mr. Lown was going to do this and that you were to be with him?

The Court: Was going to form the new company and engage in this business?

The Witness: Yes, that is right.

Q. When did Mr. Lown leave the Irving Company? A. I cannot tell you exactly; I believe the date is only through testimony I have heard—say May sometime, I think.

Q. In May of 1921? A. Yes, the early part I believe.

Q. So that for several months at least while Mr. Lown was still in the employ of the Irving Company and while you were in the employ of the Irving Company you had both made up your mind that you were going to form this new company and that you were going to be in it together? A. Yes, that is right.

Q. Why didn't Mr. Lown leave immediately when you both agreed to form the new company? A. I cannot say; there was nothing definite at that time.

Q. Why didn't you leave immediately to help him get up this company? A. For the reason that there was nothing definite.

Q. You had definitely decided to take this step, hadn't you? A. I had definitely decided to go into business with Mr. Lown, yes, sir.

Q. Why didn't you both resign as soon as you made up your mind that you were going to take this step? A. And go into business?

Q. Yes. A. There was nothing definite settled.

Examination by the Court:

Q. When was it to be definitely settled? A. It depended on the money; if he got the money together, we would go into business.

Q. Whenever he got the money? A. It wasn't discussed in that way.

Q. I am trying to find out how it was discussed. You made a bargain in January, 1921, that you would quit the Irving Company and start in a competing business—that is the plain language? A. Yes.

Q. When were you going to start that business? A. No time was set.

Q. It might have been ten years hence? A. Yes.

Q. Or it might have been a week or it might have been never, and if he got the money within a week or

two, you would quit then and start the business? A. Yes—I didn't know; it never happened.

Q. Whenever he did get the money you were going to start; that is the way I understand you. If I am wrong, correct me. A. It might be.

Q. I don't care if it might be; what was the fact, is what I want. A. All I can say, that it never was discussed; no time was set; I presume if he got the money.

Q. You told Mr. Egner one reason you didn't quit was because you didn't have the money. I am trying to find if that agreement was contingent on the money being produced to start the concern? A. That is in January?

Q. Yes. A. Yes, that is right.

FURTHER CROSS-EXAMINATION by Mr. Egner:

Q. What was the first step you actually took with Mr. Lown in connection with this new business, the first definite step that you took? A. I attended a meeting in May, I believe, or perhaps a little before that—I don't recall the exact month—1921.

Q. Where was that meeting? A. Held in New York.

Q. Well where? A. The location—I think it was in the office of Rose & Paskus, American Exchange National Bank.

Q. What are they, lawyers? A. Yes.

Q. When was the Kerlow Company incorporated, Mr. Bunker? A. I cannot tell you.

Q. Don't you know that it was incorporated in March of 1921? A. That is right.

Q. You knew that your name was to form part of the title, didn't you? A. Not at that time.

Q. Didn't you give permission to use part of your name for the title? A. No, sir.

The Court: You were one of the incorporators?

The Witness: No, sir.

Q. You were elected president of the company and director? A. Yes.

Q. At the first meeting in March? A. It may have been March.

Q. Wasn't this meeting you attended the organization meeting of the Kerlow Company of which you were president and director? A. It was a directors' meeting at which I was elected president.

Q. Is that the one held in Rose's office? A. Yes.

Mr. Kraetzer: That was held in the office of Rose & Paskus; it was the first meeting of the Board of Directors; I think the date was March 24, 1921.

Q. So that by March 24, 1921, you had committed yourself to this far enough to be elected president of the new company? A. Yes.

Q. Why didn't you resign from the Irving Company at the time of your election as president of the new company? A. As far as I was concerned, there was no company at that time, nothing but a bunch of papers and there was no intimating at that time that there would be a company.

Q. At that time were you doing anything to help the new company get on its feet? A. No, sir.

Q. Why not; why didn't you? A. In the first place there was no company, in my estimation, there was nothing; Mr. Lown was taking care of everything; that is all there was to it.

Q. When was the first time that you took an active interest in the Kerlow Company? A. I don't quite understand.

The Court: You don't understand the words "active interest"?

The Witness: Yes.

The Court: What is the doubt about it?

The Witness: I didn't go into detail at all.

The Court: He asked you when you first took any active interest; he asked you for a date more than anything else. You know what "active interest" is, the same as we all know.

The Witness: In October, 1921.

The Court: What action then took place; what active interest did you then take?

The Witness: Started to get the company together.

The Court: What do you mean by that?

The Witness: To look for machines and get ready to manufacture.

Q. So that I understand you, from December 21, 1920, down to October, 1921, you didn't do a thing to help along the career of the Kerlow Company? A. No, sir, not that I know of.

The Court: Except with the use of your name as president?

The Witness: Yes, and I attended a few meetings once in a while.

Q. What happened at those meetings? A. The next meeting after the one that I mentioned—

Q. That is the March meeting? A. Yes—was held in the middle of the year—I don't know the date, and I attended—the only thing that I can recall that was discussed was the price—the possible price of the

stock of the company. The first real directors' meeting when there was anything to direct was December of that year.

Q. You were very anxious for a new company to get started, weren't you? A. I don't think so.

Q. Wasn't this going to be a big thing for you? A. I don't think that.

Q. You didn't think that? A. No.

Q. So that it was quite immaterial to you whether it got started or not? A. I was interested in it, but I knew—

Q. In a very mild way? A. I knew that it meant a lot of hard work, and I knew that the income wouldn't be as good as I had at the Irving Iron Works, but I was willing to take a chance at it, because I felt that I had bumped my head in the ceiling at the Irving Iron Works.

Q. But outside of that feeling, you didn't do anything to help them get going? Did you help them get any money? A. No, sir. Mr. Lown was to take care of the financing, and I happened to be fortunate enough in the last of October to get some money.

Q. Then you got the money in October? A. I got some money in October.

Q. What proportion of the money that went into the company did you receive? A. Two or three per cent.

Q. Is that all? A. Yes, and Mr. Lown and the other people interested in the company raised all the rest.

Q. Who got these other people interested in the company, Lown or you? A. Mr. Lown.

Q. He got them all? A. Yes.

Q. So that the only part of the capital of the company that you either directly or indirectly interested

in the company was some three per cent? A. So far as I know, yes, that is my recollection.

Q. Do you know? A. I don't know; Lown might have gone around and talked about Bunker and he put his money in.

Q. On the strength of you being in? A. That might be this man's interpretation, but I don't know anything about it; the only money I had anything to do with was $1,200 or $1,400 or $2,000 that was put in by my father-in-law in the latter part of October.

Q. Did you give any names to Lown that he should see? A. No, sir; I don't know anything about that end of it.

Q. When did you and Lown first discuss the question of the agents to be appointed by your company? A. I would say the early part of October.

Q. Which one of you made the suggestion that it would be a good idea to get the Irving Company agents to be your agents? A. Neither of us.

Q. What was said on the subject of approaching the Irving Company agents? A. In discussing the possibility of obtaining agents, Mr. Lown decided to take a trip and advertise for agents, and he suggested that while he was in some of these towns where some of the boys were that he knew, he might see them.

Q. For what purpose? A. A personal social visit, and I immediately brought up the point that I didn't want him to say anything to them about handling this new line, and he said that never was in his head at that time; of course, he said that, "If they are particularly interested in it, I will talk to them. I don't like to go into a town to a fellow who has been a personal friend of mine and put forth a new project that is superior and a better selling proposition and take the bread out of his mouth."

Q. In this conversation why didn't you want him to call on these men? A. I didn't object to his calling on them; I didn't want him to go too strong on the new company; it was new and it hadn't gotten started.

Q. You didn't want him to mention the fact of the new company to the agents? A. I didn't object to his mentioning it.

Q. What did you object to? A. Just what I said; I didn't want him to stress the company too much.

Q. In what way? A. Its possibilities and so forth.

Q. Did you ever have any objection to his getting them to be agents for you, if they wanted to come? A. That point was never discussed until later.

Q. When was it discussed? A. When Mr. Lown came back from his first trip he told me that he had—this was just an incident—that he had seen Scarth and that when he opened Scarth's door he expected to be turned out; he said on the contrary Scarth was very eager to come with us, and he tried to put him off until he could get back to the home office and see what had been accomplished in the way of real business.

Q. Why had he expected to be thrown out of Scarth's office? A. I cannot tell you.

Q. Didn't he tell you why? A. No, he said something like this, "I put my foot in his door in fear and trembling."

Q. He didn't tell you why he put it in with fear and trembling? A. No.

Q. You testified on your direct-examination, Mr. Bunker, that you never did anything to interfere with the business of the Irving Company; is that correct? A. Yes.

Q. And that was true before you left the company? A. Absolutely.

Q. And it was true after you left the company? A. Yes.

Q. You knew when Mr. Lown went west that he was going to see all these agents, didn't you? A. No, sir.

Q. You mean to say you didn't know that? A. I mean to say absolutely that I never knew anything about it.

Q. You knew the fact that these agents were to be appointed before they were appointed, didn't you? A. No, sir.

Q. You didn't even know that? A. No, I didn't know anything about that, and that was not the intention at any conference or director's meeting that was ever held.

Q. Did Mr. Lown report to the company the fact that he was going to engage these agents? A. No, sir; you mean before he left?

Q. No, before he engaged them. A. He spoke of some applications that he expected from some of these fellows.

Q. What did he tell you about expecting applications from them? A. That is all he said; just that.

Q. Did he mention Demorest and Scarth? A. No.

Q. And Mosher and Kennedy? A. He mentioned Mosher and Scarth; the Demorest proposition was a little bit different.

Q. I am asking you this: Before these men were appointed agents by the Kerlow Company were you aware of the fact that the proposition of appointing them was under discussion? A. Not prior to this first trip that Lown made.

Q. I don't care about the first trip or second trip,

but what I want to know is, whether you knew about their prospective appointment before it took place? A. Surely.

Q. And you approved of their appointment, did you? A. Yes, sir.

Examination by the Court:

Q. Now, didn't you think that taking these agents was an interference with the Irving Company's business? A. I didn't think in any way that there was any taking whatsoever; these men apparently were very eager to come with us. I tell you frankly right now that I cannot understand at that time why they wanted to come.

Q. You knew at the time, didn't you, Mr. Bunker, that practically seventy-five per cent of the business of the Irving Company came through these agents? A. No, sir, I didn't know that; I don't know it today, either.

Q. What per cent of the business would you say came through these agents? A. I wouldn't hazard a guess; I don't know.

Q. Can't you give any opinion? A. No, it is a matter of record.

Q. Did you know that any of these agents were dissatisfied with the Irving Company? A. Yes, we knew a great many were.

Q. How do you reconcile that statement with the fact that you were surprised when they wanted to come with you? A. In this way, I was on the inside at the Irving Iron Works; those men on the inside—I knew a lot of things that dissatisfied me; these people were complaining about commissions and contracts, but I never thought for a moment but what it was a sort of a regular occurrence that salesmen had more or less difficulties, being on the outside.

FURTHER CROSS-EXAMINATION by Mr. Egner:

Q. So you had never known of any difficulty other than you thought it was a perfectly normal difficulty in a large business? A. With a few exceptions like Patterson and Demorest.

Q. You knew that the different territories supplied by the Irving Company were represented by Boston, Hartford, New York, Philadelphia, Pittsburgh, Chicago and Detroit? A. No, sir; in my estimation—

Q. In your estimation what was the chief territory? A. The chief territories at that time, in my estimation, were New York City and Chicago and the southwest and Philadelphia, around in through there.

Q. Which agent had been in receipt of the largest commission as far as you knew at this time? A. I cannot say; we had nothing to do with the best territory.

Q. Which agent had been in receipt of the largest commission? A. While I was at the Irving Iron Works?

Q. Yes? A. I don't know; I believe it was Westerfield.

Q. Do you know that Demorest had? A. I knew he had been there longest, but I never knew the amount of his commission.

Q. You knew he was the most productive agent that the company had? A. No.

Q. You didn't know that the agents whom Mr. Lown called upon were the chief agents of the Irving Company? A. No, sir.

Q. You didn't know that? A. No, sir.

Q. You didn't think that you were doing any injury to the Irving Company when you gave these agents

the opportunity to associate themselves with your new company? A. It wasn't that way at all.

Q. Answer my question? A. Will you read it, please?

Q. You didn't think you were doing any injury to the Irving Company when you gave these agents the opportunity to associate themselves with your new company? A. No, sir.

Q. Why did you employ these men as agents of the Kerlow Company? A. Because the company, I presume, needed agents, and these men wanted a job and they got it, the same as any other man.

The Court: You mean to say you don't think you did any injury to the Irving Company by taking their agency force away from them, or the principal agency force? You said no; do you really mean that?

The Witness: Yes, I mean that.

Q. Why wouldn't you do an injury to the Irving Company or any other business to have all its agents taken or its principal agents taken away from them and absorbed by a competitor? A. These men were a part of—I would say quite a few men, forty or fifty men, and I never considered them, in the first place, the best of the force. The salesmen were not like a fellow that is working at a machine or a job because it was steady; they were changing from time to time; there were new men here and there.

The Court: I haven't any such proof as that before me. These men seem to have been agents for some time. I cannot understand—I am not a business man myself—why you are not injuring a concern when you take a large portion of the agency away from them. Do you still insist you were doing no injury?

The Witness: Yes, I believe that.

The Court: Let it stand that way.

Q. Were you present when Mr. Lown was advised by a lawyer that there ought to be a written application from each of these agents? A. I never heard of such a thing.

Q. You did say, however, on your direct-examination that your lawyer asked you whether you had taken any list from the Irving Company? A. Yes, that is right.

Q. When was that discussed with your lawyer? A. The last of the year 1921; that was Williams and Pritchard; that was Mr. Pritchard.

Q. That was after this suit was started? A. Yes.

Q. How did you happen to discuss that subject with him? A. Because we were talking patents in general. This is a patent lawyer, by the way, and talking about designs, and I was very curious at that time to know what the Irving Iron Works patent consisted of and how good it was, and we were talking about other concerns, like the Press Steel Car people left some big car company and went and opened an office for themselves, and along those lines, and Mr. Pritchard was telling about his experience, where a young group of men left a concern and opening a business of its own and the snag they ran up against. I remember he spoke of the Acme Die Casting Company and the Doehler Die Casting Company, and he said that the favorite stone with which to stop a young corporation was to fight them on some arrangement of lists—some idea of taking lists, that sort of thing, and he asked me whether we had taken any list; I told him we had not, there was no need for it.

Q. You told him you hadn't taken this sample of

Type M from Mr. Irving's desk; you told him that, did you? A. What sample?

Q. The sample that has been offered in evidence here; was there a question of your taking that from Mr. Irving's desk? A. No. And there was no question about the lists.

Q. At the time you had this talk with Mr. Pritchard were you expecting to have a lawsuit with the Irving Company? A. No, this was a general conversation. Mr. Pritchard is very much of a business man and I felt very friendly with him, and he has spent considerable time in discussing things in general with us.

Q. Was Mr. Lown at that conference? A. I don't think he was.

Q. You never, until Mr. Lown mentioned it on the stand, knew that he had been cautioned about having a formal application from the men, etc.? A. I don't think I did.

Q. You never knew that? A. No, I never heard of that in any way. As far as I am concerned, this idea of these men was purely accidental in every way whatsoever.

Q. Was it agreed between you and Mr. Lown that these men, whoever were hired, if they wished to have positions as agents should make a written application? A. No, sir, it never was discussed in any way that I know of. Mr. Lown came back and said to me, "Scarth wants to locate with us." He spoke about the other cities; I said, "For God's sake, don't see anybody else; it looks to me like the whole Irving Iron Works wants to come with us." We had only a small business, we had just started; there was no need of agents at that time; we had a long, tough road ahead of us.

Q. If that was so, why did you make written agreements with all these agents before you started manufacturing? A. How do you mean; you mean contracts?

Q. Yes? A. They were not made before we started to manufacture—rather, we sold stuff and it was manufactured for us by Fassler & Kline.

Q. From the first of November, 1921, didn't you know that practically every one of the agents had resigned, or was that on or about the fifteenth of November? A. No, I didn't know that; some of them I did, but I wouldn't say three or four men did.

Q. You didn't begin to manufacture until December, did you? A. No, I believe it was in November sometime.

Q. Mr. Lown has sworn in an affidavit that you began manufacturing on the first of December; is he mistaken about that? A. I cannot say; the first shipment, as I recall, was made in December, and I know that manufacturing, that is, making of samples, perhaps not on a specific job, was started about the nineteenth of October—or was it December—it is a matter of record; I will be very glad to produce the record, and show the whole thing.

Q. You testified on direct-examination—if I am wrong, correct me—that you never got any information from either Kennard or Tarof with respect to the business of the Irving Company after you left? A. That is right, with one exception—no, that is correct as it stands.

Q. And you never got any information as to what was going on in the Irving Company? A. At one time I did.

Q. You say now that on one occasion you did; is that right? A. In answer to that last question, yes.

The Court: From Kennard or Tarof?
The Witness: From Mr. Tarof.

Q. Then when you swore in your affidavit, verified under date of March 4, 1922, in the first paragraph: "I deny absolutely that any information of any kind or nature was ever received by me or the defendant Kerlow Company from the said Tarof or from any other person in the employ of the complainant," you didn't make a correct statement, did you? A. Not at that time; I had forgotten one telephone call.

Q. What was this telephone call that you got; from whom was it, first? A. From Mr. Tarof.

Q. And when was it? A. It was around December first—around the first of December, 1921, Tarof called me up and asked me whose design was the Kerlow design and I told him it was our design. "Well," he said, "they are making dies."

Q. You said "our design, the Kerlow"? A. Yes. He said, "They are making drawings and dies from a card of the Kerlow Steel Flooring Company"; he says, "It looks very funny to me." I said to him, "Can't you see what they are doing? Just because we started in this thing"—

Q. Never mind "because"; I want the conversation? A. This is the conversation; I am saying this. "Just because we are getting started, they are going ahead and trying to grab our design," and that is all that was said.

The Court: Was that in fact your own design, or was it a design—

The Witness: Mr. Lown's design.

The Court: He designed the grating and you designed the die?

The Witness: That is it exactly.

The Court: When did Lown design this grating?

The Witness: I don't know exactly, but it was at least a year or more before he ever spoke to me.

The Court: He made the design before he ever spoke to you about leaving the concern?

The Witness: Yes, sir, and spoke to Mr. Irving about it.

The Court: He had spoken to Mr. Irving about it?

The Witness: Yes. This is patent testimony.

The Court: Do you know that he had spoken to Mr. Irving about it?

The Witness: Only through this testimony in the patent suit.

Q. Were you surprised when Mr. Tarof called you up? A. Very much surprised.

Q. Did Mr. Tarof tell you why he was bringing this to your attention? A. Yes, because he wanted to know the truth of the situation.

Q. Did he tell you why the truth was important to him? A. It so happened that he had applied to me for a position.

Q. He had applied to you for a position? A. Yes, and also Mr. Kennard.

Q. When did Mr. Tarof apply for a position to you? A. At the same time Mr. Kennard did.

Q. When was that, about? A. The last of the first week of October, 1921.

Q. Then a very few days after you left the Irving Company Mr. Tarof applied for a position? A. I would say within the first or second week.

Q. And had you discussed with him the subject of his possibility coming with the company? A. Yes.

Q. When did you first discuss with Mr. Tarof the

possibility of his coming with the company? A. Shortly after I left the Irving Iron Works Mr. Kennard called me up at my home and said he wanted to see me—he and Tarof, and would I meet them, and I said I would, and the appointment was made for Mendel's restaurant, Grand Central Terminal, New York, for lunch, and I met these two men there.

Recess.

After recess.

Q. Will you tell us what was said at the conference at Mendel's? A. Both of these gentlemen wanted to know what was doing in the new business, and whether or not there was a possibility of a position for them.

Q. When was that; that was in October? A. Yes, sir.

Q. Did you know how they knew about the new business? A. Yes, sir, I know how Kennard knew.

Q. How had he known? A. Because I told him.

Q. When had you told him? A. The Saturday afternoon when I left.

Q. What did you tell him on that occasion? A. I told him that I expected to go into business with Mr. Lown, and he wanted to know at that time what we were going to do, and I told him I felt that we were going to make grating; that was about all that was said.

Q. Tell us the conversation at Mendel's? A. I told these men that there was nothing doing in the way of a position at that time, and I could not say when there would be as the company was in an em-

bryo state, and explained to them that we were still in the process of endeavoring to raise funds, and talk of that character.

Q. Can you place this, whether it was before or after Columbus Day? A. I cannot tell you when Columbus Day is.

Q. That is on October 12th? A. I cannot place it as that close.

Q. You left the Irving Company when, on what date? A. October first, Saturday.

Q. How long after you left, approximately, was it that you met these men at Mendel's? A. I cannot fix the exact date from my memory.

Q. Can you place it approximately how many it was? A. It was within two weeks. I think Kennard called me up a few days after I left.

Q. How did you leave it then in the conversation at Mendel's? A. Just that way, as I have testified.

Q. How soon after that did you again see Kennard or Tarof? A. I would say possibly a week; they called at the office of the Kerlow Company one Saturday afternoon.

