INDEX.

PLEADINGS.

PAGE.

ROYAL INDEMNITY COMPANY.

Notice of Appeal 1
Grounds of Appeal 2-31
(I. Consolidation of Actions) 2
(II. Motion to Direct Verdict) 3
(III. Requests to Charge) 6
(IV. Exceptions to Charge) 15
(Additional ground of Appeal) 31
Complaint 32
Exhibit A 38
Answer 40
Reply 50
Postea and Judgment 52

NEW YORK PLATE GLASS INSURANCE COMPANY.

Notice of Appeal 53
Grounds of Appeal 53
Complaint 54
Exhibit A 60
Answer 78
Reply 88
Postea and Judgment 90

CHICAGO BONDING & INSURANCE COMPANY.

Notice of Appeal 91
Grounds of Appeal 91
Complaint 92
Exhibit A 98
Answer 100
Reply 110
Postea and Judgment 112

PAGE.

OCEAN ACCIDENT & GUARANTEE CORPORATION.
Notice of Appeal 113
Grounds of Appeal 113
Complaint 114
Schedule A 120
Answer 123
Reply 133
Postea and Judgment 135

LLOYDS PLATE GLASS INSURANCE COMPANY.
Notice of Appeal 136
Grounds of Appeal 137
Complaint 140
Exhibit A 147
Amendment of Complaint 162
Answer of Lehigh Valley Railroad Company..... 164
Answer of National Storage Company 168
Reply 169
Postea and Judgment 170

METROPOLITAN CASUALTY INSURANCE CO. OF NEW YORK.
Notice of Appeal 171
Grounds of Appeal 172
Complaint 175
Schedule A 180
Amendment of Complaint 194
Answer of Lehigh Valley Railroad Company..... 196
Answer of National Storage Company..... 199
Reply 200
Postea and Judgment 201

FIDELITY AND CASUALTY COMPANY.
Notice of Appeal 202
Grounds of Appeal 202
Complaint 203
Schedule A 207
Answer 214
Reply 222
Postea and Judgment 223

PAGE.

COMMERCIAL CASUALTY INSURANCE COMPANY.

Notice of Appeal 224
Grounds of Appeal 224
Complaint 225
Schedule A 232
Answer 239
Reply 249
Postea and Judgment 251

CHILDS COMPANY.

Notice of Appeal 252
Grounds of Appeal 252
Complaint 253
Schedule A 258
Amendment of Complaint 259
Answer 261
Reply 270
Postea and Judgment 271

TRUSTEES OF EVANGELICAL LUTHERAN, &C. CHURCH.

Notice of Appeal 272
Grounds of Appeal 273
Original Complaint 274
Amended Complaint 278
Answer of Lehigh Valley Railroad Company 285
Answer of National Storage Company 289
Postea and Judgment 291

ELEAZER E. CLARK, ET ALS.

Notice of Appeal 292
Grounds of Appeal 293
Complaint 300
Schedule A 314
Amendment of Complaint 317
Answer of Lehigh Valley Railroad Company..... 318
Answer of National Storage Company 325
Reply 327
Postea and Judgment 329

PAGE.

IRA W. ALLEN.
Notice of Appeal 332
Grounds of Appeal 333
Complaint 335
Answer of Lehigh Valley Railroad Company..... 347
Answer of National Storage Company..... 354
Reply 355
Postea and Judgment 357

TESTIMONY.

Motion to Consolidate Actions..... 359
Drawing of Jury 362
Objection to Consolidation of Actions 373
Offer of Documentary Evidence 375
Interrogatories and Answers 376

PLAINTIFFS' WITNESSES.

Deposition of Eleazer E. Clark, direct examination 390
cross " 402
re-direct " 408
re-cross " 409
Deposition of Ira W. Allen, direct examination 410
cross " 416
re-direct " 417
re-cross " 418
Deposition of Mark L. Jamieson, direct examination 419
cross " 427
re-direct " 440
re-cross " 441
Discussion Re Objections to Evidence..... 443
Joseph Binder, direct examination..... 447
cross " 449
Frederick Bouchard, direct examination..... 453
cross " 455

		Page.
John J. Hogan,	direct examination.....	467
	cross "	475
	re-direct "	490
	re-cross "	491
Andrew Baker,	direct examination....491,	536
	cross "	538
Mrs. Lottie Towne,	direct examination.....	491
	cross "	495
John Gately,	direct examination.....	497
	cross "	503
Louis Tregger,	direct examination.....	516
	cross "	520
	re-direct "	524
Ben Hanson,	direct examination.....	525
	cross "	529
	re-direct "	535
	re-cross "	535
Chris Casterson,	direct examination.....	542
	cross "	545
Frank A. Campbell,	direct examination.....	548
	cross "	552
	re-direct "	562
	re-cross "	565
Ebenezer W. Closterman,	direct examination.....	568
	cross "	581
Edward Joseph Kane,	direct examination.....	600
	cross "	630
	re-direct "	642
	(recalled) further cross "	706
James J. Kelly,	direct examination.....	645
	cross "	652
	re-direct "	654
Samuel J. Sloan,	direct examination.....	654
	cross "	664

		PAGE.
Dr. Charles F. McKenna,	direct examination.....	669
	cross "	673
	further direct "	698
	further cross "	700
	re-direct "	705
	re-cross "	706
Herbert C. Allen,	direct examination.....	708
Abstract of Testimony of Police Officers.....		712
Frederick Wiedeman,	direct examination.....	903
John H. Mahlenbrock,	direct examination.....	905

DEFENDANT'S WITNESSES.

Albert M. Dickman,	direct examination.....	717
	cross "	739
(recalled)	direct "	955
	cross "	956
	re-direct "	956
	re-cross "	956
Frank Deckenback,	direct examination.....	748
	cross "	753
Martin T. Henley,	direct examination.....	756
	cross "	765
Thomas Walsh (read in evidence),		
	direct examination.....	774
	cross "	784
John F. Walsh,	direct examination.....	789
Charles H. Voorhees,	direct examination.....	795
	cross "	796
Luke J. Eismann,	direct examination.....	798
	cross "	810
	re-cross "	815
Joseph Burns,	direct examination.....	816
	cross "	824
	re-direct "	838
Joseph F. Maxwell,		
(read in evidence),	direct examination.....	839
	cross "	842
	re-direct "	844

		Page.
Michael H. Mulligan,	direct examination.....	845
	cross "	849
Martin Egan		
(read in evidence),	direct examination.....	852
	cross "	855
John M. Julian,	direct examination	855, 876, 927
	cross "	867, 876, 927
	re-direct "	881
	re-cross "	884
Alexander Davidson,	direct examination.....	885
	cross "	892
	re-direct "	896
Walter S. Washington,	direct examination.....	898
	cross "	900
	re-cross "	903
Kenneth Owen		
(read in evidence),	direct examination.....	906
	cross "	909
Harry A. Campbell,	direct examination.....	910
	cross "	916
(recalled)	direct "	937
	cross "	941
	re-direct "	943
Charles P. Beisteile,	direct examination.....	920
	cross "	924
Charles A. Gamble		
(read in evidence),	direct examination.....	929
	cross "	931
	re-direct " 934,	936
	re-cross " 934,	936
Raymond Carinne		
(read in evidence)	direct examination.....	945
George A. Higgins,	direct examination.....	953
	cross "	954
	re-direct "	955

		PAGE.
Hudson Maxim,	direct examination.....	959
	cross "	986
	re-direct "	1000
	re-cross "	1001

Amendment to Complaint of St. Paul's Church..... 1012
Defendant's Motion for Direction of Verdict..... 1014
Motion Denied 1030
Court's Charge to Jury 1031
Plaintiffs' Exceptions to Charge 1054
Defendant's Exceptions to Charge 1056
Defendant's Requests to Charge 1069
(A) Interstate Commerce Duties 1069
(B) General Allegations of Negligence 1072
(C) Emergency Doctrine 1075
(D) Spontaneous Combustion 1076
(E) Jersey City Fire Department..... 1077
(F) Nuisance 1077
(G) Johnson Barge 17 1077
(H) Interest 1079
(I) Additional Requests—Clark Case 1079
(J) Additional Requests—Allen Case 1079
(K) Anticipated Consequences 1080

EXHIBITS.

PLAINTIFFS' EXHIBITS.

		Off'd.	P't'd.
P. 1	Large Map of Black Tom Yard..	375	opp. 1080
P. 1A	Insurance Policies	1007	
	Royal Indemnity Co.		1081
	New York Plate Glass Ins. Co.		1085
	Chicago Bonding Co.		1089
	Ocean Accident Co.		1093
	Lloyds Plate Glass Ins. Co....		1098
	Metropolitan Casualty Co.		1103
	Fidelity and Casualty Co.....		1107
	Commercial Casualty Co.		1112

		Off'd.	P't'd.
P. 2	Interstate Regulations for Transportation of explosives by Freight	376	1116
P. 3	List of Owners of Schooner Walcott	391	1161
P. 4	Charter Party of Schooner Walcott	406	1162
P. 5	List of Personal Effects of Capt. Jamieson	426	1164
P. 6	Affidavit—N. Y. Plate Glass Ins. Co.	443	1166
P. 7	" Lloyds Plate Glass Co.	443	1167
P. 8	" Metropolitan Casualty Co.	443	1169
P. 9	" Chicago Bonding Co.	443	1171
P. 10	" Ocean Accident Co.	443	1172
P. 11	" Royal Indemnity Co.	443	1174
P. 12	" Childs Co.	443	1175
P. 13	" Fidelity & Casualty Co.	443	1177
P. 14	" Commercial Casualty Co.	443	1178

Note: There is apparently a mistake in the record which recites these affidavits are marked P. 6 to P. 15. They should be P. 6 to P. 14.

P. 16 P. 16A	Two Sheets from Statement of Amount of Cargo Unloaded from Schooner Walcott	713	1179
P. 23	Plate 1 Attached to Col. Dunn's Report	419-1030	opp. 1180

DEFENDANT'S EXHIBITS.

D. 1	Answer of Mr. Julian Re Fire-fighting Apparatus	876	1180
D. 2	U. S. Coast and Geodetic Survey.	906	opp. 1196
D. 3	Plan Showing Soundings in the Vicinity of North Pier	910	opp. 1196
D. 3	Unloaded Shrapnel Shell	928	
D. 4	Anchorage Regulations Dated June 15, 1911	916	1196

		Off'd.	P't'd.
D. 4A	Amendment to Regulations, dated May 18, 1914	916	1208
D. 5	Photograph—2 Underwood	938	1209
D. 6	Photograph—4 Underwood	938	1210
D. 7	Photograph—8 Underwood	939	1211
D. 8	Photograph—7 Underwood	940	1212
D. 9	Photograph—1 Underwood	944	1213
D. 10	Photograph—6 Barth	944	1214
D. 11	Photograph—9 Harrison	945	1215
D. 12	Photograph—7 Harrison	945	1216
D. 13	Photograph—3A Harrison	945	1217
D. 14	Photograph—12A Harrison	945	1218
D. 15	Photograph—3 Harrison	945	1219
D. 16	Photograph—12 Harrison	945	1220
D. 17	Photograph—6 Underwood	945	1221
D. 18	Photograph—19 Harrison	945	1222
D. 19	Photograph—2 Harrison	945	1223
D. 20	Photograph—10 Harrison	945	1224
D. 21	Two Charts Showing Minimum Distances for Storage of Explosives	1001 fol. p.	1224
D. 22	Record of Automatic Thermometer.	1012 fol. p.	1224
D. —	Maxim's Diagram of Safety Zones (not marked)	984 fol. p.	1224

NOTICE OF APPEAL.

(Filed July 17, 1919.)

New Jersey Supreme Court

HUDSON COUNTY.

ROYAL INDEMNITY COMPANY, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*Action at Law.* *Notice of Appeal.*

To Messrs. Congleton, Stallman & Hoover, Attorneys for Plaintiff:

TAKE NOTICE, that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in above-stated cause.

COLLINS & CORBIN,
Attorneys for Defendant.

New Jersey State Library

GROUNDS OF APPEAL.

(Royal Indemnity Company.)

(Filed August 25, 1919.)

The appellant states the following grounds of appeal:

I.

(Consolidation of Actions.)

1. The Trial Judge ordered eleven other cases in addition to the above-named case to be consolidated and tried with said case before the same jury, against the objection of the defendant; which ruling was erroneous in so far as it affected the appellant for the following reasons:

(a) There is no law of the State of New Jersey to justify the order of the Trial Judge requiring the appellant to try in one proceeding by consolidation or otherwise, more than one action before the same jury.

(b) Said order violates the rights of the appellant in that it deprives the appellant of property without due process of law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

(c) Said order is not within the judicial power of the Supreme Court of the State of New Jersey as limited by the Constitution of said State, and especially Section 1 of Article X, there being no power at common law or under said Constitution to try the issues in two or more actions at the same time before the same jury.

(d) Even if such power exists, it should not be exercised in the present case, in that the issue in said case and the issues in the other cases with which said case was ordered to be consolidated are

dissimilar, and such method of procedure is prejudicial to the fundamental right of the appellant to have distinct issues in separate actions separately tried.

(e) Said order prevents the proper adjudication, the adequate protection and the due enforcement of the rights of the appellant; and the trial of dissimilar issues between different parties at the same time, before the same jury is contrary to the course of the common law and without justification under the laws of the State of New Jersey.

(f) Said order violates the rights of the appellant to trial by jury within the meaning of the provisions of paragraph 7 of Article I of the Constitution of the State of New Jersey.

2. Evidence was erroneously admitted in the other cases which were ordered to be consolidated and tried with the above-named case which was not relevant to the issues in said case.

II.

(Motion to Direct Verdict.)

Defendant's motion for a direction of verdict should have been granted for one or more of the following reasons:

3. The plaintiff has failed to prove facts sufficient to constitute a cause of action.

4. Congress having taken jurisdiction of the subject matter and having enacted statutes thereon to provide for the safe transportation of explosives in interstate commerce on land, and the Interstate Commerce Commission, in accordance with the directions of said statutes having made rules and regulations governing the subject matter, and the explosives in question in this suit

having been in the course of transportation on land in interstate commerce, the plaintiff can only succeed if it has proved a violation of said statutes or the rules and regulations of the Interstate Commerce Commission above referred to. This the plaintiff has failed to do.

5. The plaintiff has failed to prove any negligence on the part of the defendant in respect of the starting of the fire, and the facts in this case do not permit the Court to allow the case to go to the jury upon the doctrine of *res ipsa loquitur.*

6. Assuming that the Court holds that there may have been some other duty to which the defendant was subject which is not covered by the statutes of the U. S. and the rules and regulations of the I. C. C. above referred to, there is no proof of any violations of any such other duty, if any existed.

7. Since there is no proof from which any inference could be drawn of any negligence on the part of the defendant in respect of the starting of the fire, and since the facts do not permit the Court to allow the case to go to the jury on the doctrine of *res ipsa loquitur,* if it is sought to hold the defendant legally responsible because of the conduct of its employees after the fire started then plaintiff may not succeed in this case on this theory because the evidence shows that the fire, when discovered, was in a car, and that such car was either a car containing ammunition or explosives, or was in the immediate vicinity of cars containing ammunition and explosives; and, therefore, the only inference which a jury could be permitted to draw is that anyone going near such fire would be in great danger; and therefore the defendant cannot be held responsible even if its employees under these circumstances of emergency made any error of judgment in their conduct.

8. There is no proof that the omission of any duty set forth in the complaint with which the defendant was

legally chargeable was the proximate cause of the injury to the plaintiff.

9. There is no proof that the performance of any duty set forth in the complaint with which the defendant was legally chargeable would have prevented the injury of which the plaintiff complains.

10. The defendant may not be held legally liable upon the assumption that the failure of its employees to procure water and put out the fire was the proximate cause of the injury to the plaintiff, because the proofs show that the Jersey City Fire Department, although promptly notified, came to the scene of the fire without means of pumping water, and any failure in this respect was the failure of the Jersey City Fire Department and of its duties as a public agency and is not attributable to the defendant.

11. Since there is no proof that the fire was started by human agency directly applied at the point of origin of the fire, there is no proper legal inference that the presence of any number of watchmen would have prevented the outbreak of the fire, and there is therefore, no proper ground to attribute negligence to the defendant in respect of the number of watchmen furnished by it; and if the plaintiff seeks to hold the defendant responsible with respect to the starting of the fire as the proximate cause of the injury complained of, it may not legally do so under the proofs.

12. Since there is no testimony that the fire was started by human agency at the place where it commenced, and there is testimony that one of the ingredients in the material composing the shells was capable of spontaneous combustion, the jury may not legally infer that the fire was started by human agency applied at the place of the commencement of the fire.

13. The plaintiff may not have a verdict against the defendant upon the assumption that the proximate cause of the injury complained of was the negligence of the

defendant in respect of the starting of the fire, because the evidence in this case is consistent with the non-existence of any negligence in that respect.

14. The plaintiff may not have a verdict against the defendant upon the assumption that the proximate cause of the injury complained of was the negligence of the defendant in respect of the spreading or non-extinguishment of the fire, because the evidence in this case is consistent with the non-existence of any negligence in that respect.

15. There is no evidence in this case from which the jury can legally infer that the defendant was bound to anticipate or expect that any negligence on its part in respect of the explosives in its possession or custody would affect the property of the plaintiff, and therefore the defendant cannot be held legally liable in this action.

III.

(Requests to Charge.)

The Trial Judge refused to charge one or more of the following requests submitted in behalf of the defendant. (The numbers in brackets correspond to the number of the requests, as submitted.)

16. (2)

The sole duty of the defendant to the plaintiff in respect to the explosives received by it for interstate transportation by land and still in the course thereof was to comply with the statutes of the United States and the regulations of the Interstate Commerce Commission respecting the same; and the plaintiff is not entitled to recover unless the jury shall find that the defendant failed to so comply and that such failure was the proximate cause of the injury complained of by the plaintiff.

17. (4)

The "explosive" placard is not a regulation of the Interstate Commerce Commission.

18. (5)

The proper construction to be placed upon the placard required to be put upon cars containing explosives by Paragraph 1666 of the Interstate Commerce Regulations, is that the words, "Keep Fire Away" mean do not bring fire near. They do not constitute an injunction to put out fire in the neighborhood of the cars, and only refer to the voluntary action of a person in regard to the bringing of fire to or near the cars. There is no evidence that the defendant disregarded this injunction.

19. (6)

In the condensed rules on the so-called "explosive" placard, Section 7, which reads: "Avoid placing it near a possible source of fire," means not to put the car near a place where fire might reasonably be expected to be.

There is no evidence that this injunction was disregarded by the defendant.

20. (7)

Since the proofs in this case are uncontradicted that the shipments of explosives involved in this case were from points outside of the State of New Jersey and were in carload lots, and that it was the practice of the consignee or owner thereof to unload the said explosives from the cars, therefore paragraph 1643 (a) of the Interstate Commerce Regulations providing that "careful men must be chosen to handle explosives, the platform and the feet of the men must be as free as possible from grit, and all possible precautions must be taken against fire" applies to the consignee or owner in unloading the explosives from the cars, and does not apply to the defendant herein, and any alleged negligence in this respect is not chargeable to the defendant.

21. (8)

The language of paragraph 1643 (b) of the Interstate Commerce Regulations prescribing that "unauthorized persons must not have access to explosives * * * at any time while such articles are in the custody of the carrier," means that before the cars are sealed and after the cars are unsealed the carrier must not permit unauthorized persons to have access to the explosives in the cars. It does not refer to cars in which explosives are contained while such cars are under seal.

22. (9)

There is no evidence in this case that the defendant permitted any unauthorized persons to have access to the explosives while such articles were in its custody.

23. (10)

If the jury finds that unauthorized persons had access to the explosives on the night of July 29 and 30, 1916, while such articles were in the custody of the defendant, there is no evidence that the access of any such persons was the proximate cause of the injury complained of.

24. (11)

The language in paragraph 1689 of the Interstate Commerce Regulations referring to the handling of cars containing explosives and providing "they must be so placed in yards or on sidings that they will be subject to as little handling as possible and be removed from all danger of fire," means that in the operation of the railroad company's yard or its sidings, the cars containing explosives must be removed from such danger of fire as might reasonably be expected. This regulation does not impose upon the railroad company an absolute duty to remove such cars from all possibility that fire might ever reach them.

25. (12)

There is no evidence from which the jury can legally infer that under paragraph 1689 of the Interstate Commerce Regulations, the cars containing explosives in the Black Tom yard at the time of the fire had not been removed from whatever danger of fire might reasonably have been expected by the defendant.

26. (13)

There is no evidence in this case but that the explosives in defendant's cars were in all respects carried, conveyed, transported, handled and held by the defendant in compliance with the statutes of the United States and the regulations of the Interstate Commerce Commission respecting the safe transportation of explosives in interstate commerce by land.

27. (14)

There is no proof that the origin of the fire was the result of any failure of duty imposed upon the defendant by the Regulations of the Interstate Commerce Commission relative to the safe transportation of explosives in interstate commerce by land, and therefore the jury cannot infer that the defendant was guilty of any violation of said regulations up to and including the time of the origin of the fire.

28. (15)

There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to prevent the occurrence of fire, detonations or other means whereby the explosives and munitions in question might become exploded; or that any such alleged failure was the proximate cause of the injury complained of.

29. (16)

There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to watch and guard the said explosives and the yard, piers, cars and vessels containing the same or lying in proximity thereto, so as to prevent and to extinguish and control when discovered fire, detonations and other means by which such explosives might be exploded; or that any such alleged failure was the proximate cause of the injury complained of.

30. (17)

There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to employ a sufficient number of watchmen and guards to police the said yard and approaches and the waters adjacent thereto, to observe and detect the approach or presence of any persons not authorized or licensed to visit said pier and who might by accident or felonious intent set fire to said pier or property thereon; or that any such alleged failure was the proximate cause of the injury complained of.

31. (18)

There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to furnish, provide and install and keep in good order and repair sufficient fire-fighting devices and apparatus on and about its said pier; or that any such alleged failure was the proximate cause of the injury complained of.

32. (19)

There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to store, handle and dispose of said explosives and munitions so as to prevent and control the ignition and communication of fire and detonation from one por-

tion or mass of the same to any other part or mass of the same; or that any such alleged failure was the proximate cause of the injury complained of.

33. (21)

There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law, immediately upon the happening and discovery of a fire on or near its said premises to notify the fire department of Jersey City of the existence and location of said fire; or that any such alleged failure was the proximate cause of the injury complained of.

34. (22)

The defendant can only be held responsible in damages for the failure to exercise reasonable care under the circumstances, and the jury in considering the circumstances and the degree of care exercised may consider the fact that there were four watchmen on the premises in the immediate vicinity of the cars containing the explosives on the night of the explosion in question, in addition to the watchmen employed by the defendant.

35. (23)

Since there is no proof that the fire on the defendant's premises was started by human agency directly applied at the point of the origin of the fire, the jury cannot conclude that the presence of more Lehigh Valley watchmen in the yard than in fact were there would have prevented the starting of the fire, and therefore the jury cannot find negligence on the part of the defendant in that respect.

36. (24)

There is no evidence from which the jury can legally infer that the defendant did not observe the usual custom of railroads in respect to the fire protection afforded at Black Tom on July 29-30, 1916.

37. (25)

There was no legal duty resting upon the defendant in respect of its terminal at Black Tom, to furnish fire hydrants in addition to those furnished by the City of Jersey City, the said terminal being within the limits of that municipality.

38. (26)

There was no legal duty resting upon the defendant in respect of its terminal at Black Tom, to furnish its own fire protection, in addition to that furnished by the City of Jersey City, the said terminal being within the limits of that municipality.

39. (27)

There was no legal duty resting upon the defendant in respect of its terminal at Black Tom to furnish men and equipment to extinguish fires, in addition to the men and equipment of the municipality of Jersey City, within the limits of which the said Black Tom Terminal is.

40. (28)

The proofs show that the witness Burns was the first person on the premises to discover the fire, and that he was in a position promptly to discover the fire, and therefore the jury may not infer that if there had been more Lehigh Valley watchmen present the fire would have been discovered any earlier than it was.

41. (29)

If the jury finds that the defendant was not negligent in respect of the starting of the fire and that the said fire was either in a car of explosives or ammunition or was immediately adjacent to cars containing explosives or ammunition, then a condition of emergency existed by reason of which the defendant cannot be held responsible for errors of judgment on the part of its employees or any of them in respect of what they did or failed to do concerning the putting out of the fire.

42. (30)

If the jury find that the defendant was not negligent in respect of the starting of the fire and that the said fire was either in a car of explosives or ammunition or was immediately adjacent to cars containing explosives or ammunition, then the jury should consider whether the situation thus disclosed was not an emergency, and if the jury finds that the situation was that of emergency then it may not find the defendant legally responsible for the errors of judgment of its employees in respect of what they did or failed to do concerning the putting out of the fire.

43. (32)

If the jury finds that the fire which was discovered upon the premises of the defendant on July 30th, 1916, was started by spontaneous combustion and that the starting of such fire was the proximate cause of the injury to the plaintiff, then the defendant cannot be held legally responsible for any damage suffered by the plaintiff.

44. (33)

Since there is no testimony that the fire was started by human agency at the place where it commenced, and there is testimony that one of the ingredients in the material composing the shells was capable of spontaneous combustion, the jury cannot find a verdict against the defendant on the ground that the fire was started by human agency applied at the place of the commencement of the fire as the result of defendant's negligence.

45. (34)

If the jury finds that the spreading of the fire caused the injury to the plaintiff and that such spreading could have been prevented in time to have avoided any serious injury to the plaintiff by the throwing of water upon the fire, and that the proximate cause of the spreading was the failure to throw water upon the fire, then the jury

must consider that the Jersey City Fire Department, although promptly notified and present at the scene of the fire, came there without their fire engines and they testified that for the lack of such fire engines they were unable to throw water upon the fire, and the jury may therefore consider whether that was not the proximate cause of the spreading of the fire which caused the injury to the plaintiff, and if it so concludes, should find for the defendant.

46. (36)

The undisputed evidence is that Johnson Barge No. 17, with 1,005 cases of T N T and 417 cases of detonators (all obtained elsewhere) was moored at North Pier at Black Tom on July 30, 1916, and there is no evidence that the defendant had any knowledge whatever of the materials thus loaded on said Johnson 17 at that time; and the jury must find under the law as contained in the Anchorage Regulations of the United States Government that a boat thus loaded should not have been moored at Black Tom Pier, but should have proceeded to the anchorage grounds as designated in the said United States Regulations, and that the act of mooring her thus loaded at the North Pier at Black Tom was an unlawful act.

47. (37)

If the jury finds that the Johnson 17, containing 1,005 cases of T N T and 417 cases of detonators (all obtained elsewhere) was unlawfully moored at Black Tom Pier, and that the T N T thereon subsequently exploded on the night of July 30, 1916, and caused the damage complained of by the plaintiff, the jury cannot legally find the defendant responsible for such damage.

48. (38)

There is no evidence in this case from which the jury can legally hold the defendant responsible in respect of

the materials on Johnson Barge No. 17, or for the results of any explosion of such materials.

49. (41)

In view of the fact that the regulations concerning the transportation of explosives and other dangerous articles on land in Article 1647 contain a prohibition against the loading of such materials as detonators and high explosives in the same car or storage place, and of the evidence in this case in respect to the danger of thus loading such articles on the same carrier, the jury may legally find that the presence on Johnson Barge 17 of the detonators and T N T constituted negligence on behalf of the proprietor of such barge, and if it thus finds and also finds that the explosion on the Johnson 17 was the proximate cause of the damage complained of by the plaintiff, then it may not find against the defendant.

50. (42)

The jury is not at liberty to allow the plaintiff any interest in respect of any sum found to be due it.

IV.

(Exceptions to Charge.)

The Trial Judge erroneously charged the jury in one or more of the following respects:

51. (a) "First of all, gentlemen, the basis of every one of the actions brought here is what is called in the law negligence. If there is no negligence there can be no recovery. Only if there is negligence and that negligence is the proximate cause of the injuries to the plaintiffs can the plaintiffs recover. That brings us to consider first of all, what is the negligence that (this plaintiff) charges against this defendant company? And upon that subject these are the charges that are made in (this suit):

"In (this) case * * * the first claim is that this material which is alleged to have exploded constituted a nuisance, and the second claim is that there was negligence.

(b) "The grounds of negligence charged are, first, a failure to exercise a high degree of care to prevent fires and explosions." * * *

(c) "So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger; and the burden therefore rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out then the plaintiff is entitled to have a verdict and have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict but the verdict would have to be for the defendant."

52. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 51, the Trial Judge then charged as follows:

"The grounds of negligence charged are: * * * Secondly, failure to exercise a high degree of care to watch and guard said explosives and discover and extinguish fire."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk of danger in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal No. 51.

53. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 51, the Trial Judge then charged as follows:

"The grounds of negligence charged are: * * * Thirdly, a failure to employ sufficient watchmen to detect trespassers or incendiaries."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk of danger in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal No. 51.

54. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 51, the Trial Judge then charged as follows:

"The grounds of negligence charged are: * * * Fourthly, the failure to provide sufficient fire-fighting devices and apparatus."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk of danger in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal No. 51.

55. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 51, the Trial Judge then charged as follows:

"The grounds of negligence charged are: * * * Fifthly, failure to use a high degree of care to store, handle and dispose of said explosives, to prevent communication of fire and detonation from one part to another."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the

plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk of danger in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal No. 51.

56. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 51, the Trial Judge then charged as follows:

"The grounds of negligence charged are: * * * next, failure to notify the fire department."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk of danger in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal No. 51.

57. "First of all, gentlemen, the basis of every one of the actions brought here is what is called in the law negligence. If there is no negligence there can be no recovery. Only if there is negligence and that negligence is the proximate cause of the injuries to the plaintiffs can the plaintiffs recover. That brings us to consider first of all, what is the negligence that (this plaintiff) charges against this defendant company? And upon that subject these are the charges that are made in (this suit):

"In (this) case * * * the first claim is that this material which is alleged to have exploded constituted a nuisance, and the second claim is that there was negligence. The grounds of negligence charged are, first, a failure to exercise a high degree of care to prevent fires and explosions; secondly, failure to exercise a high degree of care to watch and guard said explosives and discover and extinguish fire; thirdly, a failure to employ sufficient watchmen to

detect trespassers or incendiaries; fourthly, the failure to provide sufficient fire-fighting devices and apparatus; fifthly, failure to use a high degree of care to store, handle and dispose of said explosives, to prevent communication of fire and detonation from one part to another; * * * next, failure to notify the fire department.

* * *

"So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger; and the burden therefore rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out then the plaintiff is entitled to have a verdict and to have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict but the verdict would have to be for the defendant."

58. "I charge you first of all that under the Constitution of the United States, which gives to Congress the right to regulate interstate commerce, that is, commerce with foreign nations and commerce amongst the various states and with the Indian tribes —that that power conferred upon Congress, when Congress has acted under it, is exclusive, and the regulations of commerce in so far as they have occupied the field solely govern; in so far as they have not occupied the field if there are at the time of their passage existing State regulations not inconsistent with the regulations of the Interstate Com-

merce Commission those State regulations are not deposed or abrogated, and if afterwards the States pass laws with respect to the regulation of the transportation of explosives in the exercise on the part of the State of its police power, those regulations if they do not directly and immediately interfere with interstate commerce or if they are not in antagonism to the regulations of the Interstate Commerce Commission, would be valid regulations and would be effective."

59. "The Supreme Court of the United States has said that through a long series of decisions dealing with the scope and effect of the commerce clause it has come to be well settled that a State possesses power to adopt reasonable measures to promote and protect the health, safety, morals and well-being of its people even though interstate commerce be incidentally or indirectly affected; and I charge you that the effect of the regulations that were in force at the time of the explosions on Black Tom was this, that individuals or companies maintaining agencies dangerous to human life must exercise a high degree of care for the safety of those who may be thereby exposed to danger. And by a high degree of care is meant no more than a degree of care commensurate with the risk of danger."

60. "So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger; and the burden therefore rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause

of the injury complained of by the plaintiff. If the plaintiff has made that out then the plaintiff is entitled to have a verdict and to have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict but the verdict would have to be for the defendant."

61. "And I charge you that after engaging in the business the railroad company had the right to restrict its operations under the following sections of the regulations of the Interstate Commerce Commission; Regulation 1401: When location conditions make the acceptance, transportation or delivery unusually hazardous, local restrictions may be imposed. And Section 1429 provides that all carriers must report to the chief inspector for compilation and publication full information as to restrictions which may be imposed as provided in paragraph 1401-a, to which I have just directed your attention, against the acceptance, delivery or transportation of explosives over any portion of their lines."

62. "Regulation 1643-a provides as follows: Careful men must be chosen to handle explosives. The platform and the feet of the men must be as free as possible from grit, and all possible precautions must be taken against fire. Suitable provision must be made outside of the station when practicable for the safe storage of explosives, and every effort possible must be made to reduce the time of this storage. If a shipment of explosives is not removed within forty-eight hours after notice of arrival at destination it must be disposed of by return to shipper or by storage at the expense of the owner or by sale or, when necessary to safety, by destruction under supervision of a competent person and (b) unauthorized persons must not have access to explosives or other dangerous articles at any time while such articles are in the custody of the carrier.

"And I charge you, gentlemen, that in so far as those provisions have a bearing upon the duty of the defendant company with respect to handling these explosives, it cast upon them, as I told you a moment ago, the duty to use a high degree of care for the safety of those who might be thereby exposed to danger, and that a high degree of care denotes no more than a degree of care commensurate with the risk of danger. And you can readily understand that in determining what a degree of care commensurate with the risk of danger is you will take into consideration all the circumstances in which the company found itself placed at the time it was called upon to act and say, what would a reasonably prudent and cautious person have done if in a like or similar situation with respect to the transportation of these explosives? If this company did all that a reasonably prudent and cautious person would have done, it did all that it was required to do; if it did not, it might be found to be negligent; and if it were found to be negligent and that negligence was the proximate cause of the injury to the plaintiff, the plaintiff would be entitled to have your verdict under the rules which I have given you and to have you assess the damages.

63. "The next provision of the regulation is this: Placard—section 1666—A certified car of the dangerous explosives specified in paragraph 1661 must be protected by attaching to each outside end and side door, the lower edge not less than four and a half feet above the car floor, a standard placard 12 by 14 inches on which appears in conspicuous red and black printing on strong tag board the following notice—I do not attempt to read the whole notice to you. You will have the whole notice with you and will look at it of course when you come to consider the case—but in large lettered type appears the word: 'EXPLOSIVES'; and underneath that, 'Handle care-

fully'; and underneath that, 'Keep fire away.' Now, whether this be a regulation of the Interstate Commerce Commission or a part of a regulation of the Interstate Commerce Commission or whether it be a warning, it correctly and aptly expresses the duty of a railroad company handling explosives, which duty when properly interpreted means that they shall use a high degree of care, that is care commensurate with the risk of danger, to keep fire away from those explosives; and it also correctly and aptly expresses the duty resting upon the defendant when it says that they shall handle the explosives carefully; because a high degree of care involves the notion that anybody in the course of his business dealing with explosives where dealing with them and handling them may subject others to danger comes under the duty to use a high degree of care to so handle them as to minimize the danger resultant from not handling them with care. In other words, their duty is to use a high degree of care to handle them carefully. If they do not use that degree of care and injury results from a neglect to use it and that neglect is a proximate cause of that injury, manifestly the person thus injured would have a right to recover damages because of that injury."

64. "Now then you might ask yourselves when we are talking about reasonable care and a high degree of care and care commensurate with the risk, what is this reasonable care, this high degree of care or care commensurate with the risk which it is the duty of the defendant company to use? I charge you, gentlemen, that reasonable care is first of all a relative term. It is a term which has reference to the situation in which the defendant finds itself when it is called upon to act. A high degree of care in some circumstances might be a low degree of care with respect to the same act in other circumstances."

65. "In this case a most interesting situation arises right on this phase of the case. Here the claim is made that these things that were on fire or in proximity to which a fire had started were explosive things, they were dangerous things; and you might ask yourselves, Well, how much courage is a reasonably prudent man expected to exhibit? You might phrase that inquiry in these words: How bold would a prudent man be expected to be? And how prudent must a bold man be in acting in such a conjuncture of circumstances? Now you will have observed that I said to you that the duty of the defendant company is to use reasonable care, and that that care is such care as a reasonably prudent and cautious person would use under the circumstances. You will observe that the person is prudent and cautious; and that means that the party is called upon to use such care in the light of all the circumstances that confront him and such boldness in the light of his knowledge of existing conditions as a reasonably prudent and cautious man would use under the circumstances. When a man uses that much it is all he is called upon to use. So that you ask yourselves in the last analysis with respect to this matter of boldness of its absence: How would a reasonably prudent and cautious man act, circumstanced as the employees of this defendant company found themselves circumstanced on the night in question? If these men acted as a reasonably prudent and cautious man would have acted they did all that was required of them. If they did not act as a reasonably prudent and cautious man would have acted under the circumstances, why then such neglect on their part would constitute negligence, and if that negligence was the proximate cause of the injury manifestly there might be a recovery, and should be a recovery. If it was not, there should not be a recovery under the circumstances.

"And then we have had a great deal of talk here on both sides by counsel in summing up—we must all admit, I think, very eloquent talk on both sides—with respect to what has been called the emergency doctrine; that when men are called upon to act in an emergency, as one of the counsel expressed it that when emergency flies into the window judgment goes out of the door. Well, we have got to be a little careful in defining terms, and we must not allow outselves in the disposition and decision of a law suit to fall too readily into the ruling tendency of the American people generally to be governed too much by epigrams and by catch phrases and by headlines. First of all, what is an emergency. And secondly, how great must the exigency be to absolve a person from responsibility if he exercises no judgment whatever but simply acts upon what I think more accurately might be called instinct; if you please, the instinct of self-preservation. Now then you can readily see that many situations in life are emergencies which are not crises. Many situations in life are emergencies which are not exigencies; and therefore you ask yourself this: What were the precise facts which were present to the apprehension of the person when he was called upon to act? Was the condition so overwhelming and overpowering on the instant as to leave him no time for deliberation, no time for thought, no time for calm judgment? If they were that would be indubitably a pure emergency. I think it might be more accurately called a pure exigency. And under such circumstances a man would not be responsible even if he did not use any judgment, for the very obvious reason that a man under such circumstances uniformly acts from instinct. The crisis comes, the act is done, and it is all over in an instant. Then there are other things that are popularly called emergencies which furnish time for thought and for deliberation

and for judgment, and when they do furnish time then the jury, called to pass upon a question of this kind, asks itself, How much time did he have? How much excitement, how much fear was engendered by the circumstances which confronted him? How calmly could he consider, determine and act? Now, upon that subject one of our cases has some rather illuminating language. The case says: 'The rule is well settled that where the sole basis of liability is the omission to perform a certain duty suddenly and unexpectedly arising there ought to be at least a consciousness of the facts which raise the duty on the part of the person who is charged with its performance, and a reasonable opportunity to discharge it.'

"Now to analyze that thing for just a moment, you see inherent in it the very things that I have been talking about to you for the last three or four moments. There ought to be at least a consciousness of the facts which raise the duty on the part of the person who is charged with its performance and a reasonable opportunity to discharge it. And therefore you ask yourselves very properly, what did these men see down there that night? What in the exercise of reasonable care on their part ought they to have seen that night? And in the light of the facts that were known to them, or should have been known to them could a reasonably prudent and cautious man have acted, and acted effectively, with respect to the condition that existed there in an effort to prevent the catastrophe that subsequently occurred? If a reasonably prudent and cautious man could have discovered the condition and have remedied it by the exercise of reasonable care and prudence on his part he was bound to do it. If he could not he was not. And then again we find the rule which I have been endeavoring to elucidate to you stated in the same case in these words:

'Parties are not liable for a mistaken exercise of judgment on the part of their employees in an emergency or for a failure to act with the utmost promptitude and in the right direction when circumstances are such as to afford no time for deliberation. Where an employee of the railroad company is confronted with a sudden emergency, failure on his part to exercise the best judgment the case renders possible does not establish lack of care or skill upon his part which renders the company liable. It is not responsible in such circumstances even for his error of judgment.'

"And, therefore, to make a resume of all that I have been trying to say to you upon this subject you ask yourselves, What was the situation that confronted the employees of this company on that night? Did it amount to an emergency of such a character, so overpowering in its nature as not to give time to a reasonably prudent and cautious man in the exercise of reasonable prudence and caution, for deliberation and decision? Why, if that condition existed, it was an emergency, and if a man on the instinct of self-preservation ran away, that is what a reasonably prudent and cautious man would do; but if, on the other hand, there was time for thought and deliberation and the condition of affairs down there was such that a reasonably prudent and cautious man in the light of what confronted him would have made an effort to put the fire out, then you might naturally say that the neglect on the part of the servants and agents of the defendant company to put it out under the circumstances was negligence; and if their neglect to make the effort to put it out was negligence under the rules which I have given you and it proximately caused the injury to the plaintiffs, the plaintiffs would have a right to recover.

"So that you see reduces itself again to just this proposition, and that is that in any given set of cir-

cumstances you erect your reasonably prudent and cautious man there and ask yourselves the question, what would he have done? If the defendant's servants did what he would have done under the circumstances they were not negligent. If they did not do what this reasonably prudent and cautious man would have done under the circumstances, then they were negligent, and if that negligence proximately caused the injury then there might be a recovery in that particular."

66. "Now, there is another claim made, that the first explosion did not take place on the land at all, that it took place on a barge, the Johnson 17, which was in the water and moored to the pier in violation of the anchorage regulations of the United States, and that it was what first exploded and that it exploded without fault on the part of the defendant company, and that it, being the first explosion, caused the injury. Of course, if the Johnson 17 was moored there in violation of the anchorage regulations of the United States, and the first explosion was the explosion that took place on that barge, why it would follow as a matter of law that the defendant would not be responsible for the injury wrought by the explosion on the Johnson 17 to these plaintiffs for the obvious reason that it would not have been their fault at all. If a third person sees fit to, in violation of law, tie up his barge to my pier, and then because of some fault on his part, or even without fault on his part, an explosion takes places on that barge, of course I am not responsible for his act in violating the law and putting the barge there and causing the damage that ensues from its presence there, the point being that you can only assess damages where you have ascertained fault to lie."

67. "But I charge you again, as I have previously charged you in the case, that there does exist a duty

with respect to the matter of taking precautions against fire, to use care commensurate with the risk of danger involved, against fire."

68. "Section 1689 provides that they must be—speaking of handling cars containing explosives—they must be coupled carefully and all unnecessary shocks must be avoided. Other cars must not be cut off and allowed to strike a car containing explosives. They must be so placed in yards or on sidings that they will be subject to as little handling as possible, and be removed from all danger of fire. Now, that last clause, that they must be removed from all danger of fire, does not impose upon the company an absolute duty that they must at all hazards remove them from all danger of fire; but they must use a high degree of care, a degree of care commensurate with the risk of danger involved in the transaction, to remove them from all danger of fire.

* * * * * *

"I charge you that the language in paragraph 1689 of the Interstate Commerce regulations referring to the handling of cars containing explosives and providing they must be so placed in yards or on sidings that they will be subject to as little handling as possible and be removed from all danger of fire, means that in the operation of the railroad company's yard or its sidings the cars containing explosives must be removed from such danger of fire as might reasonably be expected. This regulation does not impose upon the railroad company an absolute duty to remove such cars from all possibility that fire might ever reach them. They must simply use, as I have told you before, care commensurate with the risk of the danger involved."

69. "And I charge you furthermore that even if the Jersey City Fire Department did get there and

was insufficiently equipped to put the fire out, and even if that was a proximate cause of the spread of the fire, that if also you find that the defendant company was negligent in not using care commensurate with the risk to prevent the spread of the fire, that that also might be found to be a proximate cause of the fire; and if both the Jersey City Fire Department and the defendant were negligent in not using care commensurate with the risk to prevent the spread of the fire, that the mere fact that the Jersey City Fire Department might also be responsible for it would not discharge the defendant company from its responsibility, because there can be concurring proximate causes, and if two parties by their joint negligence or by the separate concurring negligence of each concur in bringing about the destruction of property, either or both may be responsible and may be called upon to respond in damages."

70. "I might add this, gentlemen, before you go out: That is, by anything I said I did not mean to have you think that the Court meant to hold as a matter of fact and charge you as a matter of fact either that there were enough men there or that there was enough apparatus there or enough facilities to meet an emergency. Whether there was or not is for you to determine; and how the men acted in the light of the circumstances that confronted them depends upon what they had to act with, and whether the defendant company was negligent or not in respect of the facilities and the men depends upon what you say reasonable care, or care commensurate with the risk, would require with respect to the number of men required and the facilities required to be furnished and had by the defendant in the exercise of rasonable care in the transportation of explosives."

Grounds of Appeal.

The appellant states the following additional ground of appeal in the case wherein Royal Indemnity Company is plaintiff:

71. Defendant's motion for a direction of verdict should have been granted for the reason that under the terms of the policy, the insurance company was not under any legal duty to pay its insured for the damage alleged to have resulted from the breakage of glass, because the plaintiff alleges that the breakage of glass resulted (directly or indirectly) either by or from or was in consequence of, a fire on defendant's premises, or that the loss or damage was caused by or resulted from fire.

COMPLAINT.

(Filed July 21, 1918.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

ROYAL INDEMNITY COMPANY,
Plaintiff,

vs.

LEHIGH VALLEY RAILROAD COMPANY,
Defendant.

At Law.

Complaint.

1. The plaintiff is a corporation of New York, having its principal office in the City of New York, and is engaged in the business of insuring persons and corporations against loss occasioned by the breakage of glass doors and windows.

2. The defendant is a corporation engaged in the maintenance and operation of a railroad in and through the State of New Jersey, for the transportation of freight and passengers.

3. On July 30th, 1916, the defendant possessed, used, occupied and controlled a certain yard in the City of Jersey City, locally known as the "Black Tom" yard, extending into the waters of New York Bay, and also possessed, used, occupied and controlled certain lands covered with the waters of New York Bay adjacent to said "Black Tom" pier, as well as certain upland, likewise adjacent to said pier, in connection with its business of a common carrier of freight and passengers.