Q. On the occasion of your first meeting was anything said about these men submitting an application for a position? A. Yes, when I told them there would be nothing doing, they wanted to know, of course —they wanted to know how soon there would be something doing, and I told them I didn't know, and they wanted to know about applying for a position and also some information on this selling of stock, which I told them, and I recall that I gave Mr. Kennard a subscription for stock, at his request, and afterwards received his subscription filled out, together with a letter of application for a position from both Kennard and Tarof.

Q. Did you tell them that they would have to make a written application? A. I don't think I did; I am quite sure I didn't, because there was nothing definite at that time, I mean as far as the company was concerned.

Q. Both of these men did file a written application for a job? A. They wrote me a letter and applied for a job.

Q. So that as far as you knew, it was purely accidental that they did that? A. Oh, no, it wasn't accidental, because they had asked me about the possibility of them being employed at this—

Q. Did you ask them to make a written application? A. No, sir.

Q. So that the making of a written application proceeded solely from these gentlemen; you hadn't suggested it in any way? A. I don't recall that I did; I do remember about a stock subscription and about giving Kennard the form.

Q. Did you tell Kennard that he could subscribe in the company for stock? A. Yes, also Tarof and anybody else.

Q. Was that in connection with their getting a position or wholly regardless of their getting a position? A. It was an independent proposition. I told them that we were going to try to make this a mutual proposition, this company, and hoped that the employees would become stockholders.

Q. Mr. Bunker, I show you Exhibit C40 in this matter, which is a letter written by you, under date of October 12, to Kennard, and see if that does not refresh your recollection as to approximately when this meeting was? A. Yes, sir, it does; I would say—this letter was an acknowledgment of Mr. Tarof's and Mr. Kennard's letters.

The Court: That is, their applications for a position?

The Witness: Application for stock.

Q. When was the meeting? A. This is dated October 12; I had received their letters that day and it was not more than two days prior to that, I would say, that I met them.

Q. So you met them about the tenth? A. Yes, sir, somewhere along in there.

Q. Isn't it a fact that prior to the twelfth of October you had already said to both of these men that they would be employed and that the only question open was as to when their employment should start? A. No, sir, I did not say it at any time near there or afterwards.

Q. If you hadn't given them that assurance, will you tell me what you meant by this paragraph in your letter: "You will hear from us definitely regarding the starting-off gun just as soon as Lown and I have had time to confer with some of our machinery people. Kindly convey this information to Tarof. Be patient as this is too big a proposition to rush at"? A. Yes, sir.

Q. What did you mean by that language? A. I meant that I felt that we were being rushed off our feet with people that wanted to be employed, and there was no definite time, and I could place no time when I would need anybody, or even try to build up an organization, and I wanted to put it off.

Q. After reading that letter, do you still say that it wasn't understood that they were to come with you, making it only a question as to when? A. It was never understood at any time that they were to come to us, and as you know, Kennard never came.

Q. What did you mean by "regarding the starting-off gun"? A. Just that, that the company had not really started as yet, and that in a week or month or two months, if it had started, that was time enough to discuss anything.

Q. I show you here in this letter, "Lown is on the way back from Chicago with about 100,000 square feet lined up, also agents placed." Then you knew on October 12th that Mr. Lown had placed agents for the company? A. Yes, he wrote me to that effect.

Q. What agents had he placed? A. Do I say here (after examining letter)? I cannot say with the exception of the man that is mentioned there. I remember there was some talk about Skoning or someone in Chicago.

Q. Skoning was the Irving man in Chicago? A. Yes.

Q. Did Mr. Lown in fact have 100,000 square feet of subway grating placed? A. No, sir; it doesn't say that.

Q. What did you mean by the term "lined up"? A. That he knew of prospects or projects that would require approximately 100,000 square feet of grating.

Q. Had he written you that? A. I think he did.

Q. Before October 12th? A. Yes, that he knew of these jobs.

Q. Did he mention what the jobs were? A. Not that I recall. I think it was a telegram and I think he said 100,000 square feet.

Q. Either in a telegram or in any other means, on or about that time, did he give you the particulars as to these jobs constituting 100,000 square feet? A. On his return from this trip he listed on some jobs

and the total was somewhere around 100,000 square feet, but I cannot tell you now what those jobs were.

Q. Was the Detroit Edison Company one of them? A. No, sir.

Q. You are positive of that? A. I am positive of that.

Q. Did he tell you how he had gotten information as to these jobs? A. Yes, to some extent.

Q. Through the agents? A. No, sir, he visited—I remember one particular job now—he visited Sargent & Londen, engineers in Chicago, and met an engineer there, and they were very cordial to him and told him about the projects, and I think they were the largest he had in mind.

Q. After he came back from these trips and having seen these agents, did he mention a single job to you that he had been informed by these agents might be in prospect? A. I don't think he did; I cannot remember the names that were on this plain sheet of paper that he wrote down. I mentioned this 160,000—it looked like all the business in the world, more or less, and I was naturally conservative and I wanted to see what it was made up from.

Q. When did you first tell Mr. Irving that you were going to go in business for yourself? A. The last of October; in fact the only visit I made to the Irving Iron Works was in October, whatever day that was.

Q. When was that? A. The latter part of October.

Q. So that at no time before you left did you tell Mr. Irving that you were going into a competing business? A. No, sir.

Q. When you told Mr. Irving in the latter part of October, did he appear to know it? A. Yes, sir; in

fact he told me he knew it; there was some confusion as to just what the name was, and I gave him my business card showing it.

Q. You said in your affidavit that you had been informed that Mr. Irving knew of your having joined yourself in a new business before you told it to him. Do you remember testifying to that effect? A. I might have; I don't recall it.

Q. Did anyone tell you that Mr. Irving knew about it? A. Yes, someone did.

Q. Who told you? A. I am trying to think. I remember an incident—I cannot say where it came from—I knew it was—whether I guess it or what—that someone told Mr. Irving that we were going into business, and the name was Kerlow, or something like that.

Q. Did Mr. Tarof tell you that? A. No, sir.

Q. You are positive of that? A. Very positive.

Q. Did Mr. Kennard tell you? A. No, sir.

Q. You stated on your direct-examination that on one occasion you took some $2.50 of material to make a grape arbor? A. Yes.

Q. And in your affidavit, page 16, you say this—beginning page 15: "Referring to that paragraph of the affidavit of the said Kennard wherein he states that I told him that I had constructed the sample of grating produced by the Kerlow Steel Flooring Company from material which I had ordered him, the said Kennard, to procure out of the stock of the complainant, I deny each and every allegation contained in said paragraph and I particularly and specifically deny that at any time I took a breast drill belonging to the said complainant. As a matter of fact, during the summer of 1921, in accordance with a custom pursued by Mr. Irving, Mr. Price and myself, I did take home

a small number of steel bars out of salvage, which bars were used by me at my home for the purpose of constructing a grape arbor. This material was taken by me openly and was charged in accordance with the custom maintained at the complainant's factory in such cases. The value thereof was approximately Two and 50/100 ($2.50) Dollars." Is that correct? A. Yes, sir.

Q. Did you mean by that statement to convey the impression that the only material which you ever took from the Irving Company was this material that went into the grape arbor? A. Yes, I would say that.

Q. Then it is a fact that other than this material which you refer to and which was used for the grape arbor, you at no time took any material from the Irving Company? A. I don't quite understand. I have taken or been given and removed from the Irving Iron Works things like maybe a candlestick: I remember buying or giving Mr. Irving a quarter once for a pair of candelabra wall fixtures, things like that, but if you mean grating material—

Q. Tell me now all the material that you remember ever having taken from the Irving Company? A. The list I have indicated there would perhaps—an occasional catalogue that I would have in my pocket —empty my pocket and leave them home.

Q. Did you ever take material to the value of five dollars other than this you mentioned? A. This candlestick that I referred to was worth more than five dollars.

Q. Where did you take that from, the forge? A. It was given to me at the Irving Iron Works.

Q. From the forge or the iron works? A. Both places. The candlestick I referred to was made at the Irving Iron Works but the torch and the wall

brackets were made at the forge; I don't know if they were made there, but I obtained them from the forge.

Q. Is this a candlestick for a candle? A. Yes, a candle holder, rather.

Q. Is that all you can remember? A. That is all I can remember; there may be odds and ends along the same line.

Q. And did you take that candlestick with the permission of anybody at the plant? A. Yes.

Q. Whom? A. Mr. Irving.

Q. Other than that candlestick and such things as catalogues and so forth? A. I recall another thing that I sent home—that is a piece of grating that I used as a doormat and still do.

Q. Other than the doormat and candlestick and the grape arbor and catalogues and things of no value, can you remember anything else that you ever took from the Irving Company, either with or without the permission of Mr. Irving or Mr. Price? A. Nothing except perhaps along those lines. I may be out of the way one or two things; I don't recall.

Q. When you say "along those lines," what do you mean? A. I mean the candlestick or things like that.

Q. You may have taken more than one candlestick? A. I didn't take anything; I had it sent home, perhaps.

Q. Have you had more than one candlestick sent home? A. I may have; in fact, I know I had two, and there may have been others that I don't think of.

Q. Did you ever have any lanterns sent home? A. Not that I recall.

Q. Did you ever have any electric lamps sent home? A. No; I made all my own fixtures out of cardboard and wood.

Defendant's Witness, Herbert H. Bunker, Cross

Q. Do you remember giving a present to your brother's wife when she was married? A. No, but I do remember sending a floor lamp to my brother. Nothing to do with any marriage or anything.

Q. You remember that now, do you? A. Yes.

Q. And that was taken out of the Irving stock, wasn't it? A. No, sir.

Q. It was not? A. No, sir, unless you explain what you mean by "stock."

The Court: You don't know what "stock" means. Don't dodge these questions.

Q. Wasn't that made out of material of the Irving Company? A. Yes, it was made there, but the forge had a stock of these things, but this was at the Irving Iron Works.

Q. Wasn't the material for that lamp taken from the stock of the Irving Iron Works at Long Island City and wasn't the lamp made there with the time of the men of the Irving Iron Works? A. Yes, sir.

Q. What was the retail value of that lamp? A. The retail value?

Q. Yes; what could you get for it?

The Court: What was it ordinarily, do you know? If you don't, say so. Don't waste time answering like that. Was it worth $1.50?

The Witness: I would say it was worth fifteen or sixteen dollars.

Q. Don't you know that as an actual fact there was $30.87 worth of material? A. No, sir.

Q. And $5.11 of actual labor went into the construction of that lamp? A. No, sir, I do not know that.

Q. Will you look at this original shop order?

The Court: What do you think the significance of that is?

Mr. Egner: Contradiction.

The Court: Contradiction of what?

Mr. Egner: Statement in his affidavit that he had never taken anything but $2.50.

Q. Look at these papers which I show you and tell me if it is not a fact that material of the value of $5.11 and shop labor amounting to $30.87 went into the construction of that lamp? I had the figures transposed before? A. Don't I know it from this? Q. Yes? A. No, sir. It appears that it might have gone in, until you have the time cards and everything else on the job, but this is certainly a lamp which was made for me; there is no question about that. Q. Did you pay for it? A. No, sir.

Mr. Egner: I ask to have these papers marked for identification.

Marked Exhibit C78 for identification.

Q. Referring to this 1921 catalogue, which you were shown, on your direct-examination you stated that you had nothing to do with this catalogue (C12b); is that correct? A. I had something to do with the preparation of this.

Q. Who actually did the work on that catalogue? Having it printed; Mr. Wightman? A. Yes, or Mr. Irving.

Q. What employee of the Irving Company at that time had it under his particular charge to see that that catalogue was made? A. I cannot say, except Mr. Irving. Mr. Wightman and he were together a great deal.

Q. Wasn't Mr. Lown in charge of that matter? A. No, sir.

Q. Did you say that he had nothing to do with it? A. Not any more than I did, to my knowledge.

Q. Did you have anything to do with it? A. Yes, I said I did.

Q. Then you both had something to do with it? A. Yes.

Q. And in particular didn't you, under date of July 12, 1920, write a letter, which I show you now, to Mr. Wightman, on the subject of that catalogue? A. Yes, sir.

Q. And before I offer that, I would like to have you look over this folder and see whether your recollection thus being refreshed, you can tell us whether Mr. Lown had any part in the preparation of that catalogue? A. I don't see anything here that relates to the catalogue at all; I may be mistaken.

The Court: Look over that and see if it refreshes your memory so you can state whether Mr. Lown took any part in that catalogue.

The Witness: No, sir.

The Court: It doesn't refresh your memory?

The Witness: No, sir, not in regard to the catalogue.

Q. But independent of this correspondence you do remember that Mr. Lown had something to do with this catalogue? A. No, sir, I don't.

Q. You said a moment ago that he had just as much as you had to do with it.

The Court: He said he had no more to do with it than he did.

Mr. Egner: I now offer in evidence this letter of July 12, 1920.

Marked Exhibit C79.

July 12, 1920.

Mr. Lucius Wightman,
50 Union Square,
New York City, N. Y.

Dear Sir:

1. Confirming our conversation with your office today, we suggest that you select from Underwood & Underwood, a nice industrial photograph of a stack of shelving, etc. etc., suitable for retouching, as the catalogues we have looked at do not show anything anywhere near what we want.

2. If there are any questions on this just let us know.

Yours very truly,
IRVING IRON WORKS CO.
H. H. BUNKER
R. K.
H. H. BUNKER
Assistant Manager.

HHB/RK

Q. When you had your talk with Mr. Price about resigning, that was just before you went away on the first of July, wasn't it? A. No, that was nearer the first of June.

Q. You had then reached your definite understanding with Mr. Lown that in case he financed the business you would go with him? A. No, sir; that original understanding had been changed by that time.

Q. You had reached it and then had changed it again? A. Yes, sir.

Q. You hadn't told us about that; when did you change that understanding?

The Court: Are you referring now to the understanding of January, 1921, having been changed?

The Witness: Yes.

Q. When was that changed? A. After I had been advised by my physician and the result of these X-rays became known and I was obliged to go away.

The Court: When did you make the change in the arrangement, what date?

The Witness: I believe it was March, perhaps the latter part of March.

Q. Before the incorporation or after? You were elected president in March, it appears? A. In May I thought it was.

Mr. Kraetzer: In March.

The Witness: It was before I knew anything about the incorporation of the company, I know that.

The Court: The change took place before that?

The Witness: Yes.

Q. So before you were elected president you changed your mind about going with the company? A. Yes.

The Court: What was the change in the arrangement?

The Witness: The only change in the arrangement was that I told Mr. Lown I did not know whether I would be with him; it depended entirely on my health, that I was going away, and developments would have to be left to take care of themselves.

The Court: And notwithstanding that you were

elected president and a director after that conversation?

The Witness: Yes.

The Court: I think you asked a question which was unanswered and which was answered by the statement, "The change in the arrangement," which caused you to shift your line of examination.

Q. Mr. Bunker, this is true, is it not, that regardless of what understanding you had with Mr. Lown, when you had your conversation with Mr. Lown in June you had definitely made up your mind that you would not again work for the Irving Company; in other words, if your health remained poor, you wouldn't work at all; whereas, if your health was better, you would work for the Kerlow Company? A. That is correct.

Q. Why didn't you tell that to Mr. Price? A. I did.

Q. Why didn't you tell that to Mr. Price when you had this talk with him in June? A. To tell him I wasn't going to work any more?

The Court: Or if you did work again, that you would work with another company; why didn't you tell him this, is the question?

(Last question repeated.)

A. I did tell him that.

Q. And did you tell Mr. Price that if your health recovered you would work with another company? A. I didn't tell Mr. Price anything about the other company.

Q. So that all you told Mr. Price was that on ac-

count of your ill health you wouldn't work any more? A. That is substantially it; yes, that is right.

Q. Didn't Mr. Price urge on you to take a vacation, in the hope that your health would return, and that you would then be in a position to again work for the Irving Company? A. No, sir, it is the other way around.

The Court: What do you mean, that you made that suggestion?

The Witness: I made that suggestion to Mr. Price, that I was going to be through.

Q. When Mr. Price suggested that you take a two months' vacation, as far as you knew, did he expect you to come back after the expiration of those two months? A. He may have. He did make that suggestion, but I told him that I didn't want to put him in the position of being left alone for an indefinite period, and I didn't know whether I would feel able to go ahead in one month or two months or four months, and then I asked him for a couple of weeks pay and I left.

Q. You knew that Mr. Price was expecting you to come back after two months, didn't you? A. No, sir.

The Court: As a matter of fact you had no intention of going back to the Irving?

The Witness: Regardless of what happened, I didn't at that time.

Q. Then why didn't you give Mr. Price a chance to break someone else in while you were away? A. I did try to get him to do that in every way I knew how.

Q. Why didn't you tell Mr. Price the reason why

you wouldn't come back to the Irving Company regardless of your health? A. I did tell Mr. Price—

The Court: When?

A. (Continued.) —the chief reason at that time why I wouldn't come back.

The Court: Did you tell him regardless of any reason, that you wouldn't come back—that is the question—in your conversation in June? I don't care whether you gave him a reason or not.

The Witness: I don't believe I did.

Mr. Kraetzer: I think Mr. Egner's question just before your Honor's was, why didn't you tell Mr. Price?

The Court: I cannot get the witness to answer responsively. If he doesn't get his statement on the record, it is no fault of ours; he tries to answer what he thinks Mr. Egner wants, instead of answering the question as it is worded. He will have to take the consequences; I cannot caution him any oftener than I have already done.

Q. You say that you called on Mr. Prince in Boston at Mr. Price's request? A. Yes, sir.

Q. What did he ask you to straighten out up there? A. He asked me to straighten out a certain job that Prince had been writing on repeatedly, and there was one particular letter of Prince's expressing some grievance, and Mr. Price asked me if I would stop in to see him; when I went there I did not see Mr. Prince.

Q. Who else did you see in Boston on that trip? A. I saw Mr. Roope, Sr.

Q. Mr. Roope was the father of the Roope who was Lown's successor? A. Yes.

Q. What did you see Mr. Roope about? A. Nothing in particular; I had met him before; I just stopped in and spoke to him.

Q. How did you meet Mr. Roope? A. I met him through his son.

Q. And you and the son had gone up and spent week-ends at the home of his father, hadn't you? A. A week-end, yes, sir.

Q. When was that? A. Somewhere around the first of July.

Q. That was before you went up to—before your vacation? A. No, it was part of it; I was going to the doctor's every day about that time, practically every day, trying to clean up and get away, and Roope had invited me to go up there.

Q. What did you see Mr. Roope about on this occasion when you were in Boston? A. I don't recall anything in particular; I just made a social visit.

Q. How long did you stay? A. Ten or fifteen minutes.

Q. In the course of that visit did you say anything about your new company? A. No, sir.

Q. Never asked Mr. Roope to invest any money in your new company? A. No, sir.

Q. Did you ever ask him to loan any money to the new company? A. No, sir.

Q. Did you say anything to him about the possibility of his son being associated with you in the new company? A. No.

Q. Did you tell him you were going to leave the Irving Company? A. Not at that time.

Q. When did you tell him? A. I cannot fix the date; it was later on in the year that I was up there and told him.

Q. You were up there again? A. Yes.

Q. When were you up there the second time? A. I cannot specify the date it was; I know it was after I left the Irving Iron Works.

Q. It was after you were openly with the Kerlow Company? A. It was when I was associated with the Kerlow Company, yes, sir.

Q. What did you talk about on that occasion?

The Court: Don't take so long to answer.

A. I talked about the possibility of the grating business.

Q. In connection with your new company? A. Yes, and business in general.

Q. And did you ask him to invest money in your new company? A. No, sir.

Q. How did you happen to talk about the possibility of the grating business? A. Because his son had—because Mr. Lown had written him a letter regarding a new company.

Q. Mr. Lown had written him a letter? A. Yes.

Q. Have you a copy of that letter in your files? A. I don't think so.

Mr. Egner: I would like to have that letter produced.

Mr. Kraetzer: I don't know that we have it. We will look for it.

The Witness: I don't remember either.

Q. At any rate you and Mr. Roope discussed a letter that Mr. Lown had sent him? A. Mr. Lown was along also.

Q. You both went up to see him? A. Yes.

Q. You mentioned his son in connection with the grating business? A. His son was there, too.

Q. And that was while the son was still the sales manager of the Irving Company, wasn't it, assistant sales manager? A. Yes, sir.

Q. Did you make a special trip to Boston? A. I think it was.

Q. Did you spend a week-end on that occasion? A. Yes, sir.

Q. So that, I suppose, you saw Mr. Roope on various occasions during this week-end? A. Yes.

Q. And Lown and you and young Roope were all there together? A. Yes.

Q. And you were discussing the grating business? A. Yes.

Q. Was anything said about young Roope being associated with you? A. I don't believe there was. I am quite sure there wasn't.

Q. Why did you have these discussions up in Mr. Roope's house? A. It wasn't in the house; there was a discussion on a boat. Sometime before I went away I had lunch with young Roope in Mendel's, and Mr. Roope—this was after the July trip, after the week-end I spent there, and he said, "Why don't you and I go in the grating business?"

Q. Roope said that to you? A. Yes, he said, "I thing you know more about the manufacturing and my father has plenty of money." He said, "What do you think about it?" I said, "I don't think anything about it," and he urged me to go to Boston again and see his father.

Q. Did you tell him at that time that you had these talks with Mr. Lown and that the Kerlow Company had already been incorporated? A. No, sir, I didn't say a word to him about anything in connection in any way with the Kerlow Company?

Q. But in view of that talk you and Mr. Lown went

up to Boston to see if you couldn't get the old gentleman to invest money in a new company? A. It wasn't quite that way.

Q. Was that your purpose in going there? A. Yes, sir, in October.

Q. And you had the young man with you? A. We went as his guests; we all went together.

Q. You were both ready, in case the old gentleman invested money in the business, to take on his son in the business, were you not? A. No, sir, that was about the only thing I said in the whole conversation, that if anything was put in Kerlow, it was put in with the distinct understanding that it had nothing to do with his son having a job.

Q. Did you tell the old gentleman that no matter how much he might invest, his son wouldn't have anything to do with the new business? A. No, I didn't tell him that.

Q. Why did you tell the father that anything he might invest would be entirely upon the understanding that it had nothing to do with the young man's connection with the business; why did you tell him that? A. Because we didn't want him in the company; in fact, at that time there was no organization of any kind, outside of Mr. Lown and myself.

Q. Did you expect that when your organization demanded, that you would take him in? A. No, sir, at no time.

Q. And you made that clear to the old gentleman? A. Yes.

The Court: Did he invest?

The Witness: No, sir.

Mr. Egner: Do you want to say anything more?

The Witness: Not unless you want me to.

The Court: You have given me the answer?

The Witness: Yes, but I am willing to explain the whole situation.

Q. Mr. Bunker, you have stated that you are of the opinion that the Irving Company owed you approximately $3,000 on account of additional compensation? A. Yes, that is right.

Q. On or about October first when you left, Mr. Irving did give you a check for $1,000, didn't he? A. I don't think at that time; he did within a month of that time, somewhere around there.

Q. That is sometime not earlier than September first of that year, he had given you a thousand dollars? A. Along in there somewhere.

Q. And that was in addition to your salary, wasn't it? A. My weekly salary, yes, sir.

The Court: Why was that given you?

The Witness: That was part of the bonus of the year before. Mr. Irving, in giving me that, said—

The Court: I don't care about that.

Q. Has he ever paid this balance you demanded from him in your letters? A. No.

The Court: How much do you claim he owed you today?

The Witness: About $3,000.

Q. Have you ever brought any suit for $3,000? A. Not as yet, no, sir.

Q. Although it has been owing to you for two years? A. Yes, sir.

The Court: Three years; it was due in 1920.

The Witness: It was due in 1921 for 1920.

Q. You say you have a patent on that die? A. Yes.

Q. Will you produce it? A. I haven't one here.

The Court: Do you remember the number of it?
The Witness: No, sir.

Mr. Kraetzer: We can produce it.
The Court: Do you want it produced?
Mr. Egner: I would like to have it at some other time.

Q. You have stated, Mr. Bunker, that approximately $3,000 was invested in the new company through your efforts; how much of that money did you put into the company yourself? A. I don't believe I put any money in the company myself.

Q. You never put any money in? A. Not through my services, no.

Q. You have stock of the company, haven't you? A. I have now.

Q. And when did you obtain your stock in the company? A. The first stock was given—issued to me in February, 1922.

Q. How many shares of stock were issued to you then; what percentage? A. Approximately twenty-five per cent. I turned over my patents and things for the stock.

Q. The company bought your patents and paid you in stock? A. Yes, all the patents are owned by the company.

Q. Did you have more than one patent? A. Yes, sir.

Q. Did you own more than one patent? A. Yes.

Q. On gratings? A. Yes, and things that go with it.

Q. I call your attention to your testimony in the interference proceeding in New York, on page 38, to the following effect: "XQ124. Are you a stockholder? A. Yes, sir. XQ125. When did you subscribe for or buy your stock? A. I never subscribed to nor bought any stock. The stock which I now hold in the Kerlow Steel Flooring Company was given to me for services rendered. XQ126. When was it given to you and by whom? A. It was given to me by the Board of Directors late in the year 1921, and some was transferred to me from Mr. Lown sometime later than that." Is that correct? A. Yes, sir. It wasn't issued until after the first of the year; it had been voted.

Q. It had been voted to you? A. Yes.

Q. So that you became entitled to these shares of stock by vote in the latter part of the year 1921? A. In December, I believe.

Q. You say that was for services rendered? A. Yes.

Q. What services had you rendered to the company? A. I turned over all patents, as I said before.

Q. Did you understand that was a service rendered? A. Yes.

Q. What other services had you rendered? A. Any improvements to it.

Q. You joined it; is that it? A. Yes, at very nominal compensation.

Q. What compensation did you get from the new company after you started to work for it? A. Approximately $50 a week.

The Court: When did you start to work?

The Witness: The Monday after October first.

The Court: 1921?

The Witness: Yes.

The Court: Had you recovered your health then?

The Witness: Not entirely.

Q. When you started to work in October, then you worked at a salary of $50 a week? A. No, sir, I didn't receive any compensation for quite a while.

Q. It wasn't paid you, but it was fixed at $50 at that time? A. No, it was not fixed; I did not receive anything for a short time, and then later on I drew $50 a week, and later on it was increased to $75 a week, but I drew about $50 a week.

Q. So up to the present time you are drawing approximately, and still drawing approximately $60 a week? A. Very close to that, maybe $60; it will average about that.

Q. You stated that you had other patents; you mentioned one, a patent on a die; what other patents did you have? A. There are two die patents and a carrier patent, and the same are allowed in Canada, I think all of them; that is, American and Canadian patents, both.

Q. Any other patents? A. No, sir.

Q. Mr. Bunker, you testified on your direct-examination that the Irving Company really had no customers, in the sense of people who would give orders, without competition and in your affidavit, on page 20, you state this: "The complainant does not obtain any substantial order without competition from at least one, and in most instances, several other manufacturers, and this is true, as above stated, even in cases where the complainant has formerly sold to the same person on more than one occasion." Is that correct? A. Yes, sir, that is right.

Q. When you say "a substantial order," what do

you mean by a substantial order? A. I don't think I mentioned a substantial order, did I?

Q. You said the complainant does not obtain any substantial order without competition. A. I mean an order of quite a few thousand square feet.

Q. Place that in money for our benefit. A. $7,000 or $8,000.

The Court: You wouldn't consider an order for $5,000 then a substantial one?

The Witness: Yes, but there are lots of seven or eight thousand and more orders.

The Court: Anything then in excess of how much would be considered a substantial order; in excess of a thousand or two thousand?

The Witness: I should say in excess of five thousand would be substantial.

Q. So that in making this affidavit you had in mind that you were referring only to orders in excess of $5,000?

The Witness: Yes.

The Court: Then why isn't Mr. Egner's question correct?

The Witness: May I have that read?

Q. (Last question read.) A. Yes, sir.

Q. Since the Kerlow Company has been in business how many orders in excess of $5,000 has it had? A. Not a great many; I cannot say offhand.

The Court: Approximately.

The Witness: Perhaps a dozen.

Q. As many as twelve; can you name them? A. I said perhaps a dozen; I cannot tell exactly.

Q. How many can you name?

The Court: In excess of $5,000?

A. The Detroit Edison, the Studebaker, two jobs for the Studebaker Company.

Q. Were they each over $5,000? A. Yes, and the Gear Pressed Wheel Company, Warner Sugar Company, the City of New York.

Q. One order? A. One order, yes.

Q. What was that for? A. That was for the Subways, one order for two different sections of the subway; the Standard Oil Company of California, the U. G. I. in Philadelphia, United Gas Improvement Company; there are quite a few more; the Vacuum Oil Company. That is about all I can remember now.

Q. Then you didn't mean to infer by your affidavit that the Irving Company didn't receive orders without competition in amounts less than $5,000? A. In some cases, yes, they did.

RE-DIRECT EXAMINATION by Mr. Kraetzer:

Q. Exhibit C55, which I show you, that refers to one pair of K dies, new block type; tell us what the K type or K dies were; the date of the shop order being 5/19/21. A. The K dies were dies to make the K type of grating, or that grating which was used for car steps.

Q. Had that any reference to the present known Type M of the Irving Company? A. No, sir.

Q. On that same question of the block die, when did you design or invent the type of block die that you illustrated for the car on Exhibit D87? A. The latter part of March, 1921.

Q. Was that after the Kerlow Company had been incorporated? A. I believe it was.

Q. And was the test of that made at the Irving plant and the use of it after that date? A. Yes, sir.

The Court: Do you know if Mr. Irving or Mr. Price knew of such dies being made at the plant?

The Witness: Yes, sir, I went out in the shop with him and showed it to them, and the next day Mr. Irving called me in his office before Mr. Price came in and he said, "Is that really one of your inventions?" I said, "Yes, sir." He said, "I guess it is all right, because Mr. Price gave you full credit for it." He said, "How much do you think it will save us?" And I said, "About $12,000 a year." He said, "Do you think it is patentable?" I said, "I don't know."

The Court: Was any compensation made you for the use of it?

The Witness: No, sir.

The Court: Or for the use of any of your ideas, other than the compensation paid you ordinarily?

The Witness: No, sir.

Q. Was the invention of that die made while you were employed by the Irving Iron Works Company? A. No, sir.

Q. During the period when you were engaged in their work over there? A. No, sir.

The Court: It was after hours?

The Witness: It was at home.

The Court: It was during the period you were working there but not during office hours?

The Witness: It was after hours. The tryout was in the shop.

The Court: During working hours?

The Witness: Yes.

Q. Exhibit C78, which has been marked for identification, refers to the lamp for Mrs. Mayo Bunker, your sister-in-law? A. Yes.

Q. Do you know whether this lamp was charged against you? A. May I see the papers?

Mr. Egner: That is the material and labor.

The Court: Was it charged—whatever it was—against his account?

The Witness: I imagine it was, because—

The Court: I want your knowledge; do you know whether it was charged or not?

The Witness: I don't know whether it was charged or not.

Mr. Kraetzer: I call the attention of the Court to the fact that on the rear of this one sheet are the words, "Transferred to S. O. 24261"; is that the shop order? That underneath are the words written by Mr. Price, "September 8, 1922," with the signature, "W. J. Brown."

The Court: What does that mean?

Mr. Kraetzer: I haven't any idea.

The Court: Why do you call my attention to it?

Mr. Kraetzer: Because of the fact that there is an implication that—I draw the inference that Mr. Egner is urging that the Irving Iron Works knew nothing about the manufacture of this lamp and that it was without their permission or authority.

The Court: Mr. Egner, in answer to my inquiry, told me that it was to contradict the statement made by Mr. Bunker in his affidavit,

that with the exception of $2.50 of steel pieces he had not taken anything else from the Irving Iron Works, and now this is offered to show that he took work that cost $35 for labor and material, and he terms it candlesticks and wall brackets. Mr. Egner will make his comment at the proper time and show that the statement in the affidavit is false.

Mr. Kraetzer: May I read the affidavit or the paragraph once more:

"Referring to that paragraph of the affidavit of the said Kennard wherein he states that I told him that I had constructed the sample of grating produced by the Kerlow Steel Flooring Company from materials which I had ordered the said Kennard to procure out of the stock of the complainant, I deny each and every allegation contained in said paragraph and I particularly and specifically deny that at any time I took a breast drill belonging to the said complainant. As a matter of fact, during the summer of 1921, in accordance with a custom pursued by Mr. Irving, Mr. Price and myself, I did take home a small number of steel bars out of salvage, which bars were used by me at my home for the purpose of constructing a grape arbor. This material was taken by me openly and was charged in accordance with the custom maintained at the complainant's factory in such cases. The value thereof was approximately Two and 50/100, ($2.50) dollars."

Q. What was the custom with regard to having things manufactured?

The Court: I don't care for that. The question is, did he tell the truth in the affidavit or didn't he? Mr. Egner is going to try to show me by his present testimony, that he didn't.

Q. The letter, Exhibit C79, of July 12, written by Mr. Bunker or to Wightman, will you state the circumstances in connection with which that letter was written and what it refers to?

The Court: Is that at all material? As I understand the purpose of that, Mr. Egner called the witness's attention to the fact that on his direct-examination he said he had no connection with the production of that catalogue; to contradict him, he calls his attention to this letter; the witness then corrects his testimony and says that he did have connection with it in the preparation of that catalogue. Is that right or wrong?

Mr. Egner: Yes, sir.

Q. I am talking about the catalogue; Mr. Egner showed you that and asked you to refresh your memory and asked if that didn't show that you had some connection with the preparation of the catalogue, and you said it didn't. A. It is wrong.

Q. Then did you or did you not have to do with the catalogue? You first stated you had nothing to do with the catalogue. A. I had something to do with it.

Q. The question was asked you as to whether you had put into effect at the Kerlow Steel Flooring Company your idea with regard to any possible change that you had in mind with regard to the riveting; that is, change from handriveting. Will you state why no

change was made or what change was contemplated at the Kerlow?

The Court: Now, he has testified that when he was working for the Irving he urged these things to be done by machine or automatic riveting. Then Mr. Egner developed by his examination that in the Kerlow he didn't have any change made in the manner of riveting; he didn't adopt the thing he recommended to the Irving. Now, why didn't you do it; that is the question.

The Witness: We did not install the automatic riveting that we experimented with at the Irving Iron Works, because I discovered an improvement on that, and that was installed in the type of a large machine. Unfortunately, the people that constructed this machine—

The Court: I don't want all this. Why didn't you install an automobile riveting machine instead of falling back on the handriveting?

The Witness: We did.

The Court: You told Mr. Egner you didn't.

The Witness: I didn't.

The Court: You certainly did. You said it was installed. Was it put into operation? You said it was installed. Why didn't you answer correctly. You didn't impress me as if you were answering fairly, and are dodging the question.

The Witness: The machine is there, but it is not working.

Q. Why haven't you put in the machine you wanted the Irving people to put in? A. Because I made an improvement on it.

Q. Why didn't you put in the one with the improvement? A. I did.

Q. Why don't you work it? A. Because the people went out of business and I had to get the parts. I have been working on it for a year.

Q. Then it wasn't a perfect machine when you wanted the Irving people to install it; you didn't know anything about its merits? A. It is a different kind of a proposition.

The Court: I am getting tired of this hair-splitting and dodging. He will not answer the questions properly. I say that in his hearing, so if he wants to correct his attitude to my mind, he can do it. I am here for information; I don't want him to dodge every question the Court and counsel put to him.

Mr. Kraetzer: May I explain?

The Court: No. If he has anything to say to clear up the impression he is making on me, he may do so. I will give him his opportunity and he can clear up the impression. Go ahead and say it, if you wish to.

The Witness: The experiment we made at the Irving Iron Works was with the air guns; I afterwards conceived the idea of using a large brake to drive a great number of rivets at one time. This brake was designed by me and while it was being constructed Lory & Naurath Company of Newark went out of business, leaving the machines partly finished. We accepted delivery of it and are finishing it by ourselves, and in the interim have used our handriveting.

Mr. Kraetzer: There are certain dates which have been specified as to the incorporation, as to the issues of stock, and as to the identity of where the meetings occurred. I was, as I

think you inferred, instrumental in handling the original organization of the company. There were certain formalities that were gone through that I perceive very clearly haven't been correctly interpreted by Mr. Bunker, or possibly by Mr. Lown either. I have certain dates, for example, that at the beginning, as your Honor knows, there were dummy incorporators; that we formed our corporation through dummy incorporators; that at that time certain formal proposals were made to turn over patents for the issues of stock, and at that time or at the beginning, in March, 1921, there was a formal vote to issue the stock in return for this transfer of patents. That appears by the records of the company and is a matter of my own personal knowledge.

The Court: The significant feature of the whole matter is this: that the company was organized and incorporated about the twenty-fourth of March, 1921; that Mr. Bunker was then elected a director and president of the company at that time. Those are the principal significant features. The fact that he got a certain amount of shares for his patents does not enter into it, except to show that he is interested in the company and helped organize it.

Mr. Kraetzer: The date of the certificate of incorporation and date of filing is shown by this certified copy as March 18, 1921.

Mr. Egner: When was the certificate of incorporation acknowledged and executed?

Mr. Kraetzer: It was on March 17, 1921, by the dummy incorporators.

The Court: Mr. Lown and Mr. Bunker had no connection with it?

Mr. Kraetzer: No.

Thereafter there was a formal meeting of incorporators March 22, 1921, the same dummy incorporators. Thereafter there was the first meeting of directors on March 24, 1921, at which time Mr. Bunker and Mr. Lown were present, and Mr. Bunker was elected president and Mr. Lown was elected treasurer. I think they were elected directors by the stockholders at the meeting of the twenty-second of March.

The Court: Any other formal proof of that kind you might just as well have stated on the record.

Mr. Kraetzer: If there is any question about it, I submit myself for cross-examination.

Mr. Egner: I accept the statement.

I would like to ask Mr. Bunker one further question.

HERBERT H. BUNKER recalled for further cross-examination:

By Mr. Egner:

Q. Where is the office of the Kerlow Company in New York at the present time? A. 50 Church Street, Room 319.

The Court: Is it a New York or New Jersey corporation?

Mr. Kraetzer: It is a New Jersey corporation.

Defendant's Witness, Herbert H. Bunker, Cross

Q. Do you know where the office of the Alpha Tool Company, that Mr. Lown is now associated with, is? A. 30 Church Street.

Q. Isn't it a fact that the Kerlow Company now has an office with the Alpha Tool Company? A. No, sir, they did at one time, but it has been moved several months ago.

Mr. Kraetzer: There is the testimony of a man by the name of McNichol, who was connected with the Irving Iron Works Company at the time that this list proposition came up. Mr. McNichol is employed and resides in New York City. We endeavored to get him to come out here, and he pleaded that he was unable. We made our application to him last week, and he said by reason of pressure of business he wasn't able to get here. The only obvious alternative for us is to take his testimony in New York. It is important, because it deals directly with the question of the identity of that particular list that it is claimed was taken by Mr. Lown.

The Court: You can take it by commission.

Mr. Kraetzer: I should like to reserve that right.

The Court: With that reservation you rest.

Adjourned to October 1, 1923.

Continuation of testimony in the above-entitled cause before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Monday, October 1, 1923.

Present: Counsel as before stated.

Mr. Kraetzer: May I indicate a correction on page 1038 of the record? I find that Mr. Egner is shown as offering in evidence a Ford, Bacon & Davis catalogue. My recollection was that I offered that, and it should be shown as offered by the defendant. It is marked Exhibit C61.

The Court: Let it be marked Defendant's Exhibit C61 as of October 1.

LOUIS N. LUMB recalled.

Direct-examination by Mr. Egner:

Q. On your previous experience on the stand you testified, did you not, about having seen the dies that are shown on the photograph C22 in the possession of the Irving Company? A. I have seen those dies.

Q. Some years ago? A. I have seen those dies in the possession of the company in the year 1918.

Q. At any time after that did you see the dies in the possession of the Irving Company while Mr. Tarof was still in the employ of the company? A. I did. I believe it was in the year 1921, the latter part of 1921, November or December. The exact date I cannot recall.

Q. Just tell us what occasion—tell us what happened then. I am referring particularly now to the occasion when you say Mr. Tarof had some connection with the matter. A. I received a shop order to make up a set of dies as per sketch and I understood this to be a rush order. I waited for about a week or two—I just cannot recall how long it was—until the sketch come out; Mr. Tarof brought the sketch out

one evening and laid it on my desk and said, "This is the sketch for the shop order that you have to make up of special dies," and with that he walked out. I looked at the sketch and immediately recalled that we had a die similar to that sketch, so I went into the tall crib and brought the dies out and brought them into the office and showed them to Mr. Kennard, who was the superintendent. We checked up the dies with the sketch and found it to be pretty near, or you might say exactly the same thing as what was called for on the sketch. Mr. Kennard then went into the office to get Mr. Tarof out. Mr. Tarof come back and in my presence, he saw the dies lying on my desk, alongside of the sketch.

Q. Did you tell Mr. Tarof where you had obtained the dies? A. I don't recall whether I did or not.

Q. But you are positive that Mr. Tarof saw those dies at that time? A. He positively did.

Q. And they were the dies which are reproduced on this photograph? A. They are the same dies.

Mr. Kraetzer: No cross-examination.

ARTHUR JOHN J. COOKE sworn in rebuttal for complainant:

Direct-examination by Mr. Egner:

Q. You are an employee of the Irving Iron Works? A. Yes, sir.

Q. How long have you been with that company? A. Ever since August 11, 1919.

Q. You knew Mr. Tarof, of course? A. I did.

Q. On any occasion while Mr. Tarof was still in

the employ of the Irving Iron Works do you recall having seen the dies reproduced on Exhibit C22 in the Irving Iron Works, in the presence of Mr. Tarof? A. Yes, sir.

Q. When was that? A. It was in the latter part of 1921; Mr. Tarof brought the sketch from the main office out into the superintendent's office, and he told us to go ahead and make a set of dies corresponding to this sketch, and then he left the office, and Mr. Lumb got up and went out, and in a few minutes he came back with the dies, and Mr. Kennard went out and he brought Mr. Tarof back with him, and Mr. Lumb said, "There is your dies, Tarof," or some words to that effect, and that is the time that Tarof saw the dies in my presence.