4. Said "Black Tom" yards and the said lands adjacent thereto, on and prior to July 30th, 1916, were used by the defendant for the handling, holding, and trans-

shipment of carload lots of gun powder, trinitrotoluol, dynamite, nitroglycerine, shrapnel and other ammunitions and munitions of war.

5. On July 30th, 1916, and for several days prior thereto, the defendant had placed and on said date was holding on said pier and lands adjacent thereto, many carloads of said explosives, ammunitions and munitions of war, which explosives were to the knowledge of said defendant highly dangerous and capable and liable, in the event of fire, to explode and thereby cause incalculable damage and injury to residents of Jersey City and their buildings, chattels and other property.

6. On July 30th, 1916, and for several days prior thereto, the defendant used its premises and waters, adjacent to said pier, for the tying up of boats, lighters and ships upon and to which was loaded, placed and carried large quantities of like explosives as described in the preceding paragraphs.

7. On July 30th, 1916, and for several days prior thereto, said defendant permitted the use of its premises and waters, adjacent to its said pier, to be used for the anchorage and tying up of tugs, boats and other vessels, as well as by boats and lighters carrying large quantities of like explosives as described in the second preceding paragraph.

8. By reason of the accumulation, on said pier and on the lands adjacent thereto, of said large quantities of said explosives and munitions, and the danger existing therein and therefrom, said accumulation of explosives and munitions constituted a nuisance.

9. The accumulation of the large quantity of like dangerous explosives on boats and vessels in its premises and waters adjacent to said pier of the defendant by the act and with the permission and knowledge of said defendant, constituted a nuisance on the part of the defendant.

10. On July 30th, 1916, a fire occurred on the premises possessed by defendant known as "Black Tom" yard, and by means thereof said accumulations of explosives and munitions became and were ignited and exploded, causing severe shocks and violent concussions of the air, which broke, damaged and destroyed the glass doors and windows of the persons and corporations shown upon the schedule marked Schedule "A" hereto attached and hereby made a part hereof.

11. The plaintiff, on said July 30th, had lawfully insured the persons and firms shown on Exhibit "A" against loss from damage to their respective glass doors and windows, and by reason of its obligations under its several contracts of insurance paid to said persons, or firms, their losses, or provided said persons or firms with new doors and windows to the amounts and values set opposite their respective names on said Schedule "A", and the plaintiff is subrogated to the rights of said parties to demand and receive the amounts of said losses so sustained and paid or replaced by it.

12. The losses so sustained and paid or replaced by the plaintiff were the direct result of the creation and maintenance by the defendant of the nuisance described in paragraphs six and seven.

SECOND COUNT.

1. The plaintiff re-alleges paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count.

2. By reason of the accumulations of said large quantities of explosives and munitions on and near said pier and premises of the defendant, it was the duty of the defendant to exercise a high degree of care to prevent the occurrence of fires, detonations or other means whereby said explosives and munitions might become exploded.

3. Said defendant negligently failed and omitted to perform said duty.

4. By reason of the accumulations of the explosives and munitions, as aforesaid, it was the duty of the defendant to exercise a high degree of care to watch and guard said explosives and the yards, piers, cars and vessels containing the same or lying in proximity thereto, so as to prevent, and to extinguish and control, when discovered, fires, detonations and other means by which such explosives might be exploded.

5. The defendant negligently omitted and failed to perform said duty.

6. It was also the duty of the defendant in the premises to exercise due care to employ a sufficient number of watchmen and guards to police its said yard and approaches and the waters adjacent thereto to observe and detect the approach or presence of any persons not authorized or licensed to visit said pier, and who might by accident or felonious intent set fire to said pier or property thereon.

7. The defendant negligently failed and omitted to perform said duty.

8. It was also the duty of the defendant in the premises to exercise due care to furnish, provide and install, and keep in good order and repair sufficient water supply, fire fighting devices and apparatus on and about its said pier, by means of which any fire occurring upon or near said pier might be promptly extinguished and controlled.

9. The defendant negligently omitted and failed to perform said duty.

10. It was also the duty of the defendant in the premises to exercise a high degree of care to store, handle and dispose of said explosives and munitions so as to prevent and control the ignition and communication of fire and detonation from one portion or mass of the same to any other part or mass of the same.

11. The defendant negligently failed to perform said duty.

12. The municipality of Jersey City at the times of said explosion maintained large police and fire departments, whose duty and custom it was, to the knowledge of the defendant, to respond immediately to all alarms of fire for the purpose of extinguishing the same.

13. It was also the duty of said defendant to exercise due care to install and provide and keep in good order and repair sufficient means of communication whereby the occurrence of any fire or other agency capable of igniting said explosives, could be immediately communicated from said pier to the fire and police departments of Jersey City.

14. Said defendant negligently failed and neglected to perform said duty.

15. It was also the duty of the defendant in the premises, immediately upon the happening and discovery of a fire on or near said pier, to notify the Fire Department of Jersey City of the existence and location of said fire.

16. Said duty, the defendant negligently failed and omitted to perform.

17. On July 30th, 1916, a fire occurred on the premises possessed by the defendant, on or in the immediate vicinity of said pier of the defendant, and by reason of negligence of the defendant in failing to perform its several duties in the premises the defendant suffered a part of said explosives and munitions and the cars, and containers thereof to become ignited, whereby the same exploded, which fire and detonation of said explosion the defendant suffered to be communicated to other masses and quantities of explosives in said yard, which likewise exploded with great force and violence, causing severe shocks and concussions of the air, which simultaneously broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit "A."

18. The plaintiff re-alleges paragraphs 10 and 11 of the first count.

19. The losses so sustained and paid or replaced by the plaintiff were the direct result of the negligence of the defendant as aforesaid.

THIRD COUNT.

1. The plaintiff re-alleges paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count.

2. By authority of certain acts of Congress approved March 4th, 1909, and June 18th, 1910, the Interstate Commerce Commission in October, 1914, promulgated, and on July 30th, 1916, there remained in force and effect, certain regulations for the handling and transportation by freight of carloads of explosives by carriers in interstate commerce, which regulations were then and there binding upon the defendant and applicable to the explosives herein above mentioned, to which regulations the plaintiff refers as fully as if here set forth.

3. The defendant negligently failed and refused to comply with the requirements of said regulations.

4. On July 30th, 1916, a fire occurred on the premises possessed by the defendant, on or in the immediate vicinity of said pier of the defendant, and by reason of negligence of the defendant in failing to perform its several duties in the premises the defendant suffered a part of said explosives and munitions and the cars, and containers thereof to become ignited, whereby the same exploded, which fire and detonation of said explosion the defendant suffered to be communicated to other masses and quantities of explosives in said yard, which likewise exploded with force and violence, causing severe shocks and concussions of the air, which simultaneously broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit "A".

5. The plaintiff re-alleges paragraphs 10 and 11 of the first count.

6. The losses so sustained and paid or replaced by the plaintiff were the direct result of the negligence of the defendant as aforesaid.

The plaintiff demands, on the first count, the sum of $4,118.51.

The plaintiff demands, on the second count, the sum of $4,118.51.

The plaintiff demands, on the third count, the sum of $4,118.51.

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff.

Exhibit "A."

MEMORANDUM OF EXPLOSION LOSSES.

Name of Assured.	Street Location, City and State.	Amount Paid.
S. Wiatr	Henry St., So. Amboy, N. J.	$ 49.51
D. Aronson	88 Baxter St., New York, N. Y.	88.03
S. Aronson	63 Bayard St., New York, N. Y.	1.98
Wallace & Newman	110 West St., New York, N. Y.	74.35
Loft, Inc.	54 Barclay St., New York, N. Y.	150.99
" "	147 Nassau St., New York, N. Y.	67.85
" "	41 Park Row, New York, N. Y.	2.01
" "	29 Cortlandt St., New York, N. Y.	60.83
" "	206 Broadway, New York, N. Y.	36.93
R. B. Saportas	96 Washington St., New York, N. Y.	30.76
Coppins Transfer Co.	50-4 W. 17th St., New York, N. Y.	226.02
C. H. Paradise	101 Monticello Ave., Jersey City, N. J.	71.36
Story & Fleckinger	17 E. 12th St., New York, N. Y.	92.70
Geo. Weideman	191 Flatbush Ave., Bklyn., N. Y.	62.00
M. Samuels	572 Court St., Bklyn., N. Y.	24.61
R. H. Raphael	148 Montague St., Bklyn., N. Y.	20.49
J. D. Lohman	251 Court St., Bklyn., N. Y.	40.57
Goldman & Son	80-6 W. Broadway, New York, N. Y.	60.55
Bklyn. Svgs. Bank	179 Wooster St., New York, N. Y.	89.62
M. E. Kassenbrook	4609 Third Ave., Bklyn., N. Y.	13.86
Geo. Holding Co.	15-7 E. 16th St., New York, N. Y.	146.81
Natl. Cloak & Suit Co.	7th Ave. and 24th St., New York, N. Y.	231.09
M. Cohen	34 Orchard St., New York, N. Y.	32.77
Hartenstein Bros.	20 Worth St., New York, N. Y.	4.32
D. Aronson	88 Baxter St., New York, N. Y.	23.81
H. E. Hrent	1907 Flatbush Ave., Bklyn., N. Y.	46.14

Complaint—Exhibit A.

E. M. Pigot	157 Remsen St., Bklyn., N. Y.....	3.71
S. and F. Crampton	111 Court St., Bklyn., N. Y.....	53.02
Central Trust Co.	101-3 Crosby St., New York, N. Y.....	6.78
Stollwerk Bros.	28-30 W. Broadway, New York, N. Y....	22.57
J. R. Mannheim	78 Warren St., New York, N. Y.....	54.63
Farbwerke Hoechst Co.	39 No. Moore St., New York, N. Y....	9.23
H. A. Metz & Co.	39 No. Moore St., New York, N. Y....	10.00
R. B. Saportas	27 Washington St., New York, N. Y....	37.17
Mouquin Co.	149 Fulton St., New York, N. Y.....	45.70
K. C. Mead	60 West St., New York, N. Y.....	32.59
R. Berman & Co.	25 Walker St., New York, N. Y.....	37.26
John J. Ryan	665 Mont. St., Jersey City, N. J.....	81.13
S. P. C. A.	486 Johnston Ave., Jersey City, N. J....	14.56
A. E. Engelbrecht	90 Hudson St., Hoboken, N. J.....	2.23
N. E. P. Peterson	50-2 Sixth St., New Dorp, S. I.....	48.44
Mr. Isaacs	452 Richmond Ter., New Brighton.....	163.32
B. W. Hitchcock	108 Vroom St., Jersey City, N. J.....	8.14
V. Ruppel	466 Ocean Ave., Jersey City, N. J.....	56.71
Chas. A. Lau	381 Grove St., Jersey City, N. J.....	117.85
W. N. Baron	205-7 Mont. St., Jersey City, N. J.....	65.76
W. N. Baron	209 Mont. St., Jersey City, N. J.....	264.88
Hen. Heilbrun	355 Jackson Ave., Jersey City, N. J....	83.75
E. C. Zieger	332 Ocean Ave., Jersey City, N. J.....	56.63
E. A. Rohlfs	188 Wash. St., Jersey City, N. J.....	118.17
W. N. Baron	154 Newark Ave., Jersey City, N. J....	272.95
T. Wentz	Ave. U & W 8th St., Bklyn., N. Y....	23.28
E. S. Johnson	865 Bergen Ave., Jersey City, N. J....	15.68
L. & B. Gilzow	387 Summit Ave., Jersey City, N. J....	59.40
J. J. and M. L. Hamson	330 Baldwin Ave., Jersey City, N. J....	68.54
F. Emigholz	423 York St., Jersey City, N. J.....	95.87
G. Spinella	311 Atlantic Ave., Bklyn., N. Y.....	23.88
E. Wacker	1739 Hudson Blvd., Jersey City, N. J..	72.72
Fraser Realty Co.	195 Smith St., Perth Amboy, N. J.....	23.66
Loft, Inc.	29 Cortland St., New York, N. Y.....	218.95
H. Schwing	2257 Church Ave., Bklyn., N. Y.....	35.87
J. A. Mannheim	80 Warren St., New York, N. Y.....	17.28
E. C. Fraser	188 Smith St., Perth Amboy, N. J.....	21.24
A. Froehlick	Jackson Ave., Jersey City, N. J.....	25.00
	Total.....	$4,118.51

ANSWER.

(Filed September 10, 1918.)

NEW JERSEY SUPREME COURT.

ROYAL INDEMNITY COMPANY,
Plaintiff,

vs.

LEHIGH VALLEY RAILROAD COMPANY,
Defendant.

Answer.

Defendant, a body corporate of the State of Pennsylvania, having its principal office in the State of New Jersey at the foot of Washington street, Jersey City, says that:

FIRST DEFENSE TO FIRST COUNT.

1. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 1.

2. It admits the allegations of paragraph 2.

3. It admits that on July 30, 1916, it possessed, used, occupied and controlled (but only to the extent provided by and in accordance with the terms of a certain lease hereinafter mentioned) a certain yard in the City of Jersey City, extending into the waters of New York Bay, and locally known as the "Black Tom" yard; it admits that it possessed, used, occupied and controlled (but only to the extent provided by and in accordance with the terms of a certain lease hereinafter mentioned) certain lands covered by the waters of New York Bay adjacent to said yards, as well as certain upland likewise adjacent to said yard. It admits that the said yard and that the said upland were used in connection with its business of a common carrier of

freight, but denies that the same or any part thereof were used in connection with its business of a common carrier of passengers. It further says that it possessed, used, occupied, and controlled certain docks and piers, together with certain waters and upland adjacent thereto in the City of Jersey City, locally known as Black Tom yard, in accordance with the terms and provisions of a certain lease dated June 24, 1913, from the National Storage Company to the Lehigh Valley Railroad Company of New Jersey, and thereafter assigned to this defendant, wherein the said premises are described as follows: "A tract of land containing about one hundred and eleven acres, more or less, together with all the tracks, wharves, piers, docks, bulkheads, stores, warehouses, elevators and power houses, and all other buildings and structures of every kind whatsoever erected thereon; excepting and reserving therefrom about one hundred and forty-nine thousand and five hundred (149,500) square feet, together with the following structures erected thereon: Stores "A", "E", "F", "G", "H", "I", "K", "L", "M", "N", "O", "P" "Q", and "R" and Pier 6 and Shed No. 2 on Pier 7 and the office building (40'x25') located between Stores "F" and "G", together with the right of access thereto and wharfage rights in connection therewith.

4. It admits that on and prior to July 30, 1916, it used said yard, and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, for the handling and holding (but only to the extent and in the manner hereinafter mentioned) of carload lots of certain munitions and explosives, as hereinafter mentioned; it says that the lands and premises described in paragraph 3 of the first defense to first count, known as the Black Tom yard, on and prior to July 30, 1916, were used by it as a freight terminal for making delivery to the consignee of carload lots of shells, shrapnel and other ammunitions and munitions of war, including trinitrotoluol

(but not including gunpowder, dynamite, nitro-cellulose or other high and dangerous explosives) and for the transferring of the same by consignees from cars to barges or lighters for trans-shipment to steamers for export; and it says that there was no handling or holding by this defendant of the cars containing the same, except as lawfully incidental to the transportation and delivery thereof in the course of interstate commerce and commerce with foreign countries; and it says that all of the materials so held or handled were in the course of interstate or foreign commerce at the times set forth in the complaint.

5. It admits that on July 30, 1916, and for several days prior thereto it had placed and on said date was holding (but only to the extent and in the manner hereinafter mentioned) in said yard and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, certain carloads (but not many) of shells, shrapnel and other ammunitions and munitions of war, including trinitrotoluol (but not including gunpowder, dynamite, nitro-cellulose or other high and dangerous explosives); denies that the said explosives, ammunitions and munitions of war referred to in paragraph 5 of the complaint, or any of them were to the knowledge of this defendant highly dangerous and capable and liable in the event of fire to explode and thereby to cause incalculable or any injury to residents of Jersey City of their buildings, chattels and other property; it says that on July 30, 1916, on the lands and premises herein described as Black Tom yard, there were carloads of the explosives, ammunitions and munitions of war herein described, for the purpose of making delivery of the same to the consignees, and that for several days prior thereto there had been other carloads of explosives of the same nature on the said lands and premises for the like purpose; but it says that there was no holding on said lands and premises of any carloads of the said explosives,

ammunitions and munitions of war, either on July 30, 1916, or at any time prior thereto, except as lawfully incidental to the transportation and delivery of the contents of said cars, in the course of interstate commerce and commerce with foreign countries; it says that all of the carloads of said explosives so held were in the course of interstate or foreign commerce at the times set forth in the complaint.

6. It denies paragraph 6.

7. It admits that on July 30, 1916, and for several days prior thereto, it permitted the use of certain of its premises and waters, as described in paragraph 3 of the first defense to first count, known as the Black Tom yard (but only to the extent and in the manner hereinafter mentioned) for the tying up of certain tugs and other vessels, but it says that it limited its said premises (for the tying up of barges and lighters carrying or to carry explosives) to one pier, namely, the pier known as "North Pier," and only when the said barges or lighters were being loaded; and it says it did not permit the tying up of tugs and/or other vessels to that pier or near, or adjacent thereto; and it says that on July 30, 1916, at the time of the explosion mentioned in the complaint there were two barges at said North Pier, with its permission, partly loaded, one with shrapnel and the other with trinitrotoluol.

8. It denies paragraph 8.

9. It denies paragraph 9.

10. It admits that on July 30, 1916, it possessed a certain yard and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, known as the Black Tom yard; it admits that on July 30, 1916, a fire occurred on the said lands and premises, but it has no knowledge nor information sufficient to form a belief as to whether, by means of said fire, the said explosives or munitions, or any of them, became and were ignited

and exploded; it admits that certain explosives and munitions exploded on said date, thereby causing severe shocks and violent concussions of the air, but it has no knowledge nor information sufficient to form a belief as to whether the said severe shocks and concussions or any of them broke or damaged or destroyed the glass doors and windows of the persons and corporations, or any or either of them, shown upon Schedule "A" attached to the complaint.

11. It has no knowledge nor information sufficient to form a belief as to the allegations of paragraph 11.

12. It has no knowledge nor information sufficient to form a belief as to the allegations of paragraph 12, except that it denies that it created or maintained any nuisance as alleged in paragraphs 8 and 9 of the first count of the complaint, or otherwise.

In lieu of a motion to strike out said first count, the defendant objects thereto on the ground that it discloses no cause of action against the defendant.

SECOND DEFENSE TO FIRST COUNT.

1. On July 30, 1916, and for many days prior thereto, the defendant was a common carrier engaged in interstate and foreign commerce, and therein transporting by land ammunitions and munitions of war, including explosives.

2. As such common carrier defendant was compelled by law to receive, carry, convey and transport the said ammunitions and munitions of war, including explosives, in the course of interstate and foreign commerce, provided the same were packed, marked, loaded and handled, and when offered for transportation were in proper condition to transport in accordance with and pursuant to the act of Congress of the United States entitled "An Act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation," approved March 4,

Answer.

1909, and the act of said Congress entitled "An Act to regulate commerce," as amended June 18, 1910, and the regulations prescribed by the Interstate Commerce Commission by authority of said acts.

3. The ammunition and munitions of war and explosives that exploded on July 30, 1916, were packed, marked, loaded and handled, and when offered for transportation were and until and at the time of said explosion continued to be in proper condition to transport in accordance with said acts of Congress of the United States and the regulations prescribed by the Interstate Commerce Commission by virtue thereof, and were carried, conveyed and transported and held by the defendant in the course of interstate and foreign commerce lawfully and strictly in accordance with said acts and regulations.

THIRD DEFENSE TO FIRST COUNT.

1. The presence of such explosives as were on July 30, 1916, on the premises of the defendant did not constitute a nuisance.

2. The explosion mentioned in the complaint was due to a fire caused by incendiarism, of which defendant had no knowledge or suspicion.

3. Said fire occurred notwithstanding due diligence by the defendant to prevent incendiarism.

FIRST DEFENSE TO SECOND COUNT.

1. Defendant repeats and makes part hereof the allegations contained in paragraphs 1 to 7, inclusive, of its first defense to first count.

2. It denies paragraph 2.

3. It denies that it was chargeable with any such alleged duty as stated in paragraph 2 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

4. It denies paragraph 4.

5. It denies that it was chargeable with any such alleged duty as stated in paragraph 4 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

6. It denies paragraph 6.

7. It denies that it was chargeable with any such alleged duty as stated in paragraph 6 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

8. It denies paragraph 8.

9. It denies that it was chargeable with such alleged duty as stated in paragraph 8 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

10. It denies paragraph 10.

11. It denies that it was chargeable with any such alleged duty as stated in paragraph 10 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

12. As to paragraph 12, it admits that the municipality of Jersey City, at the time of the explosion referred to in said count, maintained police and fire departments; but as to the size of said departments or as to what their duty and custom was at the time of said explosion this defendant has no knowledge nor information sufficient to form a belief.

13. It denies paragraph 13.

14. It denies that it was chargeable with any such alleged duty as stated in paragraph 13 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

15. It denies paragraph 15, and says that in fact it did, immediately, upon the happening and discovery of the fire referred to in the complaint, notify the Fire Department of Jersey City of the existence and location of said fire.

Answer.

16. It denies that it was chargeable with any such alleged duty as stated in paragraph 15 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

17. It admits that on July 30, 1916, it possessed a certain yard and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count; it admits that on July 30, 1916, a fire occurred on the said lands and premises; it denies that there was any negligence on its part in failing to perform its several alleged duties and denies that by reason of said alleged negligence it suffered a part of said explosives and munitions, and the cars, boats and containers thereof, to become ignited; it has no knowledge nor information sufficient to form a belief as to whether by means of said fire, the said explosives or munitions, or any of them, or the said cars, boats or containers, thereof, or any of them, became ignited, nor whether thereby the same, or any of them, exploded; it has no knowledge nor information sufficient to form a belief, as to whether the said fire and detonation of said explosives was communicated to other masses or quantities of explosives on the piers in said Black Tom yard or on any vessel adjacent thereto, nor whether the said explosives, or any of them, likewise exploded with great force and violence, nor whether the same caused severe shocks and concussions of the air, nor whether said shocks and concussions of the air, or any of them, simultaneously, or otherwise, broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit "A" attached to complaint.

18. It repeats and makes part hereof the allegations of paragraphs 10 and 11 of the first defense to the first count.

19. As to the allegations of paragraph 19, it has no knowledge nor information thereof sufficient to form a

belief, except that it alleges that it was in no manner negligent in the premises.

In lieu of a motion to strike out said second count, defendant objects thereto on the ground that it discloses no cause of action against the defendant.

SECOND DEFENSE TO SECOND COUNT.

Defendant repeats and makes a part hereof the allegations of its second defense to the first count.

THIRD DEFENSE TO SECOND COUNT.

Defendant repeats and makes a part hereof the allegations of its third defense to the first count.

FIRST DEFENSE TO THIRD COUNT.

1. Defendant repeats and makes part hereof the allegations contained in paragraphs 1 to 7, inclusive, of its first defense to first count.

2. It admits that by authority of certain acts of Congress, approved March 4th, 1909, and June 18th, 1910, and the Interstate Commerce Commission in October, 1914, promulgated, and on July 30, 1916, there remained in force and effect certain regulations for the handling and transportation by freight of carloads of explosives by carriers in interstate commerce, and that such regulations were then and there binding upon the defendant, but as to whether or not the said regulations, or any or either of them, were applicable to the explosives mentioned in the complaint, it prays reference to the original of said regulations.

3. It denies paragraph 3.

4. It admits that on July 30, 1916, a fire occurred on the premises possessed by the defendant, or in the immediate vicinity thereof; but denies that by reason of any negligence on its part in failing to perform its several alleged duties, or any or either of them, as set forth in the complaint, it suffered a part or any of said explosives

and ammunitions, and the cars and containers thereof, or any of them, to become ignited, whereby the same, or any of them, exploded; it denies that it suffered said fire and detonation of said explosion to be communicated to other masses and quantities of explosives in said yard, and denies that said other masses and quantities of explosives in said yard likewise exploded with great force and violence, or otherwise; it admits that certain explosives and ammunitions exploded on said date, thereby causing severe shocks and violent concussions of the air, but it has no knowledge nor information sufficient to form a belief as to whether said severe shocks and concussions, or any of them, broke or damaged, or destroyed the glass doors and windows of the persons and corporations, or any or either of them, shown upon Schedule "A" attached to the complaint.

5. It repeats and makes part hereof the allegations of paragraphs 10 and 11 of the first defense to the first count.

6. As to the allegations of paragraph 6, it has no knowledge nor information thereof sufficient to form a belief, except that it alleges that it was in no manner negligence in the premises.

In lieu of a motion to strike out said third count defendant objects thereto on the ground that it discloses no cause of action against the defendant.

SECOND DEFENSE TO THIRD COUNT.

Defendant repeats and makes a part hereof the allegations of its second defense to the first count.

THIRD DEFENSE TO THIRD COUNT.

Defendant repeats and makes a part thereof the allegations of its third defense to the first count.

COLLINS & CORBIN,
Attorneys of Defendant.

REPLY.

(Filed November 21, 1918.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

ROYAL INDEMNITY COMPANY,
Plaintiff,

vs.

LEHIGH VALLEY RAILROAD COMPANY,
Defendant.

Action at Law.

Reply.

FIRST DEFENSE TO FIRST COUNT.

1. Plaintiff denies the special defenses set forth in paragraph four.

2. It denies the special defenses set forth in paragraph five.

3. It denies the special defenses set forth in paragraph seven.

SECOND DEFENSE TO FIRST COUNT.

1. Plaintiff admits paragraph one.
2. It denies paragraph two.
3. It denies paragraph three.

THIRD DEFENSE TO FIRST COUNT.

1. Plaintiff denies paragraph one.
2. It denies paragraph two.
3. It denies paragraph three.

FIRST DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in paragraphs one, two and three of this reply to the first defense to the first count.

Reply.

It denies the special defenses set forth in paragraph fifteen.

SECOND DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the second defense to the first count.

THIRD DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the third defense to the first count.

FIRST DEFENSE TO THIRD COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in paragraphs one, two and three of this reply to the first defense to the first count.

SECOND DEFENSE TO THIRD COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the second defense to the first count.

THIRD DEFENSE TO THIRD COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in this reply to the third defense to the first count.

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff.

POSTEA AND JUDGMENT.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

ROYAL INDEMNITY COMPANY,

vs.

LEHIGH VALLEY RAILROAD COMPANY.

This case was tried before the Honorable William H. Speer, Circuit Court Judge (to whom the same was referred for trial) and a jury on the 20th, 23rd, 24th, 25th, 26th and 27th days of June, 1919, and the same having been submitted to the jury, the jury returned a general verdict in favor of the plaintiff and against the defendant Lehigh Valley Railroad Company in the sum of four thousand one hundred and eighteen dollars and fifty-one cents ($4,118.51).

Damages	$4,118.51
Costs	44.60
	$4,163.11

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of four thousand, one hundred eighteen dollars and fifty-one cents and its costs, which are taxed at the sum of forty-four dollars and sixty cents, making in the whole the sum of four thousand, one hundred and sixty-three dollars and eleven cents.

Judgment entered July 8, 1919.

WM. S. GUMMERE,
C. J.

NOTICE OF APPEAL.

(Filed July 17, 1919.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

NEW YORK PLATE GLASS INSURANCE COMPANY, *Plaintiff,* vs. LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*Action at Law.* *Notice of Appeal.*

To Messrs. Congleton, Stallman & Hoover,
Attorneys for Plaintiff.

TAKE NOTICE, that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in above-stated cause.

COLLINS & CORBIN,
Attorneys for Defendant.

GROUNDS OF APPEAL.

(New York Plate Glass Insurance Company.)

(Filed August 25, 1919.)

These are the same as Grounds of Appeal Nos. one to seventy-one in the case of Royal Indemnity Company.

COMPLAINT.

(Filed July 21, 1918.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

NEW YORK PLATE GLASS INSURANCE COMPANY, *Plaintiff,*	*At Law.*
vs.	*Complaint.*
LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	

1. The plaintiff is a corporation of New York, having its principal office in the City of New York, and is engaged in the business of insuring persons and corporations against loss occasioned by the breakage of glass doors and windows.

2. The defendant is a corporation engaged in the maintenance and operation of a railroad in and through the State of New Jersey, for the transportation of freight and passengers.

3. On July 30th, 1916, the defendant possessed, used, occupied and controlled a certain yard in the City of Jersey City, locally known as the "Black Tom" yard, extending into the waters of New York Bay, and also possessed, used, occupied and controlled certain lands covered with the waters of New York Bay adjacent to said "Black Tom" pier, as well as certain upland, likewise adjacent to said pier, in connection with its business of a common carrier of freight and passengers.

4. Said "Black Tom" yard and the said lands adjacent thereto, on and prior to July 30th, 1916, were used by the defendant for the handling, holding, and trans-shipment

of carload lots of gun powder, trinitrotoluol, dynamite, nitroglycerine and other high and dangerous explosives, and shells, shrapnel and other ammunitions and munitions of war.

5. On July 30th, 1916, and for several days prior thereto, the defendant had placed and on said date was holding on said pier and lands adjacent thereto, many carloads of said explosives, ammunitions and munitions of war, which explosives were to the knowledge of said defendant highly dangerous and capable and liable, in the event of fire, to explode and thereby cause incalculable damage and injury to residents of Jersey City and their buildings, chattels and other property.

6. On July 30th, 1916, and for several days prior thereto, the defendant used its premises and waters, adjacent to said pier, for the tying up of boats, lighters and ships upon and to which was loaded, placed and carried large quantities of like explosives as described in the preceding paragraphs.

7. On said July 30th, 1916, and for several days prior thereto, said defendant permitted the use of its premises and waters, adjacent to its said pier, to be used for the anchorage and tying up of tugs, boats and other vessels, as well as by boats and lighters carrying large quantities of like explosives as described in the second preceding paragraph.

8. By reason of the accumulation, on said pier and on the lands adjacent thereto, of said large quantities of said explosives and munitions, and the danger existing therein and therefrom, said accumulation of explosives and munitions, constituted a nuisance.

9. The accumulation of the large quantity of like dangerous explosives on boats and vessels in its premises and waters adjacent to said pier of the defendant, by the act and with the permission and knowledge of said defendant, constituted a nuisance on the part of the defendant.

10. On July 30th, 1916, a fire occurred on the premises possessed by the defendant known as "Black Tom" yard, and by means thereof said accumulations of explosives and munitions became and were ignited and exploded, causing severe shocks and violent concussions of the air, which broke, damaged and destroyed the glass doors and windows of the persons and corporations shown upon the schedule marked Schedule "A" hereto attached and hereby made a part hereof.

11. The plaintiff on said July 30th had lawfully insured the persons and firms shown on Exhibit "A" against loss from damage to their respective glass doors and windows, and by reason of its obligations under its several contracts of insurance paid to said persons, or firms, their losses, or provided said persons or firms with new doors and windows to the amounts and values set opposite their respective names on said Schedule "A," and plaintiff is subrogated to the rights of said parties to demand and receive the amounts of said losses so sustained and paid or replaced by it.

12. The losses so sustained and paid or replaced by the plaintiff were the direct result of the creation and maintenance by the defendant of the nuisance described in paragraphs six and seven.

SECOND COUNT.

1. The plaintiff re-alleges paragraphs 1. 2. 3, 4, 5, 6 and 7 of the first count.

2. By reason of the accumulations of said large quantities of explosives and munitions on and near said pier and premises of the defendant, it was the duty of the defendant to exercise a high degree of care to prevent the occurrence of fires, detonations or other means whereby said explosives and munitions might become exploded.

3. Said defendant negligently failed and omitted to perform said duty.

Complaint.

4. By reason of the accumulation of the explosives and munitions, as aforesaid, it was the duty of the defendant to exercise a high degree of care to watch and guard said explosives and the yard, piers, cars and vessels containing the same or lying in proximity thereto, so as to prevent, and to extinguish and control, when discovered, fires, detonations and other means by which such explosives might be exploded.

5. The defendant negligently omitted and failed to perform said duty.

6. It was also the duty of the defendant in the premises to exercise due care to employ a sufficient number of watchmen and guards to police its said yard and approaches and the waters adjacent thereto to observe and detect the approach or presence of any person not authorized or licensed to visit said pier, and who might by accident or felonious intent set fire to said pier or property thereon.

7. The defendant negligently failed and omitted to perform said duty.

8. It was also the duty of the defendant in the premises to exercise due care to furnish, provide and install, and keep in good order and repair sufficient water supply, fire-fighting devises and apparatus on and about its said pier, by means of which any fire occurring upon or near said pier might be promptly extinguished and controlled.

9. The defendant negligently omitted and failed to perform said duty.

10. It was also the duty of the defendant in the premises to exercise a high degree of care to store, handle and dispose of said explosives and munitions so as to prevent and control the ignition and communication of fire and detonation from one portion or mass of the same to any other part or mass of the same.

11. The defendant negligently failed to perform said duty.

12. The municipality of Jersey City at the times of said explosion maintained large police and fire departments, whose duty and custom it was, to the knowledge of the defendant, to respond immediately to all alarms of fire for the purpose of extinguishing the same.

13. It was also the duty of said defendant to exercise due care to install and provide and keep in good order and repair sufficient means of communication whereby the occurrence of any fire or other agency capable of igniting said explosives could be immediately communicated from said pier to the fire and police departments of Jersey City.

14. Said defendant negligently failed and neglected to perform said duty.

15. It was also the duty of the defendant in the premises, immediately upon the happening and discovery of a fire on or near said pier, to notify the Fire Department of Jersey City of the existence and location of said fire.

16. Said duty the defendant negligently failed and omitted to perform.

17. On July 30th, 1916, a fire occurred on the premises possessed by the defendant, on or in the immediate vicinity of said pier of the defendant, and by reason of negligence of the defendant in failing to perform its several duties in the premises the defendant suffered a part of said explosives and munitions and the cars and containers thereof to become ignited, whereby the same exploded, which fire and detonation of said explosion the defendant suffered to be communicated to other masses and quantities of explosives in said yard, which likewise exploded with great force and violence, causing severe shocks and concussions of the air, which simultaneously broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit "A."

18. The plaintiff realleges paragraphs 10 and 11 of the First Count.

19. The losses so sustained and paid or replaced by the plaintiff were the direct result of the negligence of the defendant as aforesaid.

THIRD COUNT.

1. The plaintiff realleges paragraphs 1, 2, 3, 4, 5, 6 and 7 of the First Count.

2. By authority of certain acts of Congress approved March 4th, 1909, and June 18th, 1910, the Interstate Commerce Commission in October, 1914, promulgated, and on July 30th 1916, there remained in force and effect, certain regulations for the handling and transportation by freight of carloads of explosives by carriers in interstate commerce, which regulations were then and there binding upon the defendant and applicable to the explosives herein above-mentioned, to which regulations the plaintiff refers as fully as if here set forth.

3. The defendant negligently failed and refused to comply with the requirements of said regulations.

4. On July 30th, 1916, a fire occurred on the premises possessed by the defendant, on or in the immediate vicinity of said pier of the defendant, and by reason of negligence of the defendant in failing to perform its several duties in the premises the defendant suffered a part of said explosives and munitions and the cars and containers thereof to become ignited, whereby the same exploded, which fire and detonation of said explosion the defendant suffered to be communicated to other masses and quantities of explosives in said yard, which likewise exploded with great force and violence, causing severe shocks and concussions of the air, which simultaneously broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit "A."

5. The plaintiff realleges paragraphs 10 and 11 of the first count.

6. The losses so sustained and paid or replaced by the plaintiff were the direct result of the negligence of the defendant as aforesaid.

The plaintiff demands, on the first count, the sum of $60,835.65.

The plaintiff demands, on the second count, the sum of $60,835.65.

The plaintiff demands, on the third count, the sum of $60,835.65.

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff.

Exhibit "A."

NEW YORK PLATE GLASS COMPANY.
STATEMENT OF LOSSES.

Actual cost of replacement of glass broken by the explosions in the Harbor of New York, July 30th, 1916, and which losses are insured against by this company.

Name of Assured.	Location.	Replacement Loss.
Seth S. Terry	26 John St.	$ 60.61
W. R. Grace & Co.	3-15 Old Slip	104.77
Chas. Herry	733-5 Broadway	15.00
E. S. Rothschild	37-43 Leonard St.	288.60
James Hopkins	289 Bleecker St.	134.54
Seaman Bank	832-4 Broadway	22.36
City Investing Co.	165 Broadway	54.12
Booras Bros.	5 Battery Place	9.00
Rogers Peet Co.	258-9 Broadway	4.50
Z. Honkosher	115-17 E. 23rd St.	11.00
Hudson & Manhattan R. R. Co.	171-5 Greenwich St.	26.40
Hill Publishing Co.	469-75 Tenth Ave.	65.28
F. S. Van Buren	45 W. 14th St.	115.92
Theo. C. Camp	72-6 Cortlandt St.	126.48
U. S. Title Co.	7 Wall St.	61.68
Hannis & LeVey	59 W. 42nd St.	93.27
Ponlides Bros.	102 Broad St.	16.50
J. G. Wendell	141-3 W. 38th St.	448.22
W. J. Madden & Co.	294 Hudson St.	11.00
Marquise Clothes Shop	77 Nassau St.	10.00
Emily Mommer	40-42 E. 19th St.	7.00
Advance Safe Co.	368 Broadway	33.75
H. W. Johns-Manville Co.	196 Chambers St.	17.00
J. B. Owens, etc.	137-9 W. 25th St.	15.00
Est. J. E. Cooley	173 Broadway	315.09

Complaint—Exhibit A.

Name of Assured.	Location.	Replacement Loss.
F. T. Van Buren	13 E. 14th St.	147.00
White & F. M. Hilton	146 Liberty St.	71.00
M. Tierney	55 E. 11th St.	140.00
M. H. Harper	223 Sixth Ave.	90.00
Atlas Line Steamship Co.	41-5 Broadway	125.00
N. H. Oscanyan	132-8 Liberty St.	536.57
32nd & 33rd St. Corpn.	5-15 W. 32nd St.	127.98
Broadway Trust Co.	531-39 W. 29th St.	21.12
Est. of E. Chesebrough	34-6 W. 3rd St.	36.16
Est. of E. Chesebrough	32 Great Jones St.	25.19
H. Ostendorf	216 Franklin St.	21.01
C. S. Kessel	208 West St.	18.59
Mrs. E. A. Davis	70 Fulton St.	41.36
Neptune Realty Co.	36 Wall St.	62.76
Cobb, Macey, Dohne, Inc.	412 Broadway	132.44
L. Morrison Co.	394 Fifth Ave.	52.43
E. Rosenbaum	265 West Broadway	34.32
Est. H. D. Potter	12 Fulton St.	23.42
Temple Court Co.	123 Nassau St.	50.65
Waterman Bldg. Co.	10 Cortlandt St.	35.67
M. Schneider	15 Thames St.	17.05
Swiss Clock Co.	85 Barclay St.	19.25
Leo. Franken, Inc.	17 W. 34th St.	29.85
U. S. Trust Co.	7 Wall St.	79.99
A. Gulbenkian	4 Battery Place	16.94
Macy & Jenkins	67 Liberty St.	6.41
H. A. Hutton	115-7 West Broadway	30.58
R. D. Poportas	14 Greenwich St.	6.03
J. F. Menke	27 Thames St.	20.57
Geo. Kemp Real Estate Co.	619-21 Fifth Ave.	55.28
R. K. Fox	338-40 Pearl St.	52.22
B. Fischer	30-2 E. 21st St.	5.42
J. A. Walsh	103 Water St.	17.81
Rogers Peet Co.	258-9 Broadway	8.56
J. De Drago	13 Broadway	26.73
Golden Hill Corp.	7 Cliff St.	24.96
R. Goelet	639 Broadway	23.01
Est. G. B. Wilson	SE. cor. Broadway & 33d St.	12.01
Sarah O. McKenna	328 W. 12th St.	107.03
L. B. Walzer Everette Co.	21 Broadway	29.04
Merchants National Bank	40-2 Wall St.	26.28
F. Van Buren et al.	W. 14th St.	51.92
J. G. Wendel	53 Carmine St.	41.03
I. C. May	12-14 W. 3rd St.	6.21
Bartholemew & Mitchell	NE. cor. New Bowery & Chambers	38.72
C. W. Endel	19-21 Bleecker St.	19.36
E. Palmer	57-9 William St.	25.34
W. J. Behrens	272 West St.	7.49
W. F. Hickey	143 Washington St.	25.30
Alexander Bros.	07-9 Bowery	48.73
S. G. Blakely	78 Hudson St.	60.94
Rolland Realty Co.	37-9 W. 25th St.	51.48
G. Faris & Co.	23 Washington St.	80.08
Pittsburgh Life & Trust Co.	141 Broadway	47.54
Broadway Corp.	597 Broadway	5.35
J. Krick	334 W. 25th St.	3.13
Hamburg-American Line	41-5 Broadway	121.27
Dennett's Supr. Coffee Co.	145 Nassau St.	61.44

New York Plate Glass Insurance Company Case.

	Name of Assured.	Location.	Replacement Loss.
	Liberty Tower	53-7 Liberty St.	46.84
	J. Del Drago	78-80 Cortlandt St.	87.94
	A. G. Vanderbilt, et al.	126-32 Nassau St.	41.36
	St. James Investing Co.	98-100 James St.	29.37
	Est. M. A. Chisholm	56-8 W. 22nd St.	20.81
	Hudson & Manhattan R. R. Co.	185 Greenwich St.	104.52
	J. Katteck, etc.	101 Varick St.	145.40
10	Moore & Hangen	133 W. 14th St.	36.30
	J. W. I. Nicols	10 Grand St.	22.38
	Rome Metallic Bedstead Co.	418-26 W. 25th St.	41.65
	Isabella Kelly	239 West Broadway	38.72
	Mozawaya & Co.	118-20 E. 25th St.	131.49
	J. A. Gallagher	86 Thompson St.	32.75
	Devin & Dollard	52-8 Whitehall St.	29.22
	W. C. Howard	260 Bleecker St.	15.57
	H. Elias Brewing Co.	82 Pitt St.	17.49
	B. S. Castles	39-41 W. 38th St.	37.80
	S. Goldstein	127 Nassau St.	15.51
	J. Bloomfield Co.	663-5 Broadway	4.50
	C. A. Gould	396-8 Broadway	53.68
	E. Weitzner	20 Fulton St.	2.48
	Italian Vineyard Co.	11-3 Hubert St.	4.60
	D. Birdsall	182 Franklin St.	2.50
	U. S. Frame & Picture Co.	24 Barclay St.	1.73
20	Seamans Savings Bank	832-4 Broadway	25.99
	Empire Hardware Co.	85 Warren St.	5.14
	Equitable Life Assur. Corp.	114-20 Greenwich St.	85.57
	Est. Elizabeth S. Jones	30 Rector St.	4.09
	Borras Bros.	5 Battery Place	17.49
	J. A. Webb & Son	52 Stone St.	4.72
	J. Berg	49 Washington St.	1.68
	Mary B. Caswell	14-16 Beaver St.	2.26
	Est. A. L. Sampson	63-5 Wall St.	58.38
	T. Speir, etc.	45 Washington St.	12.48
	Mutual Profit Realty Co.	150-2 Bleecker St.	25.44
	Farmers Loan & Trust Co.	20-24 Exchange Place	9.33
	Est. J. Fahys	103-5 Warren St.	40.33
	N. Y. Life Ins. Co.	150 Nassau St.	14.71
	C. L. Flaccus Glass Co.	63 Barclay St.	5.83
30	W. R. Grace & Co.	3-15 Old Slip	1.44
	Griffin Mfg. Co.	69 Murray St.	14.58
	The Mirror	141-5 Broadway	6.10
	Am. Sugar Refining Co.	90 West St.	30.36
	Title Ins. Co.	135-7 Broadway	29.24
	468 8th Ave. Co., Inc.	20-2 Liberty St.	28.03
	Susquehanna Silk Mills	23-7 W. 17th St.	1.83
	Atlas Line Steamship Co.	41-5 Broadway	28.48
	Geo. Jehang, et al.	39-41 Cortlandt St.	8.23
	C. T. Kessel	207 West St.	3.97
	Est. E. S. Halsted	116 Broad St.	82.44
	Jenny Sabre	541-7 Pearl St.	36.58
	L. Tannenbaum	35 Mercer St.	238.03
	Allcock Mfg. Co.	274 Canal St.	47.52
	Est. Ogden Goelet	50 Washington St.	69.67
	Hudson & Manhattan R. R. Co.	183 Greenwich St.	87.36
	W. F. Randall	83 Barclay St.	80.40
40	A. Sidner	3 Morris St.	29.88
	S. Shara	99 Washington St.	42.48

Complaint—Exhibit A.