Q. And these were the very dies which are shown on this photograph, Exhibit C22? A. This is a photograph of that set of dies.

Q. Had you seen these dies in the possession of the Irving Iron Works at any time prior to that occasion you have just spoken about? A. Oh, I saw them when I first went to the plant.

The Court: In August, 1919?

The Witness: Well, I wouldn't say in August; perhaps September or October.

The Court: Within a month or two?

The Witness: I would say within a month or two.

Q. What is your exact position? A. Foreman.

Q. Of what department? A. In the riveting department.

The Court: Does the riveting department include this subway grating?

The Witness: Yes.

The Court: Mr. Lumb is foreman of what department?

The Witness: The machine department.

Q. Did you occupy that position at the time of this Tarof occurrence? A. Yes, sir.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. Do I understand you to say that you had seen these dies back in 1919? A. Yes.

Q. These same dies? A. Yes.

Q. And did you see them continuously from 1919 on? A. No, I wouldn't say that. I understand by "continuously" you mean every day?

Q. Yes. A. No, I wouldn't say that.

Q. How frequently did you see them?

The Court: At what intervals after you first saw them?

The Witness: The way it was, these dies were—

Q. Tell us how frequently; once a week?

The Court: You can explain it later. Give a responsive answer. Mr. Egner will ask for any explanation he desires. Was it once a week or once a year? Give your best recollection.

The Witness: I would say I saw them, perhaps, from the first time I saw them until that night—

Q. By "that night" you mean in 1921? A. Yes—I would say four or five times.

Q. And each time you saw them where were they? A. Generally they were down around on the floor in the machine department.

Q. You say "generally"? A. They were there.

Q. Every time you saw them? A. Yes.

Q. At what intervals did these four or five times occur?

The Court: You mentioned a period of about two years. How often during the two years would you see them; months apart?

The Witness: Perhaps a month; perhaps the first couple of times might have been a month and then it might have been two or three months the next time.

The Court: It is all guess work.

The Witness: I have no distinct recollection of that. If I may explain how I saw them—

The Court: He hasn't asked you for that.

Q. They were on the floor every time you saw them? A. Yes.

Q. Let me ask you—I only want an approximation—how long before November, 1921, did you see them the last time? A. I don't think I saw them—

The Court: Prior to November, 1921?

The Witness: Yes—perhaps along in—approximately I would say September of 1920, and perhaps August of 1920.

The Court: You hadn't seen them between August and September, 1920, and this time in November, 1921, as you recollect now?

The Witness: That is it.

The Court: What explanation did you want to give me?

The Witness: You see in performing my duties as a foreman of the riveting department I have to get my material from Mr. Lumb's apartment. At the time that I saw these dies it was necessary for me to go into the machine department proper to find the material for a certain man to do work on.

Q. And it would be on such occasions that you got into the material department that you would see these dies? A. Yes, and the material that Mr. Lumb had finished would lie on the floor, and these dies at that time—we did not have a tool crib, as we later had.

Q. Would these dies be lying on the floor with this material? A. Yes, they were mixed in around on the floor there, and that is how I come to see them, and later they built a tool room, and when they put them in the tool room, tool crib, I should say when they put them in there, from that time on I don't recall having seen the dies.

The Court: Until this November occasion?

The Witness: Until the night Mr. Tarof saw them.

Q. You say you went into Mr. Lumb's department to get your material? A. Yes.

Q. Your material consisted of the punched and crimped strips that were to be riveted together in the grating? A. Yes, sir.

Q. And was it part of your duty to go in there and take the strips into your own department? A. Yes.

Q. You picked them up? A. Yes.

Q. What do you mean by going in to get material? A. I took a team of two men, two riveters and took them down and looked for the job on which I was working, and then I would look for these bars; I would point them out to the men and they would pick them up and take them back to the bench.

Q. At that time you recall seeing these dies among the other bars, the bars that had been finished by Mr. Lumb's department? A. Sometimes the bars would be there; they would be lying right alongside of those dies.

Q. Were those the only dies that were lying around? A. No, they were all around there.

Q. How many pair of dies did you see lying around there? A. You want the exact number?

Examination by the Court:

Q. A great many? A. No, I wouldn't say a great many, because at the time, your Honor, we only had about—

Q. Give your estimate of the approximate number. A. I would venture to say there were at least twelve or fifteen pieces of tools around on the floor.

Q. Dies? A. Dies that should have been up on the —that is, parts, not complete dies, but parts of dies; different things that should have been in the rack or something of that sort.

Q. Why did you notice these particular dies on these occasions that you did notice them? A. I picked these particular dies up for the reason that I never made a piece of grating of that description, while I was there, and being new, I noticed it and had to pick it up.

Q. Did you pick them up on more than one occasion? A. No, I think that was the only time I picked them up and noticed them.

Q. And after that the general appearance of them you remembered? A. Yes.

FURTHER CROSS-EXAMINATION by Mr. Kraetzer:

Q. Was that the first occasion that you picked them up? A. I think it was, yes.

Q. How did you know at that time that no grating was being manufactured of that type? A. I say I knew that I had had none while I was there.

Q. This was a month or two after you went into the employment? A. Yes.

Q. Were the dies fastened together at the time you saw them? A. No.

The Court: They are in two parts?

The Witness: Yes.

Q. There is an upper part and lower part? A. Yes.

Q. Were the two parts lying together? A. That is a thing I wouldn't say; I know I picked up one piece of them, but I have seen the two of them there, but on that particular occasion I don't recall whether the two were right together or not.

Q. Was any grating of this kind made from dies of that type between the time that you first saw the dies and November, 1921? A. I don't recall.

Q. You never saw any riveted in your department? A. No.

Q. You were in charge of the riveting department? A. Yes.

Mr. Egner: I should like to offer in evidence the blueprint sheets showing the state of the accounts with the three following agents, namely, J. A. Moser, J. M. Madden and J. H. Skoning.

Mr. Kraetzer: I object. There is one thing about these statements; it does not show clearly the condition during any period of the month.

The Court: That goes to the weight and not as to the competency.

Mr. Kraetzer: If I permit them to go in, we have a statement there that as of such and such a month so much was paid. Your Honor will recall that the date, perhaps, or perhaps about

the fifteenth of every month, a condition that developed in connection with Mr. Demorest's situation, where when we finally got down, that the exact situation that had been described to us, that there was some $4,000 worth of commission due at the time—

The Court: Your criticism is addressed to the fact that there is omitted the date when any payments were made, if any were made in the month.

Mr. Kraetzer: Yes.

The Court: Can that be added?

Mr. Egner: He is asking in relation to all the months covered on the sheets, on each one of the sheets. The reason I offer this is to indicate what the general status of the account was.

The Court: The real significance is that these men did not leave the Irving and enter the Kerlow employ because of dissatisfaction with the way their commissions were credited to them usually. I think that is one of the grounds.

Mr. Kraetzer: I should imagine that would be one of the grounds that Mr. Egner would claim.

The Court: The criticism Mr. Kraetzer makes is that your sheet does not disclose the entire situation, because while you show a payment in September, made almost the very last day in September, when it should have been made on the fifth or tenth, and that that did not remove the discontent which they claim existed on the part of the agents.

Mr. Egner: That would rather have to do with the weight than the competency.

The Court: It goes to its competency in that aspect of it. It loses its significance if you didn't pay until the end of the month, as I have illustrated, and then created the dissatisfaction. If you did pay them, it would largely negative the claim that these men had any ground for dissatisfaction. You can complete them, if you wish.

Mr. Egner: As far as Moser's sheet is concerned, it shows that during this entire time, so far as having any balance due to him, he had had advanced commissions, so obviously this sheet is not subject to that criticism.

Mr. Kraetzer: I don't know that it is.

The Court: Why not complete them? You can put them in later and I will let you take them back and then send them to me, together with a copy to the other side.

Mr. Egner: I would be glad to supplement these by a statement.

The Court: Let these three sheets be marked with the understanding that they are to be supplemented and copies furnished to counsel for the defendant showing the date and the amount of each payment during the period covered by the payments shown on these sheets.

Mr. Egner: Can we agree on August, September, October and November?

Mr. Kraetzer: You show figures prior to that particular month. If you show figures in any month before that, I would like those dates of payments.

Mr. Egner: I shall supplement this by a statement showing the exact dates when the payments shown on these certificates were made. I assume that these figures may be annexed to the exhibits.

The Court: I will have the supplemental report annexed to each exhibit; the supplemental sheet will be numbered with the letter "a" or a name, if you please.

Sheets referred to marked Exhibits C80, C81 and C82.

Mr. Kraetzer: The other day I asked for a copy of the addressograph plate showing the name and address of the J. G. White Engineering Co. We have no statement from counsel as to whether they have or have not that plate.

Mr. Egner: It has not been found.

Mr. Kraetzer: At one time we had a thick pile of sheets here purporting to be a list of names and addresses shown by way of the addressograph plates, as I recall it, from the files of the Irving Company. Have you that list, so we can have someone look through them and pick out the J. G. White name?

Mr. Egner: I will be very glad to look up that list and give you any reference there is on that list to J. G. White. I don't have it here today.

The Court: I will ask Mr. Egner to either furnish you one or the other or both of them, and this to be done this week.

Mr. Egner: While we are on the subject of productions, we asked some time ago for the production of a letter which Mr. Tarof wrote to the cement company, which brought the copies of that cement correspondence that was found in his portfolio. Have you that?

Mr. Kraetzer: I have made diligent search and had it made by our client; I haven't been able to turn it up. I have suggested to Mr. Bunker about the only solution that I could

think of would be to write to the Portland Cement Association and ask them to furnish us with a copy of that original letter, which they will have in Chicago.

The Court: Can that be done this week?

Mr. Kraetzer: I will try to do so. I will ask permission to make a photostatic copy of that original letter.

Mr. Egner: Then we asked for the production of the Michigan Builder containing the advertisement of the Detroit Edison job. Mr. Lown referred to that.

Mr. Kraetzer: We haven't been able to find it.

Mr. Egner: Then I also asked for the pay roll sheet showing Tarof's account.

Mr. Kraetzer: Here it is.

The Court: Pay roll sheet of what company?

Mr. Egner: Of the Kerlow Company showing the Tarof account.

Mr. Kraetzer: This is the pay roll sheet kept by Mr. Bunker originally from the inception of the company, and under the letter "T," the column headed "T," purporting to refer to Tarof, it shows that the first payment was made to him on January 21 for the week of January fifteenth, which was the first.

The Court: And paid for the week of the fifteenth?

Mr. Kraetzer: Paid for the week commencing the fifteenth.

Mr. Egner: Suppose we agree that this pay roll sheet indicates that Mr. Tarof began to work and was paid for work from January 15, 1922, and that his rate was $40 a week.

The Court: Is he still receiving that pay?

Mr. Kraetzer: The statement is made that Mr. Tarof's salary was $50 from January 15th, but that he merely drew $40 of that each week.

The Court: Is he still receiving that same compensation? Nothing greater?

Mr. Kraetzer: Yes.

The Court: Is he still only drawing only $40 a week?

Mr. Kraetzer: Yes.

The Court: Is there any object in leaving the $10 a week?

Mr. Kraetzer: There is no express object; the idea has been an accumulation of funds with the possibility of stock investment, I believe.

Mr. Egner: If there is any importance in that, I would like it testified to.

Mr. Tarof says his salary is $50. The pay roll shows he received $40. If he was entitled to something more, then there should be proof of it.

The Court: Mr. Bunker said he wasn't getting any other compensation but $50 a week, but only drew $40, and I assume then he has a credit of $10 weekly, from January 15, 1922, to date.

Mr. Egner: If that is the fact, I would like to have someone testify to that on the stand, subject to cross-examination.

Mr. Kraetzer: I will present Mr. Bunker for cross-examination on that point.

I have here a printed copy of a patent No. 1438295, issued to Mr. Bunker—to the Kerlow Steel Flooring Company as assignee of Bunker, for a multiple die machine.

Marked Exhibit D88.

WALTER E. IRVING recalled in rebuttal.

Direct-examination by Mr. Egner:

Q. Did you on any occasion prior to Mr. Lown and Mr. Bunker leaving the employ of your company, ever to either of these gentlemen or to anyone else, that if competition arose you would abandon your business and retire to your farm? A. No.

The Court: I think you asked him that before.

Mr. Egner: I want to make sure.

Q. Prior to the leaving of these gentlemen, Mr. Irving, were you aware of any general feeling of dissatisfaction among your agents as to commissions or working conditions? A. No, sir.

Mr. Kraetzer: I don't know that that would be material.

The Court: It might be strange if there were dissatisfaction that they didn't indicate it to him. I will receive it.

Q. On any occasion did Mr. Lown show you any drawings of any description of the type of grating which is known as your Type M or the Kerlow grating? A. Never.

Q. Can you give us the amount of the average order for grating received by your company? A. I cannot give it to you.

Mr. Kraetzer: During what period?

Q. During the period prior to the leaving Messrs. Lown and Bunker. A. I cannot give you an exact figure.

Q. I mean an approximate average figure. A. Approximately it runs from six to eight hundred dollars.

Q. This is the average order? A. Yes.

Q. Have you looked through the records of your company in order to ascertain whether during the years 1920 and 1921 you received any orders of at least this amount without competition? A. Yes, sir; I have.

Q. Have you picked out and have you before you examples of orders of that kind? A. Yes, sir.

Q. Without going into detail, will you tell us how many illustrative orders you have of that character for the year 1920, the number of them? A. That I have with me?

Q. Yes. A. I picked out twenty-five of each year, 1920 and 1921.

Q. Were there more than that in your files? A. Yes, sir.

Q. Taking the twenty-five which you picked out for the year 1921, between what figures do they run, the amounts? A. They run from $152 up to $2,075.

Q. And give me the same information with respect to the orders for the year 1921. A. They run from $108 to $1,225.

Q. And the $1,225 order is from what concern? A. That is from the Detroit Edison Company on the Marysville power plant.

Q. Was that without competition? A. Yes, sir; an open order.

Q. And was in the sum of how much? A. $1,225.

Mr. Egner: In order to save exhibits, I will not offer these, except that they are here and counsel may look at them if they see fit. I just wanted to give the result.

Mr. Kraetzer: I would like to see them while you are going on.

Complainant's Witness, Walter E. Irving, Cross

Q. Did you on any occasion ever tell any of your employees that they should go over Mr. Price's head with respect to any matters that arose in business? A. Never; never.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. You say all of these orders were received by you without competition? A. Yes, sir.

Q. Do you mean by that, that to your knowledge nobody else bid on these particular jobs? A. There was no bidding.

Q. I say do you mean by that that to your knowledge nobody else bid on these particular jobs? A. No, I cannot say I do.

The Court: Have you any knowledge of any bidding on them?

The Witness: No, sir; they are open orders.

Q. For all you know, other people may have bid?

The Court: Sure, that may be true; he has no knowledge of anything.

Mr. Kraetzer: I move to strike out his statement that these orders were received without competition.

The Court: The motion will be denied; he is testifying just exactly what he knows. There may be thousands competing for all he knows. It is perfectly competent in the way he stated it. To his knowledge, there was no competition.

Q. Did you know that Westerfield had sued your company for commissions? A. No.

Q. Did you know that Patterson had sued your company for commissions? A. No.

Q. You didn't know that? A. No.

Q. Never heard of it? A. No, sir.

The Court: If such suits had been brought, on whom was service made?

The Witness: I don't know.

The Court: Is this the first you ever heard of the suits?

The Witness: It is the first I ever heard of a suit.

Q. Don't you know that Patterson attached on account out west in a suit that he brought for his commission? A. No, I know that he was a busy man; there never was any suit at all.

Q. But you know the question involved was his commission? A. Yes.

Q. Wasn't an attorney by the name of Battle McArdle retained? A. By us?

Q. Yes. A. Yes.

Q. To handle that matter out there? A. Yes.

Q. Did you prior to the time when the various agents resigned, know that they were going to resign?

Mr. Egner: Is that cross-examination?

The Court: I will receive it; if he knows, he may state.

A. No, I didn't know it.

The Court: Had you any intimation of it at all prior to the receipt of the resignation?

The Witness: Very slight intimation; slightly before the receipt.

Q. From whom? A. From Roope.

Q. I mean in respect to what agency; all of them? A. Madden and Kennedy, that they were going to resign, but not that anybody particularly.

Q. On November 14, 1921, three of your agents had resigned, that is right? A. There were so many dates, I don't know for sure, but about that time, I think.

PAUL LEON PRICE recalled in rebuttal for complainant.

Direct-examination by Mr. Egner:

Q. Prior to the leaving of Messrs. Lown and Bunker was there any general feeling of dissatisfaction among the agents of the company, as far as you were aware, with respect to their compensation or general working conditions? A. No general dissatisfaction.

Q. You recall having made a trip out west to see the agents just about the time that these resignations were coming in? A. Just after the first one had come in.

Q. On that occasion you saw Mr. Scarth? A. I did.

Q. What other agents of the company did you see on that trip? A. Mr. Moser, Mr. Vonier and Mr. Seymour, who had taken the place of Mr. Skoning, and also saw Mr. Skoning who had resigned.

Q. Did you learn at that time whether Mr. Lown had visited these gentlemen before your arrival? A. He had visited each one of these agents, according to their statement, previous to the time I arrived there.

Q. Have you seen Mr. Roope recently? A. Yes.

Q. When did you see him? A. I should say about four weeks ago.

Q. And where is he now employed? A. I met him on the Queensboro subway and he said he was employed by—

Mr. Egner: Not what he said.

The Witness: I don't know where he was employed.

Q. About how long a conversation did you have with him? A. From Hunterspoint Avenue to the Grand Central on the subway.

Q. How long does that take? A. About five minutes.

CROSS-EXAMINATION by Mr. Kraetzer:

Q. Did you tell him to see Mr. Bell? A. I did not.

Mr. Egner: We rest.

HERBERT H. BUNKER resumes the stand for further cross-examination:

By Mr. Egner:

Q. Mr. Bunker, there has been produced here your pay roll sheet—

The Court: It is not in evidence.

Q. —indicating that Mr. Tarof beginning January 15, 1922, received $40 a week; what in fact was his salary beginning with January 15? A. His salary was $50 a week beginning January, 1921.

The Court: He began to work on the fifteenth?

The Witness: No, sir. Was the fifteenth of the month—

The Court: You said in explanation of a question

which I put upon the record that he began to work on the fifteenth and on the twenty-first he was paid for the week beginning the fifteenth, at the rate of $50 a week, but only drew $40; is that right or wrong?

The Witness: It is correct.

Q. Then he received $10 less than his salary each week? A. Each week.

Q. He received in money $10 less than was due him for salary each week; why was that, Mr. Bunker?

The Court: Has continued to do so to date?

The Witness: Yes.

The Court: What was the purpose in retaining the $10?

The Witness: When Mr. Tarof applied to me for a position I told him that we couldn't pay him the money he asked but I was willing to put it on the books, provided he would draw $40 a week for some time, which he agreed to.

Q. Then he asked for $50 and you told him you could only afford to pay him for some time $40; is that it? A. I believe he asked for $50 but I told him that we couldn't afford to pay him more than $40.

Q. Have you any account on your books showing the accumulation of this $10 a week? A. Yes, sir.

Q. Will you produce that, please? Just send me a copy of it during the week? A. Might I add something? From time to time he has drawn $25 extra something like that.

Q. As against that? A. Yes, but it has gone on

Q. You have an account showing all these figures? A. Yes.

Q. You will produce it? A. Yes.

The Court: You both rest with the exception that the defendants reserve the right to take the testimony of Mr. McNichol?

Mr. Kraetzer: Yes.

As to Roope's testimony, it was to go in subject to a motion to strike it out, and that I might renew my motion at the conclusion of the case. I am prepared to renew that motion, and I have page references to the testimony here and I suppose, for the protection of the defendant, I should make my motion *in extenso*.

The Court: Did Mr. Roope appear?

Mr. Egner; Mr. Roope has not appeared.

The Court: I think the significance of it was this: He made certain statements which you claim were not binding on either the Kerlow Company or Mr. Bunker or Mr. Lown?

Mr. Kraetzer: Yes, sir, about his fermenting a strike?

The Court: Yes, and you disclaimed all the responsibility for that, and I think Mr. Egner said he would show in the course of the case the connection which would warrant retaining that testimony in the record, and I left it in that shape, with the exception of that, what are you going to do with Mr. McNichol's testimony?

Mr. Kraetzer: With the exception of that, I am going to rest except for Mr. McNichol's testimony.

The Court: When will I have that; when is that to be taken?

Mr. Kraetzer: I hope to get it through this week.

The Court: I will have you stipulate a time when the McNichol testimony will be finished, and we will close the case on both sides, except for you (Mr. Egner) to rebut it, if you please.

I will say that that testimony will have to be in here by the tenth. Then if you desire to answer it—

Mr. Egner: If we want to answer it, we will answer it by the twelfth.

The Court: They will answer it by the fifteenth. The McNichol testimony is to be in the record by October twelfth, or is not to be in at all. If complainant desires then to answer it or meet it in any way, it can do so and have it in the record by October fifteenth, or it will not be in at all.

As to the brief, complainant is to serve a copy of its brief on the defendant—

Mr. Egner: I will have our brief by the fifteenth of October and serve it on the other side.

The Court: I will give the defendant fourteen days to answer Mr. Egner's brief. The order will be that complainant will take fourteen days, defendant will take fourteen days, and complainant take a week after that to reply; that will be the fifteenth, twenty-ninth of October, and third of November.

Mr. Kraetzer: How about my motion?

The Court: I won't decide it today unless I look at this testimony. Why not state your reasons upon the record and then give me your reasons in your memorandum, either in connection with your brief or independent of it?

Mr. Kraetzer: I renew the motion made in the course of the trial, to strike out any and all testimony concerning Mr. Roope, his part in any alleged conspiracy with regard to the fermenting of a strike at the plant of the Irving Iron Works Company, and any and all statements claimed to have been made to the wit-

nesses who appeared here in this case by Mr. Roope, in regard to his responsibility or his business connection in any way with the defendants in this cause.

The Court: You raise the question on the ground that whatever Roope may have done or might not have done in the matter, or said, is not binding upon the defendants, nor any of them in any way?

Mr. Kraetzer: Exactly, and I further move to strike out the testimony having to do with an assumption of authority on the part of Mr. Kennard, and any and all testimony given by witnesses, and particularly, as I recall it, by the witness Lumb, to the effect that Mr. Kennard employed him, or offered him employment in the new company, on the ground that no connection has been shown between Kennard and the defendant in this case, and that any statements made by Kennard were not binding upon the defendant.

I ask leave in the course of the brief, then, to be submitted, to refer specifically to the sections of the testimony, and that the motion now made shall be deemed to refer to the specific portions of the testimony that I shall refer to in the brief.

The Court: That will be granted, of course.

Transcript of testimony taken in the above entitled cause before Nicholas W. Bindseil, Special Master in Chancery of New Jersey, by consent, at the office of William Huck, Jr., Esq., No. 46 Cedar Street, New York City, on Monday, the 8th day of October, A. D., 1923 at 4:00 P. M.

Appearances:

Mr. Arthur F. Egner, for complainant.

Mr. William Huck, Jr., and Mr. Edgar R. Kraetzer, for defendant.

GORDON E. MACNICHOL, a witness on behalf of the defendant, being duly sworn according to law on his oath, testifies as follows:

Direct-examination by Mr. Kraetzer:

Q. Mr. MacNichol, by whom are you employed at the present time? A. By Mr. Charles B. Rogge.

Q. And the nature of that business is what? A. Insurance business.

Q. And the address? A. 111 Broadway.

Q. Have you, at the present time, any connection with the defendant, the Kerlow Steel Flooring Company? A. I have not.

Q. Are you a stockholder in that company? A. I am not.

Q. Employed by them in any way? A. No.

Q. Have you any connection with the complainant, the Irving Iron Works Company? A. No, sir.

Q. You were, however, connected with the Irving Iron Works Company at one time? A. Yes.

Q. In what capacity? A. As a stenographer.

Q. And during what period of time? A. From the summer of 1920 to the spring of 1921, on or about.

Q. And during that time what dictation did you take as stenographer? A. I took Mr. Lown's and Mr. Irving's dictation.

Q. Who was your immediate superior? A. Mr. Lown.

Q. Did you at that time know employees of the Irv-

ing Iron Works Company by the name of Winifred Healy and Virginia Disimone? A. I did.

Q. And what were their positions there? A. File and record clerks.

Q. At any time during your employment did Mr. Lown instruct you to prepare or to have prepared a list of customers of the Irving Iron Works Company? A. There was a special list prepared.

Q. My question is, did Mr. Lown instruct you to have any such list prepared, irrespective of what kind of a list it was? A. Yes, there was a list that Mr. Lown had me make up.

Q. Do you recall about when it was that he asked you to make that up? A. No, I do not.

Q. Did he ask you to make up more than one list? A. No, to the best of my knowledge and belief I only made up one list while I was there.

Q. That is the list you were just referring to now? A. Yes, sir.

Q. Tell us about that list. A. The list that I had written off was a list of installations and listing of companies in which the Irving Iron Works Company had put in installations and which Mr. Lown thought it would be a good idea to have pictures taken of and from this list I got the names and addresses to send to the McGraw-Hill Company.

Q. Can you remember approximately how many names there were on that list? A. No, I cannot.

Q. Have you any idea at all? A. No, not the least.

Q. Can you tell approximately how many pages of paper that list consisted of? A. I should say maybe ten.

Q. Can you say whether or not that list contained the names of all the persons whose names appeared in

the card file in the Irving Iron Works Company? A. No, that list did not contain all the names.

Q. Can you say whether or not that list contained all the names contained on the addressograph plates kept by the Irving Iron Works Company? A. No, that list did not.

Q. Do you recall what was done with that list, what happened to it? A. The list itself—I remember seeing the list. It was in a drawer in my desk. I kept the list and I used to bring it in to Mr. Lown occasionally.

Q. Did you, at any time, while you were working for the Irving Iron Works Company, see a list containing the names of all the customers and prospective customers of the Irving Iron Works Company? A. Yes, there was a list when I came there. It was, as I remember it, on yellow paper, long yellow paper, and it was the addressograph list at that time.

Q. It was made up of the addressograph list? A. Yes, of all the plates that they had there at that time.

Q. Do you know what happened to that? A. No, I do not.

Q. Did you, at any time, give the list that had been prepared as described by you for your use, to Mr. Lown? A. No, I don't believe I did.

Q. Did you take Mr. Irving's dictation in 1920, while you were there? A. I did.

Q. His personal dictation? A. I did.

Q. Did any of his correspondence have to do with complaints made by agents on account of nonpayment of commissions, etc.?

Mr. Egner: I object to that as calling for the contents of documents.

A. I don't remember about that.

Q. Do you recall the desk that Mr. Irving used while you were employed by the Irving Iron Works Company? A. I do.

Q. The desk in his private office? A. I do.

Q. Did you, at any time, have occasion to see the contents of the middle drawer of that desk, while you were there? A. I did.

Q. How frequently would you say that you saw that? A. I can't say—almost every day I was in there.

Q. And that was how often? A. I was in there about five days a week.

Q. Are you familiar with the type of grating manufactured by the Kerlow Steel Flooring Company? A. I am.

Q. In the course of the patent proceedings were you shown a sample of the type of grating purported to be manufactured by the Kerlow Steel Flooring Company? A. I was.

Q. Did you at any time, referring to the time when you were employed by the Irving Iron Works Company, see a sample of grating similar to the kind manufactured by the Kerlow Steel Flooring Company in the middle drawer of Mr. Irving's desk, or any place in and about the plant of the Irving Iron Works Company? A. I did not.

CROSS-EXAMINATION by Mr. Egner:

Q. Mr. MacNichol, will you describe the kind of desk Mr. Irving had? A. It was a roll top desk, mahogany in color.

Q. I mean particularly, with respect to the arrangement of the drawers? A. There were drawers on both sides and it had a center drawer.

Q. You mean on either side of a person's feet? A. Yes.

Q. How many drawers were there on either side? A. On the right I believe there were two.

Q. And on the left? A. Four.

Q. Then the drawers on the different sides were of different sizes? A. Different depths.

Q. And the center or middle drawer you are talking about, where was that situated, on the left-hand or right-hand side, or in the middle? A. It was in the center of the desk.

Q. Was it a long, flat drawer—how deep was it? A. I believe it was about as deep as a standard desk.

Q. How deep is that? A. It never impressed me that it was any different from any of the standard desks.

Q. Was it two inches deep—can you give me your recollection of how deep the drawer was? A. Four or five inches, I should say.

Q. And was there a key to that drawer? A. I don't remember.

Q. But in your testimony you referred to the drawer in the middle of the desk between the rows of drawers on either side? A. Yes.

Q. And you say that is the desk that you saw the contents of practically every day? A. I didn't say I saw the contents of the desk practically every day.

Q. That drawer? A. Yes, sir, every time it was used I saw it.

Q. How often was it opened? A. That is impossible to state.

Q. Who opened it? A. Mr. Irving.

Q. Do you recall whether he had a key or not? A. I do not.

Q. Did you ever open the drawer yourself in the presence of Mr. Irving? A. No.

Q. Then your acquaintance with the contents of the desk was based upon what you saw when Mr. Irving would himself open the desk and pull out the drawer? A. Yes.

Q. You cannot say now how often a day Mr. Irving opened that drawer? A. I could approximate it by saying maybe once a day.

Q. Every day that you were there? A. Yes, sir.

Q. That was contained in that drawer? A. The only thing that sticks in my memory is a loose leaf book—a small loose leaf book.

Q. Do you recall what was in the book? A. No, I do not.

Q. Approximately how large was that book? A. About six by four inches.

Q. And that is the only content of that drawer that you now remember? A. Yes, that I now remember.

Q. You say that the list which you prepared was made for submission to the McGraw-Hill Company and contained a list of actual installations? A. Yes, the list on my paper contained a list of actual installations.

Q. And the McGraw-Hill Company were preparing a catalogue for the Irving Iron Works Company? A. Yes, at that time.

Q. And this was to give them the name and address of the people in whose plants they might take some photographs? A. Yes.

Q. Do you know whether or not that list was actually sent to the McGraw-Hill Company? A. It was not sent to the McGraw-Hill Company.

Q. Do you know whether or not any selection of the names from that list were sent to the McGraw-

Hill Company? A. Yes, I believe there was a selection of names sent to the McGraw-Hill Company.

Q. By Mr. Lown? A. Yes, sir.

RE-DIRECT EXAMINATION by Mr. Kraetzer:

Q. You also made an affidavit in this case at the request of Mr. Irving? A. I did.

Q. Can you say whether or not all the lists that were at the Irving Iron Works Company, both when you came there and during your period of employment there, were still there when you left the employ of that company? A. The yellow list that I spoke of was lost or destroyed at some time during the time I was there. The yellow list was kept in an open cupboard that we had, in with a lot of Hooven automatic typewriter record rolls and the cleaner one time threw out a lot of my record rolls and they were burned up. I remember it because I had to make them over again.

Q. And was the other list that you have spoken about somewhere in the Irving Iron Works Company when you left? A. It was not, to the best of my knowledge and belief.

Q. Where was it? A. I have not the faintest idea.

Q. You didn't see it when you left? A. I did not.

Q. You don't know where it was? A. No.

Q. That is the selected list that I am referring to? A. No, I am talking of the actual list in distinction.

Q. I thought there was a mistake there. The other list that you have referred to, on the white paper, containing the names of the installations, for photographs, to be sent to the McGraw-Hill Company—was that still in the possession of the Irving Iron Works Company or at the plant of the Irving Iron Works

Company when Mr. Lown left its employ? A. It was.

Q. And that was about May 14th, 1921? A. Yes, I believe that is the time.

Q. Do you recall when that fire took place that you have described?

Mr. Egner: He has not described a fire.

Q. Or taking out of the record rolls? A. That was at least three or four months before he left.

Q. And was that yellow list seen at any time after that incident? A. I don't believe it was.

Q. Did you ever see it after that incident? A. No.

Q. Did these two girls, Miss Healy and Miss Disimone, work under your supervision? A. Yes.

Q. And did you see what they were doing there—could you see what they were doing? A. I could.

Q. Do you know whether or not they made up any other list, other than the ones you have spoken about, at any time during the time that you were employed there? A. I don't know that they did.

Q. Did you ever see any other list? A. No.

Q. Did these two girls work in the same office that you occupied? A. They did.

Q. And you could see what they were doing every day? A. Yes, sir.

RE-CROSS EXAMINATION by Mr. Egner:

Q. Your testimony as to what happened to that yellow list is based on conjecture—you didn't see it destroyed by the cleaner, did you? A. I did not

Q. And all you know is that one time you looked

for the list and it was gone and you assumed that it was destroyed? A. Yes.

Q. And you really don't know what happened to it? A. No.

State of New Jersey,
County of Essex, ss:

I hereby certify that the foregoing testimony was taken before me as Special Master in Chancery of New Jersey, by consent of counsel, at the office of William Huck, Jr., #46 Cedar Street, New York City, on Monday, the 8th day of October, A. D. 1923, at 4 P. M., in the presence of Mr. Arthur F. Egner, representing the complainant, and Mr. William Huck, Jr., and Mr. Edgar R. Kraetzer, representing the defendants.

I further certify that the foregoing is a true and correct transcript of my shorthand notes of the proceedings and truly and correctly states the evidence.

NICHOLAS W. BINDSEIL,
Special Master in Chancery of New Jersey.

Exhibit C26.

(Tomclier envelope.)

Kerlow Steel Flooring Company
50 Church Street
New York

Hud. Term Sta.
N. Y.
Jan. 14
2:30 P. M.
1922
(Stamp)

Mr. Tomclier

J. G. White Eng. Co.
512 West 188th St.
N. Y. City

Exhibit C28.

(Singstad addressograph.)

Name Singstad Mr. Classification 3
Address Rm. 614 Hall of Records X

Occupation N. Y. C. Source H. H. Schuldt

Represented by Entered 2/7/21

1/28/21 H. H. S. saw Mr. Singstad Int. in Rd. Armor
2/3/21 Sent cat. & letter 3A

Exhibit C28a.

Singstad addressograph.)

Mr. Singstad,
Rm. 614 Hall of Records,
New York City.

Exhibit C42.

(Tomclier letter.)

KERLOW STEEL FLOORING COMPANY

50 Church Street

New York City

Trade

KERLOW
The Universal Grating

Mark

Subject: Kerlow Universal Grating.

Mr. Tomclier,
C/o J. C. White Eng. Co.,
New York City.

Dear Sir:

The enclosed cut will introduce to you "Kerlow Universal Grating," a product which is beginning to make a name for itself throughout the country.

Kerlow is the finest grating or steel flooring on the market today, embodying features not to be found

in any other kindred product. It is reversible, non-dirt collecting and rust proof; affords perfect traction for walking, working and wheeling and embodies every attribute of the solid floor while allowing 78% open space for the passage of light and air.

Designed and built on proper engineering theory and practice, Kerlow grating is structurally correct. Its bar members are so trussed, formed and braced as to develop their full tensile strength and properly distribute load. In addition to these advantages Kerlow grating is less in price than any other grating, load for load. Prices range from $1.00 per sq. ft. for our lightest type, ¾" deep to $1.50 per sq. ft. for the heaviest. The former will sustain a load of 250 lbs. per sq. ft. on a three foot span, with less than one-fifth inch deflection. Our square foot price includes all cutouts, drawings for approval, rust proofing, finished gray and fitting guarantee.

We trust you will not hesitate to call on us for further information and quotations, which it will be our pleasure to furnish. Samples and catalogues await your request.

Thanking you for your consideration, we remain,

Yours very truly,

KERLOW STEEL FLOORING COMPANY.

W. H. Lown.

By Walter H. Lown,

Sales Manager.

WHL-L.

All agreements contingent upon conditions beyond our control. All prices subject to change without notice.

Exhibit C43.

June 6th, 1921.

Re: File 4-23-2

Portland Cement Association
11 West Washington St.,
Chicago, Ill.

Attention: Mr. J. E. Freeman,
Manager, Structural Bureau.

Gentlemen:

Receipt is hereby acknowledged of your letter of June 2nd, for which we thank you. After having gone over the two bulletins, which you are forwarding we shall be in a better position to know whether it will be necessary to take advantage of your very kind offer to render us additional service. Rest assured that we appreciate this very much.

Thanking you for the courtesies extended, we remain

Yours very truly,
IRVING IRON WORKS COMPANY.

Assistant Manager.

Per:

Data Dept.

ELT/FP

Exhibit C44.

Received
Jun 6 1921
Irving Iron Works Co.

PORTLAND CEMENT ASSOCIATION

111 West Washington Street

Chicago

June 2, 1921

File 4-23-2

E. L. Taroff, Data Department
Irving Iron Works Co.
New York, N. Y.

Dear Sir:

Mr. T. W. Shields of the Lehigh Portland Cement Co., has referred your request of May 26, for bulletins on reinforced concrete design to this Association for attention.

In reply, we take pleasure in sending you under separate cover a copy of our bulletins, "Fundamentals of Reinforced Concrete Design" and "How to Make and Use Concrete." The first mentioned bulletin we believe is the one you have in mind. The information on designs contained in this booklet is of course elimentary, but it is the only booklet we have of this kind.

The Concrete Engineer Handbook by Hool & Johnson, published by McGraw-Hill Book Co., New York City, is a standard handbook on concrete design.

The second bulletin mentioned, contains information on the recommended mixtures of concrete for different classes of work which is given on page eleven and on pages seventeen and twenty-one, are given tables for estimating the quantity of material required.

Exhibit C45

We trust that these bulletins will be of interest and value to you and if there is any further service we can render, we shall be very glad to have you write us.

Yours truly,
(Signed) J. E. FREEMAN
Manager, Structural Bureau.

A. C. Sydell*FS

Exhibit C45.

June 30th, 1921.

Re: Your File 423-2

Portland Cement Association,
111 West Washington Street,
Chicago, Illinois.

Gentlemen:

The writer has noted with interest your remarks in your letter of June 24th, relative to the installation of Irving-Subway as concrete surface armoring. One sentence in particular, namely, where you state "that the important point is to secure a bond between the concrete filling in the Subway and the underlying concrete and that the adhesion between the concrete and the steel is of less importance," is rather surprising.

Again referring to our catalogue, page 43, you will note that at the point marked "Joined," we show hooks extending down into the concrete. This we do in order to secure the grating firmly, not depending entirely upon the adhesion between the concrete and

the steel. We regard this matter in the following light.

Under ideal conditions the grating will be so laid that every part of the lower surface of the grating is in actual contact with concrete, thereby making all deflections of the grating impossible. This condition probably exists when the installation is new, but as wear proceeds concrete may become dislodged from the grating, thereby making deflections possible. If then a certain portion of the concrete allows the grating to deflect, it seems probable that at some time the continual motion of the steel will break the concrete in the immediate contact with the steel, and soon the grating will be rattling about. In order to prevent any such condition arising, we believe that hooks as shown in our catalogue, should be placed at frequent intervals, and thereby hold down the grating very securely. We realize, however, that in addition to the holding power of these hooks there is also the holding power due to the adhesion between the concrete and the steel. Could you tell us about how many hooks, of course, considering the economy in the discussion, would be required in order to make this grating last indefinitely when so installed.

We regret to state that we have not received as yet either of the bulletins, which you stated in your letter of June 2nd you were forwarding to us, and would appreciate the receipt of the same. Undoubtedly they have been lost in the mail.

Thanking you for past courtesies, and hoping that we may receive these books, we remain

Yours very truly,

IRVING IRON WORKS COMPANY.

ELT/FP

Exhibit C46.

June 10th, 1921.

Portland Cement Association,
11 West Washington St.,
Chicago, Ill.

Attention: Mr. J. E. Freeman,
Manager, Structural Bureau.

Gentlemen:

Although at the present time we have not received the bulletins which you are forwarding, we should be pleased to receive any information which you have concerning the following matter.

On page 43 of our enclosed catalogue you will notice the method which we use to protect concrete walkways with Irving-Subway. At present we are making a drive toward installing our grating thereby giving increased life to all concrete installation where heavy traffic must be sustained. It is obvious, therefore, that we are directly working with you on this project since we are eliminating objections to the concrete as a flooring under the above stated conditions.

What we are particularly interested in is some data which you have obtained through tests and experience which will enable us to anchor this grating down successfully, so that should there be any loosening of the grating from the concrete the former will be so constrained as to make it impossible to buckle it. If, therefore, you have any information along this line, and especially with regard to the adhesion between concrete and steel, we should be pleased to receive the same.

Thanking you for past favors, we remain

Yours very truly,
IRVING IRON WORKS CO.

Assistant Manager.

Per:

Data Department.

Exhibit C47.

June 7th, 1921.

Philadelphia Electric Co.,
10th & Chestnut Sts.,
Philadelphia, Pa.

Attention: Mr. Howard S. Phelps.

Gentlemen:

I was very pleased to receive your letter of June 4th, and after having gone over the same wish to say that your calculations contained therein are very clear indeed.

The reference to baffles was brought to my mind since in all formulas, relating to the amount of air which would be discharged due to differences in pressure, the velocity of the air always depended upon the size of the orifice and the presence of eddy currents; in other words, depended upon the friction which the pressure had to overcome.

Enclosed herewith you will please find a very rough sketch showing the cables passing from one duct to another with the manhole in between. Of course not knowing how the cables are laid in this particular installation, it may be that we shall have to attack this problem from a different premise entirely, but assuming that the sketch which I have made resembles your installation to some degree, it is obvious that the cylindrical baffles, which could be readily bolted to a collar welded to Irving-Subway, might extent down into the manhole within a short distance from the bottom; this distance of course depending upon the quantity of air discharging in a unit of time. Similarly we should place a deflecting pan in the bottom, so that the cold air coming down through the center would be deflected upward with as little friction as

Exhibit C47

possible, and being heated by the cables rise upward due to the force of the following cold air. Here you see that we have utilized an old and very well known method of increasing the rate of flow of this air. In order that you may have this in your hand in the shortest possible time, I shall not go into this matter further, but mail this immediately so that it may arrive in Philadelphia tomorrow morning, and hope that you may get something from it.