Name of Assured.	Location.	Replacement Loss.
Est. E. Chesebrough	444 Broadway	60.48
Geo. Jehang, et al.	39-41 Cortlandt St.	275.44
T. Tierney	371 W. 12th St.	22.44
Est. J. H. Mahany	628-30 Broadway	25.11
H. C. Avering	31 Bridge St.	33.11
Darevin & Milner	281-3 Water St.	50.76
W. K. Vanderbilt, etc.	124 Nassau St.	93.76
Dual Holding Co. Inc.	34-8 W. 27th St.	3.35
Elizabeth Johnson	33 Washington St.	31.32
A. D. Gould et al	323 Greenwich St.	3.80
J. M. Hutchinson	92 Chambers St.	
.....	77 Reade St.	24.77
Bell Bag Co.	63 Front St.	26.88
M. Ottinger	414 Washington St.	95.16
Est. E. A. Hoffman	54 Warren St.	30.36
Est. J. Castree	120 Hudson St.	15.36
D. Knabe	270 South St.	24.76
Title Ins. Co.	135-7 Broadway	113.28
O. J. Wells	98 Chambers St.	50.26
Amer. Col. Graphaphone	83 Chambers St.	66.36
J. A. Rosebaum	120 Greenwich St.	8.26
Rhone Bros. Co.	34 Barclay St.	139.07
Howard St. Corp.	434-8 Broadway	17.66
J. J. Callanan	41-3 Vesey St.	37.80
Booras Bros.	5 Battery Place	40.15
Booras Bros.	5 Battery Place	27.79
Wallack Const. Co.	29-31 W. 30th St.	100.20
Am. Sugar Refining Co.	90 West St.	197.40
John G. Agar	79-89 Wall St.	84.24
E. Redmond	65-9 Barclay St.	95.28
A. Rupal	4 West Broadway	130.54
W. P. Rogers	106 Wall St.	32.56
Rustet Co.	52 Broadway	125.34
C. R. Andrews, Trustee	273-7 Broadway	30.00
Edna B. Esaac	26 John St.	20.00
M. Melte & Son. Inc.	273 Fifth Ave.	235.00
Centerboro Realty Co.	176 Madison Ave.	160.00
S. Sprague Terry	57 Maiden Lane	232.00
L. F. Dommerick	254 Fourth Ave.	504.00
C. O. Bigelow	106-8 Sixth Ave.	86.52
P. T. Barnum	616-8 Broadway	50.31
C. H. Burke	20 E. 14th St.	154.70
F. Dreyfuss	130 West 23rd St.	35.21
H. Metcalfe	783-5 Broadway	4.50
F. J. Goefel, etc.	137 E. 13th St.	7.50
Broo & Dotter	40-2 Vesey St.	23.50
Madam Irene	W. 42nd St.	5.00
L. Siegman	150 Fifth Ave.	15.00
Dennett Surp. Coffee Co.	60 Broad St.	14.96
Dennett Surp. Coffee Co.	145 Nassau St.	7.28
Nellie S. MacFadden	147 W. 23rd St.	15.00
Model Incubator Co.	39 Barclay St.	10.00
J. Hirsch & Son	133-7 W. 21st St.	20.00
American Graphaphone	33 Chambers St.	35.00
Hall's Safe Co.	388 Broadway	20.00
Oceanic Investing Co.	189-91 Broadway	118.00
Est. R. Goelet	110-12 Fifth Ave.	53.82
Cuyler Realty Co.	119 W. 31st St.	13.71

New York Plate Glass Insurance Company Case.

	Name of Assured.	Location.	Replacement Loss.
	H. C. Juilliard	632-4 Broadway	21.65
	Est. M. A. Chisolm	56-8 W. 22nd St.	9.20
	Brunswick-Balke-Collender Co.	29-35 W. 32nd St.	4.93
	The Mirror	431-3 Hudson St.	25.80
	N. Y. Mdse. Co.	540 Broadway	137.28
	Est. W. Ottman	25 Waverly Place	69.96
	H. Pitts	49 E. 19th St.	51.80
10	E. Glinick	77½ Pine St.	71.40
	Chas. Moran, et al.	532 Hudson St.	21.00
	S. Dickmann	186-8 Wooster St.	21.53
	H. D. Atterbury, et al.	821 Broadway	52.92
	J. McCarthy	9-13 Walker St.	82.63
	Amer. Steel & Wire Co.	57 Barclay St.	237.42
	Hei Rig Realty Co.	49 E. 11th St.	47.22
	Alex. Pollock	203 West St.	7.55
	D. Lippman	80 Horatio St.	42.14
	Est. D. L. Ernstein	171-3 Wooster St.	15.72
	P. Gallagher	17-19 W. 3rd St.	7.70
	Est. J. C. Parsons	388 Broadway	49.20
	Est. E. A. Hoffman	307-11 Canal St.	49.68
	Susquehanna Silk Mills	18-24 W. 18th St.	50.40
	Hilfer & Bro.	312-14 Bowery	27.15
	F. C. Weler	180 Lafayette St.	24.24
	Isabella Kelly	239 W. B'dway & 4 & 6 White St.	43.75
20	Est. W. H. Gebhardt	59 Fifth Ave.	23.52
	Wilbert Realty Co.	141-5 W. 17th St.	91.20
	M. Teitelbaum	21-3 Bleecker St.	33.00
	Dale Lighting Fixture Co.	107-9 W. 13th St.	45.60
	Voss & Stern	71 Fifth Ave.	38.89
	J. B. Higgins	487 Broadway	96.00
	Society N. Y. Hospital	319 Broadway	39.36
	O. Wagner	250 Mulberry St.	26.45
	M. Schrenkeisen	221-7 Canal St.	30.18
	E. B. Springs	29-33 W. 38th St.	32.26
	C. A. Gould	396-8 Broadway	48.36
	L. Krisner	177 Bleecker St.	50.20
	M. Schrenkeisen	164-8 Canal St.	40.38
	H. Hallman	245½-7 Bowery	34.50
	Met. Life Ins. Co.	1-7 Madison Ave.	64.56
30	B. Fechter	417½-19 Grand St.	60.12
	Est. W. Nelson	195 Seventh Ave.	26.82
	D. Rabilotte	63 Carmine St.	31.65
	F. J. Goepel	137 E. 13th St.	24.37
	J. A. Townsend	23 E. 15th St.	107.25
	Round Robin Realty Corp.	8-10 W. 19th St.	48.48
	Ostermoor & Co.	116 Elizabeth St.	10.73
	H. Richter Sons	627-9 Broadway	11.80
	227 Greene St. Corp.	34-8 W. 4th St.	48.80
	I. Townsend, et al.	1122 Broadway	30.36
	H. C. Eibs	58 Sixth Ave.	49.32
	Pine St. Co.	27-9 Pine St.	70.44
	Est. James Cooley	173 Broadway	3.79
	Adams Express Bldg. Co.	57-61 Broadway	8.01
	Oceanic Investing Co.	189-91 Broadway	9.76
	West St. Bldg.	90 West St.	19.67
	Johnson & Faulkner	331-7 E. 17th St.	2.62
40	Est. James E. Cooley	173 Broadway	.96

Complaint—Exhibit A.

Name of Assured.	Location.	Replacement Loss.
Eve Deutsch	11-13 W. 32nd St.	7.75
Chas. Kaye	30-4 W. 26th St.	18.00
Pitts. Life & Trust Co.	565-7 Broadway	14.14
Century Building Co.	74 Broadway	63.73
Title Ins. Co.	135-7 Broadway	16.80
J. B. Thompson	7 New St.	5.68
Met. Life Ins. Co.	11-5 E. 24th St.	25.86
Polo Const. Co.	30-2 W. 15th St.	71.31
The 1912 Co.	112-14 E. 19th St.	109.87
Thos. Lenane	42 Beach St.	65.17
Ida M. Powell	109 Hudson St.	98.15
Union Trust Co.	380-2 Broadway	107.73
One Union Sq. Corp.	1 Union Square	315.50
Sarah B. Crowell	373-5 Broadway	6.47
Baker, Voorhies & Co.	45 John St.	117.18
F. F. Van Buren	2 East 14th St.	68.16
W. B. Brown	368 Broadway	140.00
T. A. Schultz	122 Nassau St.	220.96
G. Sidenberg	116 Fifth Ave.	296.41
Seamans Bank, etc.	127-33 W. 17th St.	28.72
J. Hirsch & Sons	133-7 W. 21st St.	148.17
W. R. Noe & Sons	53-5 W. 21st St.	50.65
R. S. Castles	43 W. 38th St.	41.95
R. Gregg	1-3 E. 13th St.	58.59
Est. J. Keller	722 Broadway	120.28
Griffin Mfg. Co.	69 Murray St.	76.18
J. V. Cockroft	NW. cor. John and Nassau Sts.	176.82
Chas. Haeny	733-5 Broadway	180.16
Christman & Sons	35 W. 14th St.	117.05
24 West 25th St. Corp.	24-6 W. 25th St.	98.63
Loft Realty Co.	135-9 W. 26th St.	86.89
Trustee J. Lirillard	296 Broadway	146.66
U. S. Trust Co. etc.	12 W. 23rd St.	179.14
E. Guggenheimer	727 Broadway	328.21
U. S. Trust Co.	57-9 E. 11th St.	257.92
Est. A. Post	339 Broadway	176.52
Amer. Sugar Refining Co.	90 West St.	65.63
L. F. Dommerick	254 Fourth Ave.	542.98
F. T. Van Buren	39 W. 14th St.	315.08
A. Kosofsky	742 Sixth Ave.	36.15
Est. H. Morange	145 Bowery	26.24
St. Lukes Hospital	65 Murray St.	35.09
Society N. Y. Hospital	317 Broadway	32.21
J. V. Cockroft	NW. cor. John and Nassau Sts.	14.89
Jaffray Realty Co.	127-35 Bleecker St.	22.44
Chas. Moran et al.	534 Hudson St.	26.35
Seligman Bldg.	1-3 S. William St.	5.62
Rector, Wardens, etc.	127 Reade St.	6.24
29th St. Const. Co.	105-7 E. 29th St.	4.84
D. I. Connelly	224 West St.	19.41
Est. I. Stern	33-5 W. 22nd St.	12.29
National City Bank	40-2 Wall St.	214.62
F. T. Van Beuren	15 E. 14th St.	122.15
F. G. McKeever	45-7 West 27th St.	210.40
York Safe & Lock Co.	55 Maiden Lane	51.26
Lord & Taylor	424-34 Fifth Ave.	238.01

New York Plate Glass Insurance Company Case.

	Name of Assured.	Location.	Replacement Loss.
	R. C. Cornell	127-9 Liberty St.	22.88
	M. A. Shannon	94 Greenwich St.	19.80
	U. S. Trust Co.	22 Whitehall St.	117.15
	Krover, Tynberg Co.	1200-2 Broadway	99.55
	Ponlides Bros.	102 Broad St.	38.06
	Franklin Bldg. Co.	358 Broadway	128.92
	Neptune Realty Co.	56-60 Madison Ave.	136.83
10	Dennett's Surp. Coffee Co.	60 Broad St.	93.73
	P. T. Barnum	616-18 Broadway	150.00
	W. O. Thulking	489 West St.	45.87
	Est. N. Low	130 West Houston St.	70.40
	A. Van Deweken, et al.	97 Neekman St.	20.90
	L. I. Feldman	5 Cortlandt St.	3.51
	Shaw Jewelry Shop	59 West 42nd St.	60.13
	Max Kamemy	21 Bond St.	37.52
	Elizabeth Chesebrough	28 Howard St.	8.81
	Est. E. M. Hennessey	117 East 18th St.	30.70
	F. Vitto	287 Greenwich St.	14.41
	J. G. McCullough	57 Broad St.	22.77
	Rexton Realty Co.	34-6 West Houston St.	10.47
	Est. E. M. F. Raaun	20 Bond St.	12.43
	S. Lindau	500 Fifth Ave.	46.33
	Melville Shoe Corp.	48-50 Cortlandt St.	3.43
	Tower Mfg. & Novelty Co.	326 Broadway	168.22
20	Franklin Simon Co.	414-20 Fifth Ave.	48.05
	York Safe & Lock Co.	55 Maiden Lane	10.00
	Surpass Leather Co.	17 Battery Place	25.00
	Wright & Ditson, Inc.	22 Warren St.	10.00
	Atlas Line Steamship Co.	41-5 Broadway	21.00
	Cobb, Macey & Dohne	412 Broadway	40.00
	Est. J. E. Cooley	173 Broadway	63.20
	Cotton Exchange	60-2 Beaver St.	77.75
	B. Schwartz	273 Pearl St.	48.84
	Beck Shoe Co.	368 Sixth Ave.	63.40
	Brooklyn Bank	206-10 Broadway	25.62
	M. Welte Sons, Inc.	273 Fifth Ave.	70.00
	Equitable Bldg.	120 Broadway	4,749.49
	Adams Express Bldg. Co.	57-61 Broadway	1,656.21
	City Investing Co.	185 Broadway	826.00
30	Geo. Jehanny	39-41 Cortlandt St.	205.39
	F. Melville, Jr.	78 Nassau St.	6.64
	F. Melville, Jr.	48-50 Cortlandt St.	5.00
	Hotel Astor	1507-21 Broadway	2.39
	Est. E. A. Hoffman	122-4 Fifth Ave.	96.83
	Est. E. A. Hoffman	105-7 Fifth Ave.	66.55
	One Union Sq. Corp.	1 Union Square	15.00
	Rothschild & Richnitzer	96 Fifth Ave.	3.07
	Pfiper & Vogel	75-7 Cliff St.	5.61
	Biltmore Hotel	Madison Ave. and 43rd St.	33.06
	South Ferry Bldg.	1-2-3 State St.	407.77
	Chas. Edgar etc.	68 West 39th St.	20.00
	Boericke & Runyon	14 West 38th St.	33 00
	Cheney Bros.	215-9 Fourth Ave.	500 00
	Snow Fountain, Inc.	120 Pearl St.	23.00
	Est. G. Muller	547 Tenth Ave.	4.25
	G. B. Wilson	28 Ann St.	16.76
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Complaint—Exhibit A.

Name of Assured.	Location.	Replacement Loss.
Howard St. Corp.	434-8 Broadway	5.29
Est. S. R. Van Duzer	55 Barclay St.	55.42
Alex. Pollock	203 West St.	24.60
Adams Express Bldg. Co.	57-61 Broadway	83.75
M. Shannon	94 Greenwich St.	7.52
Golden Hill Corp.	97-103 John St.	1.81
Equitable Life Assur. Co.	235-9 Broadway	10.83
Geo. Jehany	39-41 Cortlandt St.	4.35
Est. E. A. Hoffman	122-4 Fifth Ave.	16.40
Wallach Bros.	265-7 Broadway	75.00
P. T. Barnum, et al.	610-4 Broadway	16.39
J. K. Clark, Rec.	23-5 Beaver St.	10.96
J. Ehrlich & Sons	184 Broadway	20.00
A. Rupar	4 W. Broadway	8.28
Equitable Bldg.	120 Broadway	20.00
Thos. Tierney	371 W. 12th St.	7.03
I. Townsend	1121-7 Broadway	7.38
Irving Savings Bank	115 Chambers St.	44.73
12th & 13th St. Corp.	5-15 W. 32nd St.	1.90
Hudson & Manhattan R. R. Co.	171-5 Greenwich St.	3.67
Est. R. Goelet	110-2 Fifth Ave.	21.88
J. F. Menke	27 Thames St.	53.82
Melville Shoe Corp.	48-50 Cortlandt St.	46.00
Est. E. G. Hoffman, Inc.	122-4 Fifth Ave.	4.16
Broad Exchange Bldg. Co.	25-33 Broad St.	143.82
P. Goldberg	108 8th Ave.	5.50
Griffin Mfg. Co.	69 Murray St.	35.00
Rosie Klatzko	77 Cortlandt St.	.29
" "	" "	.88
Stulman Box & Lumber Co.	18 Wooster St.	.378
A. Warrendorf	1193 Broadway	36.79
Griffin Mfg. Co.	89 Murray St.	2.12
Anthony Buzzi	852 Broadway	28.18
A. D. Russell	74 West St.	6.67
Equitable Life	120 Broadway	44.28
F. F. Van Buren	7 East 14th St.	8.91
Mary B. Caswell	14-16 Beaver St.	56.74
H. C. Smith	85 Front St.	53.24
Equitable Life Assurance	395-9 Broadway	138.20
Melville Shoe Co.	8-50 Cortlandt St.	12.00
" " "	" " "	92.00
Metropolitan L. I. Co.	11-15 East 24th St.	21.84
Serena Rhinelander	125 Barclay St.	7.36
Frank Mellville, Jr.	48-50 Cortlandt St.	957.62
" " "	21-23 Cortlandt St.	148.88
Hotel Breslin	1188-98 Broadway	61.00
The Mirror	41-5 Broadway	102.75
H. King	37 Broadway	2.50
F. Melville Corp.	78 Nassau St.	115.00
Equitable Assn.	39-79 Broadway	25.30
W. Maas	57 Fifth Ave.	29.97
Atlas Line S. S. Co.	4115 Broadway	117.60
F. Melville Corp.	78 Nassau	.30
W. J. Behrens	272 West	6.93
Est. N. Weinert	167 W. 23rd St.	47.21
Amer. Exch. Natl. Bank	126-30 Broadway	89.48

New York Plate Glass Insurance Company Case.

	Name of Assured.	Location.	Replacement Loss.
		BROOKLYN	
	A. H. Lewis	145 Montague St.	41.36
	Est. N. Langler	339 Adams St.	36.08
	H. L. Willoughby	381-7 Fulton St.	48.64
	M. Hotzer	231 Court St.	26.62
	Est. I. Kaiser	59 Hamilton Ave.	29.37
	C. Pacilio	231 Sackett St.	76.76
10	Est. H. Innerscheid	141 Court St.	15.62
	H. A. O'Brien	74 Amity St.	36.30
	C. Muro	34 Carroll St.	31.02
	P. Meagher	81 Columbia St.	26.62
	J. P. Johnson	4723 6th Ave.	26.84
	N. & O. Beneuto	25 Columbia St.	80.92
	E. Gentile	23 Union St.	26.02
	B. Pinto	153 Columbia St.	19.90
	Dora Kirschbaum	567 Henry St.	21.00
	A. Lazarro	51 Sackett St.	43.60
	M. Flynn	325 Court St.	4.32
	S. Saitta	370 Hicks St.	130.94
	Rutherford Realty Co.	317 Court St.	39.24
	F. P. De Silva	55 Hamilton Ave.	27.60
	S. Brown	21 Union St.	38.36
	Voorhees Rd. Const. Co.	1668 Sheepshead Bay Road	15.21
20	.....	1664 Sheepshead Bay Road	15.81
	.....	1670 Sheepshead Bay Road	16.29
	Clark Wilcox	107 Myrtle Ave.	81.34
	Z. L. Levy	251 Columbia St.	40.30
	C. H. Offerman	503-13 Fulton St.	52.75
	J. & F. Fechter	2675 Myrtle Ave.	10.22
	United Cigar Stores Co.	565 Broadway	60.64
	Tomplins Realty League	855 Broadway	41.06
	A. N. Bernstein	328 Knickerbocker Ave.	23.46
	The Berlin	1013-21 Broadway	378.93
	F. H. McCormack	387 7th Ave.	41.40
	J. L. Hanlon	71 Columbia St.	73.92
	S. Spelling et al.	5124 5th Ave.	19.44
	S. Goldman	103 Hamilton Ave.	42.36
	P. Gaeler	363 5th Ave.	26.04
	D. Rae	126 Union St.	33.31
30	M. M. Hattenborn	182 Anover St.	31.44
	H. Sontag	759-761 Flatbush Ave.	44.67
	T. S. Morrell	159 Bridge St.	109.76
	H. Gumpel	255 Flatbush Ave.	46.92
	Olaf Olafson	4307 3rd Ave.	43.62
	.....	4305 3rd Ave.	39.42
	Thos. Roulston	315 Pearl St.	1.75
	Max Bernstein	717 Broadway	68.04
	J. Pomerantz	366-70 So. 5th	29.81
	Realty Associates	829A 3rd Ave.	26.62
	.....	825 3rd Ave.	26.62
	Antonio Avolia	2 2nd Place	40.33
	M. Martie	103 Atlantic Ave.	29.76
	C. Griener	11 New Grand St.	58.32
	Mrs. D. R. Bougarde	3911 3rd Ave.	28.82
	Davis & Weiss	4619 3rd Ave.	37.92
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Complaint—Exhibit A.

Name of Assured.	Location.	Replacement Loss.
Chas. Lyons	167-71 Broadway	56.28
Whalen Bros.	217-27 Grand	122.87
E. A. Muns Kalsomining Co.	4-12 Water St.	49.61
Max Korzok	657-9 Broadway	41.36
P. Kruger	823 3rd Ave.	26.29
E. S. Nix, et al.	267-71 State St.	17.49
R. Bauman, et al.	819 Broadway	174.02
Theo. Ibert	158 Graham Ave.	37.40
M. Kahn	75 Atlantic Ave.	38.24
A. Massa	38 Sackett St.	38.96
M. Nason & Son	599-605 5th Ave.	204.72
Wels & Zerwick	23 Columbia St.	42.00
Eliz. C. Woodward	92-4 Sands St.	30.24
J. Feuerstein	55 Sands St.	29.40
Maria Piconne	72 Union St.	10.00
S. A. Scialaga	103 Columbia St.	69.96
S. Deangelis	151 Columbia St.	9.72
H. H. Frost	85 Atlantic Ave.	37.05
Eliz. Striker	877 Flatbush Ave.	41.40
.....	875 Flatbush Ave.	55.08
M. Martin	101 Atlantic Ave.	31.20
D. Seigelman	1031-41 Bedford Ave.	88.25
J. Martinano	201 Columbia	27.24
E. N. Fitzpatrick	415 Fulton St.	46.18
S. Feldman	06 Fulton St.	31.55
A. & E. Sutherland	1 Sullivan St.	23.91
Mary E. Bretz	112¼-14 Atlantic Ave.	77.46
S. A. Schialaga	101 Columbia St.	101.28
E. W. Montonya	163-71 Bridge St.	20.35
J. L. Shea	7-9 Diamond St.	21.55
A. Miller	268 Columbia St.	59.40
H. H. Frost	87 Atlantic Ave.	45.00
W. J. Minus, et al.	359 Court St.	52.20
Katie Beck	145-9 Court St.	97.56
B. Rodriquez	318 Atlantic Ave.	28.32
R. Collier	299 5th Ave.	39.24
G. Feunell	1844-6 Bath Ave.	37.08
J. Wichern	5823 4th Ave.	50.40
A. Ammon	217-9 Columbia St.	64.45
India Wharf Brew. Co.	221 Conover St.	39.60
W. T. Compton	306 Van Brunt St.	17.76
I. Gilman	1510 Broadway	33.17
Est. F. J. Buchwalter	1563 Broadway	50.85
I. Goldstein	209-11 So. 3rd St.	26.73
J. and M. Harrie	97 Bedford Ave.	36.54
Clara Krochmal	2849 W. 3rd St.	30.90
J. Silvester	2956 W. 3rd St.	29.64
Diamond Cap Works	3325 Church Ave.	2.05
R. Stroeber	657 Flushing Ave.	14.63
F. Waldhain	1725 Nostrand Ave.	24.20
Mrs. A. Klincke	189 Grand St.	45.12
Realty Associates	96 Broadway	140.07
N. Lammers	466 Onderdonk Ave.	2.55
N. Hinden	138 Evergreen Ave.	5.87
Brklyn. Touraine Hotel Co.	17-21 Clinton St.	4.46
Chas. Youngbauer	321-3 5th Ave.	33.75

New York Plate Glass Insurance Company Case.

	Name of Assured.	Location.	Replacement Loss.
	A. Corsiglia	128-32 President St.	45.01
	J. Del Amo	118 Harrison St.	97.35
	Realty Associates	375 Van Brunt St.	23.40
	Sessa & Son	38-40 Union St.	56.53
	O. G. Reynolds, Inc.	573 Nostrand Ave.	13.97
	M. Weinschel	1126 Kings Highway	12.75
	G. Cutromeo	179 Columbia St.	26.40
10	S. J. Harding	182 Hamilton Ave.	29.15
	P. and R. Manello	5109-11 3rd Ave.	52.80
	S. Worth	1740 Myrtle Ave.	12.90
	D. Provost	195 Franklin St.	6.90
	Welz & Zerweck	2721 Myrtle Ave.	22.77
	H. Cohen	225 Columbia St.	52.03
	E. Rosenberg	309 Van Brunt St.	74.03
	Marg. McGee	5 Van Brunt St.	17.49
	H. Nieland, Jr.	119 Atlantic Ave.	18.04
	Nutting & Company	Fulton & Smith Sts.	105.81
	Realty Associates	291 Livingston St.	137.68
	Aeolian Co.	558 Fulton St.	99.55
	Auto Car Company	108-12 Livingston St.	50.05
	H. B. Davenport	373 Pearl St.	22.33
	Realty Associates	145 7th Ave.	29.48
	H. Rodenberg	271 Columbia St.	41.99
20	A. Wolf	267 Columbia St.	82.83
	Metzger	254 Bergen St.	48.40
	Weiner Bros.	646-8 Wash. Ave.	148.06
	Mary Gillick	275 Van Brunt St.	15.84
	R. W. Bennett Co.	579 Fulton St.	19.56
	.....	443 Fulton St.	138.15
	J. Friedman	269 Columbia St.	90.97
	F. Galendo	210 Hamilton Ave.	35.09
	J. T. Cox	113 Columbia St.	31.90
	P. Paver & Son	293 Columbia St.	25.30
	W. Gales	548 Court St.	17.38
	Glass & Lieberman	279 Columbia St.	102.73
	E. Gentile	46 Carroll St.	9.37
	V. Scott & Bros.	125 President St.	39.96
	S. J. Hardy	357 Court St.	42.90
	X. Grello	195 Hamilton Ave.	25.74
30	H. B. Scharman	311 Hamilton Ave.	68.53
	Ilson & Co.	474 Fulton St.	126.83
	A. F. King, et al.	227 Hamilton Ave.	34.65
	F. Kaiser	59½ Hamilton Ave.	86.62
	Realty Associates	28 Flatbush Ave.	89.87
	J. Sessa	131-3 Union St.	84.26
	E. Gentile	212-4 Hamilton Ave.	40.10
	Geo. Flanagan	183 Court St.	143.20
	Est. T. G. Sellew	132 Montague St.	103.77
	G. G. Shvany	169 Court St.	70.80
	J. S. Medice	221 Columbia St.	40.24
	J. Wechsler et al.	24-32 Smith St.	54.54
	D. De Simon	79 Sackett St.	24.09
	A. Gentile	50-2 Union St.	60.08
	J. Smilow	93-5 President St.	33.83
	Eliz. Rennert	2 4th Place	29.70
	E. J. McNoble	355 Furman St.	57.10
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Complaint—Exhibit A.

Name of Assured.	Location.	Replacement Loss.
J. J. Long	300 Columbia St.	79.68
H. Higgins	1 State St.	116.16
Mrs. M. Kalsicher	175 Clinton St.	12.65
J. J. Mullen	65 Hamilton Ave.	40.59
H. Rose	145 Hamilton Ave.	40.59
S. Dess	147 Hamilton St.	22.11
G. G. Shvany	171 Court St.	30.47
Beck Shoe Co.	575 Fulton St.	21.10
J. Ross	5 Hamilton Ave.	36.30
K. L. Kennedy	89 Atlantic Ave.	45.32
J. J. Cronin	115 Atlantic Ave.	30.58
Chesebrough Est.	295-8 Fulton St.	124.65
S. Lord et al.	181 Fulton St.	42.90
Beck Shoe Co.	383 Fulton St.	22.25
M. E. Campbell	317-7 Fulton St.	42.02
R. Scotti	242 Columbia St.	26.22
R. K. Fox	5603 3rd Ave.	43.67
J. P. Johnson	4719 5th Ave.	59.87
Est. Geo. T. Jackson	871-3 3rd Ave.	67.32
J. H. Williams & Co.	324 Columbia St.	87.90
Camero & Mancino	159 Columbia St.	21.01
F. Biermeyer	309-11 5th Ave.	64.36
S. Friedman	5410-2 3rd Ave.	178.86
F. Martino	891 3rd Ave.	65.40
E. F. Martin	22 Atlantic Ave.	4.88
Est. S. Burling	321 Myrtle Ave.	50.38
Thos. Roulston	669-71 5th Ave.	130.68
J. & E. Metzger	179 Richards St.	26.73
N. Sillieza	393 Van Brunt St.	25.41
E. C. Eckoff	19 State St.	74.36
Thos. Gaffney	42 Congress St.	36.30
A. Sichenza	165 Degraw St.	14.85
F. Petrolina	42 Sackett St.	36.08
Rosa Gunring	627 Nostrand Ave.	52.23
Gilmore Realty Co.	307 New York Ave.	47.96
J. Wohfeld	7207 13th Ave.	51.55
India Wharf Brew. Co.	276 Van Brunt St.	103.84
Marg. Bauman	372 Van Brunt St.	24.60
W. T. Compton	403 Van Brunt St.	23.43
T. Cohen	1120 Cortelyou Road	82.15
C. Giannao	169 Sackett St.	43.30
W. Murphy	40 Summit St.	122.09
J. A. Fitzgerald	545 3rd Ave.	33.99
Est. G. L. Jackson	669 3rd Ave.	25.85
C. & M. Cushion	439 3rd Ave.	64.35
Lochowitz	123 4th Ave.	30.47
Est. S. Burling	147-9 Bridge St.	30.73
F. W. and B. A. Kope	357 7th Ave.	55.98
D. Fleri	7 Carroll St.	30.58
Walther & Co.	444-6 Hicks St.	51.26
Welz & Zerwick	45 Hamilton Ave.	55.88
L. Sessa	188 Hamilton Ave.	52.70
S. Lord, et al.	179 Fulton St.	20.57
Est. J. H. Mehlhof	66 Park Ave.	24.10
C. O'Brien	259 Hamilton Ave.	23.54

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New York Plate Glass Insurance Company Case.

	Name of Assured.	Location.	Replacement Loss.
	J. S. Gold	275 Troy Ave.	3.65
	G. Colletl	424 Hicks St.	18.92
	T. Malloy	263 Hamilton Ave.	50.60
	A. Stein	557-9 3rd Ave.	32.15
	M. Manicio	520 Hicks St.	14.50
	J. S. Gold	271 Troy Ave.	39.39
	U. S. Tile Co.	32-4 Court St.	84.57
10	E. Chesebrough	677 Fulton St.	38.59
	S. E. Haggerty	46 Myrtle Ave.	8.09
	" " "	46 Myrtle Ave.	16.49
	J. H. Fienken	338 Van Brunt St.	46.53
	Mrs. Tully	582 Hicks St.	61.66
	F. Martonelli	36 Sackett St.	33.88
	Bessie Scindel	63 Union St.	35.14
	Nicola Vitram	109 Union St.	48.69
	A. F. King	297 Van Brunt St.	23.32
	Est. C. A. Chesebrough	664-6 Fulton St.	125.06
	Dime Sav. Bank	Fulton St., De Kalb Ave.	11.33
	H. S. Willoughby	285 Fulton St.	9.04
	Est. W. Nelson	161-7 Atlantic Ave.	244.09
	C. Cendari	217 Van Brunt St.	61.60
	P. Taunello	172 Sackett St.	41.25
	S. Agnello	74 Degraw St.	18.15
	M. Franklin	95 Columbia St.	47.52
20	Mary Hughes	285 Columbia St.	116.84
	W. McKee	212 Court St.	3.75
	Mary McGreegy	191 Court St.	1.31
	Crescent Club	46-56 Clinton St.	25.44
	Brooklyn Daily Eagle	838 Flatbush Ave.	4.99
	P. & A. M. Iverson	305 New York Ave.	25.81
	Maria Corrao	7313 3rd Ave.	24.38
	E. Seitz	321 4th Ave.	19.58
	V. Viscuso	105-7 Columbia St.	149.71
	D. Kean	4616 5th Ave.	31.30
	L. W. Dimelow	780 Henry St.	5.86
	J. Wohlfeld	7207 13th Ave.	51.15
	S. Greenbaum	5104-6 3rd Ave.	12.72
	F. R. Dolan	299 Atlantic Ave.	30.53
	Est. D. Semel	387 Grand St.	21.88
	G. Schenome	43 Manhasset Pl.	14.63
30	F. A. Schermerhorn	349-51 Atlantic Ave.	115.06
	S. Michel	525 Henry St.	29.48
	F. W. Brush	27 State St.	26.22
	G. Cutrone	548 Hicks St.	34.32
	A. T. Rose	876 60th St.	10.92
	G. Citarelli	7009 Ft. Hamilton Ave.	11.22
	H. B. Rosenson	367 Bedford Ave.	13.93
	H. Neiland, Jr.	117 Atlantic Ave.	48.17
	Mary Campbell	358-60 Adams St.	13.02
	G. Palmieri	162-4 Sackett St.	17.99
	V. Scala	254 Columbia St.	5.39
	H. Roschen	312 7th Ave.	3.62
	Realty Associates	298a Livingston St.	6.36
	Meinken	349 Fulton St.	1.52
	J. Auditoro	211-3 Columbia St.	9.86
	E. Gentile	65 Summit St.	13.86
40	T. Brono	110 Sackett St.	16.94
	M. Kahn	75 Atlantic Ave.	3.60

Complaint—Exhibit A.

Name of Assured.	Location.	Replacement Loss.
Abraham & Strauss	422-36 Fulton St.	1.50
J. J. Rong et al.	300 Columbia St.	65.00
Beck Shoe Co.	363 Fulton St.	14.00
.....	575 Fulton St.	10.00
C. Longo	67 Union St.	7.90
M. Reilly	207-9 Bond St.	46.75
Abraham & Strauss	422-36 Fulton St.	34.39
Realty Associates	SE. cor. Flatb'h Ave. Ext. & De Kalb Ave.	254.92
Middleton & Dannenfeld	308 Fulton St.	9.15
Welz & Zerweck	907-9 3rd Ave.	37.39
U. S. Hotel	161-7 Atlantic Ave.	11.22
Crescent Athletic Club	Clinton & Pierrepont Sts.	10.29
J. H. Williams & Co.	7-9 Richards St.	7.29
Williamsburg Trust Co.	391-3 Fulton St.	353.83
Kalaf Bros.	91 Atlantic Ave.	43.34
De Kalb Company	381-9 Berry St.	13.92
Middleton & Danenfeld	308 Fulton St.	8.00
Realty Associates	827 3rd Ave.	15.16
.....	829 3rd Ave.	26.62
Max Rosenberg	130 Graham Ave.	15.12
Ralphs, Inc.	133 Sands St.	19.02
L. Fein	89 Throop Ave.	4.31
J. Mrse	671 Broadway	35.60
F. Wandelken	404 Myrtle Ave.	16.60
J. Greenberg	2140 Dean St.	19.60
J. Greenberg	.....	.....
Realty Associates	829 3rd Ave.	5.37
N. Vogel	183 Wyckoff Ave.	1.94
M. J. Westin	1184-90 Fulton St.	265.29
M. Schneider	797 Franklin Ave.	15.36
A. Steuerwald	889-93 Berry St.	155.72
J. Carlson	4124 3rd Ave.	74.84
Est. W. Shields	268 Smith St.	19.24
Michael Buono	146 Degraw Ave.	14.28
Marg. Johnson	2948 N. 5th	5.00
Est. D. T. Jackson	669 3rd Ave.	30.64
Mary L. Lynch	285-7 Hamilton Ave.	93.73
Brkln. Wh'sale Cut Flower Mkt.	368-8 Sackett St.	3.88
C. Pocielo	231 Sackett St.	3.94
M. E. Campbell	358 Adams St.	14.37
Est. C. Tunnig	603 6th Ave.	26.70
Clinton Ave. Church	Lafayette Ave. & Clinton St.	48.00
M. J. Annenberg	642 Driggs Ave.	2.86
J. Davis, et al.	4619 Third Ave.	9.05
Est. Thos. Kerrigan	9 Willoughby Ave.	30.91
J. J. O'Connor	48 Beard St.	27.62
H. Higgins	1 State St.	6.15
Frank Lonlies	1504 Flatbush Ave.	8.49
Realty Associates	274 Van Brunt St.	39.49
R. K. Fox	5615 Third Ave.	35.50
S. Rabinowitz	158 Smith St.	1.89
H. Gimpel	255 Flatbush Ave.	7.09
Flatbush Ave. Realty Co.	10-22 Flatbush Ave.	46.24
Abraham & Strauss	422-436 Fulton St.	114.90
Est. of P. O. Neil	421 Columbia St.	1.50
J. Hecker	403 4th Ave.	1.95

New York Plate Glass Insurance Company Case.

	Name of Assured.	Location.	Replacement Loss.
	S. J. Rittle, et al.	398-406 Fulton St.	60.00
	W. L. Cook	96-8 Fulton St.	9.98
	J. J. O'Connor	48 Beard St.	73.93
	Fannie Kaiser	39½ Hamilton Ave.	3.05
	Realty Associates	38 Flatbush Ave.	66.44
	Z. L. Levy	251 Columbia St.	4.66
	Detroit Cadillac Motor Co.	3-5-7 Lafayette St.	666.96
10	Detroit Cadillac Motor Co.	3-5-7 Lafayette St.	285.20
	Lena Balmuth	142 Graham Ave.	115.47
	Frank Melville, Jr.	555 Fulton St.	97.35
	M. Symons	664-6 Fulton St.	15.00
	Est. C. A. Chesebrough	664-6 Fulton St.	58.02
	H. Windohls Sons	501 Fifth Ave.	14.10
	Mary Brush	646 Third Ave.	21.00
	H. Christy	639 Hicks St.	6.50
	M. S. Raymonds	1519-21 Fulton	15.25
	Levi Bros.	Broadway, Willoughby	57.30
	" "	Broadway, Willoughby	95.71
	M. G. Haggerty	103 Court	16.60
	E. C. Bryon	323 Flatbush Ave.	3.00
	M. S. Raymond	1519-21 Fulton St.	10.00
	H. Wurdohl Sons	501 Fifth Ave.	24.00
	Est. H. G. Jackson	669 Third Ave.	3.99
	L. Michel	3822 Ninth Ave.	24.96
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	L. Goldfarb	316 Washington Ave., Hoboken	134.64
	Eddy Palmer, Trustee	92 Newark Ave., Jersey City	67.00
	A. Hartman	373 Ocean Ave., Jersey City	86.84
	F. O'Brien	523 Newark Ave., Jersey City	214.00
	G. Y. Lewis	406 Grove St., Jersey City	40.05
	J. Marmarstein	189a Monticello Ave., Jersey City	116.75
	C. Waldecker	200 Bloomfield St., Hoboken	22.44
	E. Harnis	801 Bloomfield St., Hoboken	42.00
	A. Melching	312 1st St., Hoboken	10.96
	J. Wilshasen	99 Hudson St., Hoboken	29.28
	W. W. Read	527 Washington St., Hoboken	29.04
	H. Pollak	616 Washington St., Hoboken	73.71
	Emma Brasch	221 Willow Ave., Hoboken	62.82
	A. Melching	308½ 1st St., Hoboken	23.77
	B. F. Ellenberger	555 West Side Ave., Jersey City	27.72
30	B. F. Ellenberger	253 West Side Ave., Jersey City	29.88
	H. Schnitker	690 Ocean Ave., Jersey City	84.72
	S. G. O'Neil	536 Ocean Ave., Jersey City	15.72
	W. Faller	517 Ocean Ave., Jersey City	147.95
	W. Faller	515 Ocean Ave., Jersey City	74.91
	H. S. White	391 Ocean Ave., Jersey City	16.92
	Wm. Freese	538 Jersey Ave., Jersey City	10.77
	Continental Investing Co.	368 Hoboken Ave., Jersey City	29.64
	L. J. Eckstein	264 Fairmount Ave., Jersey City	25.20
	N. Clements	176 6th St., Jersey City	16.12
	B. C. Miller	391 Grove St., Jersey City	31.72
	Mary Lindsay	346 Communipaw Ave., Jersey City	45.50
	J. C. Grocery Co.	338 Newark Ave., Jersey City	60.18
	J. Haeslop	304-6 Communipaw Ave., Jersey City	184.97
	P. M. Glane	312 Communipaw Ave., Jersey City	34.91
	R. Eckert	141 Bright St., Jersey City	41.82
40	R. Eckert	276½ Monmouth St., Jersey City	37.44

Complaint—Exhibit A.

Name of Assured.	Location.	Replacement Loss.
Geo. Ehret	384 Monmouth St., Jersey City	22.49
P. Coyle	53 Sussex Ave., Jersey City	6.14
Thos. Keane	559 Grove St., Jersey City	50.65
C. C. Harrison	130 Pavonia Ave., Jersey City	40.56
Katherine Schmidt	514 Ferry St., Hoboken	162.89
M. F. Rubene, etc.	503 Jefferson St., Hoboken	29.25
Knodels Express Co.	274-6 Central Ave., Jersey City	31.46
I. Roller	310 Communipaw Ave., Jersey City	120.12
F. C. Ritschen	342 Communipaw Ave., Jersey City	43.16
F. Ruess	83 Ferry St., Jersey City	8.02
J. W. Birnbaum	278 Bergenline Ave., Union	16.01
J. H. Maurer	308 Pacific Ave., Jersey City	39.80
Est. B. Klaproth	408-10 Pacific Ave., Jersey City	36.66
L. P. Steel et al.	193 Newark Ave., Jersey City	435.00
J. Mirielle	126 Maple St., Jersey City	22.80
Sophie Heyman	42 Coles St., Jersey City	24.96
A. Berndt	68 Bergen Ave., Jersey City	20.41
A. Berndt	68 Bergen Ave., Jersey City	3.15
Excelsior Mut. B. & L.	150 Armstrong Ave., Jersey City	22.80
Est. Chas. Grodberg	215 Prospect Ave., Bayonne	47.64
B. P. Doyle	1021 Broadway, Bayonne	33.24
L. Abraham	1019 Broadway, Bayonne	95.28
L. Abraham	1017 Broadway, Bayonne	46.44
I. Schwartz	1049 Ave. C, Bayonne	21.16
M. N. O'Brien	242 12th St., Jersey City	23.40
A. Plum	775-7 Broadway, Bayonne	17.58
W. F. Tietjen	356 7th St., Jersey City	65.76
C. Hines	108 Morris St., Jersey City	3.93
Mrs. A. F. McNulty	NE. cor. Mercer & Brunswick St., J. C.	149.04
G. E. Gardner & Bro.	SW. cor. Grove & 8th St., Jersey City	93.42
Thos. McGuiness	784-8 Grand St., Jersey City	69.43
H. Rehncke	76 Bowers St., Jersey City	18.87
F. Koch	NW. cor. Virginia & West Side Ave.	126.00
L. E. Herrman	675 Ocean Ave., Jersey City	48.24
S. S. Watson	344 Communipaw Ave., Jersey City	46.49
M. Gizzi	208 Washington St., Jersey City	2.00
Est. August Succow	256 Warren St., Jersey City	40.04
Mrs. R. Somer	183 Warren, cor. Essex St., Jersey City	32.15
L. Neuman	630 Communipaw Ave., Jersey City	76.18
T. Higgins, etc.	231 Central Ave., Jersey City	42.90
M. Serge, etc.	107 Monticello Ave., Jersey City	105.43
C. R. Hedden	NW. cor. Broad & Market St., Newark	27.69
R. J. McMullen	372 York St., Jersey City	208.91
F. Mayer	152 Newark Ave., Jersey City	114.27
N. J. Title Guar. & Trust Co.	56 Newark Ave., Jersey City	62.39
H. S. Drayton	96 Montgomery St., Jersey City	90.16
A. Huber	351 Communipaw Ave., Jersey City	41.43
Naedele Bros.	311 Halsey St., Newark	62.01
Drury Bros.	146 York St., Jersey City	99.84
P. Regan	60 York St., Jersey City	60.06
F. B. Kopf	355-9 Summit Ave., Jersey City	145.73
H. Rustedt	791 Ocean Ave., Jersey City	79.56
B. Edelman	77 Ocean Ave., Jersey City	30.16
J. Javidzik	804 Newark Ave., Jersey City	49.19
F. W. Drecktrade	533-7 Communipaw Ave., Jersey City	218.40
Elizabeth Frye	308 Communipaw Ave., Jersey City	81.12

New York Plate Glass Insurance Company Case.

	Name of Assured.	Location.	Replacement Loss.
	M. Galvin	323 Barrow St., Jersey City	69.68
	F. Bumsted	488-92 Communipaw Ave., Jersey City	101.34
	S. M. Bidwell	357 Ocean Ave., Jersey City	64.08
	C. P. Drescher	751 West Side Ave., Jersey City	28.80
	J. Noller	359 Pacific Ave., Jersey City	95.28
	J. H. Maurer	308 Pacific Ave., Jersey City	30.84
	Farrel & Hart	SW. cor. Montg'm'y & Bergen, Jersey City	110.50
10	J. W. Clark, Exec.	62 Montgomery, Jersey City	127.62
	J. Marmarstein	189 Monticello Ave., Jersey City	52.16
	Thos. Wolverton	49 Jordan Ave., Jersey City	51.61
	F. Werner	471 Jackson Ave., Jersey City	110.19
	Monticello Realty Co.	452-4 Jackson Ave., Jersey City	73.50
	Mary A. Moore	321 Henderson St., Jersey City	26.88
	J. S. Coppengen	203 Grand St., Jersey City	18.72
	J. H. Gleckmeale	310 Communipaw Ave., Jersey City	28.43
	I. Roller	310 Communipaw Ave., Jersey City	5.35
	Farrel & Hart	755 Bergen Ave., Jersey City	32.52
	A. Dusenberry	749 Bergen Ave., Jersey City	57.92
	A. Dusenberry	743 Bergen Ave., Jersey City	26.04
	A. Dusenberry	741 Bergen Ave., Jersey City	59.80
	H. Levy	710 Bergen Ave., Jersey City	187.89
	J. L. Crosette	719 Willow Ave., Hoboken	5.83
	Est. H. W. Peters	537 Washington St., Hoboken	53.44
	F. Cordts Furniture Co.	130 Washington St., Hoboken	100.74
20	C. Rosenberg	304 Newark Ave., Hoboken	79.04
	D. Mayer	451 1st St., Hoboken	75.17
	Est. H. Wienthal	360-4 1st St., Hoboken	49.44
	Sarah Becker	421 Bloomfield St., Hoboken	29.16
	Mary A. Russell	129 Hobart St., Bayonne	3.31
	J. W. Dintrade	533 Communipaw Ave., Jersey City	72.80
	L. S. Piercy	NE. cor. Bergen & Clinton Ave., J. C.	90.79
	A. E. Solomon	314 Washington St., Hoboken	88.55
	M. Goldman	555 4th St., Hoboken	17.88
	J. P. Soulier	77 Hudson St., Hoboken	83.64
	J. Frank	1178 Summit Ave., Jersey City	14.26
	C. Epple	250 Central Ave., Jersey Ctiy	41.39
	Raymond Furniture Co.	264-8 Summit Ave., West Hoboken	477.18
	H. Kokhopp	807 West Side Ave., Jersey City	3.79
	J. McIntyre	1211 Summit Ave., Jersey City	47.61
30	Est. B. Plapwick	408-10 Pacific Ave., Jersey City	13.73
	Israel Nymart	156 1st St., Jersey City	31.44
	W. C. Collins	138 Danforth Ave., Jersey City	12.48
	L. Schlitt	SW. cor. Caton Av. & Old Bergen Rd., J. C.	43.94
	Ann Dusenbery	739 Bergen Ave., Jersey City	14.28
	M. Florman	708 Newark Ave., Jersey City	61.32
	S. G. O'Neill	536 Ocean Ave., Jersey City	12.00
	M. Galvin	323 Barrow St., Jersey City	6.00
	E. Stiskin	414-20 Paterson Ave., W. Hoboken	11.44
	Chas. Yust	184 Mercer St., Jersey City	65.11
	Celia Shaffer	193-5 Grand St., Jersey City	130.04
	Sam Safran	24 Arthur Kill Rd., Tottenville, S. I., N. Y.	22.04
	Daliano	110 Cedar Ave., Arrochar, N. Y.	31.95
	Marie Zimmerman	SW. cor. Grand & 12th Ave., L. I. City	12.50
	S. Heyman	42 Coles St., Jersey City	3.94
	Rechner Bros.	1067 Broadway, Bayonne	60.48
	H. Meehan	SW. cor. Ocean & Orient Ave., J. C.	73.38
40			

Complaint—Exhibit A.