One word more, if these cables should be so placed that the use of this cylindrical baffle is impossible, it is obvious that we might place a flat steel plate at an angle such that the cold air would go down one way and come up another, as I have indicated upon a second sketch.

I am pleased to note that the requisition has been issued for furnishing special manhole covers as per our recent conversation.

With my personal regards, and in the hope that I may see you again if you happen in New York, believe me

Yours very truly,
IRVING IRON WORKS CO.

Chief Draftsman.

Exhibit C47a.

PORTLAND CEMENT ASSOCIATION

111 West Washington Street

Chicago

June 24th, 1921

File 4-23-2

H. H. Bunker, Asst. Manager
Irving Iron Works Co.
3d, 4th, Creek Sts. & Dutchkills Creek
Long Island City, N. Y.

Dear Sir:

This will acknowledge receipt of your letter of June 10 and the enclosed booklet on the Irving Subway. We have read the data given in the booklet carefully and find it of considerable interest.

The resistance to wear of a concrete floor depends on several factors which enter into its construction, viz., the quality of the aggregates, the proportions of the mixture, the time of mixing, the amount of mixing water used, and proper protection during the early hardening period. If proper care is taken in those particulars a strong, durable, wear-resistant concrete floor will be secured that will be satisfactory for all ordinary conditions. Very frequently, however, builders observe all of those precautions except the last one which is probably the most important of all because laboratory tests have shown that proper protection of a concrete floor during the first ten days after it is laid will increase its strength and resistance to wear about 75 per cent. The hardening of concrete is a slow chemical action between the water and cement which requires the presence of moisture

for a long period. If the concrete is allowed to dry out too rapidly it cannot attain its maximum strength and hardness.

Sometime where traffic will be heavy a granolithic surface, so-called, is used. In that case small pebbles of some hard, tough material like granite or trap rock and of about the size of roofing gravel are used in the finish course so as to secure greater resistance to abrasion. In some cases, thin strips of steel or iron have been set on edge in a concrete floor that would be subjected to very heavy trucking in order to secure still greater resistance to abrasion. That would be quite similar to the installation of your Irving Subway in a concrete floor.

In many ways a one-course floor is the best type, but in places where an extremely durable surface or a special type of surface is desired a two-course floor must usually be laid. In that case it is very necessary to secure a good bond between the first course or concrete slab and the finish or wearing course. That can best be done, of course, by placing the wearing course before the slab has hardened, but where such quick action is not feasible the concrete slab should be somewhat roughened, thoroughly cleaned, drenched with water and painted with a grout of neat cement immediately before the wearing course is applied. These details are being presented because it seems to us that the main difficulty that might be encountered in the use of the Irving Subway in a concrete floor would be in securing a proper bond between the finish course in which the Subway was laid and the concrete slab.

From your booklet it seems that the openings in your Subway consist of a series of small triangles having a base seven inches long, a distance of one and

Exhibit C47a

one-eighth inches from the base to the apex, and a thickness of about three-fourths of an inch. Great care should be taken to see that the small triangles of concrete that would fill those openings are thoroughly bonded to the under-lying concrete. This might be done by laying the finish course first, and then pressing the sections of Irving Subway down into it. If that is not possibel the total thickness of the finish course of the concrete should be a half inch or more greater than the thickness of the Irving Subway and should be laid in two courses, the first forming a bed on which the Subway would be laid and the second forming the filling for the Subway openings. The two courses of this finish course should be laid with the shortest possible time interval between them.

Your booklet states that Irving Subway usually used for this purpose is three-fourth inches deep; it might be better to use the one-half type. As mentioned above, it seems to us that the important point is to secure a bond between the concrete filling in the Subway and the under-lying concrete and that the adhesion between the concrete and the steel is of less importance. In the various text books and handbooks on reinforced concrete construction you will find considerable data on the adhesion between concrete and reinforcing steel. That is somewhat different from your problem but is the best data we can suggest to you.

Yours truly,
(Signed) J. E. FREEMAN
Manager, Structural Bureau.

D. A. Tomlinson*DMK

Exhibit C50.

LANSING, MICHIGAN JOB:

Present Brodhead the cards & data on #1.

City of Lansing Card.
Shows entry May 7th, 1919, E. T. Betts called on Mr. Crane, etc.
Entry June 2nd, 1919, Sent form follow up letter.
" Feb. 12th, 1920. L. H. Skillman saw Mr. Crane. He specified Subway on first unit of Power house, etc.
" May 10th, 1920—Quoted
" Jan. 17th, 1921—Sent follow up letter.
" Aug. 17th, 1921—H. Scarth saw Mr. Bulkly, Etc.
" Aug. 17th, 1921—H. Scarth saw Eckert, etc.
" Sept. 14th, 1921—H. Scarth saw Bunkelberger, etc.
" " 20th, 1921—H. Scarth saw Mr. Bulkly who said that I. S. would undoubtedly be specified on New Power House.
" Dec. 6th, 1921—C. M. Seymour, our present Chicago Salesman, reported large job coming up, etc.
" Dec. 8th, 1921—C. M. Seymour was advised to send catalogue, letter, etc., to Woodwell & Rester, Eng. in Charge.

Card—Woodwell & Rester
Shows entry Aug. 5th, 1921—H. Scarth saw Stenog.
Entry Sept. 12th, 1921—Saw Mr. Reed.
" Oct. 7th, 1921—H. Scarth saw Mr. Reed, plans on New Power House won't be ready, etc.
" Dec. 20th, 1921—B. L. Fralick wrote Mr. Woodwell regarding Lansing Power job.

Exhibit C50

CARD: Board of Electric & Water Comm.
Entry Feb. 13th, 1920—L. H. Skillman saw Mr. Crane *re:* Elect. Lighting plant to be built at Lansing.
" April 8th, 1920—L. H. Skillman saw Mr. Bulkley
" June 16th, 1921—Harold Scarth saw Mr. Bulkley
" Jan. 20th, 1922—Quoted on job 14832.
" Feb. 18th, 1922—Still pending.

CARD: Lansing Water & Light Comm.
Entry May 18th, 1921—Scarth wrote Bulkley, Supt.

Following are C. I. M's numbered chronologically in Red Pencil.

1.—Dated Feb. 13th, 1920, L. H. Skillman *In re* Power House job.
2.— " Feb. 12th, 1920, L. H. Skillman *In re* Power House job.
3.— " April 8th, 1920, L. H. Skillman *In re* Power House job.
4.— " Aug. 17th, 1920, H. Scarth *In re* Power House job.
5.— " Aug. 17th, 1920, H. Scarth *In re* Power House job.
6.— " Sept. 20th, 1920, H. Scarth *In re* Power House job.
7.— " Dec. 6th, 1921, C. M. Seymour *In re* Power House job.
8.— " Dec. 8th, 1921, C. M. Seymour *In re* Power House job.
9.— " Dec. 20th, 1921, Detroit, B. L. Fralick Power House job.

Also original contract for order received from City of Lansing for 10,000 sq. ft. 2/21/20 and cancelled 5/21/21.

Exhibit C51.

HORROCKS IRON WORKS

Present Brodhead the Card & Data on #3.

Horrocks Iron Works Co. Card.

Shows Entry 10/5/21—J. M. Madden saw Mr. Horrocks, requested we confirm quotation on Type G 1″ grating at $1.45, etc.

" Oct. 13, 1921—J. M. Madden saw Mr. Horrocks. Hope to have order in 10 days.

" Oct. 27, 1921—J. M. Madden saw Mr. Horrocks. Things are shaping up nicely, etc.

C. I. M.s covering above numbered in red 1, 2 and 3.

Letter from L. R. Neff, 1/9/22—Job lost, etc.

Exhibit C52.

DETROIT EDISON COMPANY. (No. 4.)

Present Brodhead with card & data on #4.

Detroit Edison Company card.

Show entry Aug. 8th, 1921—H. Scarth saw Mr. Allen. Will have an order 8000 sq. ft. 1″ Type G for Marysville Power Plant in about a week, etc.

" Aug. 12th, 1921—H. Scarth saw Mr. Allen. Part of big order will be ready tomorrow.

" Aug. 30th, 1921—H. Scarth saw Mr. Heedman, etc.

" Sept. 26th, 1921—H. Scarth saw Mr. Allen tells me prospects for Marysville Power house order going thru this Fall are slim, etc.

" Oct. 4th, 1921—H. Scarth saw Mr. Brennan. Tells me they cannot consider ordering now for Marysville plant.

" Oct. 31st, 1921—H. Scarth saw Mr. Allen, see letter.

Telegram from B. L. Fralick, our Detroit man, telling us Detroit job practically closed to Kerlow. Edison Construction Engineer said Kerlow order because of price and Rust Proof Paint under black coat.

We wired back—

"Quote any price that will take the job. Get."

Scarth's C. I. M.s corresponding with about entries on card.

Exhibit C53.

NATIONAL IRON WORKS (No. 5.)

Present (Witness) with card & data on ♯5.

National Iron Works Card.

Show entry July 15th, 1921—A. S. Kennedy saw Mr. Ogens, is bidding on job for Graphic Arts Co., Jersey City, etc.

" July 26th, 1921—A. S. Kennedy saw Mr. Ogens. Says contract for Graphic Art Co. still pending, etc.

" Aug. 1st, 1921—A. S. Kennedy saw Mr. Ogens. Says they hope to have the cont. for Graphic Arts in few days.

" Aug. 22nd, 1921—A. S. Kennedy saw Mr. Ogens. Expects to have details reacy very soon on Graphic Arts so order can be placed.

" Sept. 12, 1921—A. S. Kennedy called. Mr. Kasnaw out.

" Sept. 14, 1921—A. S. Kennedy saw Mr. Krasnaw. Details of Subway for Graphic Arts job are ready but will not place order for a while yet as material will not be needed for a couple of months.

Exhibit C54.

All Folders marked with a Number followed by —A— are samples of our customers who have given business to Kerlow, but have been missionized by Scarth, Madden, etc., etc., while in our employ, but order not necessarily originating prior to November 12th, 1921.

Name of Customer	Location	Amt. of Job	Dates of Entries on Cards Showing Missionary Work by Ex-Salesmen
1-A Atlantic Elevator Co.	Phila. Pa.	$ 279.00	Madden—9/9/20, 1/3/21, 2/14/21, 3/9/21, 9/20/21, 10/4/21, 10/10/21.
2-A Lehigh Portland Cement Co.	Allentown, Pa.	1,770.00	Madden—3/22/19, 3/26/20, 6/29/20, 8/13/20, 12/22/20, 3/14/21, 4/14/21, 7/29/21.
3-A Hudson Coal Co.	Scranton, Pa.	87.00 446.00	Madden—4/10/19, 9/22/19, 1/19/20, 5/25/20, 5/26/20, 6/24/20, 7/9/20, 8/27/20, 11/24/20, 7/14/21.
4-A W. Virginia Pulp & Paper Co.	N. Y. City	234.00 146.00 117.00	H. H. Schuldt 7/1/20, 7/28/20, 10/11/20, 12/3/20, 1/19/21, 5/24/21, 7/8/21, 7/11/21, 8/16/21, 8/31/21, 10/15/21.
5-A Vacuum Oil Co.	N. Y. City	850.00	A. S. Kennedy—11/11/19. H. H. Schuldt—6/4/20, 7/19/20.
6-A Robert B. Lederle,	Phila. Pa.	113.00	Madden—3/1/20
8-A Wm. Cramp & Sons Co.	Phila. Pa.	3,178.00	Madden—3/15/21, 5/24/21, 6/16/21, 6/28/21, 7/1/21, 6/20/21, 7/25/21, 7/27/21, 8/1/21, 8/8/21, 10/27/21.
9-A John W. Ferguson & Co.	Paterson, N. J.	283.00	H. H. Schuldt—7/22/20.
10-A E. I. DuPont Nemours Co.	Wilmington, Del.	1,078.00	Madden—1/12/20.
11-A New England Iron Works Co.	New Haven, Conn.	188.00	Kennedy—7/12/20.

NOTE: On most of above we can support our card entries with the C. I. M.s, but not all.

Exhibit C79.

All agreements are contingent upon strikes, accidents and other delays unavoidable or beyond our control. All quotations are subject to change without notice.

IRVING IRON WORKS COMPANY

Main Office and Works,
3rd, 4th, Creek Sts. and Dutchkills Creek

Long Island City
in the
CITY OF NEW YORK

Trade
SUBWAY
Mark

July 12, 1920.

Mr. Lucius Wightman,
50 Union Square,
New York City, N. Y.

Dear Sir:

1. Confirming our conversation with your office today, we suggest that you select from Underwood & Underwood, a nice industrial photograph of a stack of shelving, etc. etc., suitable for retouching, as the catalogues we have looked at do not show anything anywhere near what we want.

2. If there are any questions on this just let us know.

Yours very truly,
IRVING IRON WORKS CO.
H. H. BUNKER,
RK
H. H. Bunker,
Assistant Manager.

HHB/RK.

(Stamped): Received Jul 13, 1920 Lucius I. Wightman.

Conclusions.

IN CHANCERY OF NEW JERSEY.

Between:

IRVING IRON WORKS,
Complainant,
and
KERLOW STEEL FLOORING COMPANY, *et al.*,
Defendants.

On Bill, &c.

Submitted, Feb. 20, 1924.
Decided, March 15, 1924.

Messrs. McCarter & English, Mr. Stephen Bell, Mr. Michael N. Chanalis and Mr. Arthur F. Egner, for complainant.

Mr. William Huck, Jr., and Mr. Edgar R. Kraetzer, for defendants.

FOSTER, V. C.:

Complainant seeks an injunction to restrain defendants from in any way using any confidential information and any materials obtained by the individual defendants while in its employ; from manufacturing a grating designated as type "M," and also for an accounting and for other relief.

The charge in the bill is that the individual defendants, while in complainant's employ, entered into a conspiracy to compete with and to ruin complainant's business, and to that end appropriated certain confidential information and property of complainant and organized the defendant corporation to carry their scheme into effect.

Conclusions

The answer denies all allegations of the bill, asserts that none of the information was confidential, but was accessible to the defendants and the general public from various sources and publications, and claims the right to manufacture the type "M" grating under letters patent granted to one or more of the defendants.

The pertinent facts relating to the issues thus presented are:

That in 1907 the complainant company was organized by Walter E. Irving to manufacture iron work and types of iron or steel grating which he had designed. The first product known as "Irving's Subway" was used for ventilating purposes in the New York subway in 1908, and the business of the company in that year amounted to about $10,000, and it continued to increase and in 1920 it amounted to about $800,000. This increase was largely due to the fact that some time after the organization of the company Mr. Irving realized the possibilities of the grating for flooring purposes, a use to which apparently gratings had not until then been put.

About 1916, complainant began an intensive and expensive advertising campaign and employed agents on salary and commission to do what was called missionary work, bringing to the attention of architects, engineers and others the merits of complainant's grating for flooring purposes, and this has continued to the present time with a force of nearly forty agents in the field throughout the country and a working force in the factory of over one hundred.

Included in the force which was so employed were the individual defendants.

The principal defendant, Herbert H. Bunker, who is about thirty-five years old, was employed by complainant about 1912 as a draughtsman, and as a result

of various promotions he was Production Manager and assistant to the general manager at a salary of over $6,000, when he resigned in October, 1921.

The other active defendant, Walter H. Lown, who is about twenty-four years old, entered complainant's employ as assistant sales manager in September, 1919, was promoted to sales manager at a salary of about $50 weekly, and he resigned on May 9, 1921. At the time these two defendants resigned there were nine of complainant's agents located in the larger cities who obtained over seventy-five per cent of complainant's business; in connection with its agencies complainant had a system of card indexing memoranda, on which the agents sent reports to the home office about customers and prospective customers. These reports were known as C. I. M.'s, and each agent kept as complainant required, copies of his own C. I. M.'s.

At the time Bunker and Lown severed their relations with complainant, together with seven of complainant's agents in the principal cities, complainant had in its home office complete C. I. M.'s of at least 1,300 customers and over 13,000 "prospects," or prospective customers.

In March or April, 1921, Bunker and Lown, while still in the employ of complainant organized the defendant corporation.

Lown claims that in July, 1920, he designed the type "M" grating and tried unsuccessfully to get complainant to adopt it, and in 1921, he applied for a patent on this grating which was granted on May 16, 1922, to the defendant company, and it is under this patent, which is now in litigation between the parties in the Federal Courts, or in the Patent Office, that the defendant company claims to have been manufacturing this grating principally for flooring purposes since December, 1920.

Conclusions

Bunker and Lown give as reasons for their resignation various defects in complainant's organization, such as indifference and inattention to business on the part of Mr. Irving, inefficiency on the part of Mr. Price, the general manager, lack of initiative and enterprise, unsatisfactory treatment of the principal agents, and the refusal on the part of Mr. Irving and of Mr. Price to adopt or to follow suggestions for better business methods which they or one of them suggested on frequent occasions.

As a result of these conditions Bunker and Lown in December, 1920, discussed between them the advisability of leaving complainant and establishing a competing business. About January, 1921, they agreed to do so; and they decided to keep their purpose secret as they feared Mr. Irving would do everything in his power to prevent their carrying out their intentions and to put them out of business.

About the first of May, 1921, Lown told Mr. Irving he was going to leave although he thought the world of him and Mr. Price, and was satisfied they hadn't scratched the surface yet for the use of the grating for flooring purposes. He added that he had an offer of $7,500 a year to start in business as a bond salesman with Roosevelt & Company. He suppressed from Mr. Irving the fact that he and Bunker had organized the defendant company a month or two before, to compete with complainant, and allowed his resignation to remain unacted upon while he went to Detroit at Mr. Irving's request to select a new agent for complainant at that point. Before his resignation became effective he selected one Roope as his successor as sales manager.

While Bunker was later endeavoring to get Roope's father to become financially interested in defendant

company, Roope instigated a strike among complainant's employees.

Bunker after the formation of defendant company, and suppressing all knowledge and information about it, continued in complainant's employ for six or seven months. During this period he complained of illness and complainant granted him a vacation, or leave of absence, for ten weeks, with pay. And, as stated, about October 1, 1921, he resigned, as he stated on account of his health, and three weeks after his resignation became effective he had lunch with Mr. Irving, inquired about the work complainant was figuring on, obtained this information and within two months thereafter the company he had organized was competing with complainant for some of this work.

About the middle of November, 1921, complainant began to receive the resignation of most of its principal agents, without any grievance against the company being stated as the cause, and none of the six or seven who resigned disclosed that they were entering the employ of the defendant company, and all of the resignations were to become effective on or about November 15, 1921. As a result of these resignations complainant not only lost its agents, but in two instances, at least, it lost the office space in the buildings these agents occupied and the defendant corporation took its place.

As a result of these resignations complainant decided to send Mr. Price, its general manager, on a trip to learn the real cause for these resignations, from Tarof and Roope, associates of Bunker and Lown; the itinerary of Mr. Price was made known to the defendants; it also appears that each of these resignations was the direct result of a call upon each of the agents by Lown, who told of the organization of the

defendant company to compete with complainant, who offered an increased rate of commission to be paid the agents, who first suggested or insinuated that the agents had a grievance because complainant had not made prompt settlements of commissions. Lown's method with these agents, whose superior he had been as complainant's sales manager, was to tell of the organization of the defendant company, to belittle the work and activity of complainant, to criticize Mr. Irving or Mr. Price, and when he had sufficiently aroused the interest of the agent in the defendant company, and in the increased rate of commission, to suggest, as he states, his attorney had advised him, that he could not give the agent the representation for defendant company, until the agent had formally resigned from complainant, and had then made a formal written application to represent defendant company as its agent, or in some other capacity. Bunker, in the case of Tarof and Kennard of complainant's office force employed the same tactics to induce them to leave complainant.

Some months before Lown resigned from complainant he had a complete list of all of complainant's customers and "prospects" compiled by the office force; after he left this list could not be found. Later, Roope, who had been selected by Lown as his successor, had another complete list compiled and after his discharge, only a part of this list could be found.

Tarof who is now in the employ of defendant company had been employed by complainant as chief draughtsman and he resigned in January, 1922, stating he was going into the haberdashery business for himself. Three or four months later, while he was working for the Kerlow Company he left a portfolio on a train, which was found to contain letters and docu-

ments of the defendant company, and also letters and other data that had been taken from complainant's files.

In 1921, before and after leaving complainant's employ, Lown endeavored to have the agency that placed complainant's advertising, handle the advertising of the Kerlow Company.

Respecting the Type M style of grating, which Lown claims he designed in 1920, the clear preponderance of the evidence shows that Mr. Price, complainant's general manager, designed this type in 1917 and discussed it with Bunker and that steel dies for this style of grating were manufactured in the fall of 1917, over two years before Lown entered complainant's employ and before he claims to have designed it, and these dies were around complainant's shop where anyone could see them.

This type was originally known as complainant's Type K and was later changed to "M," when it was found the letter "K" had been previously given to another type.

Defendants claim the reason the principal agents left complainant was because of their dissatisfaction over the delay in the payment of their commissions and over the negligent way in which complainant's business was being conducted. No such reasons are given by any of the agents in their letters of resignation.