Name of Assured.	Location.	Replacement Loss.
T. McGuiness	784-8 Grand St., Jersey City.....	27.24
J. J. Connors	350 1st St., Jersey City.....	19.91
Annie Collins	733 Hackensack Rd., W. Hoboken.....	10.90
D. Mayer	451-7 1st St., Hoboken.....	56.40
D. Mayer	96 Adams St., Hoboken.....	37.21
F. Milstray	75 Garden St., Hoboken.....	8.54
J. T. Rowland	100 Sip Ave., NE. Journal Sq., J. C....	287.39
Mary L. Lane	575 Ocean Ave., Jersey City.....	127.02
E. Hegewald	863 Bergen Ave., Jersey City.....	131.62
Est. C. Grodberg	215 Prospect Ave., Bayonne.....	31.53
L. Abramson	1056 Ave. C, Bayonne.....	7.63
E. W. Schaefer	60 Montgomery St., Jersey City.....	12.00
M. L. Murphy	152 5th Ave., L. I. City.....	4.51
A. Petacek	315 Webster Ave., L. I. City.....	24.30
Hugh Mahan	SW. cor. Ocean & Orient Ave., J. C....	203.00
J. Kreps	Broom & Morton Sts., Newark.....	6.70
P. Rodgers	757 Brunswick Ave., Elizabeth	24.50
S. F. Guarino	3970 Broadway, Woodhaven, N. Y.....	11.11
H. Hartog	634 West Side Ave., Jersey City.....	6.84
Mayor, Aldermen, et al.	Grove & Mercer Sts., Jersey City.....	542.13
J. R. Sonlier	77 Hudson St., Hoboken, N. J.....	73.10
Elice Shaffer	193-5 Grand St., Jersey City.....	30.00
Emil W. Schaefer	60 Montgomery St., Jersey City.....	34.84
Frederick Werner	471 Jackson Ave., Jersey City.....	11.74
N. Werdelman	95 Washington St., Hoboken.....	43.81
H. Behnke	76 Power St., Jersey City.....	4.80
J. W. Clark	63 Montgomery St., Jersey City.....	16.39
	Total.....	$60,835.65

ANSWER.

(Filed September 10, 1918.)

NEW JERSEY SUPREME COURT.

NEW YORK PLATE GLASS INSURANCE COMPANY, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*Answer.*

Defendant, a body corporate of the State of Pennsylvania, having its principal office in the State of New Jersey at the foot of Washington street, Jersey City, says that:

FIRST DEFENSE TO FIRST COUNT.

1. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 1.

2. It admits the allegations of paragraph 2.

3. It admits that on July 30, 1916, it possessed, used, occupied and controlled (but only to the extent provided by and in accordance with the terms of a certain lease hereinafter mentioned) a certain yard in the City of Jersey City, extending into the waters of New York Bay, and locally known as the "Black Tom" yard; it admits that it possessed, used, occupied and controlled (but only to the extent provided by and in accordance with the terms of a certain lease hereinafter mentioned) certain lands covered by the waters of New York Bay adjacent to said yard, as well as certain upland likewise adjacent to said yard. It admits that the said yard and that the said upland were used in connection with its business of a common carrier of

freight, but denies that the same or any part thereof were used in connection with its business of a common carrier of passengers. It further says that it possessed, used, occupied, and controlled certain docks and piers, together with certain waters and upland adjacent thereto in the City of Jersey City, locally known as Black Tom yard, in accordance with the terms and provisions of a certain lease dated June 24, 1913, from the National Storage Company to the Lehigh Valley Railroad Company of New Jersey, and thereafter assigned to this defendant, wherein the said premises are described as follows: "A tract of land containing about one hundred and eleven acres, more or less, together with all the tracks, wharves, piers, docks, bulkheads, stores, warehouses, elevators and power houses, and all other buildings and structures of every kind whatsoever erected thereon; excepting and reserving therefrom about one hundred and forty-nine thousand and five hundred (149,500) square feet, together with the following structures erected thereon: Stores "A", "E", "F", "G", "H", "I", "K", "L", "M", "N", "O", "P" "Q", and "R" and Pier 6 and Shed No. 2 on Pier 7 and the office building (40'x25') located between Stores "F" and "G", together with the right of access thereto and wharfage rights in connection therewith."

4. It admits that on and prior to July 30, 1916, it used said yard, and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, for the handling and holding (but only to the extent and in the manner hereinafter mentioned) of carload lots of certain munitions and explosives, as hereinafter mentioned; it says that the lands and premises described in paragraph 3 of the first defense to first count, known as the Black Tom yard, on and prior to July 30, 1916, were used by it as a freight terminal for making delivery to the consignee of carload lots of shells, shrapnel and other ammunitions and munitions of war, including trinitrotoluol

(but not including gunpowder, dynamite, nitro-cellulose or other high and dangerous explosives) and for the transferring of the same by consignees from cars to barges or lighters for trans-shipment to steamers for export; and it says that there was no handling or holding by this defendant of the cars containing the same, except as lawfully incidental to the transportation and delivery thereof in the course of interstate commerce and commerce with foreign countries; and it says that all of the materials so held or handled were in the course of interstate or foreign commerce at the times set forth in the complaint.

5. It admits that on July 30, 1916, and for several days prior thereto it had placed and on said date was holding (but only to the extent and in the manner hereinafter mentioned) in said yard and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, certain carloads (but not many) of shells, shrapnel and other ammunitions and munitions of war, including trinitrotoluol (but not including gunpowder, dynamite, nitro-cellulose or other high and dangerous explosives); denies that the said explosives, ammunitions and munitions of war referred to in paragraph 5 of the complaint, or any of them were to the knowledge of this defendant highly dangerous and capable and liable in the event of fire to explode and thereby to cause incalculable or any injury to residents of Jersey City of their buildings, chattels and other property; it says that on July 30, 1916, on the lands and premises herein described as Black Tom yard, there were carloads of the explosives, ammunitions and munitions of war herein described, for the purpose of making delivery of the same to the consignees, and that for several days prior thereto there had been other carloads of explosives of the same nature on the said lands and premises for the like purpose; but it says that there was no holding on said lands and premises of any carloads of the said explosives,

ammunitions and munitions of war, either on July 30, 1916, or at any time prior thereto, except as lawfully incidental to the transportation and delivery of the contents of said cars, in the course of interstate commerce and commerce with foreign countries; it says that all of the carloads of said explosives so held were in the course of interstate or foreign commerce at the times set forth in the complaint.

6. It denies paragraph 6.

7. It admits that on July 30, 1916, and for several days prior thereto, it permitted the use of certain of its premises and waters, as described in paragraph 3 of the first defense to first count, known as the Black Tom yard (but only to the extent and in the manner hereinafter mentioned) for the tying up of certain tugs and other vessels, but it says that it limited its said premises (for the tying up of barges and lighters carrying or to carry explosives) to one pier, namely, the pier known as "North Pier," and only when the said barges or lighters were being loaded; and it says it did not permit the tying up of tugs and/or other vessels to that pier or near, or adjacent thereto; and it says that on July 30, 1916, at the time of the explosion mentioned in the complaint there were two barges at said North Pier, with its permission, partly loaded, one with shrapnel and the other with trinitrotoluol.

8. It denies paragraph 8.

9. It denies paragraph 9.

10. It admits that on July 30, 1916, it possessed a certain yard and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, known as the Black Tom yard; it admits that on July 30, 1916, a fire occurred on the said lands and premises, but it has no knowledge nor information sufficient to form a belief as to whether, by means of said fire, the said explosives or munitions, or any of them, became and were ignited

and exploded; it admits that certain explosives and munitions exploded on said date, thereby causing severe shocks and violent concussions of the air, but it has no knowledge nor information sufficient to form a belief as to whether the said severe shocks and concussions or any of them broke or damaged or destroyed the glass doors and windows of the persons and corporations, or any or either of them, shown upon Schedule "A" attached to the complaint.

11. It has no knowledge nor information sufficient to form a belief as to the allegations of paragraph 11.

12. It has no knowledge nor information sufficient to form a belief as to the allegations of paragraph 12, except that it denies that it created or maintained any nuisance as alleged in paragraphs 8 and 9 of the first count of the complaint, or otherwise.

In lieu of a motion to strike out said first count, the defendant objects thereto on the ground that it discloses no cause of action against the defendant.

SECOND DEFENSE TO FIRST COUNT.

1. On July 30, 1916, and for many days prior thereto, the defendant was a common carrier engaged in interstate and foreign commerce, and therein transporting by land ammunitions and munitions of war, including explosives.

2. As such common carrier defendant was compelled by law to receive, carry, convey and transport the said ammunitions and munitions of war, including explosives, in the course of interstate and foreign commerce, provided the same were packed, marked, loaded and handled, and when offered for transportation were in proper condition to transport in accordance with and pursuant to the act of Congress of the United States entitled "An Act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation," approved March 4,

1909, and the act of said Congress entitled "An Act to regulate commerce," as amended June 18, 1910, and the regulations prescribed by the Interstate Commerce Commission by authority of said acts.

3. The ammunition and munitions of war and explosives that exploded on July 30, 1916, were packed, marked, loaded and handled, and when offered for transportation were and until and at the time of said explosion continued to be in proper condition to transport in accordance with said acts of Congress of the United States and the regulations prescribed by the Interstate Commerce Commission by virtue thereof, and were carried, conveyed and transported and held by the defendant in the course of interstate and foreign commerce lawfully and strictly in accordance with said acts and regulations.

THIRD DEFENSE TO FIRST COUNT.

1. The presence of such explosives as were on July 30, 1916, on the premises of the defendant did not constitute a nuisance.

2. The explosion mentioned in the complaint was due to a fire caused by incendiarism, of which defendant had no knowledge or suspicion.

3. Said fire occurred notwithstanding due diligence by the defendant to prevent incendiarism.

FIRST DEFENSE TO SECOND COUNT.

1. Defendant repeats and makes part hereof the allegations contained in paragraphs 1 to 7, inclusive, of its first defense to first count.

2. It denies paragraph 2.

3. It denies that it was chargeable with any such alleged duty as stated in paragraph 2 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

4. It denies paragraph 4.

5. It denies that it was chargeable with any such alleged duty as stated in paragraph 4 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

6. It denies paragraph 6.

7. It denies that it was chargeable with any such alleged duty as stated in paragraph 6 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

8. It denies paragraph 8.

9. It denies that it was chargeable with such alleged duty as stated in paragraph 8 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

10. It denies paragraph 10.

11. It denies that it was chargeable with any such alleged duty as stated in paragraph 10 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

12. As to paragraph 12, it admits that the municipality of Jersey City, at the time of the explosion referred to in said count, maintained police and fire departments; but as to the size of said departments or as to what their duty and custom was at the time of said explosion this defendant has no knowledge nor information sufficient to form a belief.

13. It denies paragraph 13.

14. It denies that it was chargeable with any such alleged duty as stated in paragraph 13 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

15. It denies paragraph 15, and says that in fact it did, immediately, upon the happening and discovery of the fire referred to in the complaint, notify the Fire Department of Jersey City of the existence and location of said fire.

Answer.

16. It denies that it was chargeable with any such alleged duty as stated in paragraph 15 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

17. It admits that on July 30, 1916, it possessed a certain yard and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count; it admits that on July 30, 1916, a fire occurred on the said lands and premises; it denies that there was any negligence on its part in failing to perform its several alleged duties and denies that by reason of said alleged negligence it suffered a part of said explosives and munitions, and the cars, boats and containers thereof, to become ignited; it has no knowledge nor information sufficient to form a belief as to whether by means of said fire, the said explosives or munitions, or any of them, or the said cars, boats or containers, thereof, or any of them, became ignited, nor whether thereby the same, or any of them, exploded; it has no knowledge nor information sufficient to form a belief, as to whether the said fire and detonation of said explosives was communicated to other masses or quantities of explosives on the piers in said Black Tom yard or on any vessel adjacent thereto, nor whether the said explosives, or any of them, likewise exploded with great force and violence, nor whether the same caused severe shocks and concussions of the air, nor whether said shocks and concussions of the air, or any of them, simultaneously, or otherwise, broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit "A" attached to complaint.

18. It repeats and makes part hereof the allegations of paragraphs 10 and 11 of the first defense to the first count.

19. As to the allegations of paragraph 19, it has no knowledge nor information thereof sufficient to form a

belief, except that it alleges that it was in no manner negligent in the premises.

In lieu of a motion to strike out said second count, defendant objects thereto on the ground that it discloses no cause of action against the defendant.

SECOND DEFENSE TO SECOND COUNT.

Defendant repeats and makes a part hereof the allegations of its second defense to the first count.

THIRD DEFENSE TO SECOND COUNT.

Defendant repeats and makes a part hereof the allegations of its third defense to the first count.

FIRST DEFENSE TO THIRD COUNT.

1. Defendant repeats and makes part hereof the allegations contained in paragraphs 1 to 7, inclusive, of its first defense to first count.

2. It admits that by authority of certain acts of Congress, approved March 4th, 1909, and June 18th, 1910, and the Interstate Commerce Commission in October, 1914, promulgated, and on July 30, 1916, there remained in force and effect certain regulations for the handling and transportation by freight of carloads of explosives by carriers in interstate commerce, and that such regulations were then and there binding upon the defendant, but as to whether or not the said regulations, or any or either of them, were applicable to the explosives mentioned in the complaint, it prays reference to the original of said regulations.

3. It denies paragraph 3.

4. It admits that on July 30, 1916, a fire occurred on the premises possessed by the defendant, or in the immediate vicinity thereof; but denies that by reason of any negligence on its part in failing to perform its several alleged duties, or any or either of them, as set forth in the complaint, it suffered a part or any of said explosives

and ammunitions, and the cars and containers thereof, or any of them, to become ignited, whereby the same, or any of them, exploded; it denies that it suffered said fire and detonation of said explosion to be communicated to other masses and quantities of explosives in said yard, and denies that said other masses and quantities of explosives in said yard likewise exploded with great force and violence, or otherwise; it admits that certain explosives and ammunitions exploded on said date, thereby causing severe shocks and violent concussions of the air, but it has no knowledge nor information sufficient to form a belief as to whether said severe shocks and concussions, or any of them, broke or damaged, or destroyed the glass doors and windows of the persons and corporations, or any or either of them, shown upon Schedule "A" attached to the complaint.

5. It repeats and makes part hereof the allegations of paragraphs 10 and 11 of the first defense to the first count.

6. As to the allegations of paragraph 6, it has no knowledge nor information thereof sufficient to form a belief, except that it alleges that it was in no manner negligence in the premises.

In lieu of a motion to strike out said third count defendant objects thereto on the ground that it discloses no cause of action against the defendant.

SECOND DEFENSE TO THIRD COUNT.

Defendant repeats and makes a part hereof the allegations of its second defense to the first count.

THIRD DEFENSE TO THIRD COUNT.

Defendant repeats and makes a part thereof the allegations of its third defense to the first count.

COLLINS & CORBIN,
Attorneys of Defendant.

REPLY.

(Filed November 21, 1918.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

NEW YORK PLATE GLASS INSURANCE COMPANY, *Plaintiff,*	*Action at Law.*
vs.	*Reply.*
LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	

FIRST DEFENSE TO FIRST COUNT.

1. Plaintiff denies the special defenses set forth in paragraph four.

2. It denies the special defenses set forth in paragraph five.

3. It denies the special defenses set forth in paragraph seven.

SECOND DEFENSE TO FIRST COUNT.

1. Plaintiff admits paragraph one.
2. It denies paragraph two.
3. It denies paragraph three.

THIRD DEFENSE TO FIRST COUNT.

1. Plaintiff denies paragraph one.
2. It denies paragraph two.
3. It denies paragraph three.

Reply.

FIRST DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in paragraphs one, two and three of this reply to the first defense to the first count.

It denies the special defenses set forth in paragraph fifteen.

SECOND DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the second defense to the first count.

THIRD DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the third defense to the first count.

FIRST DEFENSE TO THIRD COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in paragraphs one, two and three of this reply to the first defense to the first count.

SECOND DEFENSE TO THIRD COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the second defense to the first count.

THIRD DEFENSE TO THIRD COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in this reply to the third defense to the first count.

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff.

POSTEA AND JUDGMENT.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

NEW YORK PLATE GLASS INSURANCE COMPANY,

vs.

LEHIGH VALLEY RAILROAD COMPANY,

This case was tried before the Honorable William H. Speer, Circuit Court Judge (to whom the same was referred for trial) and a jury on the 20th, 23rd, 24th, 25th, 26th and 27th days of June, 1919, and the same having been submitted to the jury, the jury returned a general verdict in favor of the plaintiff and against the defendant Lehigh Valley Railroad Company in the sum of Sixty Thousand Eight Hundred and Thirty-five Dollars and Sixty-five Cents ($60,835.65).

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of Sixty Thousand Eight Hundred and Thirty-five Dollars and Sixty-five Cents and its costs, which are taxed at the sum of Fifty Dollars and Three Cents, making in the whole the sum of Sixty Thousand Eight Hundred and Eighty-five Dollars and Sixty-eight Cents.

$60,835.65	
50.03	
$60,885.68	

Judgment entered July 8, 1919.

WM. S. GUMMERE,
C. J.

NOTICE OF APPEAL.

(Filed July 17, 1919.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

CHICAGO BONDING & INSURANCE COMPANY, *Plaintiff,* vs. LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*Action at Law* *Notice of Appeal.*

To Messrs. Congleton, Stallman & Hoover,
Attorneys for Plaintiff.

TAKE NOTICE, that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in above-stated cause.

COLLINS & CORBIN,
Attorneys for Defendant.

GROUNDS OF APPEAL.

(Chicago Bonding and Insurance Company.)

(Filed August 25, 1919.)

These are the same as Grounds of Appeal Nos. one to seventy-one in the case of Royal Indemnity Company.

COMPLAINT.

(Filed July 21, 1918.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

CHICAGO BONDING & INSURANCE COMPANY, *Plaintiff,*	*At Law.*
vs.	*Complaint.*
LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	

1. The plaintiff is a corporation of Illinois, having its principal office in the City of Chicago, and is engaged in the business of insuring persons and corporations against loss occasioned by the breakage of glass doors and windows.

2. The defendant is a corporation engaged in the maintenance and operation of a railroad in and through the State of New Jersey, for the transportation of freight and passengers.

3. On July 30th, 1916, the defendant possessed, used, occupied and controlled a certain yard in the City of Jersey City, locally known as the "Black Tom" yard, extending into the waters of the New York bay, and also possessed, used, occupied and controlled certain lands covered with the waters of New York bay adjacent to said "Black Tom" Pier, as well as certain upland, likewise adjacent to said pier, in connection with its business of a common carrier of freight and passengers.

4. Said "Black Tom" yard and the said lands adjacent thereto, on and prior to July 30th, 1916, were used by the defendant for the handling, holding, and trans-

shipment of carload lots of gunpowder, trinitrotoluol, dynamite, nitroglycerin, and other high and dangerous explosives, and shells, shrapnel and other ammunitions and munitions of war.

5. On July 30th, 1916, and for several days prior thereto, the defendant had placed and on said date was holding on said pier and lands adjacent thereto many carloads of said explosives, ammunitions and munitions of war, which explosives were to the knowledge of said defendant highly dangerous and capable and liable, in the event of fire, to explode and thereby cause incalculable damage and injury to residents of Jersey City and their buildings, chattels and other property.

6. On July 30th, 1916, and for several days prior thereto, the defendant used its premises and waters, adjacent to said pier, for the tying up of boats, lighters and ships upon and to which was loaded, placed and carried large quantities of like explosives as described in the preceding paragraphs.

7. On said July 30th, 1916, and for several days prior thereto, said defendant permitted the use of its premises and waters, adjacent to its said pier, to be used for the anchorage and tying up of tugs, boats and other vessels, as well as by boats and lighters carrying large quantities of like explosives as described in the second preceding paragraph.

8. By reason of the accumulation, on said pier and on the lands adjacent thereto, of said large quantities of said explosives and munitions, and the danger existing therein and therefrom, said accumulation of explosives and munitions constituted a nuisance.

9. The accumulation of the large quantity of like dangerous explosives on boats and vessels in its premises and waters adjacent to said pier of the defendant, by the act and with the permission and knowledge of said defendant, constituted a nuisance on the part of the defendant.

10. On July 30th, 1916, a fire occurred on the premises possessed by defendant known as "Black Tom" yard, and by means thereof said accumulations of explosives and munitions became and were ignited and exploded, causing severe shocks and violent concussions of the air, which broke, damaged and destroyed the glass doors and windows of the persons and corporations shown upon the schedule marked Schedule "A" hereto attached and hereby made a part hereof.

11. The plaintiff on said July 30th had lawfully insured the persons and firms shown on Exhibit "A" against loss from damage to their respective glass doors and windows, and by reason of its obligations under its several contracts of insurance paid to said persons, or firms, their losses, or provided said persons or firms with new doors and windows to the amounts and values set opposite their respective names on said Schedule "A," and plaintiff is subrogated to the rights of said parties to demand and receive the amounts of said losses so sustained and paid or replaced by it.

12. The losses so sustained and paid or replaced by the plaintiff were the direct result of the creation and maintenance by the defendant of the nuisance described in paragraphs six and seven.

SECOND COUNT.

1. The plaintiff realleges paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count.

2. By reason of the accumulations of said large quantities of explosives and munitions on and near said pier and premises of the defendant, it was the duty of the defendant to exercise a high degree of care to prevent the occurrence of fires, detonations or other means whereby said explosives and munitions might become exploded.

3. Said defendant negligently failed and omitted to perform said duty.

4. By reason of the accumulations of the explosives and munitions, as aforesaid, it was the duty of the defendant to exercise a high degree of care to watch and guard said explosives and the yard, piers, cars and vessels containing the same or lying in proximity thereto, so as to prevent, and to extinguish and control, when discovered, fires, detonations and other means by which such explosives might be exploded.

5. The defendant negligently omitted and failed to perform said duty.

6. It was also the duty of the defendant in the premises to exercise due care to employ a sufficient number of watchmen and guards to police its said yard and approaches and the waters adjacent thereto to observe and detect the approach or presence of any persons not authorized or licensed to visit said pier, and who might by accident or felonious intent set fire to said pier or property thereon.

7. The defendant negligently failed and omitted to perform said duty.

8. It was also the duty of the defendant in the premises to exercise due care to furnish, provide and install, and keep in good order and repair sufficient water supply, fire-fighting devices and apparatus on and about its said pier, by means of which any fire occurring upon and near said pier might be promptly extinguished and controlled.

9. The defendant negligently omitted and failed to perform said duty.

10. It was also the duty of the defendant in the premises to exercise a high degree of care to store, handle and dispose of said explosives and munitions so as to prevent and control the ignition and communication of

fire and detonation from one portion or mass of the same to any other part or mass of the same.

11. The defendant negligently failed to perform said duty.

12. The municipality of Jersey City at the time of said explosion maintained large police and fire departments, whose duty and custom it was, to the knowledge of the defendant, to respond to all alarms of fire for the purpose of extinguishing the same.

13. It was also the duty of said defendant to exercise due care to install and provide and keep in good order and repair sufficient means of communication whereby the occurrence of any fire or other agency capable of igniting said explosives could be immediately communicated from said pier to the fire and police departments of Jersey City.

14. Said defendant negligently failed and neglected to perform said duty.

15. It was also the duty of the defendant in the premises, immediately upon the happening and discovery of a fire on or near said pier, to notify the Fire Department of Jersey City of the existence and location of said fire.

16. Said duty the defendant negligently failed and omitted to perform.

17. On July 30th, 1916, a fire occurred on the premises possessed by the defendant, on or in the immediate vicinity of said pier of the defendant, and by reason of negligence of the defendant in failing to perform its several duties in the premises the defendant suffered a part of said explosives and munitions and the cars and containers thereof to become ignited, whereby the same exploded, which fire and detonation of said explosion the defendant suffered to be communicated to other masses and quantities of explosives in said yard, which likewise exploded with great force and violence, causing

severe shocks and concussions of the air, which simultaneously broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit "A."

18. The plaintiff realleges paragraphs 10 and 11 of the first count.

19. The losses so sustained and paid or replaced by the plaintiff were the direct result of the negligence of the defendant as aforesaid.

THIRD COUNT.

1. The plaintiff realleges paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count.

2. By authority of certain acts of Congress approved March 4th, 1909, and June 18th, 1910, the Interstate Commerce Commission in October, 1914, promulgated, and on July 30th, 1916, there remained in force and effect, certain regulations for the handling and transportation by freight of carloads of explosives by carriers in interstate commerce, which regulations were then and there binding upon the defendant and applicable to the explosives herein above mentioned, to which regulations the plaintiff refers as fully as if here set forth.

3. The defendant negligently failed and refused to comply with the requirements of said regulations.

4. On July 30th, 1916, a fire occurred on the premises possessed by the defendant, on or in the immediate vicinity of said pier of the defendant, and by reason of negligence of the defendant in failing to perform its several duties in the premises the defendant suffered a part of said explosives and munitions and the cars and containers thereof to become ignited, whereby the same exploded, which fire and detonation of said explosion the defendant suffered to be communicated to other masses and quantities of explosives in said yard, which likewise exploded with great force and violence, causing

severe shocks and concussions of the air, which simultaneously broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit "A."

5. The plaintiff realleges paragraphs 10 and 11 of the first count.

6. The losses so sustained and paid or replaced by the plaintiff were the direct result of the negligence of the defendant as aforesaid.

The plaintiff demands, on the first count, the sum of $5,290.70.

The plaintiff demands, on the second count, the sum of $5,290.70.

The plaintiff demands, on the third count, the sum of $5,290.70.

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff.

Exhibit "A."

Name of Assured.	Location.	Replacement Loss.
J. A. Still	223 Canover St., Brooklyn	$ 208.80
Henry Bernhardt and H. Bauer	80 1st Ave., N. Y.	1.27
Tony Slitzo	73 New Chambers St., N. Y.	72.00
Charles Hoops	2862 Broadway, N. Y.	36.20
Sarah J. Howell	149 B'way) 6 Front St., N. Y.	165.40
Stephen H. Jackson	403 Canal St., N. Y.	69.36
Morris Schloss	158 Columbia St., N. Y.	39.00
John E. Gerlach Realty Co.	2458 7th Ave., N. Y.	49.52
Mintram & Wardlaw	109 Third Ave., Brooklyn	34.85
Abraham Feuer	777 Gates Ave., Brooklyn	1.38
August Kuhn	2392-10 Jerome Ave., N. Y.	99.10
P. J. Maquire	181 Pearl St., Brooklyn	62.00
Max Manne and Isaac Reese	508 Court St., Brooklyn	89.60
Thos. H. and Minerva Sherman	SW. Terrace Pl. & 20th St., Brooklyn	120.20
Chas. M. Straub	52-4 Bank St., N. Y.	85.90
A. Stevane	50 Division St., N. Y.	103.92
Helen Meyer and Sarah Hart	W. Broadway, N. Y.	98.00
Samuel Weinberg	601 3rd Ave.	5.58
B. Ganine and Bro.	55 Washington St., N. Y.	143.48
Goldsmith Rty. Co.	75-7 Nassau St., N. Y.	116.80
Helen Meyer and Sarah Hart	40 W. Broadway, N. Y.	114.64

Complaint—Exhibit A.

Name of Assured.	Location.	Replacement Loss.
Lennon & Co.	153-7 W. 23rd St., N. Y.	160.00
Henry Katz	324 West St., N. Y.	163.54
The Chic Women's Shop, Inc.	10 E. 14th St., N. Y.	226.44
Lincoln Trust Co., of N. J.	74 Montgomery St., Jersey City	151.01
Annie W. Harris	62 W. 101st St., N. Y.	19.04
Patrick Igoe	252 Hamilton Ave., Brooklyn	94.66
Est. of John Baumann	50 Wolcott St., Brooklyn	29.40
Sarah F. Bleyer	498 Broome St., N. Y.	11.66
Morris Weiss	81 Canal St., N. Y.	92.64
N. Y. Gas & Elec. App. Co., Inc.	569-71 Broadway, N. Y.	275.60
James P. Silo	546 5th Ave., N. Y.	70.36
I. Thomases	101 Hudson St., N. Y.	9.64
John McCabe	259 Columbia Ave. (359?)	148.?
A. Stark & Bro.	7 Bond St., N. Y.	10.50
Cornelius Hearn	1206 Kings Highway, Brooklyn	97.20
Emilie Bierman	551 So. Blvd., N. Y. City	55.19
M. Ponemone	16 Tompkins Ave., Brooklyn	101.00
.....	469 Broadway, Bayonne, N. J.	165.40
Ferdinand Funk (Funk Bros.,	50 Market St., N. Y.	60.80
Chas. F. Holm	480 Bergen St., Brooklyn	36.60
Chas. F. Holm	9-11 Clinton St., Brooklyn	33.60
Cornelius Hearn	1206 Kings Highway Brooklyn	24.00
J. G. Ament	7311 13th Ave., Brooklyn	23.00
Joseph Skawinski	854 Newark Ave., J. C.	67.50
Frederick W. Klotz	121 Jackson Ave., J. C.	48.00
George Bockhaus Co.	546 Grove St., J. C.	60.90
George Bockhaus	186 18th St.	101.25
Lorenzo Montano	885 3rd Ave., Brooklyn	60.80
Henry Kanenbly	183 Washington St., J. C.	84.96
Lincoln Trust Co. of N. J.	70-80 Montgomery St., J. C.	381.98
Lincoln Trust Co. of N. J.	70 to 80 Montgomery St., J. C.	188.12
Lincoln Trust Co. of N. J.	70-80 Montgomery St., J. C.	27.56
Lincoln Trust Co. of N. J.	70-80 Montgomery St., J. C.	9.27
Lincoln Trust Co. of N. J.	70-80 Montgomery St., J. C.	95.88
T. C. O'Brien Co.	173 Newark Ave., J. C.	93.80
Benjamin Welles, et al.	27 Rector St., N. Y.	42.60
John O. Grode	22 Morton St.	53.90
H. J. Biscotto	461 6th Ave., Brooklyn	135.40
H. Kabla	43 Washington St., Brooklyn	40.80
Jacob Rothman	524 E. 11th St.	22.20
	Total	$5,290.70

ANSWER.

(Filed September 10, 1918.)

NEW JERSEY SUPREME COURT.

CHICAGO BONDING & INSURANCE COMPANY,
Plaintiff,

vs.

LEHIGH VALLEY RAILROAD COMPANY,
Defendant.

Answer.

Defendant, a body corporate of the State of Pennsylvania, having its principal office in the State of New Jersey at the foot of Washington street, Jersey City, says that:

FIRST DEFENSE TO FIRST COUNT.

1. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 1.

2. It admits the allegations of paragraph 2.

3. It admits that on July 30, 1916, it possessed, used, occupied and controlled (but only to the extent provided by and in accordance with the terms of a certain lease hereinafter mentioned) a certain yard in the City of Jersey City, extending into the waters of New York Bay, and locally known as the "Black Tom" yard; it admits that it possessed, used, occupied and controlled (but only to the extent provided by and in accordance with the terms of a certain lease hereinafter mentioned) certain lands covered by the waters of New York Bay adjacent to said yard, as well as certain upland likewise adjacent to said yard. It admits that the said yard and that the said upland were used in connection with its business of a common carrier of

freight, but denies that the same or any part thereof were used in connection with its business of a common carrier of passengers. It further says that it possessed, used, occupied, and controlled certain docks and piers, together with certain waters and upland adjacent thereto in the City of Jersey City, locally known as Black Tom yard, in accordance with the terms and provisions of a certain lease dated June 24, 1913, from the National Storage Company to the Lehigh Valley Railroad Company of New Jersey, and thereafter assigned to this defendant, wherein the said premises are described as follows: "A tract of land containing about one hundred and eleven acres, more or less, together with all the tracks, wharves, piers, docks, bulkheads, stores, warehouses, elevators and power houses, and all other buildings and structures of every kind whatsoever erected thereon; excepting and reserving therefrom about one hundred and forty-nine thousand and five hundred (149,500) square feet, together with the following structures erected thereon: Stores "A", "E", "F", "G", "H", "I", "K", "L", "M", "N", "O", "P" "Q", and "R" and Pier 6 and Shed No. 2 on Pier 7 and the office building (40'x25') located between Stores "F" and "G", together with the right of access thereto and wharfage rights in connection therewith."

4. It admits that on and prior to July 30, 1916, it used said yard, and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, for the handling and holding (but only to the extent and in the manner hereinafter mentioned) of carload lots of certain munitions and explosives, as hereinafter mentioned; it says that the lands and premises described in paragraph 3 of the first defense to first count, known as the Black Tom yard, on and prior to July 30, 1916, were used by it as a freight terminal for making delivery to the consignee of carload lots of shells, shrapnel and other ammunitions and munitions of war, including trinitrotoluol

(but not including gunpowder, dynamite, nitro-cellulose or other high and dangerous explosives) and for the transferring of the same by consignees from cars to barges or lighters for trans-shipment to steamers for export; and it says that there was no handling or holding by this defendant of the cars containing the same, except as lawfully incidental to the transportation and delivery thereof in the course of interstate commerce and commerce with foreign countries; and it says that all of the materials so held or handled were in the course of interstate or foreign commerce at the times set forth in the complaint.

5. It admits that on July 30, 1916, and for several days prior thereto it had placed and on said date was holding (but only to the extent and in the manner hereinafter mentioned) in said yard and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, certain carloads (but not many) of shells, shrapnel and other ammunitions and munitions of war, including trinitrotoluol (but not including gunpowder, dynamite, nitro-cellulose or other high and dangerous explosives); denies that the said explosives, ammunitions and munitions of war referred to in paragraph 5 of the complaint, or any of them were to the knowledge of this defendant highly dangerous and capable and liable in the event of fire to explode and thereby to cause incalculable or any injury to residents of Jersey City of their buildings, chattels and other property; it says that on July 30, 1916, on the lands and premises herein described as Black Tom yard, there were carloads of the explosives, ammunitions and munitions of war herein described, for the purpose of making delivery of the same to the consignees, and that for several days prior thereto there had been other carloads of explosives of the same nature on the said lands and premises for the like purpose; but it says that there was no holding on said lands and premises of any carloads of the said explosives,

ammunitions and munitions of war, either on July 30, 1916, or at any time prior thereto, except as lawfully incidental to the transportation and delivery of the contents of said cars, in the course of interstate commerce and commerce with foreign countries; it says that all of the carloads of said explosives so held were in the course of interstate or foreign commerce at the times set forth in the complaint.

6. It denies paragraph 6.

7. It admits that on July 30, 1916, and for several days prior thereto, it permitted the use of certain of its premises and waters, as described in paragraph 3 of the first defense to first count, known as the Black Tom yard (but only to the extent and in the manner hereinafter mentioned) for the tying up of certain tugs and other vessels, but it says that it limited its said premises (for the tying up of barges and lighters carrying or to carry explosives) to one pier, namely, the pier known as "North Pier," and only when the said barges or lighters were being loaded; and it says it did not permit the tying up of tugs and/or other vessels to that pier or near, or adjacent thereto; and it says that on July 30, 1916, at the time of the explosion mentioned in the complaint there were two barges at said North Pier, with its permission, partly loaded, one with shrapnel and the other with trinitrotoluol.

8. It denies paragraph 8.

9. It denies paragraph 9.

10. It admits that on July 30, 1916, it possessed a certain yard and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, known as the Black Tom yard; it admits that on July 30, 1916, a fire occurred on the said lands and premises, but it has no knowledge nor information sufficient to form a belief as to whether, by means of said fire, the said explosives or munitions, or any of them, became and were ignited

and exploded; it admits that certain explosives and munitions exploded on said date, thereby causing severe shocks and violent concussions of the air, but it has no knowledge nor information sufficient to form a belief as to whether the said severe shocks and concussions or any of them broke or damaged or destroyed the glass doors and windows of the persons and corporations, or any or either of them, shown upon Schedule "A" attached to the complaint.

11. It has no knowledge nor information sufficient to form a belief as to the allegations of paragraph 11.

12. It has no knowledge nor information sufficient to form a belief as to the allegations of paragraph 12, except that it denies that it created or maintained any nuisance as alleged in paragraphs 8 and 9 of the first count of the complaint, or otherwise.

In lieu of a motion to strike out said first count, the defendant objects thereto on the ground that it discloses no cause of action against the defendant.

SECOND DEFENSE TO FIRST COUNT.

1. On July 30, 1916, and for many days prior thereto, the defendant was a common carrier engaged in interstate and foreign commerce, and therein transporting by land ammunitions and munitions of war, including explosives.

2. As such common carrier defendant was compelled by law to receive, carry, convey and transport the said ammunitions and munitions of war, including explosives, in the course of interstate and foreign commerce, provided the same were packed, marked, loaded and handled, and when offered for transportation were in proper condition to transport in accordance with and pursuant to the act of Congress of the United States entitled "An Act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation," approved March 4,

1909, and the act of said Congress entitled "An Act to regulate commerce," as amended June 18, 1910, and the regulations prescribed by the Interstate Commerce Commission by authority of said acts.

3. The ammunition and munitions of war and explosives that exploded on July 30, 1916, were packed, marked, loaded and handled, and when offered for transportation were and until and at the time of said explosion continued to be in proper condition to transport in accordance with said acts of Congress of the United States and the regulations prescribed by the Interstate Commerce Commission by virtue thereof, and were carried, conveyed and transported and held by the defendant in the course of interstate and foreign commerce lawfully and strictly in accordance with said acts and regulations.

THIRD DEFENSE TO FIRST COUNT.

1. The presence of such explosives as were on July 30, 1916, on the premises of the defendant did not constitute a nuisance.

2. The explosion mentioned in the complaint was due to a fire caused by incendiarism, of which defendant had no knowledge or suspicion.

3. Said fire occurred notwithstanding due diligence by the defendant to prevent incendiarism.

FIRST DEFENSE TO SECOND COUNT.

1. Defendant repeats and makes part hereof the allegations contained in paragraphs 1 to 7, inclusive, of its first defense to first count.

2. It denies paragraph 2.

3. It denies that it was chargeable with any such alleged duty as stated in paragraph 2 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

4. It denies paragraph 4.

5. It denies that it was chargeable with any such alleged duty as stated in paragraph 4 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

6. It denies paragraph 6.

7. It denies that it was chargeable with any such alleged duty as stated in paragraph 6 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

8. It denies paragraph 8.

9. It denies that it was chargeable with such alleged duty as stated in paragraph 8 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

10. It denies paragraph 10.

11. It denies that it was chargeable with any such alleged duty as stated in paragraph 10 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

12. As to paragraph 12, it admits that the municipality of Jersey City, at the time of the explosion referred to in said count, maintained police and fire departments; but as to the size of said departments or as to what their duty and custom was at the time of said explosion this defendant has no knowledge nor information sufficient to form a belief.

13. It denies paragraph 13.

14. It denies that it was chargeable with any such alleged duty as stated in paragraph 13 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

15. It denies paragraph 15, and says that in fact it did, immediately, upon the happening and discovery of the fire referred to in the complaint, notify the Fire Department of Jersey City of the existence and location of said fire.

Answer.

16. It denies that it was chargeable with any such alleged duty as stated in paragraph 15 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

17. It admits that on July 30, 1916, it possessed a certain yard and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count; it admits that on July 30, 1916, a fire occurred on the said lands and premises; it denies that there was any negligence on its part in failing to perform its several alleged duties and denies that by reason of said alleged negligence it suffered a part of said explosives and munitions, and the cars, boats and containers thereof, to become ignited; it has no knowledge nor information sufficient to form a belief as to whether by means of said fire, the said explosives or munitions, or any of them, or the said cars, boats or containers, thereof, or any of them, became ignited, nor whether thereby the same, or any of them, exploded; it has no knowledge nor information sufficient to form a belief, as to whether the said fire and detonation of said explosives was communicated to other masses or quantities of explosives on the piers in said Black Tom yard or on any vessel adjacent thereto, nor whether the said explosives, or any of them, likewise exploded with great force and violence, nor whether the same caused severe shocks and concussions of the air, nor whether said shocks and concussions of the air, or any of them, simultaneously, or otherwise, broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit "A" attached to complaint.

18. It repeats and makes part hereof the allegations of paragraphs 10 and 11 of the first defense to the first count.

19. As to the allegations of paragraph 19, it has no knowledge nor information thereof sufficient to form a

belief, except that it alleges that it was in no manner negligent in the premises.

In lieu of a motion to strike out said second count, defendant objects thereto on the ground that it discloses no cause of action against the defendant.

SECOND DEFENSE TO SECOND COUNT.

Defendant repeats and makes a part hereof the allegations of its second defense to the first count.

THIRD DEFENSE TO SECOND COUNT.

Defendant repeats and makes a part hereof the allegations of its third defense to the first count.

FIRST DEFENSE TO THIRD COUNT.

1. Defendant repeats and makes part hereof the allegations contained in paragraphs 1 to 7, inclusive, of its first defense to first count.

2. It admits that by authority of certain acts of Congress, approved March 4th, 1909, and June 18th, 1910, and the Interstate Commerce Commission in October, 1914, promulgated, and on July 30, 1916, there remained in force and effect certain regulations for the handling and transportation by freight of carloads of explosives by carriers in interstate commerce, and that such regulations were then and there binding upon the defendant, but as to whether or not the said regulations, or any or either of them, were applicable to the explosives mentioned in the complaint, it prays reference to the original of said regulations.

3. It denies paragraph 3.

4. It admits that on July 30, 1916, a fire occurred on the premises possessed by the defendant, or in the immediate vicinity thereof; but denies that by reason of any negligence on its part in failing to perform its several alleged duties, or any or either of them, as set forth in the complaint, it suffered a part or any of said explosives

and ammunitions, and the cars and containers thereof, or any of them, to become ignited, whereby the same, or any of them, exploded; it denies that it suffered said fire and detonation of said explosion to be communicated to other masses and quantities of explosives in said yard, and denies that said other masses and quantities of explosives in said yard likewise exploded with great force and violence, or otherwise; it admits that certain explosives and ammunitions exploded on said date, thereby causing severe shocks and violent concussions of the air, but it has no knowledge nor information sufficient to form a belief as to whether said severe shocks and concussions, or any of them, broke or damaged, or destroyed the glass doors and windows of the persons and corporations, or any or either of them, shown upon Schedule "A" attached to the complaint.

5. It repeats and makes part hereof the allegations of paragraphs 10 and 11 of the first defense to the first count.

6. As to the allegations of paragraph 6, it has no knowledge nor information thereof sufficient to form a belief, except that it alleges that it was in no manner negligence in the premises.

In lieu of a motion to strike out said third count defendant objects thereto on the ground that it discloses no cause of action against the defendant.

SECOND DEFENSE TO THIRD COUNT.

Defendant repeats and makes a part hereof the allegations of its second defense to the first count.

THIRD DEFENSE TO THIRD COUNT.

Defendant repeats and makes a part thereof the allegations of its third defense to the first count.

COLLINS & CORBIN,
Attorneys of Defendant.

REPLY.

(Filed November 21, 1918.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

CHICAGO BONDING & INSURANCE COMPANY, *Plaintiff,* vs. LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*Action at Law.* *Reply.*

FIRST DEFENSE TO FIRST COUNT.

1. Plaintiff denies the special defenses set forth in paragraph four.

2. It denies the special defenses set forth in paragraph five.

3. It denies the special defenses set forth in paragraph seven.

SECOND DEFENSE TO FIRST COUNT.

1. Plaintiff admits paragraph one.

2. It denies paragraph two.

3. It denies paragraph three.

THIRD DEFENSE TO FIRST COUNT.

1. Plaintiff denies paragraph one.

2. It denies paragraph two.

3. It denies paragraph three.

Reply.

FIRST DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in paragraphs, one, two and three of this reply to the first defense to the first count.

It denies the special defenses set forth in paragraph fifteen.

SECOND DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the second defense of the first count.

THIRD DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the third defense to the first count.

FIRST DEFENSE TO THIRD COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in paragraphs one, two and three of this reply to the first defense to the first count.

SECOND DEFENSE TO THIRD COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the second defense to the first count.

THIRD DEFENSE TO THIRD COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in this reply to the third defense to the first count.

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff.

POSTEA AND JUDGMENT.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

CHICAGO BONDING & INSURANCE COMPANY,

vs.

LEHIGH VALLEY RAILROAD COMPANY.