Defendants further claim it was unnecessary for them to take or to make use of any of complainant's lists or C. I. M.'s, or the information or knowledge possessed by complainant's former agents and employees who had left complainant and taken employment with the defendant company, because all of this information could be and was obtained by them, as it

could be by anyone, from trade papers, catalogues, newspapers, and other mediums of publicity giving names of architects, engineers, contractors and others interested in work under construction or in contemplation.

The best answer to this claim is the fact that after complainant's agents had entered defendant company's employ certain work which complainant through these agents had been endeavoring to obtain, was lost to it, and was obtained by the defendant company; for example, the Lansing Power House, and the Detroit Edison contracts through Agent Scarth, at Detroit; the Horrocks Iron Works contract through Agent Madden, and the National Iron Works contract through Agent Kennard not to mention others that would merely prolong the list. Further use of complainant's lists is indicated by the exact copy, including errors, in communications sent by defendant company to Mr. Tonnelier and the special address of Mr. Singstad given by him to complainant.

In addition to the agents and employees mentioned the proofs further show that Bunker and Lown tried unsuccessfully to induce complainant's assistant production manager, its agent in Pittsburgh, its bookkeeper, and its advertising agent, to desert complainant.

The facts recited present but a brief summary of the proofs contained in a voluminous record of about 1,500 pages, and a large mass of exhibits, but they are sufficient to establish complainant's charge that defendants conspired to ruin its business and to destroy its reputation, and that in furtherance of this conspiracy defendants induced many of complainant's agents and employees to desert complainant and to enter into the employ of the defendant company and

to use all the information, confidential and otherwise, of complainant's business, which they had obtained as employees of complainant, in injuring complainant and its business and in promoting the interests of the defendants. The proofs further show that some of the defendants unlawfully removed from complainant's premises lists of customers and prospective customers, blueprints and other data belonging to complainant and made use of the same to take customers and business from complainant and to obtain such business for the defendant company. And these proofs further show that defendant company is using and manufacturing as its own, under color of a patent, the Type M form of grating, which had been designed by Mr. Price, complainant's general manager, nearly three years before the defendant Lown claims to have invented it, and the steel dies for which had been made and were in complainant's shop where Lown could see them, for over three years before Lown, without the knowledge of complainant, applied for and obtained for defendant company a patent on this design. The clear preponderance of the evidence of the case requires that a decree be advised for complainant.

The terms of the decree may be settled on notice.

Final Decree.

IN CHANCERY OF NEW JERSEY.

Between IRVING IRON WORKS, Complainant, and KERLOW STEEL FLOORING COMPANY, *et al.*, Defendants.	On Bill, etc.

This cause having come on for final hearing and the Court having considered the proofs and the arguments of counsel and being satisfied that the defendants and each of them have conspired through illegal and improper means to injure the complainant and its business and that they have, by the use of confidential information gained by some of them and their employees and agents while in the employ of the complainant, engaged in a course of illegal and unfair competition as against the complainant and that the type of grating manufactured by the defendant Kerlow Steel Flooring Company (such grating being of the design designated by the complainant in its business as Type M) is the invention and property of the complainant, and the Court being satisfied that the complainant is entitled to the relief prayed for in its bill of complaint, and counsel having been heard further as to the terms of this decree,

It is accordingly, on this 16th day of April, 1924, on motion of Haines & Chanalis, solicitors of the complainant, ordered, adjudged and decreed, that the defendants and each of them, and their and each

of their agents and employees, be and they are enjoined and restrained from disclosing, publishing or making use of any lists or confidential information of the complainant obtained by them or any of them while in the employ of the complainant, or from the records, the agents or former employees of the complainant company and from soliciting for business, either directly or indirectly, from any customer or prospective customer on the lists of records of the complainant company on the fifteenth day of November, 1921.

And it is further ordered, adjudged and decreed, that the defendants and each of them, and their and each of their, agents and employees, be and they are enjoined and restrained from doing business with any customer or prospective customer on the lists or records of the complainant company on the fifteenth day of November, 1921, unless such business comes to said defendants as a result of a request for bids for the doing of the same, made by said customers, or prospective customers, without previous solicitation on the part of said defendants.

And it is further ordered, adjudged and decreed, that the defendants be and they are enjoined and restrained from employing or continuing to employ in their service, either directly or indirectly, any agent or employee other than said Bunker and Lown, who left the employ of the complainant and entered into the employ of the said Kerlow Steel Flooring Company, and they are further enjoined and restrained from enticing or endeavoring to entice any present employee or agent of the complainant to leave its employ.

And it is further ordered, that the said defendants, and each of them, and their and each of their agents and employees, be and they are enjoined and re-

strained from the further manufacture or sale of the type of grating manufactured by them and hereinabove referred to, provided, however, that the said defendants may, in lieu of desisting from the further manufacture and sale of said type of grating, continue until the further order of this Court, to manufacture and sell the same upon condition, however, that the said defendants shall keep full and complete records of all profits made by them, or any of them, from such manufacture and sale, to the end that they may account to the complainant for the same, as and when this Court may direct.

And said defendants furthermore render to the complainant full and complete reports as to the amount of grating so sold, to whom sold and at what prices, the expenses incident to the manufacture and sale thereof, and the profits realized therefrom, such reports to be rendered at the expiration of each two months after the date of this decree.

And it is further ordered, adjudged and decreed, that the defendants and each of them, do account to the complainant for all profits made by them, or any one of them up to the date of this decree, through the use by said defendants of the said Type M grating, as well as for all profits made by the defendants, or any of them, for any former customer or for any prospective customer of the complainant as of the fifteenth day of November, 1921, and that it be referred to Charles M. Myers, Esq., to state and audit the amount of such profits and report thereon to this Court.

And it is further ordered, adjudged and decreed, that the defendants, their agents and employees, and each of them, are enjoined and restrained from making any representations as to the business of the com-

New Jersey State Library

plainant company, or its product, tending to depreciate the same.

And it is further ordered, that the defendant do pay to the complainant, its costs of this suit to be taxed, including therein the sum of $500.00 expended by the complainant for its share of the cost of the transcript of the testimony taken in the cause, as well as a counsel fee of $5,000.00 to the counsel of the complainant, said items to be included in the taxed bill of costs and collected with the other items thereof, according to law and the practice of this Court.

And it is further ordered, that all further equities be reserved until the coming in of said master's report.

And it is further ordered, that the parties to this cause shall have leave to apply to this Court, after due notice, for such modification as they may be advised, of that portion of the restraint contained in this decree as relates to the further manufacture and sale by the defendants of the type of grating manufactured by them, in the event of a decision and judgment being entered in the proceedings now pending between said parties with respect to the patent rights relating to said type of grating. And for such other relief as the circumstances of the parties may require.

E. R. WALKER, C.

Respectfully advised:

John E. Foster,

V. C.

A true copy.

THOMAS BARBER,

Clerk.

Order.

IN CHANCERY OF NEW JERSEY.

Between IRVING IRON WORKS, Complainant, and KERLOW STEEL FLOORING CO., *et al.*, Defendants.	On Bill, etc.

The defendants in this cause having given notice of appeal from the final decree made herein on the 16th day of April, 1924, and having moved for an order staying execution upon said final decree, pending the determination of said appeal, and counsel having been heard, and making no objection to the jurisdiction of this Court, and the Court being of opinion that the operation of said final decree should be stayed in the respects hereinafter set forth,

It is accordingly, on this 7th day of May, 1924, on motion of William Huck, Jr., solicitor of the defendants, ordered, that until the further order of this Court, or of the Court of Errors and Appeals, the operation and effect of so much of said final decree as enjoins and restrains the defendants from employing or continuing to employ in their service, either directly or indirectly, any agent or employee, other than defendants Bunker and Lown, who left the employ of the complainant and entered into the employ of the defendant Kerlow Steel Flooring Company, be stayed.

And it is further ordered, that until the further order of this Court, or the Court of Errors and Appeals, so much of said decree as directs the defendants to render to the complainant, full and complete reports as to the amount of grating sold by them after the date of said decree, to whom sold and at what prices, the expenses incident to the manufacture and sale thereof, and the profits realized therefrom, be also stayed.

And it is further ordered, adjudged and decreed, that this order is made upon the express condition that the defendant Kerlow Steel Flooring Company do within seven days from the date hereof, file with the chancellor, a bond in the sum of Twenty thousand dollars ($20,000), conditioned to pay the counsel fee and taxed costs allowed under the said final decree in the event that such allowance shall be affirmed by the Court of Errors and Appeals upon said appeal, and further conditioned to pay to the complainant, all profits made by said defendants, or any of them, after the date of said decree, from the manufacture and sale of the so-called Type M form of grating, as and when the payment of such profits may be directed by this Court, such bond to be with good and sufficient surety and approved by any Special Master of this Court upon notice to the solicitors of the complainant.

And it is further ordered, that in the event of the failure of the said defendant to file said bond as hereinabove set forth, that the stay contained in this order shall cease to have any further force or effect.

And it is further ordered, that in the event of the failure of the defendants to bring on said appeal for argument at the May term, 1924, of the Court of Errors and Appeals, that the complainant may move be-

fore this Court, upon three days' notice, to vacate the stay herein contained.

And it is further ordered, that the complainant may, if it deems necessary, apply to this Court upon three days' notice to the solicitor of the defendants, for an order vacating the stay contained herein if proper grounds exist for such vacation.

E. R. WALKER,
C.

Respectfully advised:
John E. Foster,
V. C.

Petition on Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS,

IN THE LAST RESORT IN ALL CAUSES.

IRVING IRON WORKS,
Complainant-Appellee,

vs.

KERLOW STEEL FLOORING COMPANY, *et al.*,
Defendants-Appellants.

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

The petition of Kerlow Steel Flooring Company, appellant in the above-entitled cause, respectively shows that:

1. Petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date April 16, 1924, in a certain cause in said Court of Chancery wherein the said Irving Iron Works was complainant and the said Kerlow Steel Flooring Company, *et al.*, were defendants, in this respect, to wit, that the said decree adjudges:

1. That the defendants have conspired through illegal and improper means to injure the complainant and its business.

2. That the defendants by the use of confidential information engaged in a course of illegal and unfair competition against the complainant.

3. That the type of grating manufactured by the defendant corporation is the invention and property of the complainant.

4. That the defendants are enjoined from doing business with any customers or prospective customer of the complainant company on the lists of said company November 15th, 1921, unless such business comes to defendants voluntarily from said customers or prospective customers.

5. That enjoins defendants from employing any person formerly in the employ of the complainant.

6. That enjoins defendants from the further manufacture or sale of the type of grating now manufactured by them.

7. That enjoins defendants to keep full and complete records of all profits made by them to the end that they may account to the complainant for the same.

8. That imposes in lieu of the injunction against the manufacture a bond in the sum of $20,000 conditioned for the keeping of such records and the payment of costs.

9. That enjoins defendants to account to complainants for all profits made by defendants or any of them prior to the date of the said decree by the use of the said grating.

10. That enjoins defendants to account for all profits made by them or any of them upon work done by the defendants for any former customer or prospective customer of the complainant as of November 15th, 1921.

11. That decrees that defendant do pay to the complainant costs of suit to be taxed including expenses for transcript of testimony and a counsel fee.

Petitioner appeals from the said decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous in that as to paragraphs 1 to 6 above mentioned the findings are against the weight of the evidence; as to paragraph 3 the Court was without jurisdiction, the issue being the validity and originality of a patent which issue is pending in the Patent Office of the United States of America; as to paragraphs 4 and 5, the decree is beyond the jurisdiction of the Court, no contractual relations being shown to exist between the complainant and said customers and prospective customers, subsequent to November 15, 1921; as to paragraph 6 above mentioned the decree is beyond the jurisdiction of the Court, it not being shown that the employees therein mentioned were under indeterminate contracts with the complainant; as to paragraphs 7 to 11 above set forth, that they are based upon the erroneous findings above complained of in paragraphs 1, 2 and 3.

Petitioner therefore prays that the said decree 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.

Answer to Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

IRVING IRON WORKS,
Complainant-Respondent,

vs.

KERLOW STEEL FLOORING COMPANY, *et al.*,
Defendants-Appellants.

The answer of the above-named Respondent to the petition of appeal of the above-named Appellants.

This Respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless says and admits that a decree was on the 16th day of April, 1924, last past, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated, that as to the substance and form thereof this Respondent prays to refer thereto when the same shall be produced, and this Respondent is advised and believes that the said decree is agreeable to equity and it prays that the same may be affirmed with costs—to be adjudged to this Respondent.

HAINES & CHANALIS,
Solicitors of Complainant-Respondent.
ARTHUR F. EGNER,
Of Counsel.

94 MAY.T.1924

The Evening Post Job Printing Office, Inc., 154 Fulton St., New York, N. Y.

New Jersey Court of Errors and Appeals.

Between

IRVING IRON WORKS,
Complainant-Respondent,

and

KERLOW STEEL FLOORING COMPANY,
et al.,
Defendants-Appellants.

On Appeal
from Chancery.

BRIEF FOR COMPLAINANT-RESPONDENT.

This cause comes up upon an appeal from a decree of the Cancellor advised by Vice-Chancellor Foster.

The issue was almost entirely one of fact and most voluminous testimony was taken before the Vice-Chancellor. After the submission of thorough briefs by counsel for both sides, and full consideration, the learned Vice-Chancellor filed his conclusions (p. 1248), in which he found that practically every allegation of fact made by the complainant in its bill of complaint, had been established, and that the complainant was therefore entitled to the full relief which it sought.

The Vice-Chancellor's own summary of the proofs is (p. 1255):

> "The facts recited present but a brief summary of the proofs contained in a voluminous record of about 1,500 pages, and a large mass of exhibits, but they are sufficient to establish complainant's charge that defendants con-

spired to ruin its business and to destroy its reputation, and that in furtherance of this conspiracy defendants induced many of complainant's agents and employees to desert complainant and to enter into the employ of the defendant company and to use all the information, confidential and otherwise, of complainant's business, which they had obtained as employees of complainant, in injuring complainant and its business and in promoting the interests of the defendants. The proofs further show that some of the defendants unlawfully removed from complainant's premises lists of customers and prospective customers, blueprints and other data belonging to complainant and made use of the same to take customers and business from complainant and to obtain such business for the defendant company. And these proofs further show that defendant company is using and manufacturing as its own, under color of a patent, the Type M form of grating, which had been designed by Mr. Price, complainant's general manager, nearly three years before the defendant Lown claims to have invented it, and the steel dies for which had been made and were in complainant's shop where Lown could see them, for over three years before Lown, without the knowledge of complainant, applied for and obtained for defendant company a patent on this design."

The Vice-Chancellor's conclusions, and all of them, are so amply supported by the evidence that counsel for the appellants have, in their brief before this court, refrained from attacking them, and have based their argument entirely upon respects in which it is alleged the decree below granted injunctive relief beyond the power of the court.

In view of this attitude of appellants' counsel, therefore, it is not necessary to burden the court with a detailed discussion of the evidence supporting the Vice-Chancellor's conclusions. Suffice it to say that the evidence disclosed, as the opinion below indicates, a most unjustifiable and unlawful con-

spiracy on the part of the defendants to ruin the complainant's business and by a deliberate and ingenious course of unfair competition to take unto themselves the fruit of many years of labor and expense devoted by the complainant to the development of its business.

Appellants' effort to obtain a modification of the decree below is directed to those portions of the decree (p. 1257) which restrain the defendants from the further manufacture or sale of the so-called Type M form of grating, unless under conditions imposed by the decree, and further restrain the defendants from soliciting business from any customer or prospective customer on the lists of the complainant as of November 15, 1921, the date as of which most of the agents who had been enticed away from the complainant left its employ.

In endeavoring to accentuate the importance of the issue as far as said Type M form of grating is concerned, counsel, forgetting the pleadings entirely, say (p. 4 of their brief) that:

> "The controversy turns upon the right of defendants to manufacture and sell a grating floor known in the case as Type 'M', for which defendant Lown applied for a patent in February, 1921, which was granted in May, 1922."

The court below, in restraining the defendants from the further manufacture or sale of the Type M form of grating, was within the jurisdiction of our courts and was not undertaking to determine any question arising under the Patent Laws of the United States.

In attempting to attack the decree below in so far as it affects the Type M form of grating, counsel, in the first place, seek to insinuate by their quotation from the record on page 6 of their brief, that the

court below in some way prevented them from introducing their full proof, and, in the second place, has asumed to try an issue arising under the patent laws of the United States.

It is very clear that the learned Vice-Chancellor did not mislead counsel, and it is equally clear that no questions arising under the patent laws of the United States were involved in the case nor decided by the court. The bill of complaint in the case at bar was filed before the defendant Lown received his alleged patent (and here it is important to observe that there was no proof that such patent purported to cover the complainant's Type M grating) from the United States patent office, and at a time when the complainant, as the bill discloses, was unaware even that such patent had been applied for. The patent was granted pending the determination of this cause in the court below and, incidentally, upon the hearings before the Vice-Chancellor reference was made to the interference proceedings pending in the United States Patent Office, but any issue as to the patent was neither raised by the pleadings nor decided by the Vice-Chancellor. The bill of complaint (p. 1) was based upon a series of allegations of unlawful acts on the part of the defendants, indicating a conspiracy to wreck the complainant's business and to take that business for the defendants by a course of unlawful acts and by unfair competition, involving the enticement away of the principal agents of the complainant, the theft of its lists of customers and prospects, and other confidential information, the theft and use of a type of grating (the so-called Type M) which was the property of the complainant, and other unlawful acts. The case presented was one of which the Court of Chancery of this state had undoubted jurisdiction upon the grounds recognized by this court in *Vulcan Detinning Company* vs. *American Can Company, 72 N. J. Equity, 387,* and similar cases.

The allegation with respect to the Type M form of grating was but one of the circumstances making up the proof of the whole case. As far as it relates to the type of grating, the allegation of the complaint is found in paragraph 23 (p. 21) as follows:

> "23. That to effectuate the said conspiracy, scheme or plan and as a part thereof, the defendants have appropriated and adopted a design for ventilating steel flooring which was originated by your orator during the year 1919 and known by the defendants to have been so originated, and which has been and now is exclusively the property of your orator; that there is no substantial advantage in the said design as compared with the designs regularly manufactured and sold by your orator, although the said design does possess a theoretical or talking advantage in that its purpose was to eliminate the acute angles where bar meets bar and thus to prevent in a greater degree the accumulation of dirt at such angles, but in actual manufacture this advantage is only partially obtained and is practically negligible; that at the time the said design was originated by your orator, your orator made dies for the manufacture of said flooring in the said design and made a sample of the said flooring and has carefully preserved both such dies and such sample but has never manufactured or sold or offered for sale any of said flooring in the said design; that as your orator is informed and believes and therefore states, the defendants have represented to your orator's sales representatives and other employees that the said design is the creation and property of the defendants and that it possesses distinct advantages over the designs of said flooring regularly manufactured and sold by your orator and that by reason thereof your orator would be at a great disadvantage in competing with the defendants."

Not only did the bill of complaint make no reference to the patent or rights under the patent laws,

but the answer as well omitted any such reference. Answering paragraph 23 the answer says (p. 31):

> "8. Paragraph 23 is denied except that defendants admit that they have adopted, manufactured and sold a steel flooring of a design far superior to that of complainants, that they have represented it as their creation and property and said defendants allege that said representations so made by them are true."

Again there is no reference to a patent (in fact the patent had not yet been granted) and the issue simply was under these pleadings, whether or not the type of grating which defendants were using and claiming to own, had been designed by the complainant or its employees, and was its property, so that the court should, on general equitable principles, restrain the defendants from the use thereof. This was the issue and this was the issue which the Vice-Chancellor clearly indicated he expected to decide and as to which he invited a full defence from the defendants. Thus, the Vice-Chancellor said (p. 535) as to the issues before him as far as the grating was concerned:

> "Assuming it to be the property of the Irving (Company), was it stolen by Mr. Bunker or Mr. Lown, or those associated with them, and appropriated improperly by the Kerlow Company. * * * The point I will pass on, and only this, is, did they, in furtherance of the conspiracy, or one formed by them to take over this business, abstract from the files or papers of the Irving Company, plans and designs, or sketches and letters, and other acts in furtherance of the conspiracy. I will not determine who originated that idea. If it was the property of Mr. Irving, it was in his possession and they took it away with them, it is a very significant circumstance that probably the rest of the things that they are charged with doing is true. If on the other hand, you come in and show me, as you say, in your defense, that this man didn't design this at all, Mr.

> Bunker designed it, or one of these persons; it never was in the possession of Irving and couldn't have been abstracted, it is a question then whether I will believe, not merely that he didn't design it, but, in addition, that they didn't abstract it from the Irving files. I will not try the patent case; I am not called upon to. You may bring proof, when you reach this case, that this witness never had anything to do with it."

After this language counsel continued with his cross-examination and did in fact produce what evidence he had, through Lown, the supposed inventor, and others appearing, upon the ownership of this type of grating. As the Vice-Chancellor correctly said, he was not trying the patent issue, but he was determining whether or not this type of grating had been the property of the complainant and was stolen by the defendants, and upon his conclusion that it was the property of the complainant he was justified in restraining the further use of it. This on general equitable grounds, in no manner involving any patent jurisdiction.