This case was tried before the Honorable William H. Speer, Circuit Court Judge (to whom the same was referred for trial) and a jury on the 20th, 23rd, 24th, 25th, 26th and 27th days of June, 1919, and the same having been submitted to the jury, the jury returned a general verdict in favor of the plaintiff and against the defendant Lehigh Valley Railroad Company in the sum of Five Thousand Five Hundred and Twenty-nine Dollars and Twenty-one Cents ($5,529.21).

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of Five Thousand Five Hundred and Twenty-nine Dollars and Twenty-one Cents, and its costs, which are taxed at the sum of Forty-four Dollars and Sixty Cents, making in the whole the sum of Five Thousand Five Hundred and Seventy-three Dollars and Eighty-one Cents.

$5,529.21	
44.60	
$5,573.81	

Judgment entered July 8, 1919.

WM. S. GUMMERE,
C. J.

NOTICE OF APPEAL.

(Filed July 17, 1919.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

OCEAN ACCIDENT & GUARANTEE CORPORATION, LIMITED, OF LONDON, ENGLAND, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*Action at Law.* *Notice of Appeal.*

To Messrs. Congleton, Stallman & Hoover,
Attorneys for Plaintiff.

TAKE NOTICE, that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in above-stated cause.

COLLINS & CORBIN,
Attorneys for Defendant.

GROUNDS OF APPEAL.

(Ocean Accident & Guarantee Corporation, Limited, of London, England.)

(Filed August 25, 1919.)

These are the same as Grounds of Appeal Nos. one to seventy-one in the case of Royal Indemnity Company.

COMPLAINT.

(Filed July 21, 1918.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

OCEAN ACCIDENT & GUARANTEE CORPORATION, LIMITED, OF LONDON, ENGLAND, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*At Law.* *Complaint.*

1. The plaintiff is a corporation of London, England, having an office in the City of New York, and is engaged in the business of insuring persons and corporations against loss occasioned by the breakage of glass doors and windows.

2. The defendant is a corporation engaged in the maintenance and operation of a railroad in and through the State of New Jersey, for the transportation of freight and passengers.

3. On July 30th, 1916, the defendant possessed, used, occupied and controlled a certain yard in the City of Jersey City, locally known as the "Black Tom" yard, extending into the waters of New York bay, and also possessed, used, occupied and controlled certain lands covered with the waters of New York bay adjacent to said "Black Tom" Pier, as well as certain upland, likewise adjacent to said pier, in connection with its business of a common carrier of freight and passengers.

4. Said "Black Tom" yard and the said lands adjacent thereto, on and prior to July 30th, 1916, were used

by the defendant for the handling, holding, and transshipment of carload lots of gunpowder, trinitrotoluol, dynamite, nitroglycerin, and other high and dangerous explosives, and shells, shrapnel and other ammunitions and munitions of war.

5. On July 30th, 1916, and for several days prior thereto, the defendant had placed and on said date was holding on said pier and lands adjacent thereto, many carloads of said explosives, ammunitions and munitions of war, which explosives were to the knowledge of said defendant highly dangerous and capable and liable, in the event of fire, to explode and thereby cause incalculable damage and injury to residents of Jersey City and their buildings, chattels and other property.

6. On July 30th, 1916, and for several days prior thereto, the defendant used its premises and waters, adjacent to said pier, for the tying up of boats, lighters, and ships upon and to which was loaded, placed and carried large quantities of like explosives as described in the preceding paragraph.

7. On said July 30th, 1916, and for several days prior thereto, said defendant permitted the use of its premises and waters, adjacent to its said pier, to be used for the anchorage and tying up of tugs, boats and other vessels, as well as by boats and lighters carrying large quantities of like explosives as described in the second preceding paragraph.

8. By reason of the accumulation, on said pier and on the lands adjacent thereto, of said large quantities of said explosives and munitions, and the danger existing therein and therefrom, said accumulations of explosives and munitions constituted a nuisance.

9. The accumulation of the large quantity of like dangerous explosives on boats and vessels in its premises and waters adjacent to said pier of the defendant, by the act and with the permission and knowledge of said defendant, constituted a nuisance on the part of the defendant.

10. On July 30th, 1916, a fire occurred on the premises possessed by defendant known as "Black Tom" yard, and by means thereof said accumulations of explosives and munitions became and were ignited and exploded, causing severe shocks and violent concussions of the air, which broke, damaged and destroyed the glass doors and windows of the persons and corporations shown upon the schedule marked Schedule "A" hereto attached and hereby made a part hereof.

11. The plaintiff on said July 30th, had lawfully insured the persons and firms shown on Exhibit "A" against loss from damage to their respective glass doors and windows, and by reason of its obligations under its several contracts of insurance paid to said persons, or firms, their losses or provided said persons or firms with new doors and windows to the amounts and values set opposite their respective names on said Schedule "A," and plaintiff is subrogated to the rights of said parties to demand and receive the amounts of said losses so sustained and paid or replaced by it.

12. The losses so sustained and paid or replaced by the plaintiff were the direct result of the creation and maintenance by the defendant of the nuisance described in paragraphs six and seven.

SECOND COUNT.

1. The plaintiff realleges paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count.

2. By reason of the accumulations of said large quantities of explosives and munitions on and near said pier and premises of the defendant, it was the duty of the defendant to exercise a high degree of care to prevent the occurrence of fires, detonation or other means whereby said explosives and munitions might become exploded.

3. Said defendant negligently failed and omitted to perform said duty.

4. By reason of the accumulations of the explosives and munitions, as aforesaid, it was the duty of the defendant to exercise a high degree of care to watch and guard said explosives and the yard, piers, cars and vessels containing the same or lying in proximity thereto, so as to prevent, and to extinguish and control, when discovered, fires, detonations and other means by which such explosives might be exploded.

5. The defendant negligently omitted and failed to perform said duty.

6. It was also the duty of the defendant in the premises to exercise due care to employ a sufficient number of watchmen and guards to police its said yard and approaches and the waters adjacent thereto to observe and detect the approach or presence of any persons not authorized or licensed to visit said pier, and who might by accident or felonious intent set fire to said pier or property thereon.

7. The defendant negligently failed and omitted to perform said duty.

8. It was also the duty of the defendant in the premises to exercise due care to furnish, provide and install, and keep in good order and repair sufficient water supply, fire-fighting devices and apparatus on and about its said pier, by means of which any fire occurring upon or near said pier might be promptly extinguished and controlled.

9. The defendant negligently failed and omitted to perform said duty.

10. It was also the duty of the defendant in the premises to exercise a high degree of care to store, handle and dispose of said explosives and munitions so as to prevent and control the ignition and communication of fire and detonation from one portion or mass of the same to any other part or mass of the same.

11. The defendant negligently failed to perform said duty.

12. The municipality of Jersey City at the times of said explosion maintained large police and fire departments, whose duty and custom it was, to the knowledge of the defendant, to respond immediately to all alarms of fire for the purpose of extinguishing the same.

13. It was also the duty of said defendant to exercise due care to install and provide and keep in good order and repair sufficient means of communication whereby the occurrence of any fire or other agency capable of igniting said explosives could be immediately communicated from said pier to the fire and police departments of Jersey City.

14. Said defendant negligently failed and neglected to perform said duty.

15. It was also the duty of the defendant in the premises, immediately upon the happening and discovery of a fire on or near said pier, to notify the Fire Department of Jersey City of the existence and location of said fire.

16. Said duty the defendant negligently failed and omitted to perform.

17. On July 30th, 1916, a fire occurred on the premises possessed by the defendant, on or in the immediate vicinity of said pier of the defendant, and by reason of negligence of the defendant in failing to perform its several duties in the premises the defendant suffered a part of said explosives and munitions and the cars and containers thereof to become ignited, whereby the same exploded, which fire and detonation of said explosion the defendant suffered to be communicated to other masses and quantities of explosives in said yard, which likewise with great force and violence, causing severe shocks and concussions of the air, which simultaneously broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit "A."

18. The plaintiff realleges paragraphs 10 and 11 of the first count.

Complaint.

19. The losses so sustained and paid or replaced by the plaintiff were the direct result of the negligence of the defendant as aforesaid.

THIRD COUNT.

1. The plaintiff realleges paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count.

2. By authority of certain acts of Congress approved March 4th, 1909, and June 18th, 1910, the Interstate Commerce Commission in October, 1914, promulgated, and on July 30th, 1916, there remained in force and effect, certain regulations for the handling and transportation by freight of carloads of explosives by carriers in interstate commerce, which regulations were then and there binding upon the defendant and applicable to the explosives hereinabove mentioned, to which regulations the plaintiff refers as fully as if here set forth.

3. The defendant negligently failed and refused to comply with the requirements of said regulations.

4. On July 30th, 1916, a fire occurred on the premises possessed by the defendant, on or in the immediate vicinity of said pier of the defendant, and by reason of negligence of the defendant in failing to perform its several duties in the premises the defendant suffered a part of said explosives and munitions and the cars and containers thereof to become ignited, whereby the same exploded, which fire and detonation of said explosion the defendant suffered to be communicated to other masses and quantities of explosives in said yard, which likewise exploded with great force and violence, causing severe shocks and concussions of the air, which simultaneously broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit "A."

5. The plaintiff realleges paragraphs 10 and 11 of the first count.

6. The losses so sustained and paid or replaced by the plaintiff were the direct result of the negligence of the defendant as aforesaid.

The plaintiff demands, on the first count, the sum of $6,443.52.

The plaintiff demands, on the second count, the sum of $6,443.52.

The plaintiff demands, on the third count, the sum of $6,443.52.

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff.

Schedule "A."

PLATE GLASS BROKEN DUE TO BLACK TOM EXPLOSION, JULY 30, 1916.

Loss No.	Policy No.	Assured	Location.	No. lts. Broken.	Amt.
13687	43517	Eamuel Gross	178 Bay St., Jersey, N. J.....	1	$ 51.83
13750	38648	Aaron Adler, trading as Bernard	44 West 14th St., N. Y. C.....	2	257.35
13773	28202	John E. Andrus	79-81 Monticello Ave., Jersey City, N. J.	6	121.70
13774	24468	Abbie W. Purdy	54-56 Virginia Ave., Jersey, N. J...	5	170.41
13775	40722	Morris Cohen	Old Bergen Rd. (171), Jersey, N. J.	1	50.25
13776	32922	Mary A. Kelly	255-7 Van Vorst St., Jersey, N. J....	2	41.16
13777	23378	Chas. H. and Ida Schroder	317-319 Jackson Ave., Jersey, N. J.	6	195.48
13778	13294	William F. Gernannt	589 Communipaw Ave., Jersey, N. J.	7	89.80
13779	16141	W. C. Kellegher	145 Monticello Ave., Jersey, N. J...	1	29.67
13780		F. J. Hoeft	728 Grand St., Jersey, N. J.....	1	33.55
13781	11219	James T. Kelly	113 Irving St., Rahway, N. J.....	2	23.44
13782	43610	John Mulligan	371 Johnston Ave., Jersey, N. J....	1	33.95
13783	39744	Harry Jaffe	570 Jackson Ave., Jersey, N. J.....	2	37.22
13772	"				
13784	40792	United Realty & Investment Co.	217 Washington St., Hoboken, N. J..	1	44.20
13785	9283	Dietrich Bahrenburg	115 Willow Ave., Hoboken, N. J....	1	37.57
13786	29416	D. L. Cella	96-98 Willow Ave., Hoboken, N. J..	1	7.16
13787	19426	Giovanni Garbarini	507 First St., Hoboken, N. J.....	1	26.96
13788	15526	United Realty & Investment Co.	109-111 Willow Ave., Hoboken, N. J.	1	46.73
13789	12669	John Keaveney	395 West Side Ave., Jersey, N. J..	1	58.95
13790	22237	Mary H. Mullen	61 Newark Ave., Jersey, N. J.....	2	102.91
13791	39697	Francesco Garraffa & Severio Ferretto	315 Fifth St., Jersey, N. J.....	1	33.41

Complaint—Schedule A.

Loss No.	Policy No.	Assured	Location.	No. lts. Broken.	Amt.	
13792	26281	Annie A. McInnerney	200 Pavonia Ave., Jersey, N. J....	2	45.20	
13793	39774	Marg. H. Browning	439 Jackson Ave., Jersey, N. J.....	2	82.27	
13794	43678	Joseph Ferrero	382 First St., Jersey, N. J.....	1	37.61	
13795	43676	Joseph Angelo	370 First St., Jersey, N. J.....	1	29.67	
13796	34774	Elizabeth M. Doyle	79 Newark Ave., Jersey City, N. J..	1	55.60	
13797	43615	William Steierman	824 Newark Ave., Jersey, N. J....	4	74.42	
13799	43592	Emanuel Gross	34-36-38 Montgomery St., Jersey, N. J.	6	173.81	
13800	43618	Antonio Orrico	226 Wayne St., Jersey, N. J.....	1	32.48	10
13801	19362	United Realty & Investment Co.	229 Washington St., Hoboken, N. J.	2	29.03	
13002	39528	Henry Lindermann	101 Monticello Ave., Jersey, N. J..	2	38.22	
13803	18702	John E. Andrus	83 Monticello Ave., Jersey, N. J..	2	63.23	
13804	20906	Max Lange	413 Jackson Ave., Jersey, N. J.....	4	104.92	
13805	18514	Abbie W. Purdy	411 Jackson Ave., Jersey, N. J....	1	25.54	
13806	29237	Louise Wilkinson	396 Jackson Ave., Jersey, N. J.....	1	41.73	
13807	23357	Albert Schmidt	499 Communipaw Ave., Jersey, N. J.	1	56.88	
13808	26122	Est. of J. J. Duffy, deceased, Abbie Duffy, Executrix	317-317½ Grove St., Jersey, N. J.	2	128.90	
13809	39745	Hyman Rand	341 Whiton St., Jersey, N. J.....	3	56.52	
13811	40752	John J. and James Marnell	505 Jefferson St., Hoboken, N. J..	1	26.73	
13810	22440	Gottfried Kruger Brewing Co.	204 Duncan Ave., Jersey, N. J....	2	71.87	
13812	38698	Emanuel Gross	319 Henderson St., Jersey, N. J..	1	19.01	20
13813	41994	Emanuel Gross	319 Henderson St., Jersey, N. J..	1	38.91	
13814	40656	Ignatz Ozerwinski	100 Essex St., Jersey, N. J.....	1	25.24	
13815	32971	Katherine and Mary E. Kilroy	742 Grand St., Jersey, N. J.....	1	31.63	
13816	17496	Clara Wilkinson	408 Jackson Ave., Jersey, N. J....	5	64.64	
13817	9297	August Reisch and Eva Reisch	360 Randolph Ave., Jersey, N. J..	3	76.18	
13818	38691	Vincensa Sesta	244 First St., Jersey, N. J.....	2	40.62	
13819	41997	Emanuel Gross	180 Bay St., Jersey, N. J.....	1	11.55	
13820	43511	William Steierman	822 Newark Ave., Jersey, N. J.....	2	36.35	
13821	26317	Frank McCarren	379 Grove St., Jersey, N. J.....	1	48.86	
13822	41992	Emanuel Gross	315 Henderson St., Jersey, N. J....	1	23.17	
13224	43586	Angelo Zingaro	348 First St., Jersey, N. J.....	2	35.00	
13825	38694	Emanuel Gross	362 Grove St., Jersey, N. J.....	2	40.00	
13826	18620	United Realty & Investment Co.	129 Washington St., Hoboken, N. J.	1	3.58	30
13827	40656	Jacob Hurwitz	190½ Third St., Jersey, N. J.....	1	25.10	
13828	41995	Emanuel Gross	317 Henderson St., Jersey, N. J...	3	45.29	
13829	18724	Anna D. Gates	235 Grove St., Jersey, N. J.....	2	61.53	
13830	26263	Antonio Valestro	735 Grand St., Jersey, N. J.....	1	67.12	
13831	43611	A. Oschrin	419 Monmouth St., Jersey, N. J....	1	22.81	
13832	12658	Mrs. Bonnie V. La Fetra	35 Morton Pl., Greenville, Jersey City, N. J.	3	88.62	
13833	40554	John & Gaetano Tito	311 Jackson Ave., Jersey, N. J....	3	65.62	
13834	20960	Emerich Miko	109 Mallory Ave., Jersey, N. J.....	1	23.87	
13835	112283	Marie Kelly	483 Westside Ave., Jersey, N. J..	1	58.21	
13836	18702	James H. Mullins	163-165 Newark Ave., 331-333 Barrow St., Jersey, N. J.....	12	404.75	
13837	24411	Andrew Nielsen	523-525 Jackson Ave., Jersey, N. J.	4	121.53	
13838	39609	Edward Kochka	101 Jackson Ave., Jersey, N. J...	7	77.72	
13839	19369	Anne E. Prendergast	298 Grand St., Jersey, N. J.....	3	110.01	
13840	24383	Joseph H. Bumstead	492 Communipaw Ave., Jersey, N. J.	3	44.93	40

Ocean Accident & Guarantee Corporation Case.

Loss No.	Policy No.	Assured	Location.	No. lts. Broken.	Amt.
13841	40767	John J. Carboy	473 Third Ave., Brooklyn, N. Y..	1	38.97
13842	10887	Kent Building Co.	37 Division Ave., Brooklyn, N. Y...	1	20.01
13843	23629	Anna Hendricks	167 Fifth Ave., New York, N. Y..	1	45.98
13844	22122	Bessie Weinstein	817 Nostrand Ave., New York, N. Y.	1	3.87
13845	23337	Lelia F. Hall	1626 Nostrand Ave., New York, N. Y.	2	53.80
13846	13670	Margaret M. Hewey	765 Nostrand Ave., New York, N. Y.	1	81.14
13847	43635	John Stegman	761 Nostrand Ave., New York, N. Y.	1	71.52
13848	32825	William Driscoll	301 Utrecht Ave., New York, N. Y.	2	30.91
13849	39728	H. L. Development Co., Inc.	105 Fort Hamilton Ave., Bor. of Brooklyn	2	55.44
13750	26174	Eiseman & Co., Inc.	66-68 Cortlandt St., New York, N. Y.	2	74.77
13851	32835	Annie Miller & Est. of Frederick Kloppenburg, Frederick Miller & W. H. Lemmers, Esrs.	752 Greenwich St.	1	21.41
13852	39625	J. H. Rodhde	874 Washington St., New York,N. Y.	1	37.38
13854	40778	The New Hotel Keller Co., Inc.	384-385 West St., New York, N. Y..	5	224.59
13855	23387	Levi-Sondheimer & Co.	19-23 W. Eighteenth St., New York	2	241.24
13856 & 13864	43502	The Golden Hill Building Co.	11 William St., NW. cor. 59 John St., New York, N. Y.....	3	79.60
13857	39602	Carey Show Print Co.	97-103 Horatio St., New York, N. Y.	1	47.12
13858	11877	Heyman Vogel	176-180 Grand St., New York City..	1	62.20
13859	24572	Ross M. Wilson & Agnes Burton	585-59 Hudson St., 95-99 Bank St., 1-9 Bethune St., New York, N. Y.	11	342.75
13860	26269	Bara Beers Crowell, James L. Beers & John M. Beers, as their interest may appear	East Seventeenth St., New York		25.00
13861	43681	Pauline Cohen	596 Grand St., Jersey, N. J.....	1	24.86
13862	26113	Thorpe Bros., a corporation	85-87 Monticello Ave., Jersey City, N. J.	1	28.47
13863	43680	Louis Rubenstein	328 Montgomery St., Jersey City, N. J.	3	37.80
13896	40255	Est. of Julius Koehler	5 Union St., Brooklyn, N. Y.....	1	42.69
13897	39517	Chas. A. Cole	0 Monticello Ave., Jersey, N. J...	1	33.75
13898	23003	Elizabeth A. Stutt	572 Clinton St., New York, N. Y...	2	24.74
13899	29321	Frank E. Older	99 Communipaw Ave., Jersey, N. J. (Lettering)		20.00
13945	35874	Thomas Gross	64-6 Neptune Ave., New York, N. Y., Bor. of Brooklyn.....	2	16.60
13981	32936	Nellie Toomey	233 Avenue "B", Bayonne, N. J..	1	7.33
14022	36230	Sam Katzan	Passaic, N. J., 169 Main Ave.....	1	47.34
14042	9191	Jeanne Rauscher	28 St. Johns Place, New York, N. Y.	1	18.51
14116	39766	Montague Aaron	85-187 Flatbush Ave., New York, N. Y.	2	43.73
14162 & 13823	43686	Elizabeth M. Doyle	42-42½ Montgomery Pl., Jersey, N. J.	2	58.63
			Total Loss.....		$6,443.52

Answer.

ANSWER.

(Filed September 10, 1918.)

NEW JERSEY SUPREME COURT.

OCEAN ACCIDENT & GUARANTEE CORPORATION, LIMITED, OF LONDON, ENGLAND,
Plaintiff,
vs.
LEHIGH VALLEY RAILROAD COMPANY,
Defendant.
} *Answer.*

Defendant, a body corporate of the State of Pennsylvania, having its principal office in the State of New Jersey at the foot of Washington street, Jersey City, says that:

FIRST DEFENSE TO FIRST COUNT.

1. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 1.

2. It admits the allegations of paragraph 2.

3. It admits that on July 30, 1916, it possessed, used, occupied and controlled (but only to the extent provided by and in accordance with the terms of a certain lease hereinafter mentioned) a certain yard in the City of Jersey City, extending into the waters of New York Bay, and locally known as the "Black Tom" yard; it admits that it possessed, used, occupied and controlled (but only to the extent provided by and in accordance with the terms of a certain lease hereinafter mentioned) certain lands covered by the waters of New York Bay adjacent to said yard, as well as certain upland likewise adjacent to said yard. It admits that the said yard and that the said upland were used in connection with its business of a common carrier of

freight, but denies that the same or any part thereof were used in connection with its business of a common carrier of passengers. It further says that it possessed, used, occupied, and controlled certain docks and piers, together with certain waters and upland adjacent thereto in the City of Jersey City, locally known as Black Tom yard, in accordance with the terms and provisions of a certain lease dated June 24, 1913, from the National Storage Company to the Lehigh Valley Railroad Company of New Jersey, and thereafter assigned to this defendant, wherein the said premises are described as follows: "A tract of land containing about one hundred and eleven acres, more or less, together with all the tracks, wharves, piers, docks, bulkheads, stores, warehouses, elevators and power houses, and all other buildings and structures of every kind whatsoever erected thereon; excepting and reserving therefrom about one hundred and forty-nine thousand and five hundred (149,500) square feet, together with the following structures erected thereon: Stores "A", "E", "F", "G", "H", "I", "K", "L", "M", "N", "O", "P" "Q", and "R" and Pier 6 and Shed No. 2 on Pier 7 and the office building (40'x25') located between Stores "F" and "G", together with the right of access thereto and wharfage rights in connection therewith."

4. It admits that on and prior to July 30, 1916, it used said yard, and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, for the handling and holding (but only to the extent and in the manner hereinafter mentioned) of carload lots of certain munitions and explosives, as hereinafter mentioned; it says that the lands and premises described in paragraph 3 of the first defense to first count, known as the Black Tom yard, on and prior to July 30, 1916, were used by it as a freight terminal for making delivery to the consignee of carload lots of shells, shrapnel and other ammunitions and munitions of war, including trinitrotoluol

(but not including gunpowder, dynamite, nitro-cellulose or other high and dangerous explosives) and for the transferring of the same by consignees from cars to barges or lighters for trans-shipment to steamers for export; and it says that there was no handling or holding by this defendant of the cars containing the same, except as lawfully incidental to the transportation and delivery thereof in the course of interstate commerce and commerce with foreign countries; and it says that all of the materials so held or handled were in the course of interstate or foreign commerce at the times set forth in the complaint.

5. It admits that on July 30, 1916, and for several days prior thereto it had placed and on said date was holding (but only to the extent and in the manner hereinafter mentioned) in said yard and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, certain carloads (but not many) of shells, shrapnel and other ammunitions and munitions of war, including trinitrotoluol (but not including gunpowder, dynamite, nitro-cellulose or other high and dangerous explosives); denies that the said explosives, ammunitions and munitions of war referred to in paragraph 5 of the complaint, or any of them were to the knowledge of this defendant highly dangerous and capable and liable in the event of fire to explode and thereby to cause incalculable or any injury to residents of Jersey City of their buildings, chattels and other property; it says that on July 30, 1916, on the lands and premises herein described as Black Tom yard, there were carloads of the explosives, ammunitions and munitions of war herein described, for the purpose of making delivery of the same to the consignees, and that for several days prior thereto there had been other carloads of explosives of the same nature on the said lands and premises for the like purpose; but it says that there was no holding on said lands and premises of any carloads of the said explosives,

ammunitions and munitions of war, either on July 30, 1916, or at any time prior thereto, except as lawfully incidental to the transportation and delivery of the contents of said cars, in the course of interstate commerce and commerce with foreign countries; it says that all of the carloads of said explosives so held were in the course of interstate or foreign commerce at the times set forth in the complaint.

6. It denies paragraph 6.

7. It admits that on July 30, 1916, and for several days prior thereto, it permitted the use of certain of its premises and waters, as described in paragraph 3 of the first defense to first count, known as the Black Tom yard (but only to the extent and in the manner hereinafter mentioned) for the tying up of certain tugs and other vessels, but it says that it limited its said premises (for the tying up of barges and lighters carrying or to carry explosives) to one pier, namely, the pier known as "North Pier," and only when the said barges or lighters were being loaded; and it says it did not permit the tying up of tugs and/or other vessels to that pier or near, or adjacent thereto; and it says that on July 30, 1916, at the time of the explosion mentioned in the complaint there were two barges at said North Pier, with its permission, partly loaded, one with shrapnel and the other with trinitrotoluol.

8. It denies paragraph 8.

9. It denies paragraph 9.

10. It admits that on July 30, 1916, it possessed a certain yard and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, known as the Black Tom yard; it admits that on July 30, 1916, a fire occurred on the said lands and premises, but it has no knowledge nor information sufficient to form a belief as to whether, by means of said fire, the said explosives or munitions, or any of them, became and were ignited

and exploded; it admits that certain explosives and munitions exploded on said date, thereby causing severe shocks and violent concussions of the air, but it has no knowledge nor information sufficient to form a belief as to whether the said severe shocks and concussions or any of them broke or damaged or destroyed the glass doors and windows of the persons and corporations, or any or either of them, shown upon Schedule "A" attached to the complaint.

11. It has no knowledge nor information sufficient to form a belief as to the allegations of paragraph 11.

12. It has no knowledge nor information sufficient to form a belief as to the allegations of paragraph 12, except that it denies that it created or maintained any nuisance as alleged in paragraphs 8 and 9 of the first count of the complaint, or otherwise.

In lieu of a motion to strike out said first count, the defendant objects thereto on the ground that it discloses no cause of action against the defendant.

SECOND DEFENSE TO FIRST COUNT.

1. On July 30, 1916, and for many days prior thereto, the defendant was a common carrier engaged in interstate and foreign commerce, and therein transporting by land ammunitions and munitions of war, including explosives.

2. As such common carrier defendant was compelled by law to receive, carry, convey and transport the said ammunitions and munitions of war, including explosives, in the course of interstate and foreign commerce, provided the same were packed, marked, loaded and handled, and when offered for transportation were in proper condition to transport in accordance with and pursuant to the act of Congress of the United States entitled "An Act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation," approved March 4,

1909, and the act of said Congress entitled "An Act to regulate commerce," as amended June 18, 1910, and the regulations prescribed by the Interstate Commerce Commission by authority of said acts.

3. The ammunition and munitions of war and explosives that exploded on July 30, 1916, were packed, marked, loaded and handled, and when offered for transportation were and until and at the time of said explosion continued to be in proper condition to transport in accordance with said acts of Congress of the United States and the regulations prescribed by the Interstate Commerce Commission by virtue thereof, and were carried, conveyed and transported and held by the defendant in the course of interstate and foreign commerce lawfully and strictly in accordance with said acts and regulations.

THIRD DEFENSE TO FIRST COUNT.

1. The presence of such explosives as were on July 30, 1916, on the premises of the defendant did not constitute a nuisance.

2. The explosion mentioned in the complaint was due to a fire caused by incendiarism, of which defendant had no knowledge or suspicion.

3. Said fire occurred notwithstanding due diligence by the defendant to prevent incendiarism.

FIRST DEFENSE TO SECOND COUNT.

1. Defendant repeats and makes part hereof the allegations contained in paragraphs 1 to 7, inclusive, of its first defense to first count.

2. It denies paragraph 2.

3. It denies that it was chargeable with any such alleged duty as stated in paragraph 2 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

4. It denies paragraph 4.

Answer.

5. It denies that it was chargeable with any such alleged duty as stated in paragraph 4 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

6. It denies paragraph 6.

7. It denies that it was chargeable with any such alleged duty as stated in paragraph 6 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

8. It denies paragraph 8.

9. It denies that it was chargeable with such alleged duty as stated in paragraph 8 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

10. It denies paragraph 10.

11. It denies that it was chargeable with any such alleged duty as stated in paragraph 10 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

12. As to paragraph 12, it admits that the municipality of Jersey City, at the time of the explosion referred to in said count, maintained police and fire departments; but as to the size of said departments or as to what their duty and custom was at the time of said explosion this defendant has no knowledge nor information sufficient to form a belief.

13. It denies paragraph 13.

14. It denies that it was chargeable with any such alleged duty as stated in paragraph 13 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

15. It denies paragraph 15, and says that in fact it did, immediately, upon the happening and discovery of the fire referred to in the complaint, notify the Fire Department of Jersey City of the existence and location of said fire.

16. It denies that it was chargeable with any such alleged duty as stated in paragraph 15 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

17. It admits that on July 30, 1916, it possessed a certain yard and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count; it admits that on July 30, 1916, a fire occurred on the said lands and premises; it denies that there was any negligence on its part in failing to perform its several alleged duties and denies that by reason of said alleged negligence it suffered a part of said explosives and munitions, and the cars, boats and containers thereof, to become ignited; it has no knowledge nor information sufficient to form a belief as to whether by means of said fire, the said explosives or munitions, or any of them, or the said cars, boats or containers, thereof, or any of them, became ignited, nor whether thereby the same, or any of them, exploded; it has no knowledge nor information sufficient to form a belief, as to whether the said fire and detonation of said explosives was communicated to other masses or quantities of explosives on the piers in said Black Tom yard or on any vessel adjacent thereto, nor whether the said explosives, or any of them, likewise exploded with great force and violence, nor whether the same caused severe shocks and concussions of the air, nor whether said shocks and concussions of the air, or any of them, simultaneously, or otherwise, broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit "A" attached to complaint.

18. It repeats and makes part hereof the allegations of paragraphs 10 and 11 of the first defense to the first count.

19. As to the allegations of paragraph 19, it has no knowledge nor information thereof sufficient to form a

belief, except that it alleges that it was in no manner negligent in the premises.

In lieu of a motion to strike out said second count, defendant objects thereto on the ground that it discloses no cause of action against the defendant.

SECOND DEFENSE TO SECOND COUNT.

Defendant repeats and makes a part hereof the allegations of its second defense to the first count.

THIRD DEFENSE TO SECOND COUNT.

Defendant repeats and makes a part hereof the allegations of its third defense to the first count.

FIRST DEFENSE TO THIRD COUNT.

1. Defendant repeats and makes part hereof the allegations contained in paragraphs 1 to 7, inclusive, of its first defense to first count.

2. It admits that by authority of certain acts of Congress, approved March 4th, 1909, and June 18th, 1910, and the Interstate Commerce Commission in October, 1914, promulgated, and on July 30, 1916, there remained in force and effect certain regulations for the handling and transportation by freight of carloads of explosives by carriers in interstate commerce, and that such regulations were then and there binding upon the defendant, but as to whether or not the said regulations, or any or either of them, were applicable to the explosives mentioned in the complaint, it prays reference to the original of said regulations.

3. It denies paragraph 3.

4. It admits that on July 30, 1916, a fire occurred on the premises possessed by the defendant, or in the immediate vicinity thereof; but denies that by reason of any negligence on its part in failing to perform its several alleged duties, or any or either of them, as set forth in the complaint, it suffered a part or any of said explosives

New Jersey State Library

and ammunitions, and the cars and containers thereof, or any of them, to become ignited, whereby the same, or any of them, exploded; it denies that it suffered said fire and detonation of said explosion to be communicated to other masses and quantities of explosives in said yard, and denies that said other masses and quantities of explosives in said yard likewise exploded with great force and violence, or otherwise; it admits that certain explosives and ammunitions exploded on said date, thereby causing severe shocks and violent concussions of the air, but it has no knowledge nor information sufficient to form a belief as to whether said severe shocks and concussions, or any of them, broke or damaged, or destroyed the glass doors and windows of the persons and corporations, or any or either of them, shown upon Schedule "A" attached to the complaint.

5. It repeats and makes part hereof the allegations of paragraphs 10 and 11 of the first defense to the first count.

6. As to the allegations of paragraph 6, it has no knowledge nor information thereof sufficient to form a belief, except that it alleges that it was in no manner negligence in the premises.

In lieu of a motion to strike out said third count defendant objects thereto on the ground that it discloses no cause of action against the defendant.

SECOND DEFENSE TO THIRD COUNT.

Defendant repeats and makes a part hereof the allegations of its second defense to the first count.

THIRD DEFENSE TO THIRD COUNT.

Defendant repeats and makes a part thereof the allegations of its third defense to the first count.

COLLINS & CORBIN,
Attorneys of Defendant.

REPLY.

(Filed November 21, 1918.)

NEW JERSEY SUPREME COURT

HUDSON COUNTY.

OCEAN ACCIDENT & GUARANTEE CORPORATION, LIMITED, OF LONDON, ENGLAND, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*Action at Law.* *Reply.*

FIRST DEFENSE TO FIRST COUNT.

1. Plaintiff denies the special defenses set forth in paragraph four.

2. It denies the special defenses set forth in paragraph five.

3. It denies the special defenses set forth in paragraph seven.

SECOND DEFENSE TO FIRST COUNT.

1. Plaintiff admits paragraph one.
2. It denies paragraph two.
3. It denies paragraph three.

THIRD DEFENSE TO FIRST COUNT.

1. Plaintiff denies paragraph one.
2. It denies paragraph two.
3. It denies paragraph three.

FIRST DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in paragraphs one, two and three of this reply to the first defense to the first count.

It denies the special defense set forth in paragraph fifteen.

SECOND DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the second defense to the first count.

THIRD DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the third defense to the first count.

FIRST DEFENSE TO THIRD COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in paragraphs one, two and three of this reply to the first defense to the first count.

SECOND DEFENSE TO THIRD COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the second defense to the first count.

THIRD DEFENSE TO THIRD COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in this reply to the third defense to the first count.

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff.

POSTEA AND JUDGMENT.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

OCEAN ACCIDENT & GUARANTEE CORPORATION, LIMITED, OF LONDON, ENGLAND,

vs.

LEHIGH VALLEY RAILROAD COMPANY.

This case was tried before the Honorable William H. Speer, Circuit Court Judge (to whom the same was referred for trial) and a jury on the 20th, 23rd, 24th, 25th, 26th and 27th days of June, 1919, and the same having been submitted to the jury, the jury returned a general verdict in favor of the plaintiff and against the defendant Lehigh Valley Railroad Company in the sum of Six Thousand Four Hundred and Forty-three Dollars and Ffty-two Cents ($6,443.52).

Damages	$6,443.52
Costs	44.60
	$6,488.12

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of Six Thousand Four Hundred Forty-three Dollars and Fifty-two Cents and its costs, which are taxed at the sum of Forty-four Dollars and Sixty Cents, making in the whole the sum of Six Thousand Four Hundred and Eighty-eight Dollars and Twelve Cents.

Judgment entered July 8, 1919.

WM. S. GUMMERE,
C. J.

NOTICE OF APPEAL.

(Filed July 21, 1919.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

LLOYDS PLATE GLASS INSURANCE COMPANY, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, IMPLEADED, ETC., *Defendant.*	*Action at Law.* *Notice of Appeal.*

To Messrs. Congleton, Stallman & Hoover,
Attorneys for Plaintiff.

TAKE NOTICE, that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in above-stated cause.

COLLINS & CORBIN,
Attorneys for Defendant.

GROUNDS OF APPEAL.

(Lloyds Plate Glass Insurance Company of New York.)

(Filed August 25, 1919.)

These are the same as Grounds of Appeal Nos. one to seventy-one in the case of Royal Indemnity Company. Also the following additional grounds:

The Trial Judge further erroneously charged the jury in one or more of the following respects:

72. (a) "First of all, gentlemen, the basis of every one of the actions brought here is what is called in the law negligence. If there is no negligence there can be no recovery. Only if there is negligence and that negligence is the proximate cause of the injuries to the plaintiffs can the plaintiffs recover. That brings us to consider first of all, what is the negligence that (this plaintiff) charges against this defendant company? And upon that subject these are the charges that are made in (this suit): * * *

(b) "The Lloyds Plate Glass Insurance Company charged, first, negligence in keeping and maintaining large quantities of explosives." * * *

(c) "So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger, and the burden therefore rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out, then the plaintiff is entitled to have a verdict and have you assess damages. If the plaintiff has not made that out, mani-

festly the plaintiff is not entitled to a verdict but the verdict would have to be for the defendant.

73. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 72, the Trial Judge then charged as follows:

"The Lloyds Plate Glass Insurance Company charged * * * negligently keeping, managing and controlling the same." (*i. e.,* large quantities of explosives.)

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk of danger in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal No. 72.

74. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 72, the Trial Judge then charged as follows:

"The Lloyds Plate Glass Insurance Company charged * * * negligently and carelessly failing to provide proper and adequate means of protection against explosion and fire."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk of danger in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal No. 72.

75. "First of all, gentlemen, the basis of every one of the actions brought here is what is called in the law negligence. If there is no negligence there can be no recovery. Only if there is negligence and that negligence is the proximate cause of the injuries to the plaintiffs can the plaintiffs recover. That brings us to consider first of all, what is the negli-

gence that (this plaintiff) charges against this defendant company? And upon that subject these are the charges that are made in (this suit): * * *

"The Lloyds Plate Glass Insurance Company charged, first, negligence in keeping and maintaining large quantities of explosives, negligently keeping, managing and controlling the same, negligently and carelessly failing to provide proper and adequate means of protection against explosion and fire." * * *

"So that so far as charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger; and the burden therefore rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out then the plaintiff is entitled to have a verdict and have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict but the verdict would have to be for the defendant."

COMPLAINT.

(Filed July 31, 1918.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

LLOYDS PLATE GLASS INSURANCE COMPANY OF NEW YORK, *Plaintiff,* *against* LEHIGH VALLEY RAILROAD COMPANY and NATIONAL STORAGE COMPANY, *Defendants.*	*Action at Law.* *Complaint.*

Plaintiff, Lloyds Plate Glass Insurance Company of New York, through McDermott & Enright, its attorneys, for a cause of action against the defendants, alleges:

First. That at all the times hereinafter mentioned plaintiff was and now is a corporation organized and existing under the laws of the State of New York, with its principal place of business in the City of New York in said State, and the plaintiff was and is organized for the purpose, among others, of making insurance upon glass against breakage; and the plaintiff was and is engaged in the business of insuring glass against breakage.

Second. Upon information and belief, that at all the times hereinafter mentioned the defendant National Storage Company was and now is a corporation organized and existing under the laws of the State of New Jersey.

Third. Upon information and belief, that during all the times hereinafter mentioned the defendant Lehigh Valley Railroad Company was and is a corporation organized and existing under the laws of the State of Pennsylvania.

Complaint.

Fourth. Upon information and belief that the defendant National Storage Company during all the times hereinafter mentioned was and still is the owner of certain real estate situate, lying and being in the County of Hudson, in the State of New Jersey, known as "Black Tom Island."

Fifth. That on and prior to the 30th day of July, 1916, the said defendant National Storage Company maintained certain warehouses, docks, yards, terminals, tracks and facilities for the storing of goods, wares and merchandise, and the transportation of the same and for the operation of the steam railroads upon and over said aforementioned real estate.

Sixth. Upon information and belief, that said National Storage Company was on and prior to the 30th day of July, 1916, within the State of New Jersey, engaged in the business of receiving, storing, transporting and warehousing large quantities of merchandise of various kinds, nature and description, including great quantities of explosives.

Seventh. Upon information and belief that on and prior to the 30th day of July, 1916, the defendant Lehigh Valley Railroad Company was engaged in business as a common carrier of passengers and merchandise within the State of New Jersey and operated trains consisting of cars and locomotives upon and over rails and tracks within the State of New Jersey.

Eighth. Upon information and belief that on or prior to said date the said defendant Lehigh Valley Railroad Company placed, transported, maintained, stored and harbored in and upon the property of the defendant National Storage Company aforesaid at Black Tom Island large quantities of goods, wares and merchandise in course of transportation and shipment from one point to another, including large quantities of high and dangerous explosives and explosive materials.

Ninth. That heretofore and prior to the 30th day of July, 1916, plaintiff, for a valuable consideration, and by its written policies of insurance in the usual and regular form for such policies, insured the persons whose names are set forth in Schedule A hereto annexed and by reference thereto made a part of this allegation, against loss by breakage of the glass mentioned in said policies in the premises at the addresses given opposite the respective names of each of said persons in said Schedule A hereto annexed, and in and by which said policies the plaintiff promised and agreed to make good to each of said persons such loss or damage as should happen by breakage of the glass above specified, and that under the terms of the aforesaid policies and each of them this plaintiff was obligated to replace all of the aforesaid glass which might be lost, broken or damaged during the term of the respective policies of insurance.

Tenth. That each of said policies of insurance was written and accepted upon the following conditions therein contained, to wit:

That such breakage shall be the result of accident and due to causes beyond the control of the assured.

That any loss is to be estimated according to the value of the glass at the time of breakage, provided always that this company (the plaintiff herein) shall be at liberty to pay the actual value of the glass broken or to replace the glass as it shall elect; and in case it shall elect to replace glass, it shall replace the same without unnecessary delay after satisfactory proof of said loss has been made by the assured.

That all rights and equities of the assured (the said persons mentioned in Schedule A hereto annexed) against any party or parties who may have caused or are liable for any damage or loss covered by the said policies and each of them, shall revert to the said company (the plaintiff herein) and the assured by any necessary instrument in writing shall, on demand, subrogate the company to such rights and equities.

Eleventh. That under the terms of the aforesaid policies and each of them, plaintiff was obligated to replace all of the aforesaid glass which was destroyed, as hereinafter set forth, and that heretofore and before the commencement of this action the plaintiff did replace all of the said glass damaged as hereinafter set forth, in each of the premises specified in Schedule A hereto annexed, at a cost of forty-eight thousand three hundred and six and 21/100 ($48,306.21) dollars, which was the reasonable value of the said materials and labor employed in the replacing of the said glass as aforesaid.

Twelfth. That under and by virtue of the terms of the aforesaid policies of insurance and each of them with the said assured and each and every one of the said assured covering the plate glass destroyed as hereinafter alleged, this plaintiff, upon the replacing of the plate glass so destroyed, became and was subrogated to all the rights and claims against any person or persons whatsoever which the said assured had arising out of the damage to said plate glass as herein alleged.

Thirteenth. Upon information and belief that on and prior to the 30th day of July, 1916, and the night following said day until the explosion hereinafter referred to, the defendants brought and allowed to be brought and had and maintained and stored and kept upon the said aforementioned real estate large quantities of high, dangenous and powerful explosives.

Fourteenth. Upon information and belief that the said Black Tom Island was situated at a point within the County of Hudson and within a distance of one-quarter of a mile from an inhabited house and without the consent of the occupants of said inhabited house, and in a neighborhood thickly settled and populated by men, women and children, then and there residing and occupying dwelling houses and places of business.

Fifteenth. Upon information and belief that on the 30th day of July, 1916, and on the night following said

day up to the time of the explosion hereinafter referred to, the defendants negligently and carelessly kept and maintained on said real estate large quantities of high, dangerous and powerful explosives, and negligently kept, managed and controlled the said explosives, and that through the negligence of the defendants and each of them in bringing and transporting said explosives upon said Black Tom Island and in the maintenance of the same thereon and in negligently and carelessly keeping, managing and controlling the said explosives, and thereby and by reason of the said carelessness and negligence of the defendants the said high, dangerous and powerful explosives exploded with great force and violence, damaging and injuring a great number of the said dwelling houses and buildings in use for business and trade situated in the neighborhood as aforesaid, and in other places in New Jersey and in various parts of Manhattan and Brooklyn, in the City and State of New York.

Sixteenth. Upon information and belief that the said explosion was caused solely by the negligence of the defendants and each of them in negligently bringing, storing and maintaining said large quantities of explosives in and upon said Black Tom Island, and in negligently keeping, managing and controlling the said explosives and in failing to provide proper and adequate means of protection against explosions and fire, and said explosion was caused solely by the negligence of the defendants and without any negligence on the part of the plaintiff or any of the aforementioned assured.

Seventeenth. That it was the duty of said defendants and each of them to provide proper and adequate means of protection against explosions and fire and that during all the times herein mentioned neither of the said defendants furnished such adequate means or any proper or adequate means of protection against either explosions or fire.

Eighteenth. That by reason of the aforesaid explosion and without any fault or negligence on the part of the plaintiff or of any of the assured aforementioned, the plate glass which was the property of the persons whose names are set forth in Schedule A hereto annexed and by reference thereto made part of this allegation, and which at the time of said explosion was located in the buildings situated upon the various premises, the locations of which are given in said Schedule A, was completely destroyed and shattered so as to be utterly worthless and that the value of the said glass so destroyed was forty-eight thousand three hundred and six and 21/100 ($48,306.21) dollars.

Nineteenth. That thereafter each of the said persons mentioned in Schedule A made lawful demand upon this plaintiff to make good said loss and damage, in and about which demand and the making good thereof the said assured and each of them fully and fairly complied with each of the terms and conditions of the said respective policies of insurance; and this plaintiff was compelled and did in order to perform upon its part the said contracts of insurance and each of them make good the said losses to the respective assured and each of them by replacing with new and good glass the glass that was broken and shattered; and the net cost and expenses to plaintiff of so doing was the sum of forty-eight thousand three hundred and six and 21/100 ($48,306.21) dollars, which was the reasonable cost and value of the labor and material used in so doing after deducting from the gross amount so expended by plaintiff the reasonable worth and value of any portions of the broken glass which could be further or elsewhere utilized.

Twentieth. That in consideration of this plaintiff so making good to said assured and each of them the said loss or damage, each of said assured respectively assigned, transferred and set over unto this plaintiff any and all claims, demands, actions or rights of action at

law or in equity which the said respective assured then had or might have against the said defendants by reason or in consequence of the damage of said glass.

Twenty-first. That under and pursuant to the terms of the aforesaid policies of insurance and each of them covering the plate glass destroyed as aforesaid, this plaintiff, upon the replacing of the plate glass so destroyed as aforesaid, became and was subrogated to all rights and claims against any person or persons whatsoever which the said respective assured had arising out of the aforesaid explosion and damage of and to the aforesaid plate glass.

Twenty-second. That under and by virtue of the aforesaid policies of insurance and of the replacing by the plaintiff of the destroyed and damaged plate glass, this plaintiff became subrogated to all of the rights of the said assured, and each of them, and to his claim against these defendants for and on account of the aforesaid breakage of the aforesaid plate glass.

Twenty-third. That on the 30th day of July, 1916, and at the time of the aforesaid explosion the plaintiff did perform each and every thing on its part required to be performed by said respective contracts of insurance, and each of them.

Twenty-fourth. That by reason of the foregoing plaintiff has been damaged by the defendants in the sum of forty-eight thousand three hundred and six and 21/100 ($48,306.21) dollars, which is now due and owing to the plaintiff from the defendants, together with interest thereon from the 30th day of July, 1916, and no part of which has been paid, although the same has been duly demanded.

WHEREFORE, plaintiff demands judgment against the defendants in the sum of forty-eight thousand three hundred and six and 21/100 ($48,306.21) dollars, with interest

thereon from the 30th day of July, 1916, besides the costs and disbursements of this action.

McDERMOTT & ENRIGHT,
Attorneys for Plaintiff,

Office and Post Office address, 75 Montgomery street,
Jersey City, N. J.

Exhibit A.

NEW YORK CITY

Name.	Address	Amount.
Est. of Mary A. Manley	195 Greenwich St.	$ 37.14
Est. of Mary A. Manley	193 Greenwich St.	40.21
Peerless Light Company	125 Chambers St., cor. bldg., N. E., 99 W. Broadway	21.35
Charles W. Leveridge, Inc.	133 Liberty St.	0
P. J. Arbeiter	391 Canal St.	46.65
Germania Fire Ins. Co.	SE. cor. 62 William & Cedar Sts.	43.89
Interstate Land Holding Co.	47-9 Maiden Lane	177.88
H. W. Ditman	2 Barclay St.	26.60
Estate of Peter Cooper	33 Cooper Square	152.70
Fred'k T. Van Beuren, Josephine F. V. B. R. Thomas, Eleanor C. Wittman, et al.	11 East 14th St.	68.10
Baldwins, Inc.	313-5 Broadway	124.15
F. T. Van Beuren & F. T. Van Beuren, Jr., & J. W. A. Davis	5 West 14th St.	238.30
J. & H. Cohen	39-41 E. 12th St.	100 05
J. Newton Van Ness Co.	120 Chambers St., thr. to 50 Warren St.	10.44
James & Holmstrom	23 East 14th St.	76.00
C. W. Williams & Co.	212-4 Wooster St.	78.75
Joseph Acierno	No. ½ 21 West St.	18.89
John A. Gifford & Son	25 Park Pl., 22 Murray St.	24.34
The Marine Works, M. Schronbrunn, Prop.	31 Coenties Slip	17.13
Est. Francis B. Wallace & Est. Mary C. Wallace	188-190 Chambers St.	3.54
A. C. Bechstein	96-98-100 Hudson St., SE. Cor. 161-3 Franklin St.	342.77
Estate of Francis B. Wallace, Estate of Mary C. Wallace, as Ins. may appear	21 Murray St.	36.08
Arthur Mountain & Co.	111 Liberty St.	45.36
Estate of Jane E. Edgar	6 Greenwich St.	53.51
Regina B. Sapartas	50 Greenwich St.	68.90
The Thirty-Seven West Thirty-Sixth St. Company	5-7-9 West 36th St.	99.46
The Jos. Garneau Co., Inc.	9-21 W. 24th St.	79.98
Jno. S. Urguhart Son & Co.	31 Liberty St.	19.52

Lloyds Plate Glass Insurance Company Case.

	Name.	Address	Amount.
	W. H. Church	51 Barclay St.	89.68
	Vivian S. Kraeger	17-19 Peck Slip	30.45
	Charles F. Hubbs & Co.	385-7 Lafayette St., SE. cor. 20-2 E. 4th St.	74.22
	E. L. & B. W. Ilson, Props.	2 West 14th St.	35.40
	Est. Thos. Suffern, Inc.	99 Chambers St.	74.17
	Columbia Trust Co.	58-60 Broadway	272.44
10	New York Clearing House Bldg. Co.	No. side 77 Cedar St., between Nassau St. & Broadway	136.96
	Hannah C. Young	37-39 Murray St.	55.92
	Spencer Aldrich	600-02 Broadway	111.30
	Fajen Bros.	13-4 So. St., NW. cor.	36.02
	Fajen Bros.	48-9 Whitehall St., NE. cor. Front St.	11.07
	The Orphan Asylum Society in the City of N. Y.	265-7 Broadway	26.00
	E. Bertram Pike	151 Chambers St.	136.85
	Est. Thos. Suffern, Inc.	154 Chambers St.	24.16
	Frederick Feus	81 Greenwich St., & 44 Trinity Pl.	18.36
	Levi A. Fessenden, Atty.	320 Greenwich St., SW. cor. Duane St.	72.90
	Cowperthwait's Furniture Co.	782-6 Sixth Ave.	792.45
	Bartin H. Zabin, trading as J. Zabinsky & Son	SE. cor. of 1-3 Division St.	27.30
	Rudolph Wirth	162 William St.	79.95
20	F. Augustus Schermerhorn, et al.	91-93 Chambers St.	.96
	Newbold LeRoy Edgar, et al.	69 West St.	6.30
	F. Augustus Schermerhorn	73-5 Reade St.	0
	Number Thirty-nine West Thirty-second Street Company	39-41 West 32nd St.	175.65
	H. S. Ely & Co.	334-342 Fourth Ave., SW. cor. 25th St.	99.23
	Estate of James Phelan	75 Murray St.	12.84
	David W. Bishop	362 Broadway	0
	Mrs. Leah L. P. Morton	16 West 45th St.	107.71
	Wm. Reynolds Brown	170-2 West Broadway, NW. cor. Worth St.	112.80
	Estate of Peter B. Knapp	362-64 Hudson St., SE. cor. King St.	116.55
	Estate of Abial M. Hawkins	298 Hudson St., SE. cor. Spring St.	39.30
	Charles J. Degenhardt	369 Greenwich St.	31.11
	Jesse C. Shriner, et al.	388 Hudson St., NE. cor. 266 W. Houston St.	48.01
	Est. of Henry Welsh	465-9 Greenwich St., SE. cor. 2 Watts St.	22.97
30	Hollywood Company	402 W. Broadway, SW. cor. 168 Spring St.	50.00
	A. D. Pell	622-4 Broadway & Rear on 156 Crosby St.	97.50
	Archibald D. Russell	72 West St.	36.65
	Henry E. Coe	636-8 Broadway thr. to 170-2 Crosby St.	8.75
	Murray St. Realty Corporation	56-8 Murray St.	83.72
	Children of DeLancey Kane	518 Broadway	90.30
	Marie C. Post	102 Vesey St.	25.64
	The Importers & Traders Bank	247 Broadway	121.80
	Peter J. Mentasti	40 Broad St.	140.97
	Philip Lewisohn	243-7 W. 17th St.	83.25
	General Electric Inspection Co.	237 Fulton St., NE. Washington St.	59.26
	Michael Regan	356 West St.	96.90
	Jaffray Realty Co.	109-115 Leonard St.	132.60
	Chas. F. & W. M. V. Hoffman	79-81 Duane St.	229.26
	Hannah C. Young	37-39 Murray St.	13.50
	American Brass & Copper Co.	132-8 Lafayette St., SW. cor. Howard St. (17)	6.61
40	Gansevoort Washington Co.	60-70 Gansevoort St.	5.07

Complaint—Exhibit A.

Name.	Address	Amount.
Mrs. Ella C. Hubert	53 Whitehall St.	353.54
Cornelia Harsen Rhoades & Bessie R. Chisolm	224 Sixth Ave.	247.59
Jacob J. Dubber	418 Greenwich St.	49.38
W. P. Douglas	405 Canal St.	33.13
James A. Macdonald	269 Greenwich St., NE. cor. Murray St.	22.90
Est. of J. A. Hamilton, et al.	455 Broadway	25.84
Estate of Cornelius Callahan	46 Grand St.	15.42
Regina B. Saportas	28 Rector St.	14.38
Est. of Thos. Suffern, Inc.	2 Bowery, NW. cor. Doyers St.	4.57
Newbold Le Roy Edgar	42 Hudson St.	3.29
Curmulius & Demetrius	38 Washington St.	23.70
Estate of Jos. Etzel	118 Hudson St.	21.04
David W. Bishop	325 Canal St.	2.90
James Phelan	292-293 West St.	14.34
Fruit Auction Co.	202-20 Franklin St.	28.49
Estate Jane E. Edgor	332-4 Delancey St., NW. cor. Mangin.	19.62
John Robinson Est.	538 Hudson St.	20.19
Ed. L. Godfrey	46 Carmine St.	35.55
Mary E. Gregory	131-3 Sullivan St.	39.30
Chas. G. Koos and others	345 West Broadway	50.55
Stephen Upson Est.	85 Chambers St.	182.40
Wall & Hanover Streets Realty Co.	59-61 Wall St., SW. cor. Hanover St.	10.86
Frederich H. Schomann	331 West 4th St.	52.15
The Woodbury G. Langdon Co., Inc.	8-12 Jay St.	186.00
Ellen S. Auchmutz	44 Hudson St.	45.26
A. Perry	408 Grand St., NE. cor. Clinton St.	57.69
Pauline De Witt, et al.	181-187 Park Row	28.13
Est. of Margaret Chesebrough	SE. cor. 2-10 John St & 182-4 B'dway.	74.40
Thomas C. S. Crain, et al.	245-47 Greenwich St.	38.57
Wm. P. Douglas	407 Canal St.	49.12
V. N. Napoliello	152 Greenwich St.	65.27
Wm. P. Douglas	39-41 Barclay St., 40-42 Park Pl.	33.42
John R. & Jane M. Suydam	28 Reade St.	84.45
Frederick Westphal & Brother	186 E. Houston St.	40.05
Morris Levinson & S. Shapiro	126 Delancey St.	71.75
Anna R. Morris	212 Bowery	56.70
Estate of Millard F. Smith	261-4 Broadway, NW. cor. 2-6 Warren St.	0
Syndicate Trading Co.	2 Walker St.	46.50
Eliza H. Lawrence	58 Leonard St.	64.05
Remington Typewriter Co. of New York	325-7 Broadway	214.18
Est. of Albert W. Brown	40 Murray St.	48.15
Est. of John W. Aufmann	SE. cor. Cherry St. & Catherine Slip.	59.04
P. K. Wilson & Son	3 & 5 West 18th St.	228.00
Frederick Gerken	90-92 W. Broadway, SW. cor. Chambers St.	67.35
Children of DeLancey Kane	579 Broadway	36.90
Wm. Sauter	36 So. William St.	48.45
Mrs. Louis Schermerhorn	80 West St.	102.30
Robert Quickert & Frederick Spohler	322 West St., NE. cor. Charlton St.	140.10
List & Lennons	370 West St., SE. cor. Morton St.	41.25
W. H. Chesebrough	117-118 West St.	77.70
Michael Shannon	28-32 Whitehall St.	49.20
Louis Rosenthal & Son	5 New St.	60.30

Lloyds Plate Glass Insurance Company Case.

	Name.	Address	Amount.
	Domencio Curcio	23 West St.	31.50
	Charles Weiland, Inc.	147-49 Chambers St.	19.56
	M. Wiener	50 West 8th St.	30.90
	Rector of St. Bartholomew's Church	97 Wooster St.	3.18
	Metropolitan Bank	271 Broadway	14.03
	James A. Glover	17 West St.	57.10
	Alfred Duane Pell	450-52 Broome St.	9.22
10	John E. Nicholson & Isabella N. Doremus	638, 8½, 40 Hudson St., NE. cor. 41 Horatio St.	46.90
	Est. of Chas. J. Fagan	296 W. 10th St	19.40
	Meyer Gans, as owner	151 Spring St.	51.70
	Schwab Bros.	1179 Broadway	16.00
	Eliza A. Pease	1-3 Bayard St.	43.38
	Est. of Chas. J. Fagan	298 W. 10th St.	19.50
	American Flag Co.	73-7 Mercer St.	4.16
	Commercial Advertising Assn.	73-81 Dey St.	48.53
	Est. of F. B. & M. C. Wallace	188-90 Chambers St.	8.50
	New York Produce Exchange Bank	10-2 Broadway, NE. cor. Beaver St.	135.25
	Charles W. Leveridge	133 Liberty St.	13.40
	Estate of John N. A. Griswold	65-66 South St.	29.84
	Thomas Courtney & Son	310 Spring St.	22.94
	Estate of E. F. Floyd	2 Front St.	23.72
20	Estate of Wm. Hill	42 South St.	16.74
	The O. B. Potter Properties, Inc.	71 Broadway, SW. cor. Rector, including SE. cor. Trinity Place	260.63
	Frederick Kneif	27-9 Pearl St.	206.45
	Alice H. and Ida L. Greenleaf	163 W. 23rd St.	70.95
	Vapo Cresoline Co.	62 Cortlandt St.	92.00
	John Glackner	192-94 Greenwich St.	154.65
	Cora M. Bramwell & Myra Moffat	335-7 Broadway, NW. cor. Worth St.	18.73
	John Dalton	87 9th Ave., SW. cor. 16th St.	2.89
	Cornelius Hayes	107 Greenwich St.	21.80
	Henry A. Feste	347 Bleecker St.	37.02
	Estate of D. W. Bishop	362 Broadway	83.85
	Hudson Motor Car Co. of New York	890 Broadway, through to 32 W. 63d St.	174.57
	Ludwig Baumann & Co.	560-14 8th Ave.	118.65
30	Helen C. Engel	11 Bleecker St.	68.64
	Greenhut Co., Inc.	West side 6th Ave.	387.90
	Greenhut Co., Inc., et al.	289-303 Sixth Ave.	387.57
	Parisian Real Estate Corp.	810 Broadway	273.85
	Herman Beckman	533 West St., SE. cor. Gansevoort St.	37.35
	A. B. Marko, et al.	169 8th Ave.	40.35
	Estate of Eliz. F. Floyd	47 Whitehall St.	108.83
	Max and Meyer Rosen	113 Broad St.	39.46
	Estate of John Paradise	8 Old Slip	29.65
	Caroline T. Kissel	200 8th Ave.	3.19
	Fruit Auction Co.	206-8 Franklin St.	25.75
	Frederick Ayer	1140-48 Broadway, NE. cor. 26th St.	877.80
	Estate of Bradish Johnson, a Corp.	921-23 Broadway, NW. cor. 21st St.	42.20
	Westchester Owners Corp.	37 West 17th St.	80.50
	Security Mortgage Co.	148-50 W. 24th St.	35.91
	Estate of C. R. Conger	19 W. 20th St.	77.12
40	251 5th Ave. Co., Inc.	251 5th Ave.	18.66

Complaint—Exhibit A.

Name.	Address	Amount.
Julius Fleishmann	1182-4 Broadway	161.18
John Bohling	40-2 Park Pl., SE. cor. Church St.	8.09
Estate of Henry Weete	30 Greenwich St.	48.25
Elmer A. Darling, as owner	812 Broadway	7.97
Frank Cesana	67 Clarkson St.	5.92
Mary Morena	170 West St., NE. cor. 113 Murray St.	33.10
Adolph Geister	NW. cor. Loew Ave. & West St., West Washington Market	36.00
William N. Wagner	323-5 E. 29th St.	30.69
Meyer Robinson	463-5 Canal St.	20.02
Henry R. Drowne	126-30 W. 22nd St.	204.64
Michael Regan	355-356 West St. (3 stores)	114.00
Bradstreet Realty Corporation	16-20 Howard St. & 140-8 Lafayette St., NW. cor.	14.06
William M. Martin	69 Cortlandt St.	98.40
Theo. Stewart, A corp.	8 Warren St.	2.73
Estate of Geo. D. Wicks	33-5 E. 21st St.	48.45
John Corse	753 Washington St., SE. Cor. Bethune St.	70.71
Robert J. Leaycraft	228 W. Broadway	71.40
Mrs. W. B. Crocker	375 5th Ave.	496.50
Beekman Est., Inc.	248 Grand St.	57.00
Wm. V. B. Kip, et al.	48-50 W. 21st St.	20.86
Richmond Co. Lunch Co., Inc.	Foot of Whitehall St., at E. side Ferry House, Ferry Slip	60.60
Richmond Co. Lunch Co., Inc.	Foot of Whitehall St., at W. side Ferry House, Ferry Slip	197.30
Frederick T. Van Beuren, et al.	33 W. 14th St.	54.60.
The O. B. Potter Properties, Inc.	318 Broadway	50.70
The Celluloid Co.	30-6 Washington Pl., SE. cor.	41.70
Wm. Thoelen	12 Barclay St.	20.00
R. U. Davry	68 Warren St., NW. cor. W. Broadway	6.15
Elm Park Realty Co.	3-5 Coenties Slip	17.80
The Farmers Loan & Tr. Co., et al.	43 So. William St.	4.74
Henry S. Kip & A. W. S. Cochran	58 Vesey St.	29.40
Est. Geo. W. Bassett	71-3 Barclay St.	95.25
Commercial Adv. Assn.	73-81 Dey St., & 178-80 Washington St., SW. cor.	208.00
Frances E. Woodbury	69 Warren St.	73.35
Caroline Hurry, et al.	339-41 Sixth Ave., NW. cor.	261.45
Mary B. Brandegee	784-5 Fifth Ave., & 5-7 E. 59th St.	24.00
Bradish Johnson, et al.	53 W. 3rd St.	.83
Meyer G. Lowenthal	188-90 Eighth Ave.	18.26
Geo. W. Connell	131 W. 23rd St.	85.27
S. Zaloon & Co.	21 Washington St.	124.50
Geo. B. Zaloon	16 West St.	19.08
Mary J. Sampers, et al.	195-7 Fulton St.	17.93
Wm. Engleman	110 Pearl St.	68.00
Edw. Hilson and Est. of Max Hilson	222-4 Greene St.	6.80
Barnett I. Seckel	45 Whitehall St.	36.68
Agnes G. Boyd	615 Hudson St.	40.70
Adam Wiener	107-9 Christopher St.	48.98
Italian Swiss Colony	337-45 W. 11th St., NE. corner 721 Washington St.	7.65
Louise Schermerhorn	17 Carlisle St., NE. cor. 80 West St.	57.46

Lloyds Plate Glass Insurance Company Case.

	Name.	Address	Amount.
	Wall St. Exchange Bldg. Assn.	43-9 Exchange Place	90.18
	Flinn Realty Corp.	259 5th Ave.	163.95
	Helen Hughes Hall	239-43 Greenwich St.	169.84
	A. A. Forrest	201 Greenwich St.	29.85
	Graf Realty Holding Co.	119-25 West 24th St.	109.24
	James R. Brevoort	56 Warren St.	158.20
	George Peabody Wetmore	56 Wall St. and 59-61 Pine St.	184.95
	Mary A. Hoyt, et al.	40-4 Pine St.	40.53
10	Corn Exchange Bank	11-21 William St., and 55-9 Beaver St., NW. corner	140.45
	Wall St. Exchange Bldg. Assn.	43-9 Exchange Place	191.29
	Siegel Cooper Co.	6th Ave. & 18th St.	7.00
	Patrick Lynch	175 West St.	.90
	Charles Young	56-8 Wall St.	8.76
	The Norwich Pharmacal Co. (a corp.)	57-9 East 11th St.	60.00
	Thomas C. T. Crain, et al.	245-7 Greenwich St. and 90-94 Park Pl.	152.85
	Stephen Upson Estate	85 Chambers St.	1.33
	J. B. Greenhut Co.	6th Ave., 18th & 19th Sts.	12.35
	Baumoehl & Emerman	422 West Broadway	3.00
	H. Fajen & Co.	8 South St., NE. cor. Moore St.	26.00
	Estate of W. C. Schermerhorn	32 West St.	1.50
	L. A. Fessenden, Atty	226 Fulton St.	97.65
	Ganesvoort Washington Co.	60 Ganesvoort St.	20.33
	Fruit Auction Co.	206-8 Franklin St.	34.65
20	Palisade Holding Co., Inc.	69 Leonard St.	17.14
	Est. of M. F. Smith	261 Broadway	58.40
	Hencken & Haaren	425 Sixth Ave.	21.86
	F. Augustus Schermerhorn, et al.	73-75 Reade St.	218.29
	Horatio J. Sharrett	70 Richmond Ave., Port Richmond, S. I.	57.60
	Chas. G. Thompson	410 Lafayette St.	15.60
	George V. Gross & Co.	30 Oil Slip	23.10
	Carl Rosenbaum	142-44 Greene St.	2.75
	Mary L. Fraser, as owner	18 W. 27th St.	10.11
	P. K. Wilson & Son	130-2 5th Ave., being also 1 W. 18th St.	33.30
	Edward Beadel, et al.	100-2 Wall St., and 120-2 Front St.	5.45
	Alice M. Gardiner Libowitz, et al.	119-21 5th Ave., NE. cor. 1 E. 19th St.	116.40
	Est. of Charles T. Wills, decd.	65-9 Bleecker St.	53.81
30	Estate of D. W. Bishop	76 William St.	21.45
	New York Hospital	319 Broadway, NW. cor. Thomas St.	253.45
	St. Joseph's Maronite Roman Catholic Church	59½ Washington St.	18.77
	Est. David W. Bishop	72 William St.	8.27
	A. C. Bechstein	96-100 Hudson Street	10.87
	Wall & Hanover Streets Realty Co.	59-61 Wall St.	16.16
	Estate Thomas Suffern, Inc.	459-61 Broadway	29.50
	James A. Glover	17 West St.	2.58
	Metropolitan Safe Deposit Co.	3 East 14th St.	12.00
	Samuel Eiseman & Co.	114-20 E. 23rd St. through to and being 111-21 E. 22nd St.	108.00
	Farmers Loan & Trust Co.	16-22 William St.	82.68
	United States Trust Co.	16-18 Catherine St.	23.62

40

Complaint—Exhibit A.

BROOKLYN, NEW YORK

Name.	Address	Amount.
Margaret Gallagher	595-97 Washington Ave.	31.60
Margaret Gallagher	599-601 Washington Ave.	53.62
Warwick & Collins	920 Gates Ave., SE. cor. Patchen Ave.	17.93
Estate of C. A. Silver	117 Court St.	35.00
Edward Ball	159-61 Fifth Ave., NE. cor. Lincoln Pl.	132.53
Murphy Realty Co.	155 Van Brunt St.	40.81
Murphy Realty Co.	153 Van Brunt St.	42.94
Murphy Realty Co.	7 Union St.	7.81
Murphy Realty Co.	11 Union St.	49.05
Murphy Realty Co.	18 High St.	67.47
B. Schellenberg	99-101 Myrtle Ave.	18.81
The Tumbridge Realty Co.	65 Clarke St.	19.25
Henry Kern	158a Berkeley Place	10.69
John & Eleanor Schell	212 Prospect Place West	36.53
Georgianna Koepke	657 Fulton St.	12.77
Thos. J. Redmond	613 Vanderbilt Ave.	1.76
Jennie Wundoehl	501 Fifth Ave.	18.57
Annie Levy	549 Third Ave.	20.32
Marie A. Hartung	657-9 Fifth Ave.	71.63
Thos. R. Farrell	479 Bergen St., NW. cor. 6th Ave.	45.72
Thos. R. Farrell	283 Fifth Ave.	57.42
John Roth	283 Fifth Ave.	59.23
Est. N. H. Cary	164 Atlantic Ave.	2.64
Marie A. Hartung Est.	665a Fifth Ave.	50.85
Chris Nelson	491 Court St.	25.41
Marie A. Hartung Est.	661 Fifth Ave.	22.58
Toni Sanntrock	191 Fulton St.	55.69
Eugene A. Lambert	97 South Portland Ave.	22.65
John Antomicci, et al.	1681 Nostrand Ave.	48.47
Isidor Nuchmann	713 Third Ave.	31.52
Herman Stephen	455½ Fifth Ave.	67.49
J. P. H. DeWint	667a Fifth Ave.	12.43
Lyde Newman	181 Court St.	6.34
Chas. Levy	271 Court St.	77.97
Simon Chese	544 Court St.	31.50
Morris Goldberg	1043 Bedford Ave.	39.53
Gerson Realty Co., Inc. Owners	548-50 Fifth Ave., NW. cor. 15th St.	110.43
Ahrend Ahlers	1426 Nostrand Ave.	40.10
Robt. M. Loeser	258-60 Washington St.	73.76
James E. Martenhoff	109 Concord St., NW. cor. Jay St.	95.32
Hudtwelker Bros.	655 Fifth Ave.	58.80
E. Schomaker	1825 Church Ave.	41.95
William H. English	283 Livingston St.	69.26
Jos. Lazzara	249 Bushwick Ave.	10.00
Geo. J. Shapiro	268 Putnam Ave.	39.45
Geo. Jantzen	944 Flatbush Ave.	49.98
C. E. & G. C. Herbst	697 Third Ave.	64.24
Ayen & Newberger	217-19 Seventh Ave.	133.11
Chas. Cordes	2-4 Sackett St. and 1 Ferry Pl., SE. cor.	38.40
Hattie L. H. Chatfield	517 Court St.	70.56
Ida C. Randolph, et al.	4 Flatbush Ave.	115.49
T. Engelhardt	905 Broadway, SE. cor. Arion Place.	50.12
Estate of Henry Heymann	1443-5 Broadway	87.46
The Corn Exchange Bank	79 Hamilton Ave.	34.08
Kirkman & Son	303-5 Bridge St.	68.76
Estate of James Lamont	289 Van Brunt St.	116.52

Lloyds Plate Glass Insurance Company Case.

	Name.	Address	Amount.
	Estate of Jacob Fleischhauer	253 Court St.	25.56
	Simon Malony	Ferry Place	14.53
	Simon Malony	Ferry Place	.00
	Deborah Sheridan	233 Nostrand Ave.	28.80
	Perfetto Cleva	23 Atlantic Ave.	42.00
	Lea Luquer	209 Hamilton Ave.	22.28
	Est. Mary Rogers	142 Van Brunt St.	30.72
	Chas. Brody	Carroll St.	39.60
10	Alfonso Menichini	121 Columbia St.	50.88
	Didrich Winkelmann	304 Van Brunt St.	39.76
	Jacob Schmitt	4924 Third Ave.	31.44
	Seymour Rosenberg	4110 Fifth Ave.	46.80
	Selam Obrey	145 Atlantic Ave.	45.60
	J. J. Shanahan	59 Bond Street	32.16
	James Keeler Est.	240 Court St.	33.36
	New York Life Ins. & Trust Co., Trustee	396 Court St.	24.34
	Elizabeth Froehlich	216 Graham Ave.	50.96
	Sophie Carlson	4105 Third Ave.	26.54
	Mary E. Schult	41 Hamilton Ave. and 10 President St.	59.52
	Gertrude Savage	124 Franklin Ave.	25.56
	Isabelle Realty Co.	997 Broadway	55.25
	Est. of M. D. Duane	433 Fulton St.	45.00
	Andrew Schafer	5803 Fifth Ave.	1.37
20	George C. Doerschuck	1510-18 Sheepshead Bay Road, Sheepshead Bay	119.34
	John R. Murchison	1101-03 Flatbush Ave.	8.48
	R. S. Hager	1197 Fulton St.	3.92
	S. E. Haslett, et al.	138 Remsen St.	2.19
	Patrick Campbell	67 Court St.	27.30
	Louis B. Walker	354 Court St.	54.25
	John Reis	805 Flatbush Ave.	87.04
	O. L. Mathews	111 Broadway	82.74
	E. H. Wohlers Meyers	497 Rogers Ave.	26.34
	Jos. Marienhoff	851 Flatbush Ave.	3.65
	Dayton & Montgomery Inc.	9 Lafayette Ave.	76.82
	Guiseppe Celentano	2976 West 25th St., Coney Island	49.82
	P. N. Wohlers	4401 3rd Ave., SE. cor. 44th St.	24.62
	Frederic W. Van Hoorn	1127 Gravesend Ave.	65.34
	Eliza Stryker	1397 Flatbush Ave.	24.03
30	Elise E. Jantzer	1384 Flatbush Ave.	48.63
	Mabel L. Bull	1604 Ave. "M"	52.65
	Russell F. Starr	2037 86th St.	49.29
	Anna E. Bigelow, Est.	515 Rogers Ave.	59.40
	Est. Catherine Ulmer	807 Classon Ave., SE. cor. St. Johns Pl.	45.22
	Est. of Wm. Ulmer	79 Amity St., NE. cor. Hicks St.	52.08
	John G. Jung	711 Woodward Ave., Sidgewood	13.60
	Lawyers Realty Co.	1083 Coney Island Ave.	66.83
	Lester Mayer & Wm. Coleman	118 Court St.	26.66
	Brooklyn Union Bldg. Corp.	727 Flatbush Ave.	35.39
	Jno. J. Holfelder	01 Flatbush Ave.	73.77
	Max Berger	00 Grand St., SE. cor. & Fifth Ave., Maspeth, L. I.	24.00
	Gertrude J. Wohlberg	65 Fifth Ave.	2.68
	Max Cohen	249 Bushwick Ave.	17.42
	Vincenzo Marra	285 Van Brunt St.	36.68
	Anna Sheridan	17 Van Brunt St.	30.38
40	Mrs. M. G. Murtagh	5505 First Ave.	32.34

Complaint—Exhibit A.

Name.	Address.	Amount.
Karl & Barbara Rehfuss	3923 Ft. Hamilton Ave.	25.67
Lancastershire Realty Co.	4319 Third Ave.	23.10
Mrs. Dorr	293 Smith St.	30.26
Mary K. Packer and others	21 Columbia Place	22.12
Est. of John N. Eitel	165 Clermont Ave.	43.40
Andrea Sollecito	477 Hicks St.	60.73
U. P. Young & M. A. Metzer	297 Myrtle Ave.	32.64
Thos. Pitbladdo	746 Third Ave.	28.66
The Rt. Rev. C. E. McDonnell	776 4th Ave., SW. cor. 26th St.	31.33
Shelbourne Const. Co.	SE. cor. Eastern Parkway and Nostrand Ave.	58.79
Shelbourne Const. Co.	827 Nostrand Ave.	52.26
George Schwebel	1715 Nostrand Ave.	40.94
J. & D. Greenough, Trustees	1051-3-5 Fulton St.	18.08
Estate of R. M. Gleason	657 Franklin Ave.	47.71
Estate of Solomon Schwarz	409 Van Brunt St.	33.04
Estate of Solomon Schwarz	407 Van Brunt St.	25.90
Isabelle Realty Co.	875-7 Broadway	62.79
Isidor D. Moscovitz	258-62 Grand St.	22.99
Eugene Ruben	836 Fulton St.	13.98
Estate of Edw. W. Brunsen	819 Kent Ave.	29.51
Henry R. and Frank J. Goodnow	1227 Fulton St.	16.44
Estate of Benedict Fischer	359 Smith St.	31.24
James W. Bliss	125-9 Greenpoint Ave.	34.00
W. J. Gaynor	235 Fulton St.	39.39
John Scutter	234 Atlantic Ave.	1.74
Estate of James Thompson	121 Atlantic Ave.	143.33
Isaac and Frieda Appelbaum	215-7 Hoyt St.	1.32
Frederico Maggiolo	SW. cor. Surf Ave. and W. 32nd St., Coney Island	35.23
Estate of George B. Rretz	Rear of 112 Atlantic Ave.	58.86
Georgio Del Vecetrio	645 Sixth Ave.	11.16
Mrs. F. Lambrecht	233 Hamilton Ave.	7.82
Mrs. Anna M. Roehr	1511 Nostrand Ave.	18.07
Chas. R. Waentig	1061 Flatbush Ave.	43.88
Brooklyn Athenaeum	169-75 Atlantic Ave.	138.55
Cunningham Bros.	5601 Second Ave.	34.65
Estate of John N. Eitel	352-60 Myrtle Ave., SW. cor. 154 Adelphi St.	12.91
Chas. E. Annett, Trustee	378 Atlantic Ave.	42.35
Est. of W. J. Gaynor	231 Fulton St.	30.88
Geo. H. Rathgeber	1432 Flatbush Ave.	32.71
William L. Andrews	801 Broadway	164.92
J. T. Gleason	819 Nostrand Ave.	46.33
Horace B. Dobbie	1308 Cortelyou Road	37.37
Geo. B. Byxbee, et al.	177 Smith St.	46.46
Est. of Harry L. Christian	627 Hicks, rear SE. cor. Summer St.	109.20
Jas. H. Parks	125 Court St.	79.58
Jas. H. Parks	127 Court St.	63.34
Josephine A. Morrison	107 Fulton St.	73.20
May Schaaf	865 Flatbush Ave.	46.57
Theresa McGlinn	162 Court St.	23.44
Wm. Ulmer Brewery	138 Third Ave.	32.87
Geo. O. Walbridge	469 Rogers Ave.	46.16
Geo. O. Walbridge	465 Rogers Ave.	46.16
Geo. O. Walbridge	463 Rogers Ave.	46.16
Triangle Holding Co.	2390-92-94-96-98 Coney Island Ave.	92.76
Louis Germain	552 Fifth Ave., SW. cor. 15th St.	42.86

Lloyds Plate Glass Insurance Company Case.

	Name.	Address.	Amount.
	Jas. Morello, et al.	1507 Avenue "U"	8.73
	Bertha E. and Lillian Thomsen	SE. cor. Ave. "H" and E. 14th St.	10.31
	Guiseppe Cafiero	2952 W. 22nd St.	10.26
	Julia Rosenstock, et al.	526 Third Ave.	26.22
	Morris Cohn	5205 Third Ave.	17.29
	Morris Goldberg	1043 Bedford Ave.	53.69
	E. Lazansky	197 Smith St.	34.36
	Henry J. and Cora Kronshage	109 Fifth Ave.	10.22
10	Catherine R. Gaudineer	NE. cor. 257 Nassau St. and 252 Hudson Ave.	54.56
	Edw. R. Gallavan	S. side Surf Ave., 100 ft. w. of W. 33d St.	3.25
	Vincenzo Abate	676 Fourth Ave.	7.02
	Boswyck Realty Co.	661 Flatbush Ave.	3.39
	Eugene A. Lambert	97 S. Portland Ave.	46.33
	Cecelia Louis	1406 Cortelyou Road	62.74
	Anna M. Rohrs, et al.	64 Fulton St. SW. cor. Hicks St.	58.47
	Mrs. Anna M. Roehr	1507 Nostrand Ave.	17.36
	Lawyers Realty Co.	1089 Coney Island Ave.	57.56
	Meyer Sinkman	141-3 Pulaski St.	14.93
	Louis Baraginsky	124 S. Third St.	18.98
	Isaac Appelbaum	901 Third Ave.	3.69
	Mrs. F. Lambrecht	233 Hamilton Ave.	2.92
	Henry L. Schneider	851 Broadway	138.17
	Murphy Realty Co.	102-4 Hamilton Ave. and 96-8 Summit St., SE. cor.	50.02
20	Geo. W. Egbert	1310 Ave. "H"	43.23
	Aug. & Emma Hallgren	496 Atlantic Ave.	7.42
	Murphy Realty Co.	9½ Union St.	89.55
	Wilhemina Hansse	1408 Nostrand Ave.	29.60
	John H. Lafreniere	351 Flushing Ave.	22.15
	Chas. Cordes	2-4 Sackett St.	25.10
	Jacob Wachsman, et al.	4120 Fifth Ave., NW. cor. 42nd St.	35.38
	Wm. A. Whiting	1449-55 Broadway	55.00
	James Blake	196 Prospect Park West	7.11
	Wm. L. O'Connor	1548 44th St.	3.09
	Maxwell H. Lanes, Inc.	275 Smith St.	25.25
	Est. of Rose A. Hughes	518 Third Ave., NW. cor. 12th St.	27.69
	J. Kurtz & Sons, Inc.	773-75 Broadway	735.00
		NEW JERSEY	
30			
	The Mathushek & Son Piano Co.	150 Newark Ave., Jersey City	350.97
	Jessica R. Greene & Benj. T. McGill	107 Montgomery St., and 265 Warren St., Jersey City	33.34
	Jessica R. Greene & Benj. T. McGill	2 Newark Ave., Jersey City	96.73
	Jessica R. Greene & Benj. T. McGill	261 Warren St., Jersey City	116.13
	Jessica R. Greene & Benj. T. McGill	259½ Warren St., Jersey City	72.35
	Jessica R. Greene & Benj. T. McGill	6 Newark Ave.	218.93
	Jessica R. Greene & Benj. T. McGill	8 Newark Ave.	176.44
	Jessica R. Greene & Benj. T. McGill	257 Warren St.	48.50
40	Jessica R. Greene & Benj. T. McGill	259 Warren St.	77.96

Complaint—Exhibit A.

Name.	Address.	Amount.
Harry Mayer	46-8 Madison St., Hoboken	47.98
Henry Vorrath	354 Fifth St., Hoboken	28.88
Est. of Aug. Moos	200 River St. and 34-8 2nd St., Hoboken	28.60
Rosina Amabil	201 Wayne St., Jersey City	37.10
W. W. Foley	687 Montgomery St., Jersey City	104.55
Est. of Edward C. Parker, decd.	738 West Side Ave., Jersey City	136.08
Frank Cowan	194 Newark Ave., Jersey City	74.25
Hy. H. Whitman, Trus.	713 Jersey Ave., Jersey City	26.25
Helen V. Cronin	NW. cor. Ferris St. and Newark Ave. (720), Jersey City	40.95
Thomas Smith	118 Van Horne St., Jersey City	51.54
Mrs. Mary Bruns	360 Jackson Ave.	119.10
S. Lepare	535 Ocean Ave., Jersey City	72.09
George H. Morgan	343 Ocean Ave., Jersey City	149.76
S. Bloomberg & J. Leibell	657 Summit Ave., Jersey City	39.30
Samuel Ruskin	112-116 Monticello Ave., Jersey City	108.15
John J. Fallon	4 Paterson Ave., Hoboken	57.60
	88 Willow Ave., Hoboken	24.24
Jos. & Salvatore Lea	601 Jefferson St., Hoboken	44.04
Patk. J. Barry	414 Newark Ave., Hoboken	29.28
Baldwin Lumber Co.	81-3 Park Ave., Town of Union	9.72
Walter Russell	NW. cor. Jewett Ave. & Hudson Blvd., Jersey City	50.64
Mrs. Catherine Newkirk	515 Bergen Ave. & SW. cor. Communipaw Ave., Jersey City	32.47
D. R. Mertens	323 Varick St., SW. cor. Mercer St., Jersey City	58.61
Theodore Thaez	38½-40 Greene St., Jersey City	28.25
Chas. Krieger	42-4 Greene St., Jersey City	96.04
George Kromer	228 7th St., Jersey City	70.61
W. J. Hart	313 Johnston Ave., Jersey City	56.67
M. Adele Edge and Nelson J. Edge, 2nd	58 Lexington Ave., cor. Blvd. and 2351 Boulevard, Jersey City	79.30
Vincent De Marrese	238 Railroad Ave., Jersey City	35.71
James Ruggiero	14 Brunswick St., Jersey City	74.49
Estate of Bryan Smith	07 Barrow St., NW. cor. of Wayne St., Jersey City	61.61
Elizabeth J. Heidt	58 Montgomery St., Jersey City	89.25
John Morris	NW. cor. Garfield Ave. and Union St., Jersey City	249.97
Samuel Gorlin	166-72 Myrtle Ave. and 287-9 Jackson Ave., Jersey City	138.53
Jessica R. Greene & Benj. T. McGill	NW. cor. Warren and York Sts., Jersey City	302.82
Joseph T. Maguire	746 Grand St., NW. cor. Arlington Ave., Jersey City	95.10
John S. Menagh	343 Grove St., Jersey City	160.65
O. W. Holmes	61 Erie St., Jersey City	98.55
James P. Hall	291 First St., Jersey City	132.37
John H. Kohlman	189-191 Monticello Ave., Jersey City	126.69
Mattie L. & Agnes Ringle	459-63 Jackson Ave., Jersey City	179.80
James MacGrandle	256-8 Jackson Ave., Jersey City	86.57
Joseph Fennelly, Trustee	444-444½ Jackson Ave., Jersey City	163.96
Morris Gordon	305 Jackson Ave., Jersey City	39.34
Albert Buckman	80 Wayne St., Jersey City	57.10
Wm. Hansen, Jr.	NE. cor. Wayne & Varick Sts., Jersey City	29.41
Hyman Finkelstein	365 Westside Ave., Jersey City	33.65
Mathias Last	376 West Side Ave., Jersey City	74.88

Lloyds Plate Glass Insurance Company Case.

	Name.	Address.	Amount.
	A. E. Sipp	467-9 West Side Ave., Jersey City.....	165.81
	Edward McQuillan	10½ Golden St., Jersey City.....	86.56
	Peter S. Johnson	577-9 Communipaw Ave., Jersey City....	125.54
	Gettianna Tompkins	547-9 Communipaw Ave., Jersey City..	53.71
	Walter Wilkinson	564 Communipaw Ave. and 45 Harrison Ave., Jersey City	167.82
	S. T. Hunt	611 Communipaw Ave., Jersey City....	39.66
10	Miss Annie Byrne, Katherine A. Byrne, and Mrs. Mary A. Sumulty	NW. cor. Varick and Montgomery Sts., Jersey City	107.10
	Barton Green	557 Ocean Ave., Jersey City.....	212.04
	H. Meincke	SE. cor. Ocean and Woodlawn Ave., Jersey City	53.02
	Mrs. Mary Hopkins	185 Montgomery St., Jersey City.....	18.56
	Elizabeth J. Hayden, Josephine D. Geiger, Thos. C. Brown and Dan'l D. Brown	52 Montgomery St., Jersey City.....	150.35
	Mathias Last	92 Montgomery St., Jersey City.....	175.59
	Edge Estate, N. J. Edge, Atty.	15 Montgomery St., Jersey City.....	18.96
	Edge Estate, N. J. Edge, Atty.	17 Montgomery St., Jersey City.....	24.77
	A. J. Doan	94 Montgomery St., Jersey City.....	63.01
	Dominick Prever	529 Newark Ave., Jersey City.....	68.80
	Mathias Last	50 Newark Ave., Jersey City.....	280.01
20	The New York & New Jersey Beef & Provision Company	245 Newark Ave., Jersey City.....	95.13
	Elizabeth J. Heidt	598 Newark Ave., Jersey City.....	153.81
	Elizabeth J. Heidt	596 Newark Ave., cor. Oakland Ave., Jersey City	34.75
	Lautman & Lipshutz	46 Newark Ave., Jersey City.....	39.66
	Wm. Hunt	0 Newark Ave., Jersey City.....	77.00
	Clarke Holding Corporation	8-58½-60 Newark Ave., Jersey City....	425.85
	Alexander F. Ormsby	NE. cor. Grove and 3rd Sts., Jersey City	48.35
	Edge Estate	92 Grove St., Jersey City.....	48.66
	James F. Gannon, executor and trustee Est. of Mary C. McBride, deceased	325 Grove St., Jersey City.....	36.63
	Irene D. Warren	351 Grove St., Jersey City.....	58.77
	Wolf Levin	61 Ocean Ave., Jersey City.....	88.92
	Lisette & Frank C. Feiseler	33 Ocean Ave., Jersey City.....	78.18
	Andrew Brannigan	49 Ocean Ave., Jersey City.....	48.66
30	Jos. Silberberg	34 Essex St., Jersey City.....	110.89
	Harry Rothberg	32 Essex St., Jersey City.....	132.70
	John Orzechowski	28 Essex St., Jersey City.....	130.55
	Raffaele De Sevo & Elizabeth M. Doyle, as interest may appear	302 Henderson St., Jersey City.....	90.14
	Ralph Basile	286 Henderson St., Jersey City.....	60.03
	Thomas Halleron	213 Washington St., Jersey City.....	149.27
	M. F. Whitehead	201 Washington St., Jersey City.....	21.02
	Mathias & Dinah Last	189 Washington St., Jersey City.....	38.18
	Mathias & Dinah Last	187 Washington St., Jersey City.....	30.03
	Joseph & Carl Sohmers	72 Morris St., Jersey City.....	79.10
	Julian Kozlowski	108 Morris St., Jersey City.....	48.18
	Thomas Halloran	102 Morris St., Jersey City.....	28.91
	Joseph Granski	169 Warren St., Jersey City.....	27.86
	Goldstein, Fineberg Company	182 Warren St., Jersey City.....	100.47
40	Andrew Brannigan	680-2 Ocean Ave., Jersey City.....	37.60

Complaint—Exhibit A.