Counsel quite misconceive the decisions with respect to the rights of state courts to consider and decide controversies, even though they may involve questions affecting patents.

The case at bar is quite within the principle of *Pratt* vs. *Paris Gas, Light and Coke Company, 168 U. S. 255.* As Mr. Justice Brown there said:

> "The action under consideration is not one arising under the patent right laws of the United States in any proper sense of the term. To constitute such a cause the plaintiff must set up some right, title or interest under the patent laws, or at least make it appear that some right or privilege will be defeated by one construction, or sustained by the opposite construction of these laws. * * * Section 711 does not deprive the state courts of the power

> to determine *questions* arising under the patent laws, but only of assuming jurisdiction of *cases* arising under those laws."

Mr. Justice Brown referred in his opinion to many cases where such jurisdiction had been exercised without question by the state courts. A familiar example is that of a suit to enforce or set aside a contract relating to a patent. (See *Excelsior Wooden Pipe Company* vs. *Pacific Bridge Co., 185 U. S. 282.*)

In *Henry* vs. *Dick Co., 224 U. S. at page 16,* the court said:

> "The test of jurisdiction is this—does the complainant 'set up some right, title or interest under the patent laws of the United States, or make it appear that some right or privilege will be defeated by one construction or sustained by another of those laws?' "

Upon this test, the propriety of the inquiry below is manifest. No right, title or interest under the patent laws was claimed by either the complainant or the defendants in their pleadings, and any such suggestion is entirely without the issues.

It is true that the learned Vice-Chancellor in lieu of the final restraint which he would have been justified in granting under his conclusions, did provide that the defendants, in lieu of refraining from the further manufacture and sale of this type of grating, might continue to use the same until the further order of the court, upon condition that they kept and rendered proper reports as to the details of the profits made by them from such manufacture and sale, and the court furthermore reserved to either party the right to apply for a modification of the decree in the event of a decision in the interference proceedings with respect to the patent claimed by the defendants. Surely the defendants were not harmed by this decree, which reserves unto them the right of a further appeal to the Court of

Chancery in the unlikely event of their prevailing in the interference proceedings and reserves unto them the right to again argue before the Vice-Chancellor, in such event the question whether any decree ought to be made with respect to this type of grating. We submit that this decree went even further for the defendants than they had any right to ask. Obviously they are not prejudiced thereby, in view of the court's decision on the facts which they do not even undertake to question in their brief.

A very recent exercise by our courts of jurisdiction of a question involving a patent, although not arising under the patent laws, is found in the decree advised by Vice-Chancellor Bentley in *Migel, Inc.,* vs. *Backhoven*, which was argued on appeal before this court, No. 12 of the May Term, 1924. In that case the decree below (and the counsel seem to have assumed the question of jurisdiction before this court) enforced the specific performance of a contract to assign a patent and, furthermore, enjoined the owner of the patent from manufacturing thereunder or licensing any other person or corporation to make any use of the patent. The jurisdiction there, as here, is clear, being based on a general principle of equity in no way arising under the patent laws of the United States.

That the court's conclusion with respect to this type of grating is amply supported by the evidence, is clear from a reference to the testimony of the following witnesses:

Mr. Lumb, one of the foremen employed by the Irving Company, testified that he entered its employ in October, 1918 (p. 386), and that about three weeks after he came there, he saw the dies for this type of grating (variously called in the testimony, Type K or Type M) and that he saw them on several occasions thereafter.

Arthur C. Davis, now an engineer of the New York and New Jersey Tunnel Commission, who was at one time employed by the Irving Company, leaving it in May of 1918 (p. 456), testified to having seen Type K or Type M manufactured at the Irving plant while he was still there, and that the steel dies for this type of grating were then manufactured. This was some time in the fall of 1917 (pp. 456 and 457). He was the one who gave this type of grating the temporary designation of Type K, which was later changed to Type M, when it was ascertained that there was another type of grating in use by the complainant, also designated Type K.

Mr. Price, the general manager of the complainant, testified as to the manufacture of the Type M style of grating in the year 1917 (p. 482). He originated the design (p. 483), and at that time had several discussions with Mr. Bunker, one of the leading defendants, about it. The defendant Lown, who claims to have been the inventor, did not come with the Irving Company until two years after this grating had been designed (p. 484).

As to the reasons why this type of grating was not used commercially, Mr. Price said (p. 553):

> "The reason we hadn't used it was because we hadn't reached the point where we felt that it was time to put it out, and then the war came on and we laid it aside entirely because we were engaged in other matters entirely different, and that really carried us through to the year 1920, when there was no time to put anything out like that. This type as we designed it didn't fill the bill that I originally got it up for. It turned out to be valuable to us from another point of view, and that was the point of view of its architectural ornateness—its beauty, and we hadn't gotten to a place in the development of our business where we were ready to launch a campaign on ornateness; we were dealing with engineers at that time, but we felt that there was a chance that the time would come when we would be."

Even Mr. Tarof, the chief engineer of the defendant company, and a witness obviously interested in its behalf, had to admit on cross-examination, the circumstances of finding the dies for this type of grating in the shop of the complainant company, under circumstances testified to by the complainant's witnesses (p. 802).

Clearly the preponderance of the evidence on this issue, as on every other, was with the complainant.

The injunctive features of the decree below are not too broad.

Complainant alleged, and the court found, that the defendants had stolen confidential lists of customers and prospective customers of the complainant, which lists had been gathered by the complainant during many years and upon great expenditures of money. The complainant charged, and the court found, that the defendants had enticed away from the complainant, some of its important employees, and important agents, representing the territory from which 75% of the complainant's business came. Complainant charged, and the court found, that by reason of these unlawful acts, important contracts, which would otherwise have gone to the complainant, were lost to it and taken by the defendants. These facts being found, undoubtedly the court was justified in enjoining the defendants from soliciting business from any customer or prospective customer on these confidential lists of the complainant as of November 15, 1921, and from employing, or continuing to employ, any of those agents or employees of the complainant, and from enticing or endeavoring to entice away any present employee of the complainant. Many cases might be referred to. The decree below was quite within the principles recognized in *Vulcan Detinning Company* vs. *American Can Com-*

pany, supra. In *Witkof & Holmes Co.* vs. *Boyce, 112 N. Y. Supp. 874, affirmed 131 App. Div. 922,* the defendant was enjoined from calling upon, canvassing, soliciting, accepting or filling orders for goods similar in kind to those carried by the complainant, from the persons whose names and addresses were contained in the schedule attached to the complaint, being customers of the complainant upon whom the defendant had been accustomed to call to obtain orders. The court said:

> "The names of the customers of a business concern whose trade and patronage have been secured by years of business effort and advertising, and the expenditure of time and money, constituting a part of the good will of a business which enterprise and foresight have built up, should be deemed just as sacred and entitled to the same protection as a secret of compounding some article of manufacture and commerce."

This court said in *Vulcan Detinning Company* vs. *American Can Company, supra:*

> "The conclusion to which the foregoing considerations lead is that 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 interests of the complainant, the very process with which its trustee was entrusted for its benefit."

Very persuasive is the language of this court in *Stone* vs. *Grasselli Chemical Co., 65 N. J. Equity, 756:*

> "These facts leave no doubt that the Grasselli Chemical Company acted in fraud of Stone's rights in the effort to learn his secret by inducing his employee to divulge the same. Even though they did not know of the contract, they must have known of the confidential character

of Stone's business and the confidential character of the relations between him and his employees. The defendant company is a party to Goss' fraudulent disclosure of the secret and the complainants were entitled to an injunction restraining the Grasselli Chemical Company from making any use of the information thus obtained from Goss. The injunction should not be refused, because the process was such that it would probably have been discovered by independent experiments in the manipulation of the ingredients of which the products of both parties were alike composed. The Grasselli Chemical Company, by its own conduct, has put itself in such a position that it may even lose the advantage of future independent experiments. It would be quite impossible hereafter to decide how much of the improvement in the product of the Grasselli Chemical Company would be attributable to its own independent efforts and how much to the knowledge of Stone's process fraudulently acquired by it. Every doubt must be resolved against the parties to a fraudulent act. If the defendant thereby suffers, it suffers only by reason of having been a party to Goss' fraudulent disclosure of the secret. The legal principle governing the case is, in effect, the same that was applied by this court to a case of fraudulent intermixture of goods. *Jewett* vs. *Dringer, 3 Stew. Eq. 291.*"

In *Helmore* vs. *Smith, 35 Chancery Division, 449,* it is said:

> "The servant may resort to fair competition, but if entrusted with important information, viz., the names of customers of the firm reduced to a list, * * * it is implied in the contract between the master and servant, that such confidential information shall not be used to master's disadvantage."

We very respectfully submit that the defendants, who practically stand confessed before this court as guilty of the charges laid to their account by the

learned Vice-Chancellor, are not in a position to complain of the injunctive relief contained in the decree below, which is no broader or more drastic than necessary to protect the complainant as far as may still be possible, from the damaging effects of the defendants' unlawful acts.

As far as the accounting for profits is concerned, counsel misconceive the law when they say that the correct rule is the award of damages rather than profits. As has been held time and again, damages may not be awarded by a court of equity. The court may only compel the wrongdoer to account to the injured party for profits made by the wrongdoer out of his wrongful actions. This is shown by the decree finally affirmed in *Vulcan Detinning Company* vs. *American Can Company, supra.*

It is respectfully submitted that the decree below is in all respects just and equitable and should be affirmed.

STEPHEN M. BELL,
MICHAEL N. CHANALIS,
ARTHUR F. EGNER,
Of counsel with Complainant-Respondent.

94 MAY.T.1924

New Jersey Court of Errors and Appeals

IN THE LAST RESORT IN ALL CAUSES.

IRVING IRON WORKS, Complainant-Appellee, and KERLOW STEEL FLOORING COMPANY, *et al.*, Defendants-Appellants.	ON APPEAL FROM COURT OF CHANCERY.

BRIEF FOR DEFENDANTS-APPELLANTS.

This is an appeal from a decree of the Court of Chancery advised by Vice Chancellor Foster in which the defendants are enjoined from certain actions.

The bill charges that in the year 1920 the defendants Bunker and Lown (page 14) entered into a conspiracy to secure for their own benefit the fruits of a business created and developed by the complainant, in the manufacture and sale of metal grating used for floor purposes. One expected result of this scheme was that the complainant would be deprived of its business and its control would devolve upon these defendants. One step in the alleged conspiracy was the organization of the corporation defendant; another was the enticing of complainant's sales representatives in important territories; another was the use of lists of customers and prospective customers of complainant, pilfered from the files of

complainant; another (of the main project about which the whole case centres) is the manufacture and sale of a type of grating used for flooring which complainant claims was designed by it (page 21) and knowledge of which came to the individual defendants during their employment by the complainant.

The learned Vice Chancellor found on the testimony that the individual defendants had conspired to ruin the business of complainant, destroy its reputation and that in furtherance of the conspiracy they induced many of complainant's agents and employees to desert and enter the employ of defendant company, using all the information, confidential and otherwise, relating to complainant's business which they had obtained as employees.

He further found that some of the defendants unlawfully removed from complainant's premises lists of customers and prospective customers, working plans and other data and used the same to take business from complainant to defendant company.

He further found that the defendant company is using and manufacturing as its own "under color of a patent," a form of grating, which had been designed by complainant's general manager three years before the defendant Lown claims to have invented it.

The decree in its preamble formally finds the facts and then enjoins that the defendants and their agents and employees be enjoined and restrained from:

1. Disclosing, publishing or making use of any list or confidential information obtained by them while in the employ of the complainant.

2. Soliciting directly or indirectly business from

any customer or prospective customer on the lists or records of the compainant company on November 15th, 1921.

3. From doing business with any customer or prospective customer or complainant's list November 15th, 1921, unless such business comes to defendant as a result of a request for bids made by such customers or prospective customers without previous solicitation on the part of defendant.

4. From employing or continuing to employ in their service either directly or indirectly any agent or employee of complainant other than the defendant Bunker and Lown, and from enticing and endeavoring to entice any present employee of complainant to leave its employ.

5. From the further manufacture and sale of the type of grating manufactured by defendants, except that until the further order of the Court they may continue manufacturing upon condition that they keep full and complete records of all profits made by them to the end that they may account to the complainant as and when the Court may direct.

6. That the defendants render to the complainant full and complete reports as to the amount of grating so sold and the profits thereof at the expiration of each two months from the date of the decree.

7. That defendants account for all profits made by them from November 15th, 1921, to the date of the decree.

8. From making any reports regarding the complainant or its product or business tending to depreciate the same.

On May 7, 1924, the injunction as to employees, subsequent acts, and manufactures was stayed upon defendant giving a bond.

The facts adduced at the trial show that defendant Lown was employed by complainant in September, 1919 (pages 58-556-647) and left in May or June, 1921 (557). During his employment he acted as general sales manager for the company.

Defendant Bunker entered the employ of complainant in 1912 (pages 119-1061) and left in October, 1921 (pages 1074-1105). He was employed at first as a draftsman and was later advanced to the position of production manager at the plant of complainant in Long Island City.

The controversy turns upon the right of defendants to manufacture and sell a grating floor known in the case as type "M" for which defendant Lown applied for a patent in February, 1921, which was granted in May, 1922 (page 571).

The defendant corporation was organized in March, 1921, with dummy stockholders (pages 566-1145-1193), after Lown had left the employ of complainant and while Bunker was still in its employ. This organization appears as the result of a conference in December, 1920, between the two (pages 566-652-1071-1139).

The defendant corporation began manufacturing in November, 1921 (660-1157) at which time Lown began the compilation, finished in 1922, of a list of prospective customers. At about this time complainant received the resignation of several of its sales agents and representatives in important centres of the country, due largely to visits made upon them by Lown.

Lown claims to have designed type "M" in July, 1920 (page 568). Complainant claims to

have made use of the design in 1917 and 1919 (pages 94, 101, 159-386-456-463-482-112-1196-1198).

It admits, however, that it never manufactured any for sale (pages 387-483-765-795-802-1126-1128); it did not advertise the type (page 883); did not apply for a patent until 1922, after the manufacture had begun by the corporate defendant (535) and made no sales thereof until after that period (page 124-125-165-537). The reason given is that complainant had no confidence in it and considered the standard type sold by it to be so far superior as to afford no comparison (pages 171-553). In the meantime the design or die or sample was kept in a drawer tool crib in the factory of the complainant (101, etc., *supra*).

Defendant Bunker says he did not know of this type until 1921 when it was disclosed to him by Lown, notwithstanding he had been in complainant's employ for ten years.

Complainant's superintendent Price (page 532) claims to have designed type "M" but curiously enough it appears to be the only type he did design during his long years of employment with the complainant. This type is the only type manufactured by the defendant corporation.

At the time Lown left complainant, it had in its employ 26 sales agents and salesmen (page 588) and at the time he left the corporate defendant in February, 1923 (pages 556-854) it had in its employ 84 sales agents (588). Six of these had been in the employ of complainant.

Our main concern on this appeal is with that portion of the decree which finds as a fact that the type "M" grating was designed for and is the property of the complainant. Upon that finding the corporate defendant is enjoined from

manufacturing or selling that type, notwithstanding it owns a patent granted therefor to it prior to the application by complainant's Superintendent in 1922 for a similar patent. The purpose and result of the Price application was the institution of interference proceedings in the United States Patent Office which are still pending and undecided. The conclusions of the learned Vice Chancellor and the decree deliberately avoids the use of language which could be construed as a decision upon the confiicting patents and places the decision upon the ground that the design was originated by complainant and was stolen from it by the defendant Lown. The learned Vice Chancellor recognizes the fact that he could not try the patent case (page 535) and while the complainant's witness, Price, was under cross-examination the following colloquy took place (pages 535-536):

> The Court: I don't want to try your patent case here. I am going to stop it; we are confronted in the statement in this case by the witness that he is the designer. That alleged type of the design must have considerable significance.
>
> Assuming it to be the property of the Irving, was it stolen by Mr. Bunker or Mr. Lown, or those associated with them, and appropriated improperly by the Kerlow Company?
>
> Mr. Kraetzer: Doesn't that come down to the essence of the story?
>
> The Court: I will not pass on the question whether this gentleman did or did not design it. The point I will pass on, and only this, is did they, in furtherance of the conspiracy, or one formed by them to take over this business, abstract from the files or papers of the Irving Company, plans and designs, or sketches and letters, and other acts in furtherance of the conspiracy. I will not de-

> termine who originated that idea. If it was the property of Mr. Irving, it was in his possession and they took it away with them, it is a very significant circumstance that probably the rest of the things that they are charged with doing is true. If, on the other hand, you come in and show me, as you say, in your defense, that this man didn't design this at all, Mr. Bunker designed it, or one of these persons; it never was in the possession of Irving and could not have been abstracted, it is a question then whether I will believe, not merely that he didn't design it, but, in addition, that they didn't abstract it from the Irving files.
>
> I will not try the patent case: I am not called upon to. You may bring proof, when you reach this case, that this witness never had anything to do with it.

Two objections stand out to this decision. Regardless of the form of the decision, it was in fact a decision between two conflicting claims to the right to use an article which had already been patented by one of the claimants. This is not a case of unfair competition where defendants are charged with selling to the public an imitation of complainant's goods with intent to lead the public to believe they are complainant's product.

The United States Courts have exclusive jurisdiction of suits for infringement of patent whether at law or in Equity. 30 Cyc, 901-991, Parkhurst vs. Kinsman, 6 N. J. E. 600; Oscar Barnett Foundry Company vs. Crow, 80 N. J. E. 112.

The decision of the Commissioner of Patents in the allowance and issuance of a patent creates only a prima facie right and is subject to examination by the Court* * *; but a patent conferred upon an individual is conclusive of its

own validity and a State Court cannot go behind it. 30 Cyc 901.

The issuance of the patent established prima facie patentee's title as the original or first inventor, 30 Cyc. 902, citing cases, note 71.

He must be considered as such even in a subsequent interference proceeding in which prior invention by another is shown, unless there is proof either positive or presumptive that he had knowledge thereof, 30 Cyc. 903, conclusion of note 72.

It was disclosed at the trial that such interference proceedings were pending in the United States Patent Office. The result of the finding of an injunction by the Court in this case, is to deprive the prima facie legal owner of a patent granted by the United States, of the rights which that Federal grant confer upon it. Furthermore, the decision is premature in that it anticipates the decision of the Federal Tribunal in a proceeding exclusively within the Federal Jurisdiction and which in fact is the only form of procedure in which defendants' right may be attacked.

Suppose the defendant should prevail in the present proceeding as of course it has every intention and hope of doing. It would then be in possession of a patent under decree of the Federal Courts and yet by the decree of the Court of Chancery of New Jersey is unable to exercise its rights either under the patent or decree of the said Court. In the meantime awaiting that dcision the defendant is to all intents and purposes put out of business, for as the testimony shows, and the Vice Chancellor found, this is the only type of grating manufactured by the defendant.

We do not overlook the case of Pratt vs. Paris Gaslight & Coke Co., 168 U. S. 255, 42 L. Ed. 458, wherein it was held that:

> "Section 711 Rev. Stat. does not deprive the state courts of the power to determine *questions* arising under the patent laws, but only of assuming jurisdiction of *cases* arising under those laws. There is a clear distinction between a case and a question arising under the patent laws. The former arises when the plaintiff in his opening pleading—be it a bill, complaint or declaration—sets up a right under the patent laws as ground for recovery. Of such the state courts can have no jurisdiction. The latter may appear in the plea or answer or in the testimony. The determination of such question is not beyond the competency of state tribunals."

A number of cases under State jurisdictions are cited showing that State Courts have exercised jurisdiction on disputes, under circumstances above outlined, but this as shown by the cases decided in this State is a power the Courts of New Jersey have never undertaken to exercise. In the last cited case the issue as to the validity of the patent arose collaterally. Complainants were seeking to be protected by their licensor in the exercise of a license granted to them. In the instant case the whole litigation revolves around this particular type of grating and defendants' right to manufacture and sell it.

The decree appealed from is also open to attack because it is too broad. The injunction restraining soliciting of business from any customer or prospective customer on complainant's list November 15, 1921, injures defendant without benefiting complainant. The mere compiling of a list does not presume that the names

on that list are likely to trade with the complainant. The same objection is made to the employment of former attaches of the complainant. This indirectly operates upon those individuals who were not made parties to the suit.

The decree is further open to attack because of its provisions, anticipating the decision in the patent case, requiring the defendant at short notice to turn over to complainant all the information respecting the conduct of its business. We quote "defendants render to the complainant full and complete reports as to the amount of grating so sold, to whom sold and at what prices, the expenses incident to the manufacture and sale thereof, and the profits realized therfrom. Such reports to be rendered at the expiration of every two months after date of decree."

The provisions in the decree for an accounting of past profits arises in anticipation of the decision of the patent office takes away from defendant without the possibility of return profits already made by it. This is distinctly the measure of damages applied to patent cases. The measure of damages in equity would be not what the defendants made by way of profit but what the complainant actually lost. Upon this point complainants' proof is uttery silent.

The decree appealed from should be reversed.

William Huck, Jr.,
Solicitor for Defendants.

Edgar R. Kraetzer,
Treacy & Milton,
of Counsel.