Name.	Address.	Amount.
Benjamin Rosthal	124 Montgomery St. and 17 Newark Ave., Jersey City	79.46
The Sperry Realty Co.	156 Newark Ave. and 237 Bay St., Jersey City	437.98
United States Piano Corp.	146 Newark Ave., Jersey City	372.70
Von Kattengell Estate	Cor. Maple Ave. and Monmouth St., Red Bank	52.25
T. J. Hannon and Ellen Collins	353 Grove St., NW. cor. Bay St., Jersey City	26.85
Samuel Pachenbaum	745½ Jersey Ave., Jersey City	30.90
A. V. P. Hervey	148-148½ Pavonia Ave., Jersey City	34.65
Joseph Kitz	333 Jefferson St., Hoboken	37.21
Helen F. Craven	278 Monmouth St., NE. Bright St., Jersey City	170.65
Mrs. Dora Meyer	54 Garden St., Hoboken	30.48
Green & McGill	4 Newark Ave., Jersey City	220.02
The Commercial Trust Co. of New Jersey	5-21 Exchange Place, Jersey City	135.23
Jos. Gargulo	457 Jackson Ave., Jersey City	2.78
H. J. Wackerbarth	SW. cor. Boulevard and Stuyvesant Ave., Jersey City	87.75
Mathias Last	358 Grove St., Jersey City	2.02
Elizabeth J. Heidt	58 Montgomery St., Jersey City	4.62
Max Markey	70 Garfield Ave., Jersey City	22.88
Samuel Levy	153 Monticello Ave., Jersey City	20.89
Giovanni Natelli	228 Wayne St., Jersey City	22.17
Felix Venutolo	52 Harrison Ave., Jersey City	116.89
Henry L. Rugge	69-73½ Grove St., Jersey City	189.54
Alfonso Lettiero	263 Wayne St., Jersey City	200.60
Theodose Thaez	40 Greene St., Jersey City	30.02
Mathias Last	92 Montgomery St., Jersey City	13.53
Dr. Walter Wilkinson	562 Communipaw Ave., Jersey City	89.14
Estate of F. G. Wetmore	534 Newark Ave., Jersey City	5.46
Thomas Rowlands & W. W. Westphal	49 Washington St., Jersey City	80.40
Stoeckel Realty Corp.	2 Monticello Ave., Jersey City	35.00
Patterson & Rowlands	49 Washington St., Jersey City	48.00
James F. Gannon	59 Grove St., Jersey City	38.00
Morris Fax	11 Monticello Ave., Jersey City	30.00
Joseph Jancower	90 Newark Ave., Jersey City	9.09
Stephen K. Karczewski	6 Newark Ave., Jersey City	36.50
Aug. Probst	1697 Hudson Blvd., Jersey City	40.00
The Sperry Realty Co.	156 Newark Ave. and 237 Bay St., Jersey City	18.66
Estate of F. G. Wetmore	530 Newark Ave., cor. McPherson Pl., Jersey City	78.91
Consiglia Attanasio	360-4 Third St., Jersey City	21.32
Benjamin Gorlin	765-7 Jersey Ave., Jersey City	256.35
John Kohlmann	195 Monticello Ave., Jersey City	97.47
Mrs. Ann Blackshaw	218 Monticello Ave., SE. cor. Fairview Ave., Jersey City	50.87
Est. of D. Hegman	04-6 Grand St., Jersey City	34.44
Adam Grobholz	50 Sussex St., Jersey City	22.60
Fannie B. Schustrin	71 Woodward St., Jersey City	41.39
Louis Mintz	152 Steuben St., Jersey City	32.19
Michael Harris	08 Stevens Ave., Jersey City	42.03
Estate of Max Ashkenas	230½ Fourth St., and 71-3 Erie St., Jersey City	43.44

Lloyds Plate Glass Insurance Company Case.

Name.	Address.	Amount.
Max Martey	170 Garfield Ave., cor. Neptune Ave., Jersey City	55.61
Est. of William Kerr	202 Fourth St., Jersey City	30.97
Mrs. Annie Knight	SW. cor. Monticello Ave. and Reid St., Jersey City	55.61
Joseph A. Murphy	400 Grand St., cor. Monmouth St., Jersey City	150.77
A. L. Cassell	397 Grand St., Jersey City	36.97
Mathias Last	204 Bay St., Jersey City	50.08
Wm. J. Mileham, or his assigns	72-4-6 Grand St., Jersey City	192.70
Mauro Santoro and Angelina Santoro, his wife	458 Grand St., Jersey City	116.26
Mathias Last	358 Grove St., Jersey City	118.55
Henry S. Drayton	309 Grove St., Jersey City	28.12
Chas. L. Rugge	401 Grove St., NW. cor. 3rd St., Jersey City	93.70
John Kohlman	193 Monticello Ave., Jersey City	30.65
Henry J. Russell	175 Monticello Ave., Jersey City	51.21
William H. Hunt	324 Third St., Jersey City	49.76
Samuel Gorlin	505-515 Ave. "C", Bayonne	29.20
Chas. L. Edinger	387 Jackson Ave., Jersey City	148.17
Chas. L. Edinger	547 Jackson Ave., Jersey City	32.86
Interstate Metal Cornice Co.	152-4 Myrtle Ave., Jersey City	1.31
Michael Monahan	127 Van Horne St., NW. cor. Bramhall Ave., Jersey City	119.10
Horace W. Billington	301 First St., Jersey City	69.82
Rose Bergoff	121-3 Garrison Ave., Jersey City	11.95
Est. Daniel McWilliams, decd.	34-6 Hudson St., Jersey City	235.04
Thomas Wall	120 Bayview Ave., Jersey City	51.92
Ann Shugrue & Mary C. McCahill, executrix of the Est. of Margaret C. Conlan, as owners	132 Newark Ave., Jersey City	88.88
Samuel Gorlin	516-22 Ocean Ave., Jersey City	581.10
Frederick N. Eberhard	NW. cor. Bridge & Varick Sts., Jersey City	405.94
Ernest Sietas	654 Grand St., NE. cor. State St., Jersey City	140.63
Mark A. Sullivan, Trustee	482 Grove St., NE. cor. 8th St., Jersey City	58.89
Mrs. Mary A. Moore	323 Henderson St., Jersey City	36.30
The Mathushek & Son Piano Co	231 Bay St., Jersey City	90.60
A. B. & M. F. Whitebread	249 Washington St., Jersey City	39.61
Mrs. Philomena De Martino	479 Ocean Ave., Jersey City	84.86
Leo Waldstein	335-7 Henderson St., Jersey City	222.25
Elizabeth Collins	210 Ninth St., Jersey City	32.25
Catherine Baker	79 Railroad Ave., Jersey City	149.10
Emeline De Witte Vreeland	597-9 Westside Ave., Jersey City	134.10
Mary C. Couch	178 Mercer St.	5.96
Clarence Linn, Trustee	170 Pavonia Ave., Jersey City	41.24
Marcus & Rachel Leibner	364 Grove St., Jersey City	45.65
Angela M. Gannon	97½ Morris St., Jersey City	17.55
Jacob Fein	165 Jackson Ave., Jersey City	90.04
Abelsky & Lichtenstein	467 Henderson St., Jersey City	4.20
Samuel Garlin	287-9 Jackson Ave., Jersey City	13.39
Benj. Freier	781 West Side Ave., Jersey City	19.78
Michael H. Flannery	180 Jackson Ave., Jersey City	20.00

Complaint—Exhibit A.

Name.	Address.	Amount.
John H. Morris	NW. cor. Garfield & Union Sts., No. 953 Garfield Ave., Jersey City	13.88
Charles L. Rugge	403 Grove St., Jersey City	2.84
Antonio Prudenti	NW. cor. Gates & Princeton Aves.	133.38
Frank J. Mathews Co.	746 Jersey Ave., Jersey City	14.37
Goldstein, Feinberg Co.	588-90 Grand St., Jersey City	59.80
Elizabeth J. Heidt	660 Newark Ave., Jersey City	56.03
Mathias Last	354 Grove St., Jersey City	49.95
Estate of S. C. Van Nuyse	190 Newark Ave., Jersey City	526.35
B. Sheehan	02 Newark Ave., cor. Porter St., Jersey City	93.26
Henry J. Russell	175 Monticello Ave., Jersey City	47.70
Charles L. Edinger	543-5 Jackson Ave., Jersey City	429.30
Mathias Last	21 Newark Ave., and 128 Montgomery St., Jersey City	395.10
Sebastian Plescia	206 Clinton Ave., W. Hoboken	1.80
Mrs. Philomena De Martini	477 Ocean Ave., Jersey City	34.12
Anna V. H. T. Hervey	154 Pavonia Ave., Jersey City	1.50

AMENDMENT OF COMPLAINT.

(Filed June 10, 1919.)

NEW JERSEY SUPREME COURT.

LLOYDS PLATE GLASS INSURANCE COMPANY OF NEW YORK, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY AND NATIONAL STORAGE COMPANY, *Defendants.*	*Action at Law.* *Amendment of Complaint.*

The plaintiff amends the complaint in the above entitled action by adding thereto as follows:

"FOR A SECOND CAUSE OF ACTION:

Plaintiff, realleging all of the allegations of this complaint in paragraphs marked first to fourteenth inclusive, and eighteenth to twenty-fourth inclusive, with the same force and effect as if the same were set forth at length hereunder, further alleges:

Twenty-fifth. By authority of certain acts of Congress approved March 4th, 1909, and June 18th, 1910, the Interstate Commerce Commission in October, 1914, promulgated, and on July 30th, 1916, there remained in force and effect, certain regulations for the handling and transportation by freight of carloads of explosives by carriers in interstate commerce, which regulations were then and there binding upon the defendant Lehigh Valley Railroad Company and applicable to the explosives hereinabove mentioned, to which regulations the plaintiff refers as fully as if here set forth.

Amendment of Complaint.

Twenty-sixth. The defendant Lehigh Valley Railroad Company negligently failed and refused to comply with the requirements of said regulations.

Twenty-seventh. On July 30th, 1916, a fire occurred on the premises possessed by the defendant Lehigh Valley Railroad Company, on or in the immediate vicinity of said pier of the defendant Lehigh Valley Railroad Company, and by reason of negligence of the said defendant in failing to perform its several duties in the premises, the said defendant suffered a part of said explosives and munitions and the cars, and containers thereof to become ignited, whereby the same exploded, which fire and detonation of said explosion the defendant Lehigh Valley Railroad Company suffered to be communicated to other masses and quantities of explosives in said yard, which likewise exploded with great force and violence, causing severe shocks and concussions of the air, which simultaneously broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit 'A.'

Twenty-eighth. The losses so sustained and paid or replaced by the plaintiff were the direct result of the negligence of the defendant Lehigh Valley Railroad Company, as aforesaid."

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff.

ANSWER OF LEHIGH VALLEY RAILROAD CO.

(Filed September 17, 1918.)

NEW JERSEY SUPREME COURT.

LLOYDS PLATE GLASS INSURANCE COMPANY OF NEW YORK, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY AND NATIONAL STORAGE COMPANY, *Defendants.*	*Answer of Lehigh Valley Railroad Company.*

LEHIGH VALLEY RAILROAD COMPANY, a corporation of the State of Pennsylvania, having its principal office in New Jersey at 243 Washington street, Jersey City, says that:

FIRST DEFENSE.

1. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 1.

2. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 2.

3. It admits the allegations of paragraph 3.

4. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 4.

5. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 5.

6. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 6.

7. It admits the allegations of paragraph 7.

8. It denies the allegations of paragraph 8, except that it says that it transported in and upon certain prop-

erty of the National Storage Company, whereof this defendant was in possession, under the terms of a certain lease, large quantities of goods, wares and merchandise, including certain (but not large) quantities of explosives.

9. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 9.

10. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 10.

11. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 11.

12. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 12.

13. It denies the allegations of paragraph 13.

14. It denies the allegations of paragraph 14.

15. It denies the allegations of paragraph 15, except that it admits that on July 30, 1916, there were at said Black Tom Island certain explosives, which were in the possession of this defendant as a common carrier and which were in the course of transportation in interstate and foreign commerce; and except that it admits that on July 30, 1916, certain of said explosives exploded.

16. It denies the allegations of paragraph 16.

17. It denies the allegations of paragraph 17.

18. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraphs 18, 19, 20, 21, 22, 23 and 24, except that it denies that plaintiff has been damaged by reason of any negligence on the part of this defendant.

Second Defense.

1. On July 30, 1916, and for many days prior thereto, the defendant was a common carrier engaged in inter-

state and foreign commerce, and therein transporting by land ammunitions and munitions of war, including explosives.

2. As such common carrier defendant was compelled by law to receive, carry, convey and transport the said ammunitions and munitions of war, including explosives, in the course of interstate and foreign commerce, provided the same were packed, marked, loaded and handled, and when offered for transportation were in proper condition to transport in accordance with and pursuant to the act of Congress of the United States entitled "An Act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation," approved March 4, 1909, and the act of said Congress entitled "An Act to regulate commerce," as amended June 18, 1910, and the regulations prescribed by the Interstate Commerce Commission by authority of said acts.

3. The ammunition and munitions of war and explosives that exploded on July 30, 1916, were packed, marked, loaded and handled, and when offered for transportation were and until and at the time of said explosion continued to be in proper condition to transport in accordance with said acts of Congress of the United States and the regulations prescribed by the Interstate Commerce Commission by virtue thereof, and were carried, conveyed and transported and held by the defendant in the course of interstate and foreign commerce lawfully and strictly in accordance with said acts and regulations.

THIRD DEFENSE.

1. The presence of such explosives as were on July 30, 1916, on the premises of the defendant did not constitute a nuisance.

2. The explosion mentioned in the complaint was due to a fire caused by incendiarism, of which defendant had no knowledge or suspicion.

3. Said fire occurred notwithstanding due diligence by the defendant to prevent incendiarism.

COLLINS & CORBIN,
Attorneys of Defendant,
Lehigh Valley Railroad Company.

ANSWER OF NATIONAL STORAGE COMPANY.

(Filed September 17, 1918.)

NEW JERSEY SUPREME COURT.

LLOYDS PLATE GLASS INSURANCE COMPANY OF NEW YORK, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY and NATIONAL STORAGE COMPANY, *Defendants.*	*Answer of National Storage Company.*

NATIONAL STORAGE COMPANY, a corporation of the State of New Jersey, having its principal office at 243 Washington street, Jersey City, says that:

It denies the truth of the matters contained in the complaint insofar as the same relate to this defendant, except that it admits that:

(a) During the times mentioned in the complaint it was and now is a corporation organized and existing under the laws of the State of New Jersey;

(b) At all said times it was and still is the owner of a certain piece of land situated in Hudson County, New Jersey, known as Black Tom Island.

(c) At all said times it maintained certain warehouses and was engaged in the business of receiving, storing and warehousing (but not transporting) large quantities of various kinds of merchandise, but not including great or any quantities of explosives.

COLLINS & CORBIN,
Attorneys of Defendant National Storage Company.

REPLY.

(Filed ———, 1918.)

NEW JERSEY SUPREME COURT.

LLOYDS PLATE GLASS INSURANCE COMPANY OF NEW YORK, *Plaintiff,* *against* LEHIGH VALLEY RAILROAD COMPANY and NATIONAL STORAGE COMPANY, *Defendants.*	*Reply to Answer of Lehigh Valley Railroad Company.*

1. Plaintiff denies the special defenses set forth in the second defense.

2. Plaintiff denies the special defenses set forth in the third defense.

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff.

POSTEA AND JUDGMENT.

NEW JERSEY SUPREME COURT.

LLOYDS PLATE GLASS INSURANCE COMPANY OF NEW YORK,

vs.

LEHIGH VALLEY RAILROAD COMPANY, Impleaded, Etc.

This case was tried before the Honorable William H. Speer, Circuit Court Judge (to whom the same was referred for trial) and a jury on the 20th, 23rd, 24th, 25th, 26th and 27th days of June, 1919, and the same having been submitted to the jury, the jury returned a general verdict in favor of the plaintiff and against the defendant Lehigh Valley Railroad Company in the sum of forty-eight thousand three hundred and six dollars and twenty-one cents ($48,306.21).

Damages	$48,306.21
Costs	56.69
	$48,362.90

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of forty-eight thousand, three hundred six dollars and twenty-one cents and its costs, which are taxed at the sum of fifty-six dollars and sixty-nine cents, making in the whole the sum of forty-eight thousand, three hundred sixty-two dollars and ninety cents.

Judgment entered July 8, 1919.

WM. S. GUMMERE,
C. J.

NOTICE OF APPEAL.

(Filed July 21, 1919.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

METROPOLITAN CASUALTY INSURANCE COMPANY OF NEW YORK, *Plaintiff,*	*Action at Law.*
vs.	*Notice of Appeal.*
LEHIGH VALLEY RAILROAD COMPANY, Impleaded, etc., *Defendant.*	

To Messrs. Congleton, Stallman & Hoover,
Attorneys for Plaintiff.

TAKE NOTICE, that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in above stated cause.

COLLINS & CORBIN,
Attorneys for Defendant.

GROUNDS OF APPEAL.

(Metropolitan Casualty Insurance Company of New York.)

(Filed August 25, 1919.)

These are the same as Grounds of Appeal Nos. one to seventy-one in the case of Royal Indemnity Company.

Also the following additional grounds:

The Trial Judge further erroneously charged the jury in one or more of the following respects:

72. (a) "First of all, gentlemen, the basis of every one of the actions brought here is what is called in the law negligence. If there is no negligence there can be no recovery. Only if there is negligence and that negligence is the proximate cause of the injuries to the plaintiffs can the plaintiffs recover. That brings us to consider first of all, what is the negligence that (this plaintiff) charges against this defendant company? And upon that subject these are the charges that are made in (this suit): * * *

(b) "The Metropolitan Casualty Company charges, first, negligence in caring for the explosives. * * *

(c) "So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger; and the burden therefore rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out then the plain-

tiff is entitled to have a verdict and have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict but the verdict would have to be for the defendant."

73. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 72, the Trial Judge then charged as follows:

"The Metropolitan Casualty Company charges * * * failing to provide a proper and adequate means of protection against explosion and fire."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk of danger in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal No. 72.

74. "First of all, gentlemen, the basis of every one of the actions brought here is what is called in the law negligence. If there is no negligence there can be no recovery. Only if there is negligence and that negligence is the proximate cause of the injuries to the plaintiffs can the plaintiffs recover. That brings us to consider first of all, what is the negligence that (this plaintiff) charges against this defendant company? And upon that subject these are the charges that are made in (this suit): * * *

"The Metropolitan Casualty Company charges, first, negligence in caring for the explosives, failing to provide a proper and adequate means of protection against explosion and fire." * * *

"So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger; and the burden therefore rests upon the

plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out then the plaintiff is entitled to have a verdict and have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict but the verdict would have to be for the defendant."

COMPLAINT.

(Filed July 30, 1918.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

METROPOLITAN CASUALTY INSURANCE COMPANY OF NEW YORK, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY and NATIONAL STORAGE COMPANY, *Defendants.*	*Action at Law.* *Complaint.*

Plaintiff, The Metropolitan Casualty Insurance Company of New York, a corporation, organized under the laws of the State of New York, having a place of business and office at No. 47 Cedar street, in the City, County and State of New York, says that:

FOR A FIRST CAUSE OF ACTION.

First. That during all the times hereinafter mentioned plaintiff was and now is a corporation organized and existing under the laws of the State of New York and the plaintiff was during all the times herein mentioned and now is organized for the purpose among other things of making insurance upon glass against breakage and the plaintiff was during the said times and now is engaged in the business of insuring glass against breakage and was and is duly authorized to carry on its business in the State of New Jersey.

Second. That during all the times hereinafter mentioned, the defendant the National Storage Company

was and now is a foreign corporation organized and existing under the laws of the State of New Jersey.

Third. That during all the times hereinafter mentioned the defendant Lehigh Valley Railroad Company was and now is a foreign corporation organized and existing under the laws of the State of Pennsylvania.

Fourth. That the defendant National Storage Company during all the times hereinafter mentioned was and still is the owner of a certain piece of land situated in the State of New Jersey, County of Hudson, known as "Black Tom Island."

Fifth. That on or about the 30th day of July, 1916, the defendant brought and allowed to be brought and kept upon the said island great quantities of explosives and kept and maintained the same upon the said island. That through the negligence of the defendants and each of them in the bringing of the said explosives upon the said island and in the maintenance of the same thereon and through the negligence of the defendants and each of them in failing to provide proper and adequate means of protection against explosion and proper and adequate means of protection against fire an explosion of said explosives ensued on or about said date which was caused solely by the negligence of the defendants and without any negligence on the part of this plaintiff or any of its said assignors; and plaintiff avers that it was the duty of said defendants and each of them to provide proper and adequate means of protection against explosion and proper and adequate means of protection against fire and that during all the times herein mentioned neither of the said defendants furnished said adequate means or any proper or adequate means of protection against either explosion or fire and that the said explosion took place and the damage hereinafter referred to was caused by the defendants' said failure in making said provision and by the negligence of the said defendants hereinbefore set forth.

Sixth. That solely by reason and on account of the said explosion the glass which was the property of the persons herein referred to as plaintiff's assignors and named in Schedule A which is hereto annexed and made part of this complaint, and which was at the time of said explosion located in the buildings situated upon the various premises, the locations of which are given in said Schedule A, was completely destroyed and shattered so as to be utterly worthless and that the value of the said glass so destroyed was forty-three thousand eight hundred and eighty-eight and 51/100 ($43,888.51) dollars, which is the amount suffered by plaintiff's said assignors by reason of said explosion.

Seventh. That heretofore and before the commencement of this action each and every one of the persons mentioned in said Schedule A as the owner of said glass at the location set opposite his or its name did for a good and valuable consideration, assign, transfer and set over to plaintiff all his or its right, title and interest in and to any cause of action which he or it might have had against the defendants or either of them arising out of the destruciton of the aforesaid glass or any part thereof by reason of the aforesaid explosion or for any other reason.

Eighth. That heretofore and on the 30th day of July, 1916, all of the persons who are mentioned in said Schedule A as the owners of the plate glass at the locations set opposite their names in said Schedule A were insured by this plaintiff against loss by breakage of the plate glass heretofore mentioned, which insurance was effected by certain policies. That under the terms of the aforesaid policies and each of them this plaintiff was obligated to replace all the aforesaid glass which was destroyed by and on account of the aforesaid explosion and heretofore and before the commencement of this action the plaintiff did replace all of said glass referred to in said Schedule A at a cost amounting to forty-three

thousand eight hundred and eighty-eight and 51/100 dollars ($43,888.51). That under and by virtue of the terms of the aforesaid policies of insurance with the said insured and each and every one of the said insured, covering the plate glass destroyed as aforesaid, this plaintiff upon the replacing of the plate glass so destroyed became and was subrogated to all the rights and claims against any person or persons whatsoever which the said insured had arising out of the aforesaid destruction of the aforesaid plate glass.

Ninth. That the value of the aforesaid plate glass destroyed as aforesaid was forty-three thousand eight hundred and eighty-eight dollars and 51/100 ($43,888.51) dollars, and that in and by virtue of the aforesaid policies of insurance between this plaintiff and said insured and each of them, and the payment of the loss as aforesaid, this plaintiff became subrogated to all the rights of the said insured and each of them in and to his claim against these defendants for and on account of the aforesaid breakage of the aforesaid glass.

Tenth. The plaintiff further alleges that by reason of the foregoing plaintiff has been damaged in the sum of forty-three thousand eight hundred and eighty-eight and 51/100 ($43,888.51) dollars which is now due and owing to the plaintiff from defendants, together with interest from the 30th day of July, 1916, no part of which said principal or interest has been paid, although duly demanded.

FOR A SECOND CAUSE OF ACTION.

Plaintiff, realleging all the allegations of this complaint in paragraphs marked first to fourth inclusive, and sixth to tenth inclusive, with the same force and effect as if the same were set forth at length hereunder, further alleges:

Eleventh. That on or about the 30th day of July, 1916, and for some time prior thereto the defendants had per-

mitted extraordinarily great quantities of high explosives to be brought to, accumulated, stored and maintained on said island. That the maintenance and storing of such explosives in such quantities constituted a nuisance in that it was a menace and a danger to all property in the City of New York and Jersey City situated as close to said island as the property upon which the glass destroyed as herein set forth was located.

Twelfth. That as a result of the storing and maintenance of the said extraordinarily large quantities of explosives on said island and in the proximity of the property upon which the glass destroyed as herein alleged was located, an explosion occurred which destroyed the glass as herein set forth.

WHEREFORE and by reason of the premises, plaintiff was injured and has sustained damage in the sum of $43,888.51.

Plaintiff demands $43,888.51 damages, together with interest thereon from July 30th, 1916, and costs of this action.

QUEEN & STOUT,
Attorneys for Plaintiff.

Schedule A.

Each of the following named persons was at the time of the explosion mentioned in the complaint, the owner of glass located upon the premises set opposite his name and suffered the loss set opposite his name, the figures set opposite each name herein being the value at the time of its destruction of glass situated on the premises set opposite said figures and also being the cost of replacement of said glass.

Name of Assured and Assignor.	Location of premises where glass was destroyed	Value of glass destroyed and cost of replacement
Helen F. Craven	357 Montgomery St., Jersey City, N. J..	$ 10.84
Helen F. Craven	128 Monticello Ave., Jersey City, N. J...	44.41
Mrs. Mary G. Fagan	202 Wayne St., Jersey City, N. J.....	124.74
Helen F. Craven	E. P. & W. P. 355 Montgomery St., Jersey City, N. J.....	27.59
Jacob Miller	87 Broad St., New York City.....	49.90
A. Isola	1 2nd Place, Ext. on 603 Henry St., Brooklyn, N. Y.	16.92
Isaac H. Cary	194 Fulton St., Brooklyn, N. Y.....	104.55
Est. of Sussanna E. Cary	94-100 Orange St., Brooklyn, N. Y.....	41.36
M. A. Modell & Son	S. P. 143 West St., New York, N. Y....	33.88
Henrietta Egan	62 DeGraw St., Brooklyn, N. Y.....	54.96
Julia Roche	624 Newark Ave., Jersey City, N. J....	149.45
St. Adeans R. C. Church	W. S. Tuers Ave., bet. Mercer & Vroom Sts., Jersey City, N. J.....	13.02
Yadwiga Smakowska	34 Vroom St., Jersey City, N. J.....	46.37
Eagle Sav. & Loan Co.	109 Montague St., Brooklyn, N. Y.....	37.20
Martha A. Gaines	33-43 8th Ave., New York City.....	19.39
B. Hornung	307 Ocean Ave., Jersey City, N. J....	83.16
Anna C. M. Johnson	319 Columbia St., Brooklyn, N. Y.....	49.84
Henry D. G. Rohlfs	944 Fulton St., Brooklyn, N. Y.....	38.88
Eva Moniz	38 Desbrosses St., New York City....	50.52
A. N. Nelson	12 President St., Brooklyn, N. Y.....	33.84
State Bank	374-8 Grand St., New York City.....	12.01
State Bank	60-2 Graham Ave., Sec. Varet St., Brooklyn, N. Y.	12.12
Jacobs & Harris	77-9 Fulton St., New York City.....	254.35
Matilda A. Moller, et al.	258 West St., New York City.....	39.96
Charles Schwartz, et al.	156-8 Hamilton Ave., Sec. 329-35 Columbia St., Brooklyn, N. Y.....	22.49
Sarah Purcell	491 Grove St. (South Store), Jersey City, N. J.	6.30
Fanny R. Magee	457 Grove St., Jersey City, N. J.....	22.06
Julia Fitzgerald, et al.	184½ Newark Ave., Jersey City, N. J.	3.73
Meyer Bornt	41 Coles St., Jersey City, N. J.....	44.14
Julia Fitzgerald, Alice Fitzgerald, et al.	184 Newark Ave., Jersey City, N. J....	90.86
Julia Fitzgerald, et al.	182 Newark Ave., Jersey City, N. J....	101.85
Mary C. Davies	342 Grove St., Jersey City, N. J.....	25.65
Mary Reilly	450 Henderson St., Jersey City, N. J..	31.20

Complaint—Schedule A.

Name of Assured and Assignor.	Location of premises where glass was destroyed	Value of glass destroyed and cost of replacement
Christian J. Guterl	330 2nd St., Jersey City, N. J.....	110.65
Christian J. Guterl	328 2nd St., Jersey City, N. J.....	56.70
Mutual Life Ins. Co.	NE. cor. Cedar & Nassau Sts., New York City	89.50
Anton Burghart	633-5 Third Ave., Brooklyn, N. Y.....	27.12
Anna A. Johnston	265 8th St., Jersey City, N. J.....	58.91
Solomon Lent	391 West St., New York City.....	31.80
Handel Bros.	237 Greenwich St., New York City.....	94.95
J. E. Stillwell	273-5 Hudson St., New York City.....	66.56
John L. Tonnele, Trustee	273 6th Ave., New York City.....	108.71
Ginsberg Bros.	5105 Third Ave., Brooklyn, N. Y.....	70.72
Isaac Fries	658-60 Third Ave., Brooklyn, N. Y.....	23.04
Max Friedenberg	790 Newark Ave., Jersey City, N. J....	32.80
David Tudor	415 Pacific Ave., Jersey City, N. J....	32.54
Angelo Legniti	64 Mulberry St., New York City.....	56.76
J. Rogers	177-9-81 Hudson Ave., Brooklyn, N. Y.	43.05
Nicholas J. & Mary Kelleher	266 Varick St., Jersey City, N. J.....	132.69
Nicholas J. & Mary Kelleher	437 Jersey Ave., Jersey City, N. J.....	122.44
Adolph Lipschitz	289 Grand St., Jersey City, N. J.....	85.15
Henry Meyer	568 Grand St., Jersey City, N. J.....	52.26
John J. Burke	324 Newark Ave., Jersey City, N. J.....	53.49
Burke Bros.	SW. cor. Brunswick & 5th Sts., Jersey City, N. J.	30.24
Fred Heinz Co.	389 Newark Ave., Jersey City, N. J....	19.69
Arcangelo Scatuorchio	156-8 Brunswick St., Jersey City, N. J.	43.66
Mary McCormack	367 8th St., sec. Brunswick St., Jersey City, N. J.	28.76
Adolph Lipschitz	292 Grand St., Jersey City, N. J.....	61 62
James J. Magee	55 Whitehall St., New York City.....	45.63
I. Cohn	79 4th Ave., New York City.....	4.73
The Otto Gerdau Co.	83 Murray St., New York City.....	45.12
Est. of Chas. F. Mattlage	97-99-101 Warren St., SW. cor. Greenwich St. and 206 West St., SE. cor. 51-3 Harrison St., New York City.....	72.92
Mrs. H. Levy	963-5 Fulton St., Brooklyn, N. Y.....	42.79
Est. O. Y. Walbridge	57-9 Prince St., New York City.....	215.84
John Schwinge	532 Clinton St., Hoboken, N. J.....	34.55
Honora A. O'Leary	116 Jersey St., New Brighton, S. I.....	45.00
Oliver Typewriter Co.	310 Broadway, New York City.....	111.60
S. Aronson	13 Madison St., New York City.....	28.17
H. E. Jacobs	92 Division St., New York City.....	97.91
Jacob J. Schmukler	133-5 Canal St., New York City.....	54.88
Fulton & Elm Leasing Co.	474 Fulton St., Brooklyn, N. Y.....	246.91
Roechling Electro Steel Co., Inc.	S. P. 173-5 Lafayette St., New York City	103.32
H. J. Brandt, et al.	129 Court St., Brooklyn, N. Y.....	34.32
Thomas Fallon	926-30 Bergen Ave., SE. cor. Sip Ave., Jersey City, N. J.....	189.34
Ellen A. Freeman, et al.	237 Columbia St., Brooklyn, N. Y.....	25.68
Wm. A. Overton and Arline A. Wilson, et al.	409 Bedford Ave., Brooklyn, N. Y.....	23.98
Louis Zisis	1177 Broadway, Brooklyn, N. Y.....	55.08
Simon Hellmuth	205 West St., New York.....	28.30
Hanover Fire Ins. Co.	34-36 Pine St., New York.....	35.04
M. and J. Zampella	344½ Grove St., Jersey City, N. J.....	35.45
George A. Woods	178 Newark Ave., Jersey City, N. J....	8.79

Metropolitan Casualty Insurance Co. of New York Case.

	Name of Assured and Assignor.	Location of premises where glass was destroyed	Value of glass destroyed and cost of replacement
	Chas. M. & Victoria M. Nimmo	475 Grove St., Jersey City, N. J.....	62.47
	Edward Goodman	457 Grove St., Jersey City, N. J.....	12.00
	Anna H. Lahnecker	387 Grove St., Jersey City, N. J.....	81.27
	Herz Bros.	225 Newark Ave., Jersey City, N. J....	27.56
	Jacob Schmitt	531 Jersey Ave., Jersey City, N. J....	85.74
	Jacob Schmitt	450 Bergen Ave., Jersey City, N. J....	32.94
10	Nimmo Realty Co.	599 Grove St., Jersey City, N. J.....	27.40
	Jacob Schmitt	529 Jersey Ave., Jersey City, N. J....	98.80
	P. F. Wanser	156 Montgomery St., Jersey City, N. J.	15.79
	Frank J. Matthews Co.	175 Pavonia Ave., Jersey City, N. J....	4.23
	Frank J. Matthews Co.	605-9 Grand St., Jersey City, N. J....	52.90
	Wm. G. Bumsted	188-188½-90 Pavonia Ave., Jersey City, N. J.	40.95
	John Arthur Greene	1233 Flatbush Ave., Brooklyn, N. Y....	21.00
	John Fitzsimmons	161 Court St., Brooklyn, N. Y.....	25.70
	Frederick A. Keller	336 Communipaw Ave., Jersey City, N. J.	41.75
	Fred Druhmel	509 Jackson Ave., Jersey City, N. J....	161.46
	Ethel M. Magley	489 Westside Ave., Jersey City, N. J..	52.92
	J. Louis Mathey	202 Washington St., Hoboken, N. J....	3.82
	Trustees under will of A. Hemenway	39 Broadway, New York.....	111.90
	Jeremiah Calicchio	323½ Monmouth St., Jersey City, N. J.	31.46
	James F. Stewart Co.	378 Grand St., Jersey City, N. J.....	109.46
20	Antonio Giaccio	576 Grand St., Jersey City, N. J.....	47.32
	Frank Danelewski	575 Grand St., Jersey City, N. J.....	13.56
	John H. McGuiness	176 Mercer St., Jersey City, N. J.....	25.48
	Robert M. & Joseph P. Hughes	SW. cor. Brooks & Centre Sts., Jersey City, N. J.	55.38
	Andrew Muro	380 2nd St., Jersey City, N. J.....	45.62
	David Schneider, et al.	318 8th St., Jersey City, N. J.....	9.50
	Est. of Patrick H. Baxter	241 Mercer St., Jersey City, N. J.....	87.75
	Pasquale Amabile	224 Wayne St., Jersey City, N. J.....	24.70
	Gabriel Minotto	432 Second St., Jersey City, N. J.....	26.73
	Vincenzo Lefanta	48 Center St., Jersey City, N. J.....	53.19
	R. M. & J. P. Hughes	188 Mercer St., Jersey City, N. J.....	66.56
	Robert M. & Joseph P. Hughes	138 Colden St., Jersey City, N. J.....	113.57
	Jacob Tobler	113-21 Hamilton Ave., Brooklyn, N. Y., SW. cor. 306-8 Columbia St.....	324.44
30	Est. of Mary J. Peck, decd.	47 Hamilton Ave., Brooklyn, N. Y....	37.21
	Hudson Investment Co.	355 Second St., Jersey City, N. J.....	47.98
	Carrie H. Wells	191 9th Ave., New York City.....	1.00
	Fred Waltjen	129 Griffith St., Jersey City, N. J.....	24.57
	Frederick H. Man, Trustee	115 Christopher St., New York City....	37.73
	I. H. Cary, Atty.	166-8 Atlantic Ave., Brooklyn.....	32.52
	Est. Jas. K. Pell	221 Bleecker St., New York.....	31.32
	Mrs. Annie C. Pell	08 8th Ave., New York City.....	66.51
	John E. Nicholson	48-52 Hudson St., New York.....	99.98
	Henry Steeger	142-154 E. 32d St., New York.....	9.93
	Henry Lilly Co.	88-90 Reade St., New York.....	25.11
	Dietel & Wilmott	78 Greenwich St., New York.....	39.96
	Mark M. Fagan	527 Jersey Ave., Jersey City, N. J.....	54.34
	Taylor & Manahan	422 Grove St., Jersey City, N. J.....	93.21
	Fred W. Grube	85 Washington St., Hoboken, N. J.....	49.00
	Frank T. Day	60 W. 14th St., New York.....	229.17
40	Susan L. Vivian, U. S. Trust Co., Trustees	35 Warren St., New York.....	124.92

Complaint—Schedule A.

Name of Assured and Assignor.	Location of premises where glass was destroyed	Value of glass destroyed and cost of replacement
Berfield Realty Co.	130-2 Pearl St., New York	57.12
Wm. H. & Nathaniel H. Lyons	293-5 Fulton St., Brooklyn, N. Y.	134.04
S. Levinsky & Son	80-4 Canal St., New York	19.99
Frank Lombardi	1059 Richmond Ave., Graniteville, Staten Island, N. Y.	35.29
D. Feinberg	59 Greene St., Jersey City, N. J.	32.11
I. Barowsky	342 Henderson St., Jersey City, N. J.	7.42
Louis Levy	646½ Newark Ave., Jersey City, N. J.	43.81
The Realty Co. of N. J.	132-4 Westside Ave. and 388-412 Woodlawn Ave., Jersey City, N. J.	7.58
Joseph M. Doran	547 Newark Ave., Jersey City, N. J.	1.81
Patrick Conroy	754 Newark Ave., Jersey City, N. J.	58.37
Alfred H. Mansfield	558-60 Newark Ave., Jersey City, N. J.	24.31
Mutual Life Ins. Co. of N. Y.	32-4 Broadway, New York	99.05
Mutual Life Ins. Co. of N. Y.	45-7-9 Cedar St., New York	32.04
Mutual Life Ins. Co. of N. Y.	47-9 Liberty St., New York	8.20
Edward Cunard	6 & 8 W. 20th St., New York	58.32
Frederick W. Black	23 Ferris St., Brooklyn, N. Y.	51.72
Peter W. Rauss	549-55 Broadway, New York	145.68
Wm. D. Salter	972 Broadway, Bayonne, N. J.	10.00
James Dunne	279 Grand St., Jersey City, N. J.	34.74
Thomas G. Moran	450 Grand St., Jersey City, N. J.	89.44
C. P. Smith Co.	548 Jersey Ave., Jersey City, N. J.	142.61
John H. Sheeran	353 Montgomery St., Jersey City, N. J.	53.73
L. Rice & Co.	546 Jersey Ave., Jersey City, N. J.	5.00
Michael J. Hennessey	140 Wayne St., Jersey City, N. J.	207.36
Joseph Merlino	303 Monmouth St., Jersey City, N. J.	90.94
Laurence E. Witzel, et al.	260 South St., New York	16.27
Est. of A. Rehill	4555 3rd Ave., New York	24.85
Peter Henderson & Co.	35-37 Cortlandt St., New York	271.92
Joseph H. Cohen	35-7 E. Broadway, New York	10.00
Daisy Lippmann & Lena Baum	85-91 Bayard St., New York	23.79
K. W. Saydah	66 Greenwich St., New York	30.68
Benson Construction Co., Inc.	275 Grand St., New York	102.24
Jacob Witterscheim, Sr.	40 Gregory St., Jersey City, N. J.	109.85
Beadelston & Woerz, a corp.	683 Washington St., New York	22.80
Seamons Christian Asso.	399 West St., New York	19.84
Henry Pollak	303 1st St., New York	87.70
Annie E. Cruden, et al.	700 Clinton St., Hoboken, N. J.	30.39
James D. McKernan	561 Grove St., Jersey City, N. J.	29.90
Mrs. Catherine Baker	81 Railroad Ave., Jersey City, N. J.	77.48
Charles Schrauff	88 Newark Ave., Jersey City, N. J.	35.26
Behrens Bros.	130 West St., New York	23.63
Antonio F. Siano	39-41 Wright Ave., Jersey City, N. J.	8.16
Edward Hughes	415 West St., N. Y.	122.19
William M. Sperry	11-17 North Ave., Cranford, N. J.	59.00
Deitrich Meyer	767 Washington St., New York	31.91
Annie McEntee	503 Jersey Ave., Jersey City, N. J.	190.74
John Corcoran	178 Monticello Ave., Jersey City, N. J.	40.95
Leonard Lock	285 Grand St., Jersey City, N. J.	44.78
Frank Culalo & Antonio Yanmuzzi	289 Summit Ave., Jersey City, N. J.	125.14
John Corcoran	682 Montgomery St., Jersey City, N. J.	55.55
Est. Mary A. Link	265-7 Bleecker St., New York	26.16
August Zinsser Realty Co.	78-80 Beekman St., New York	2.40

Metropolitan Casualty Insurance Co. of New York Case.

	Name of Assured and Assignor.	Location of premises where glass was destroyed	Value of glass destroyed and cost of replacement
	Huyler's, a corporation	10 Wall St., New York	8.90
	Frederick H. Jolivette	174 18th St., Brooklyn, N. Y.	33.84
	E. Nesbit	102 Washington St., Hoboken, N. J.	52.35
	Elizabeth Nesbit	106 Washington St., Hoboken, N. J.	35.65
	A. McInnes	67 Cortlandt St., New York	5.38
	Wm. H. & Gertrude Lyons	148 Sullivan St., New York	22.80
10	Charles B. Hughes	421-425 Ocean Ave., Jersey City, N. J.	5.08
	Frank J. Mathews Co.	605-11 Grand St., Jersey City, N. J.	52.90
	D. Perkel	721 Newark Ave., Jersey City, N. J.	45.13
	John E. Mullers Sons	1 Exchange Place, Jersey City, N. J.	25.66
	Pessagno & Montressor	534-8 West Broadway, New York	72.48
	Rebecca Mandel	30 Henry St., New York	4.84
	James S. Bearns & F. W. Keller, executors of Est. of J. H. Bearns,	41 North Moore St., New York	29.88
	O. J. Maigne	358-60 Pearl St., New York	53.81
	Amos E. Aschner	79 Fulton St., Brooklyn, N. Y.	48.00
	Meta Herr	217 5th Ave., Brooklyn, N. Y.	19.75
	Speyer & Co.	24-8 Pine St., New York City	149.41
	Nelson R. Vanderhoof and Lyman E. Brown	347-9 Grand St., Jersey City, N. J.	46.56
	Nelson R. Stryker	169-171 Danforth Ave., Jersey City, N. J.	203.04
	Cecelia H. Connors	254 Newark Ave., Jersey City, N. J.	1.48
20	Est. Emil J. Zahn	70 Railroad Ave., Jersey City, N. J.	197.40
	Est. Emil J. Zahn	68 Railroad Ave., Jersey City, N. J.	72.72
	Charles Flocken	444-6 East Jersey St., Elizabeth, N. J.	30.90
	The Security Land & Improvement Co.	282-4-88-90 N. Broad St., Elizabeth, N. J.	32.50
	Meta A. Seekam	73 Hancock Ave., Jersey City, N. J.	26.09
	Julius Kayser	95 William St., New York	41.40
	Devisees under the will of Edw. R. Satterlee; Devisees under the will of Henry T. Satterlee, Arthur B. Satterlee, Mary L. Catlin, and Devisees under the will of Clarence Satterlee, as Interest may appear	399 Canal St., New York	55.31
	Sound Realty Co.	358-64 Bleecker St., New York	29.45
30	L. Heyman	509 Rogers Ave., Brooklyn, N. Y.	51.55
	L. Kurtz & Sons	169-73 Smith St., Brooklyn, N. Y.	266.03
	Francis Lee	5606 4th Ave., Brooklyn, N. Y.	32.64
	N. Y. Produce Exchange	2-8 Broadway, cor. Beaver, Whitehall & Stone Sts., New York	761.61
	Matilde L. Treat	331 Henry St., Brooklyn, N. Y.	38.25
	Schall & Co.	81 Barclay St., New York	59.15
	High Grade Retail Clothing Co.	245 Columbia St., Brooklyn, N. Y.	59.95
	Simon Rausch	204-6 First St., Hoboken, N. J.	35.65
	Morris Engle	129 Greenwich St., New York	15.80
	C. P. Smith Co.—Michael M. McGrath	327 Monmouth St. & 175 Mercer St., Jersey City, N. J.	16.07
	Joseph Siegler	218 Newark Ave., Jersey City, N. J.	159.78
	Margaret Tremble	48 Bright St., Jersey City, N. J.	50.93
	Henry Heilig	54-60 Coles St., Jersey City, N. J.	81.43
	Jacob Lewis	370 Grove St., Jersey City, N. J.	109.78
	Drelich Bros.	352 Montgomery St., NW. cor. 317-9 Monmouth St., Jersey City, N. J.	30.59
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Complaint—Schedule A.

Name of Assured and Assignor.	Location of premises where glass was destroyed	Value of glass destroyed and cost of replacement
L. Vogel & Rom	639 Newark Ave., Jersey City, N .J....	54.13
Max Feinstein	723-7 Grand St., Jersey City, N. J.....	190.17
Michael Goldrich	63 Newark Ave., Jersey City, N. J.....	96.94
Michael Goldrich	420 Grove St., Jersey City, N. J.....	52.78
Meyer A. Jasper	379-81 Jackson Ave., Jersey City, N. J..	14.77
Sarah Schoenberg	54-6 Harrison Ave., Jersey City, N. J....	86.26
Max Feinstein	125 Essex St., Jersey City, N. J.....	55.51
Henry Levy	110 Myrtle Ave., Jersey City, N. J.....	53.60
Morris Mandel	378 Monmouth St., Jersey City, N. J...	21.97
George Guckenberger	252 Palisade Ave., Jersey City, N. J....	53.59
Samuel Ritter	144 Morris St., Jersey City, N. J.....	87.92
Ignatz Goodfriend	287 Grand St., Jersey City, N. J.....	37.13
E. F. Keer	971 Broad St., Newark, N. J.....	182.30
John Mullins & Sons	218-220 Market St., Newark, N. J.....	161.97
Phillipp Schimnagel	72 Wayne St., Jersey City, N. J.....	45.15
John Yard, Executor	60 West 23rd St., New York.....	128.88
Eric Forster	203 Greenwich St., New York.....	4.45
August Quick	NE. cor. West & Cortlandt Sts., New York	77.38
Wm. Weilage	301 Washington St., New York.....	4.22
Benjamin Willis, et al.	31 Rector St., New York.....	25.56
Adolph Lipschitz	292 Grand St., Jersey City, N. J.....	19.16
Est. of A. W. Hart	NE. cor. 111-13 Prospect Place, Bklyn., N. Y., 293-5-7-9-301-5 Flatbush Ave., Bklyn., N. Y.	18.40
Bay Ridge Savings Bank	5517 5th Ave., Brooklyn, N. Y.....	25.00
The Artee Realty Corp.	1261 39th St., Brooklyn, N. Y.....	15.12
Eugene Zorlig	575 3rd Ave., Brooklyn, N. Y.....	26.66
Thos. S. Morrell	97-9 Liberty St., Brooklyn.....	66.24
Jas. Ruddiman	685 3rd Ave., Brooklyn.....	49.08
Rutgers Realty Co., et al.	25-29 W. 31st St., New York.....	71.22
The Estate and devisees of Henriette Constable, dec'd., and Trustees under her will as interest may appear	109-11 5th Ave., New York.....	255.27
Israel Unterberg	352 4th Ave., & 53-9 E. 25th St., New York	123.36
Estate of Charles P. Walker	192 Grand St., Jersey City, N. J.....	146.33
Isaac Silverstein, et al.	92 Bright St., Jersey City, N. J.....	153.73
Rosina Marino as guardian for the heirs at law of Gerardo Marino	77 Mulberry St., New York.....	31.20
Henry Hillebrand	44-6 Duane St., N. Y.....	4.31
John J. O'Keefe	125 Christopher St., New York.....	42.00
Robert P. & Michael Galligan	115-115½ Coles St., Jersey City, N. J...	27.95
John P. Lloyd	205 to 209 Smith St., Perth Amboy, N. J.	15.84
Ellis Streiff Co.	191 Hall Ave., Perth Amboy, N. J.....	37.60
J. P. Goldsmith & B. Streiff	187-189 Hall Ave., Perth Amboy, N. J.	36.63
Joseph E. Stricker	141 Smith St., Perth Amboy, N. J.....	51.00
Mrs. J. L. Jennnigs	279 Van Brunt St., Brooklyn, N. Y.....	14.63
Charles L. Babcock	5713-17-19 4th Ave., Bklyn., N. Y.....	22.90
Mary Marrone	1024 Summit Ave., Jersey City, N. J...	28.21
Samuel Green	29 Clinton St., Brooklyn, N. Y.....	35.00
O. D. Brown, E. B. Brown, et al.	739 3rd Ave., Brooklyn, N. Y.....	54.47
McKesson & Robbins	95 Fulton St., New York.....	3.90
Est. of Matilda L. Robbins, et al.	91-7 Fulton St., New York.....	17.04

Metropolitan Casualty Insurance Co. of New York Case.

	Name of Assured and Assignor.	Location of premises where glass was destroyed	Value of glass destroyed and cost of replacement
	Geo. W. Sutton	448 Broome St., New York	36.56
	T. J. Kelley	48 Hudson St., Jersey City, N. J.	101.39
	Chas. Singer, et al.	89-91 Bayview Ave., Jersey City, N. J.	262.74
	Singer Bros.	326 Montgomery St., Jersey City, N. J.	175.58
	Est. of John S. O'Connor	240-2 Newark Ave., Jersey City, N. J.	218.91
	Mary Meyer	598 Grand St., Jersey City, N. J.	19.80
10	C. Lerro	242 Railroad Ave., Jersey City, N. J.	24.96
	J. L. Compton	90 Montgomery St., Jersey City, N. J.	59.37
	Sarah Gellis	243 Henry St., New York	22.05
	W. Gazzale, Lessee	184 West St., New York	41.04
	Elizabeth Spiegel	2 Greenwich St., New York	118.53
	Marks Cohen	104 Canal St., New York	13.89
	Joseph D. Goldstein	404 Grand St., New York	25.85
	David Schoff & Est. of Sam'l. J. Silherman	36 Eldridge St., New York	3.19
	A. J. Goldstein & Co.	123-5 Myrtle Ave., Jersey City, N. J.	45.60
	Goldstein, Feinberg Co., Inc.	592-4 Grand St., Jersey City, N. J.	100.30
	Goldstein & Feinberg	347 Henderson St., Jersey City, N. J.	17.93
	American Grocery Co.	327-9 Henderson St., Jersey City, N. J.	148.45
	Goldstein, Feinberg Co.	146 Morris St., Jersey City, N. J.	142.06
	Mulford Martin	95 Atlantic Ave., Brooklyn, N. Y.	42.72
	Friends Academy	82 & 84 Atlantic Ave., Brooklyn, N. Y.	46.43
	P. W. Faatz	422 Lafayette St., Newark, N. J.	24.50
20	Estate of Samuel M. Meeker	1333-9 B'way, Brooklyn, N. Y.	109.08
	The Fleischmann Co.	699-701 Washington St., New York	25.48
	Henry Fickon	253 Atlantic Ave., Brooklyn, N. Y.	50.40
	Mechanics Bank	205-13 Montague St., Brooklyn, N. Y.	182.16
	J. R. Simons & Co.	53-9 East 25th St., through to 352 4th Ave., New York	28.00
	Michael La Rossa	400 Jefferson St., Hoboken, N. J.	43.20
	Howard O. Wood	229 Fulton St., Brooklyn, N. Y.	149.28
	Est. of T. P. Peters, etc.	24-6 Broadway, Brooklyn, N. Y.	16.50
	Mary A. Gibson	147 Duane St., New York	2.38
	Est. Mary Mix, decd.	463 Grove St., Jersey City, N. J.	31.20
	Est. Christopher P. Smith	4 Coles St., Jersey City, N. J.	29.51
	Louis C. Hummel	177 York St., Jersey City, N. J.	5.67
	Est. of Edward P. Hart, decd.	520 Jersey Ave., Jersey City, N. J.	28.47
	R. DeStefano	366½-8-8½ 5th St., Jersey City, N. J.	84.73
30	First National Bank of Jersey City	1 Exchange Place, Jersey City, N. J.	35.97
	Henry T. Nugent	20-6 Newark Ave., Jersey City, N. J.	669.31
	Est. of Annie Pasalano	27 Wright Ave., Jersey City, N. J.	53.04
	Edith F. B. Engelhardt	117-9 Fulton St., Bklyn., N. Y.	42.12
	Scheland & Von Harten	N. P. 94-6 River St., Hoboken, N. J.	34.98
	J. Ehrlich's Sons	498 Fulton St., Bklyn., N. Y.	280.00
	Frank N. McGurk, Rec'r.	582-8 Hudson St., New York	21.50
	Eugene F. Sullivan	189 Pavonia Ave., Jersey City, N. J.	1.22
	Est. Dennis McLoughlin	184 Pavonia Ave., Jersey City, N. J.	15.70
	Maria Hogan	625 Grove St., Jersey City, N. J.	24.05
	Dennis Gallagher	162 Pavonia Ave., Jersey City, N. J.	64.65
	E. Waldstein	254 Fairmont Ave. and 249-51 Monticello St., Jersey City, N. J.	35.49
	Singer Bros.	473 Ocean Ave., Jersey City, N. J.	20.00
	Patrick Shiel	650 Washington St., New York	93.99
	Wm. Wolff	34 Howard St., New York	48.36
40	Henry P. Journeay, et al.	120-122 Atlantic Ave., Bklyn., N. Y.	67.72

Complaint—Schedule A.

Name of Assured and Assignor.	Location of premises where glass was destroyed	Value of glass destroyed and cost of replacement
Henry P. Journeay, et al.	134 Atlantic Ave., Bklyn., N. Y.....	17.16
Mary T. Slevin, et al.	29 Murray St., New York.....	39.36
Mary C. T. Slevin, et al.	47 Murray St., New York.....	9.65
Est. of Hugh J. O'Reilly	290 Newark Ave., Jersey City, N. J....	45.24
Est. of Hugh J. O'Reilly	292 Newark Ave., Jersey City, N. J....	49.85
Est. of Hugh J. O'Reilly	294 Newark Ave., Jersey City, N. J....	31.46
Jacob F. Mergenthaler	884 Broadway, Brooklyn, N. Y.....	48.18
Frederic J. Meystre	500 Adams St., Hoboken, N. J.....	49.46
Blackburne Realty Co.	589 Broad St., Newark, N. J.....	27.61
C. Schwager	171 Fulton St., Brooklyn, N. Y.....	30.36
Est. of Lawrence Connins	716-18-18½ Grand St., Jersey City, N. J.	74.62
Julia Fitzgerald, et al.	276 1st St., Jersey City, N. J.....	12.33
Philip J. Hollmuller	295 Van Brunt St., Brooklyn, N. Y....	35.00
George T. Hale	388 Van Brunt St., Brooklyn, N. Y....	73.08
Abraham Lewis	254 Barrow St., Jersey City, N. J.....	22.88
C. Cornehlson	345 Jefferson Ave., Brooklyn, N. Y....	20.99
Joseph Stewart	335 Smith St., Brooklyn, N. Y.....	12.60
William H. North, as Executor of Est. of Mary Rogers, decd.	5 Carroll St., SW. cor. Van Brunt St., Brooklyn, N. Y.	33.80
Martin Brunjes	723 6th Ave., Brooklyn, N. Y.....	42.50
Charles F. Nayes	152-4 William St., New York.....	22.44
O. N. Cammann, Trustee for Mande C. Hooker	656 Grand St., NW. cor. State St., Jersey City, N. J.....	35.37
J. Louis Mathey	01 Bloomfield St., NE. cor. 2d St., Hoboken, N. J.	30.65
Anna V. H. T. Hervey	176½ Pavonia Ave., Jersey City, N. J..	148.00
Anna V. H. T. Hervey	176 Pavonia Ave., Jersey City, N. J....	57.00
Anna V. H. T. Hervey	192 Pavonia Ave., Jersey City, N. J....	6.00
Anna V. H. T. Hervey	74 Pavonia Ave., Jersey City, N. J....	27.00
Simon Bros.	49 Canal St., New York.....	73.06
Christina Corkett	65 Ocean Ave., Jersey City, N. J.....	65.79
Echo Investing Corp.	134-38 Broadway, and 212 Fifth Ave., New York	455.00
Est. P. H. Hanley, dec'd.	3[illegible]-9 Newark Ave., Jersey City, N. J..	788.96
Nathan Aschner and Est. of Fred'k B. Aschner	175 Fulton St., Brooklyn, N. Y.....	29.28
A. Sklarck	487 Third Ave., Brooklyn, N. Y.....	2.74
A. C. Hull	1108-10-12 Cortelyou Road, Bklyn., N. Y.	27.06
Lorin B. Huse	11 Seventh Ave., New York.....	16.29
Est. of Thomas Lewis	10 Bethune St., New York.....	71.28
George G. Stephenson	226 Court St., Brooklyn, N. Y.....	52.00
James E. Connelly	128-30 Sussex St., Jersey City, N. J....	77.79
John H. W. Doscher	396 Seventh Ave., Brooklyn.....	44.88
William Steiner	3913 Third Ave., Brooklyn.....	23.22
Martha Behnken	219 Van Brunt St., Brooklyn, N. Y....	34.83
Charlotto Donahue	281 Van Brunt St., Brooklyn, N. Y....	33.60
Chas. V. Harrison	34 Pavonia Ave., Jersey City, N. J....	28.50
Mrs. Clara Butler	25 Mercer St., Jersey City, N. J.....	96.15
Harry M. Rush	49 Conover St., Brooklyn, N. Y.....	145.81
Joseph Kane	01 Van Brunt St., Brooklyn, N. Y....	42.36
Charles Mayer Bakery, Inc.	72 West St., New York.....	6.68
Solomon Rosenberg	8 Chrystie St., New York.....	45.80
Adam Blum	25 Newark Ave., Jersey City, N. J....	76.55
Henry Windhorst	31 Newark Ave., Jersey City, N. J....	22.25
Foster Crampton	36-144 Hamilton Ave., Bklyn., N. Y....	22.80
Mary A. Cervante	10 Chrystie St., New York.....	18.28

Metropolitan Casualty Insurance Co. of New York Case.

	Name of Assured and Assignor.	Location of premises where glass was destroyed	Value of glass destroyed and cost of replacement
	Wm. Mills & Son	21 Park Place, New York	9.05
	William D. Edwards	251 Washington St., Jersey City, N. J.	109.03
	Chas. & Ida Fuhrlein	424-8 Grove St., Jersey City, N. J.	17.62
	Collins & Doan	196 Morgan St., Jersey City, N. J.	36.84
	Isaac Torshis	468-70 Fifth Ave., Bklyn., N. Y.	56.00
	Brooklyn Associates	1123 Flatbush Ave., Bklyn., N. Y.	18.19
10	Max Salamon	198 Smith St., Brooklyn, N. Y.	3.63
	Joseph Michaels	503-9 Fifth Ave., Brooklyn, N. Y.	255.00
	Joseph Michaels	182-90 Smith St., Brooklyn, N. Y.	117.15
	Michael & Co.	839-41 Broadway, cor. 2-10 Park St., Brooklyn, N. Y.	52.36
	Jacob Brenner	195 Smith St., Brooklyn, N. Y.	31.71
	Jacob Brenner	193 Smith St., Brooklyn, N. Y.	72.70
	Jos. Fox	185 Smith St., Brooklyn, N. Y.	80.51
	S. D. Benoliel	240-2 Hamilton Ave., Brooklyn, N. Y.	41.39
	Isabella Scott	233 Newark Ave., Jersey City, N. J.	5.94
	Isabella Scott	235 Newark Ave., Jersey City, N. J.	233.38
	Isabella Scott	308 First St., Jersey City, N. J.	26.91
	Nelson G. Carman, as Trustee	209-11-13 Fulton St., Brooklyn, N. Y.	97.92
	N. G. Carman, Trustee	205 Fulton St., Brooklyn, N. Y.	47.64
	N. G. Carman, Trustee	203 Fulton St., Brooklyn, N. Y.	45.00
	S. W. Kagan & Co.	747 Bergen Ave., Jersey City, N. J.	65.11
	Thomas H. Liddle	174 Smith St., Brooklyn, N. J.	38.18
20	Pasquale D'Armionto	347 Court St., Brooklyn, N. Y.	47.76
	Mary Reilly	448 Henderson St., Jersey City, N. J.	63.44
	Ella F. Reilly	251 Newark Ave., Jersey City, N. J.	77.39
	Ella F. Reilly	344 2nd St., Jersey City, N. J.	5.18
	George O. Doerschuck	1504-6 Sheepshead Bay Road, Bklyn.	52.56
	Est. of Lucy M. Petrick	87 Newark Ave., Jersey City, N. J.	86.84
	Samuel Feldman	11 South St., New York	75.48
	William Brejcha	107 Golden St., Jersey City, N. J.	90.73
	Dr. Henry S. Drayton	305 Globe St., NW. cor. Wayne St., Jersey City, N. J.	92.62
	F. R. Coyle and H. A. McLoughlin	213 Newark Ave., Jersey City, N. J.	307.79
	Est. of Elizabeth C. Coyle	405 Grove St., Jersey City, N. J.	36.67
	Est. of Elizabeth C. Coyle	407 Grove St., Jersey City, N. J.	90.75
	Bernard Adler	366 Fifth Ave., Brooklyn, N. Y.	143.13
30	K. Cohen	47 Forsythe St., New York	22.62
	M. Bauman	101 Hudson St., Hoboken, N. J.	47.08
	The Manhattan Rubber Mfg. Co.	18 Vesey St., New York	43.32
	Eleanor C. Spear	491 Communipaw Ave., Jersey City, N. J.	33.05
	Eleanor C. Spear	92 Monticello Ave., Jersey City, N. J.	41.99
	Eleanor C. Spear	134 Monticello Ave., Jersey City, N. J.	37.75
	Third United Cities Realty Corporation	383 Court St., Brooklyn, N. Y.	48.00
	Third United Cities Realty Corporation	133 Smith St., SE. cor. Dean St., Brooklyn, N. Y.	44.10
	United Cities Realty Corp.	362-64 Fulton St., Brooklyn, N. Y.	205.72
	Henry Hart	3 Hamilton Ave., Bklyn., N. Y.	67.92
	Est. of Henry Wellbrook	318 Stuyvesant Ave., Bklyn., N. Y.	30.05
	Ella F. Reilly	159 Newark Ave., Jersey City, N. J.	71.06
	Peter N. Meineke	5801 & 5809 5th Ave., Brooklyn, N. Y.	32.16
	James T. Lunney	217 Summit Ave., Jersey City, N. J.	34.56
	Giuseppe Ricca	323 Atlantic Ave., Brooklyn, N. Y.	21.21
40	Catherine Tresouthick	682 Newark Ave., Jersey City, N. J.	48.00

Complaint—Schedule A.

Name of Assured and Assignor.	Location of premises where glass was destroyed	Value of glass destroyed and cost of replacement
Grace D. Markgraf	3001-05 Ft. Hamilton Ave., Bklyn., N. Y.	48.04
E. Rawitser & Co., Inc.	293-5-7 W. Broadway, SE. cor. 380-2-4 Canal St., New York	8.48
S. Rawitzer & Co., Inc.	283-91 West Broadway, N. Y.	7.80
Mary E. Schult	10 President St., Brooklyn, N. Y.	24.50
Edward Rubin	211 Newark Ave., Jersey City, N. J.	51.46
Thos. F. Carey	396 Ocean Ave., Jersey City, N. J.	103.48
Est. of Johanna Kenny	370 Grand St., Jersey City, N. J.	73.58
Mrs. Ray Goldberg	279 Reid Ave., cor. McDonough St., Brooklyn, N. Y.	7.21
Est. of Johanna Kenny	370 Grand St., Jersey City, N. J.	60.16
Aaron Cohn	102-8 Attorney St., New York	28.62
Est. of James McCarthy	151-3 Montgomery St., Jersey City, N. J.	35.88
Anderson Bros. Co.	394 Grove St., Jersey City, N. J.	40.88
Schneitzer Bros.	184 Newark Ave., Jersey City, N. J.	11.00
Josephine E. Cain	267 Van Brunt St., NE. cor. Visitation Place, Bklyn., N. Y.	126.60
The Robert Graves Co.	397-9 Bridge St., Brooklyn, N. Y.	205.15
Dennis O'Brien	50 Beacon Ave., NW. cor. Baldwin Ave., Jersey City, N. J.	23.66
Fred B. Alexander, Trustee	182-4 Fulton St., SW. cor. 91 Orange St., Brooklyn, N. Y.	13.35
Mrs. Meta Freund	710 Newark Ave., Jersey City, N. J.	39.09
M. J. Hennessy	345 Varick St., Jersey City, N. J.	90.64
Crescent Automobile Co.	2561-7 Hudson Blvd., Jersey City, N. J.	189.53
Frederick L. Willis	12 Dutch St., N. Y. C.	2.52
Margaret Wood	84 Greenwich St., New York	39.12
Clara E. Goode	232 Palisade Ave., Jersey City, N. J.	48.62
Shinshak Bros.	251 Henderson St., Jersey City, N. J.	28.86
Anton Milczarski	271 Grand St., Jersey City, N. J.	30.29
Shapiro & Aronson	20 Warren St., New York City	40.00
The Tuttle Corp.	47 Montgomery St., Jersey City, N. J.	49.90
Frederick W. Brush	45 Columbia Pl., Brooklyn, N. Y.	20.88
Est. of J. D. Canfield	326 3rd St., Jersey City, N. J.	30.24
Paul Zipkin	229 Court St., Brooklyn, N. Y.	64.44
John & Louis Bender	1380 Flatbush Ave., Brooklyn, N. Y.	62.76
The Montauk Bank	209 Fifth Ave., Brooklyn, N. Y.	40.70
Annie D. Milne	225 Fulton St., Brooklyn, N. Y.	23.10
Wm. F. Gearns	76 Watt St., New York	23.52
P. J. Gilheany	496 Ocean Ave., SE. cor. Wegman Pl., Jersey City, N. J.	248.67
Joseph Donohue	397 Ocean Ave., Jersey City, N. J.	84.35
Arthur Abrams	1-2 Hanover Sq., SW. cor. Pearl St., SE. cor. Stone St., N. Y.	13.00
Est. of A. Lutigen	233 Court St., Brooklyn, N. Y.	12.60
Emily F. Barrett	30 Boerum Place, Brooklyn, N. Y.	35.21
Emil Iverson	73 Hamilton Ave., Brooklyn, N. Y.	18.96
Drelich Bros.	330 Montgomery St., Jersey City, N. J.	91.85
Rose Avella	242 Union Ave., Brooklyn, N. Y.	36.29
Caroline H. Field	1168-72 Broadway, New York	1.38
Girward F. Thomson as Trustee, etc.	428-32 Broadway, New York City	444.56
Est. of Harry L. Christian	291 Van Brunt St., Brooklyn, N. Y.	93.50
Est. of Margaret Coughlin	181-5 Grand St., Jersey City, N. J.	62.40
Crescent Auto Co.	2561-7 Hudson Blvd., Jersey City, N. J.	17.50
Martha T. Lehman	531 West Side Ave., Jersey City, N. J.	44.15

Metropolitan Casualty Insurance Co. of New York Case.

	Name of Assured and Assignor.	Location of premises where glass was destroyed	Value of glass destroyed and cost of replacement
	E. T. N. Stein	217 Montgomery St., Jersey City, N. J..	72.38
	A. Wilson	201 Montgomery St., Jersey City, N. J..	55.96
	Philip Kelaher	198 Grand St., NW. cor. Henderson St., Jersey City, N. J.....	78.62
	James F. Gannon	423 Grove St., Jersey City, N. J.....	37.54
	Ada C. Gannon	359 Grove St., Jersey City, N. J.....	49.92
10	James P. McHale	438 Jersey Ave., Jersey City, N. J....	91.80
	John T. Everett	115 Montgomery St., Jersey City, N. J..	21.32
	Susan S. Brown	780 Montgomery St., Jersey City, N. J.	97.55
	W. E. Harmon	316-18-20 Livingston St., Bklyn., N. Y..	59.61
	W. E. Harmon,	201-12 to 16 Livingston St., & 39 Hoyt St., Brooklyn, N. Y.....	98.17
	W. E. Harmon, Civic Trust of Lebanon, Trustee	328-30 Livingston St., Brooklyn, N. Y...	24.96
	William J. Kelly	30 Underhill Ave., Brooklyn, N. Y.....	36.84
	Mary W. B. Booth and Henrietta Wynkoop	55 Greenwich St. and 12-14 Trinity Place, N. Y.	30.72
	John Skelly	318 West St., New York.....	6.77
	J. A. Scholland, et al.	226 Seventh St., NE. cor. Erie St., Jersey City, N. J.....	24.36
	Mrs. Meta Freunch	729 Newark Ave., Jersey City, N. J...	8.71
	John McCarthy	219 Montgomery St., Jersey City, N. J.	80.08
20	Estate of John Bahrenburg	129 Gates Ave., NE. cor. Cambridge Pl., Bklyn., N. Y.	36.96
	Duane M. E. Church Sustentation Fund	76 Bedford St., New York.....	25.20
	Benjamin Schwartz	194 Columbia St., Bklyn., N. Y.....	33.12
	Est. of Richard Mortimer	825 Broadway, New York City.....	32.49
	Estate of G. Heirman	306-8-10 Newark Ave., Jersey City, N. J.	127.38
	Estate of Adolph Kirsten	37 Erie St., Jersey City, N. J.....	24.20
	Charles & Emma Bolte	449 Central Ave., Jersey City, N. J....	82.06
	Louis and Gertrude Michael	511 Rogers Ave., Brooklyn, N. Y.....	39.59
	Teresa Zurla and Lausa Talamini	109 Macdougal St., New York.....	35.19
	A. E. Spratt, et al.	350 Grove St., Jersey City, N. J.....	59.62
	W. H. Hemingway	136 Newark Ave., Jersey City, N. J....	89.44
	Donoto DiGuiglemio	564 Newark Ave., Jersey City, N. J....	1.81
	James M. Houghton	663 Summit Ave., Jersey City, N. J.....	51.55
30	Catherine Tully	685 Summit Ave., NW. cor. Hopkins Ave., Jersey City, N. J.....	56.75
	Augusta L. Gerdts	460 Mercer St., Jersey City, N. J.....	51.47
	Samuel J. Sanger	564 Newark Ave., Jersey City, N. J.....	75.27
	Mary E. Colahan	64 York St., NW. cor. Green St., Jersey City, N. J.....	94.95
	Elizabeth J. Heidt	122 Monticello Ave., Jersey City, N. J..	122.50
	Frank J. Matthews Co.	233-5 Pavonia Ave., SE. cor. East Hamilton Pl., Jersey City, N. J.....	62.40
	Frank and Mary Meyers	191 York St., SW. cor. Henderson St., Jersey City, N. J.....	133.12
	George Siebert	265 Grove St., Jersey City, N. J.....	45.10
	Patrick J. Burke	75 4th Ave., NE. cor. 38th St., Bklyn., N. Y.	24.84
	Chas. V. Hanley	28 Barrow St., Jersey City, N. J.....	58.76
	Mathias Last	52-358 Henderson St., Jersey City, N. J.	57.72
40	Mathias Last	352-8 Henderson St., Jersey City, N. J.	87.03

Complaint—Schedule A.

Name of Assured and Assignor.	Location of premises where glass was destroyed	Value of glass destroyed and cost of replacement
Estate of Mary A. Chisolm	62-70 West 14th St., 190-206 Sixth Ave., New York	93.72
J. S. Woods	545 Newark Ave., Jersey City, N. J.	123.66
Ehrich Bros.	821 Nostrand Ave., Brooklyn, N. Y.	4.29
Agnes R. Rorke	65 Myrtle Ave., Brooklyn, N. Y.	45.60
Catherine A. Murphy	567 Grove St., Jersey City, N. J.	28.21
Patrick Coyle	100 Montgomery St., Jersey City, N. J.	376.90
Edward McQuillan	448 Grand St., Jersey City, N. J.	38.96
Estate of Edward Smith	503-5 Bedford Ave., Brooklyn, N. Y.	70.44
Alfred D. Pell	85 Sixth Ave., New York	54.97
Henry T. Nugent	27-29 Newark Ave., Jersey City, N. J.	200.78
Tod S. Cioffi	80 Hamilton Ave., Brooklyn, N. Y.	20.80
Samuel Schwartz	215 Erie St., NW. cor. 12th St., Jersey City, N. J.	32.94
Estate of Margaret Conlon	119 Newark Ave., Jersey City, N. J.	56.14
Estate of Margaret Conlon	130 Newark Ave., Jersey City, N. J.	191.32
Elias Krams	590 Henderson St., Jersey City, N. J.	24.81
Sophia Demmerling	389 York St., Jersey Ci y, N. J.	80.39
Michael Glanz	565 Grand St., Jersey City, N. J.	21.56
D. Waldstein	247 Monticello Ave., Jersey City, N. J.	65.52
George Shaony	89 Washington St., New York	31.00
Julius Kaplan	109 Division St., New York	40.32
John McCarthy	528 Newark Ave., Jersey City, N. J.	34.45
Helen C. Martin	181 Montgomery St., Jersey City, N. J.	5.14
Brooklyn City Savings & Loan Association	91 Court St., Brooklyn, N. Y.	107.95
First National Bank of The City of New York	90-4 Broadway, NE. cor. Wall St., New York	839.92
James Smith	832-4 Willow Ave., Hoboken, N. J.	62.37
Thomas Gaffney	22 Atlantic Ave., SE. cor. Columbia St., Bklyn., N. Y.	51.96
Elizabeth H. Miriam	247 Columbia St., SE. cor. President St., Bklyn., N. Y.	27.50
Mary Sprague and Lily Myers	283 Grove St., Jersey City, N. J.	128.40
Estate of John McGrath	216 Washington St., NE. cor. Sussex St., Jersey City, N. J.	149.46
Jacob Welitoff	396-402 Communipaw Ave., NE. cor. Woodward St., Jersey City, N. J.	219.85
Estate of John S. Davidson	16-18 Broad St., NW. cor. Stone St., New York	9.61
Box Board & Lining Co.	10 to 14 Grand St., New York	4.30
Dr. Max Huhner	268 Henderson St., Jersey City, N. J.	41.66
A. Carroll	433-5 Summit Ave., Jersey City, N. J.	128.82
Guilfoyle & Loftus	35 Atlantic Ave., NW. cor. Columbia Pl., Brooklyn, N. Y.	86.97
Henry Koehler	311 Grove St., Jersey City, N. J.	108.34
Estate of John H. Hingstage and Elizabeth A. Ficken	332 Greenwich St., New York	45.60
Estate of John Cowhey	442 Van Brunt St., Brooklyn, N. Y.	100.36
Clarence Sackett, Gertrude T. Sackett and Helen L. Sackett	78 Murray St., New York	119.70
Clarence Sackett, Gertrude T. Sackett and Helen L. Sackett	74-6 Murray St., New York	146.04
Mary Agnes Kelly	546 Jersey Ave., Jersey City, N. J.	36.40
Max Engelson	310-12 Woodbridge Ave., Chrome, N. J.	93.50
Antonio DeMartini, et al.	550 Newark Ave., Jersey City, N. J.	39.99

Metropolitan Casualty Insurance Co. of New York Case.

Name of Assured and Assignor.	Location of premises where glass was destroyed	Value of glass destroyed and cost of replacement
Nathan Lese	58 Catherine St., New York	58.12
The Warren Realty Co.	252-4 Warren St., Jersey City, N. J.	15.08
The Warren Realty Co.	124 York St., NE. cor. Warren St., Jersey City, N. J.	127.40
Estate of Samuel Solomon	15 and 16 Chatham Sq., New York	57.42
Walker & Florio	4 Church St., New York	8.88
I. M. Shackter	150 Newark Ave. and 231 Bay St., Jersey City, N. J.	11.06
I. K. Shackter	54 Newark Ave., Jersey City, N. J.	244.84
Brill Bros.	279 Broadway, New York	319.81
Brill Bros.	47 Cortlandt St., New York	405.52
Brill Bros.	44 East 14th St., New York	96.12
Estate of Dominick Salvia	314 39th St., Brooklyn, N. Y.	55.34
Goldberg Bros.	5019 Fifth Ave., Brooklyn, N. Y.	135.84
Benjamin Zeitler	189 Hamilton Ave., Brooklyn, New York	87.12
Sternfeld Bldg. Co.	20-24 West 37th St., New York	182.77
Henrietta Davitt	200 Grand St., Jersey City, N. J.	62.12
G. & W. Halpert	455 Fulton St., Brooklyn, N. Y.	146.64
Estate of John Fitzgerald	589 Hicks St., Brooklyn, N. Y.	21.29
The Minister, Elders and Deacons of the Reformed Protestant Dutch Church of the City of New York	111-113 Fulton St., New York City	52.21
The Peters Cartridge Co.	81-5 West Broadway, NE. cor. 60-62 Warren St., New York	85.00
F. G. Smith	774-8 Fulton St., Brooklyn, N. Y.	143.40
William F. Wyatt	363 Grove St., Jersey City, N. J.	66.17
The Brooklyn Daily Eagle	303-307 Washington St., Bklyn., N. Y.	106.48
George & Henrietta Baschmishe	189-191 Jackson Ave., Jersey City, N. J.	151.77
William Mayer, Jr.	678 Ocean Ave., Jersey City, N. J.	25.21
Josephine Just	377 Ocean Ave., Jersey City, N. J.	103.73
Flinstein & Weinstein	56 Kearney Ave., Jersey City, N. J.	64.74
Commercial Trust Co.	660-670 Newark Ave., Jersey City, N. J.	328.12
Estate of John O'Brien	177 Atlantic Ave., Brooklyn, N. Y.	130.80
Second United Cities Realty Corporation	202 Himrod St., Bklyn., N. Y.	72.36
The Frank Cordts Furniture Company	107 Second St., Hoboken, N. J.	10.68
Mary McGowan	5115-5121 Fifth Ave., Bklyn., N. Y.	619.25
Estate of Alexander Kantrowitch	512 Jersey Ave., Jersey City, N. J.	70.37
Court House Realty Co.	584-6-8 Newark Ave., Jersey City, N. J.	116.60
Godfrey Knoche	119-125 West 25th St., New York City	79.67
James A. Gordon	471 Newark Ave., Jersey City, N. J.	37.53
Annie Lichtenstein	99-101 Fulton St., Bklyn., N. Y.	83.24
Wisoff & Bronerwein	42 East Broadway, New York	16.15
Wm. H. Wheeler	28-30 W. 38th St., New York	196.43
Archibald M. Henry	34-6 Newark Ave., Jersey City, N. J.	333.57
Fanny E. Brooks and Est. of Emma H. Brooks	49 Leonard St., N. Y. C.	9.34
Estate of Charles F. Mattlage	97-101 Warren St., New York City	142.00
Mary Nolan	584 Hicks St., SW. cor. Carroll St., Bklyn., N. Y.	42.72
Jerome Nolan	307 Columbia St., Brooklyn, N. Y.	144.88
Fritz Lindinger	105 Broad St., NE. cor. 22 Water St., New York	7.50

Complaint—Schedule A.

Name of Assured and Assignor.	Location of premises where glass was destroyed	Value of glass destroyed and cost of replacement
S. Levinsky & Sons	804 Canal St., New York	19.99
George J. Wolf	566 Grand St., Jersey City, N. J.	24.71
Clara Henitze	612 Grand St., Jersey City, N. J.	70.84
Robert Hartshorne, et al.	123 Bowery, New York	19.89
Max Feinstein	123 Essex St., Jersey City, N. J.	122.44
William D. Edwards	251 Washington St., Jersey City, N. J.	98.21
Esther Shulman	572½ Grove St., Jersey City, N. J.	18.04
Miller & Co.	212 Fifth Ave., New York	40.00
Martin Latorius	138 Garfield Ave., Jersey City, N. J.	51.24
		5.00
Frank Giordano	358 1st St., Jersey City, N. J.	44.28
Frank Giordano	354 1st St., Jersey City, N. J.	49.53
Frank Giordano	364 1st St., Jersey City, N. J.	30.51
Alice & Richard Entwistle	246 Virginia Ave., Jersey City, N. J.	54.27
Unz & Co.	24 Broadway, New York	42.96
R. Davis	281 Grace St., Jersey City, N. J.	110.85
Nicolo Colonna	87 Williams Ave., Jersey City, N. J.	28.75
Goldenberg Bros.	5019 Fifth Ave., Bklyn., N. Y.	135.84
Est. Margaret Smith	21 State St., Brooklyn, N. Y.	27.39
Eugene Kennedy	330 West St., New York	43.32
E. A. Kirch & Co.	77-9 Market St., Newark, N. J.	112.36
William Malloy	390 Court St., Bklyn., N. Y.	61.31
Harry Clifton	721 Ocean Ave., Jersey City, N. J.	58.34
William S. O'Brien	130 Montgomery St., Jersey City, N. J.	127.53
Geo. A. Mohlman, et al.	23-5 Jay St., New York	60.72
Bessie B. Carlisle	170 Grand St., Jersey City, N. J.	54.04
Louis Fogel, et al.	725 Montgomery St., Jersey City, N. J.	18.59
William Mason	638-40 Newark Ave., Jersey City, N. J.	22.72
Gaetana Lauro	552 Hicks St., Bklyn., N. Y.	6.86
		$43,888.51

AMENDMENT OF COMPLAINT.

(Filed June 10, 1919.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

THE METROPOLITAN CASUALTY INSURANCE COMPANY OF NEW YORK, *Plaintiff,*	*Action at Law.*
vs.	*Amendment of Complaint.*
LEHIGH VALLEY RAILROAD COMPANY and NATIONAL STORAGE COMPANY, *Defendants.*	

The plaintiff amends the complaint in the above-entitled action by adding thereto as follows:

"FOR A THIRD CAUSE OF ACTION:

Plaintiff, re-alleging all of the allegations of this complaint in paragraphs marked 'First' to 'Fourth' inclusive and 'Sixth' to 'Tenth' inclusive, with the same force and effect as if the same were set forth at length hereunder, further alleges:

Thirteenth. By authority of certain acts of Congress approved March 4th, 1909, and June 18th, 1910, the Interstate Commerce Commission in October, 1914, promulgated, and on July 30th, 1916, there remained in force and effect certain regulations for the handling and transportation by freight of carloads of explosives by carriers in interstate commerce, which regulations were then and there binding upon the defendant Lehigh Valley Railroad Company and applicable to the explosives hereinabove mentioned, to which regulations the plaintiff refers as fully as if here set forth.

Amendment of Complaint.

Fourteenth. The defendant Lehigh Valley Railroad Company negligently failed and refused to comply with the requirements of said regulations.

Fifteenth. On July 30th, 1916, a fire occurred on the premises possessed by the defendant Lehigh Valley Railroad Company, on or in the immediate vicinity of said pier of the defendant Lehigh Valley Railroad Company, and by reason of negligence of the said defendant in failing to perform its several duties in the premises, the said defendant suffered a part of said explosives and munitions and the cars and containers thereof to become ignited, whereby the same exploded, which fire and detonation of said explosion the defendant Lehigh Valley Railroad Company suffered to be communicated to other masses and quantities of explosives in said yard, which likewise exploded with great force and violence, causing severe shocks and concussions of the air, which simultaneously broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit 'A.'

Sixteenth. The losses so sustained and paid or replaced by the plaintiff were the direct result of the negligence of the defendant Lehigh Valley Railroad Company as aforesaid."

Plaintiff also amends the said complaint in the eighteenth, nineteenth, twenty-fourth and twenty-fifth paragraphs by changing the amount of the damages therein claimed to $49,918.49.

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff.

ANSWER OF LEHIGH VALLEY RAILROAD CO.

(Filed Sept. 17, 1918.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

THE METROPOLITAN CASUALTY INSURANCE COMPANY OF NEW YORK, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY and NATIONAL STORAGE COMPANY, *Defendants.*	*Answer of Lehigh Valley Railroad Company*

Defendant Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, having its principal office in New Jersey at 243 Washington street, Jersey City, says that:

FIRST DEFENSE TO FIRST COUNT.

1. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 1.

2. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 2.

3. It admits the allegations of paragraph 3.

4. It admits the allegations of paragraph 4.

5. It denies the allegations of paragraph 5 insofar as the same relate to this defendant, except that it says that on July 30, 1916, in the course of its duty as a common carrier of freight, it had on hand at said Black Tom Island for delivery to consignees certain quantities (but not great) of explosives, and its admits that certain of the said explosives exploded on said date.

6. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraphs 6, 7, 8, 9 and 10.

SECOND DEFENSE TO FIRST COUNT.

1. On July 30, 1916, and for many days prior thereto, the defendant was a common carrier engaged in interstate and foreign commerce, and therein transporting by land ammunitions and munitions of war, including explosives.

2. As such common carrier defendant was compelled by law to receive, carry, convey and transport the said ammunitions and munitions of war, including explosives, in the course of interstate and foreign commerce, provided the same were packed, marked, loaded and handled, and when offered for transportation were in proper condition to transport in accordance with and pursuant to the Act of Congress of the United States entitled "An Act to promote the safe transportation in intersate commerce of explosives and other dangerous articles, and to provide penalties for its violation," approved March 4, 1909, and the Act of Congress entitled "An Act to regulate commerce," as amended June 18, 1910, and the regulations prescribed by the Interstate Commerce Commission by authority of said acts.

3. The ammunition and munitions of war and explosives that exploded on July 30, 1916, were packed, marked, loaded and handled, and when offered for transportation were and until and at the time of said explosion continued to be in proper condition to transport in accordance with said acts of Congress of the United States and the regulations prescribed by the Interstate Commerce Commission by virtue thereof, and were carried, conveyed and transported and held by the defendant in the course of interstate and foreign commerce lawfully and strictly in accordance with said acts and regulations.

THIRD DEFENSE TO FIRST COUNT.

1. The presence of such explosives as were on July 30, 1916, on the premises of the defendant did not constitute a nuisance.

2. The explosion mentioned in the complaint was due to a fire caused by incendiarism, of which defendant had no knowledge or suspicion.

3. Said fire occurred notwithstanding due diligence by the defendant to prevent incendiarism.

FIRST DEFENSE TO SECOND COUNT.

1. Defendant repeats and makes part hereof the allegations contained in paragraphs 1 to 4 inclusive and 6 to 10 inclusive of its first defense to first count.

2. It denies the remaining allegations of the second count of the complaint.

SECOND DEFENSE TO SECOND COUNT.

It repeats and makes part hereof the allegations of the second defense to first count.

THIRD DEFENSE TO SECOND COUNT.

It repeats and makes part hereof the allegations of the third defense to first count.

COLLINS & CORBIN,
Attorneys of Defendant Lehigh Valley Railroad Company.

ANSWER OF NATIONAL STORAGE COMPANY.

(Filed Sept. 17, 1918.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

THE METROPOLITAN CASUALTY INSURANCE COMPANY OF NEW YORK, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY and NATIONAL STORAGE COMPANY, *Defendants.*	*Answer of National Storage Company.*

Defendant National Storage Company, a corporation of the State of New Jersey, having its principal office at 243 Washington street, Jersey City, says that:

It denies the truth of the matters contained in the complaint insofar as the same relate to this defendant, except that it admits that:

(a) During the times mentioned in the complaint it was and now is a corporation organized and existing under the laws of the State of New Jersey;

(b) At all said times it was and still is the owner of a certain piece of land situated in Hudson County, New Jersey, known as Black Tom Island.

COLLINS & CORBIN,
Attorneys of Defendant National Storage Company.

REPLY.

(Filed December 4, 1918.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

THE METROPOLITAN CASUALTY INSURANCE COMPANY OF NEW YORK, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY and NATIONAL STORAGE COMPANY, *Defendants.*	*Action at Law.* *Reply to Answer of Lehigh Valley Railroad Company.*

Plaintiff, replying to the second defense of defendant Lehigh Valley Railroad Company to the first count says:

1. It admits paragraph 1.
2. It denies paragraph 2.
3. It denies paragraph 3.

Plaintiff, replying to the third defense to the first count, says:

1. It denies paragraph 1.
2. It denies paragraph 2.
3. It denies paragraph 3.

Plaintiff, replying to the second defense to the second count, says:

1. It repeats and makes part hereof the reply to the second defense to the first count.

Plaintiff, replying to the third defense to the second count, says:

1. It repeats and makes part hereof the reply to the third defense to the first count.

QUEEN & STOUT,
Attorneys of Plaintiff.

POSTEA AND JUDGMENT.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

METROPOLITAN CASUALTY INSURANCE COMPANY OF NEW YORK,

vs.

LEHIGH VALLEY RAILROAD COMPANY and NATIONAL STORAGE COMPANY,

This case was tried before the Honorable William H. Speer, Circuit Court Judge (to whom the same was referred for trial) and a jury on the 20th, 23rd, 24th, 25th, 26th and 27th days of June, 1919, and the same having been submitted to the jury, the jury returned a general verdict in favor of the plaintiff and against the defendant Lehigh Valley Railroad Company in the sum of fifty-one thousand two hundred and one dollars and fifty-one cents ($51,201.51).

Whereupon it is adjudged that the plaintiff recover of the defendants the sum of fifty-one thousand two hundred and one dollars and fifty-one cents and its costs, which are taxed at the sum of fifty-six dollars and sixty-nine cents, making in the whole the sum of fifty-one thousand two hundred and fifty-eight dollars and twenty cents.

$51,201.51	
56.69	
$51,258.20	

Judgment entered July 8, 1919.

WM. S. GUMMERE,
C. J.

NOTICE OF APPEAL.

(Filed July 17, 1919.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

FIDELITY & CASUALTY COMPANY, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*Action at Law.* *Notice of Appeal.*

To Messrs. Edwards & Smith,
Attorneys for Plaintiff.

TAKE NOTICE, that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in above-stated cause.

COLLINS & CORBIN,
Attorneys for Defendant.

GROUNDS OF APPEAL.

(Fidelity and Casualty Company.)

(Filed August 25, 1919.)

These are the same as Grounds of Appeal Nos. 1 to 71 in the case of Royal Indemnity Company.

COMPLAINT.

(Filed Dec. 18, 1917.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

FIDELITY & CASUALTY COMPANY, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*At Law.* *Complaint.*

Plaintiff, a corporation of the State of New York, having its principal office in New York City, New York, and authorized to do business in the State of New Jersey, complains:

1. That it is engaged in the business of insuring persons, firms and corporations against loss occasioned by the breakage of glass doors, windows, &c.

2. Defendant is a corporation engaged in the maintenance and operation of a railroad in and through the State of New Jersey and elsewhere for the transportation of freight and passengers.

3. On the date hereinafter mentioned, and for a long time prior thereto, defendant possessed, used, occupied and controlled a certain dock or pier in the City of Jersey City, locally known as "Black Tom Island," extending into the waters of New York Bay, and also possessed, used, occupied and controlled certain lands covered with the waters of New York Bay adjacent to said "Black Tom Island," as well as certain upland likewise adjacent to said pier, used as a railroad yard in connection with its business of a common carrier of freight.

4. Said "Black Tom Island" Pier and the said lands adjacent thereto, on and prior to July 30th, 1916, were used by defendant for the handling, holding, storage and trans-shipment of carload lots of gunpowder, trinitrotoluol, dynamite, nitroglycerine and other high and dangerous explosives, and shells, shrapnel and other ammunitions and munitions of war.

5. On said date and for several days prior thereto, defendant had placed and was holding on said pier and the lands adjacent thereto, many carloads of said explosives, ammunitions and munitions of war, which explosives were, to the knowledge of said defendant, highly dangerous and capable and liable, in the event of fire, to explode and thereby cause incalculable damage and injury to residents of Jersey City and elsewhere, their buildings, chattels and other property.

6. On said date and for several days prior thereto, defendant used its premises and waters adjacent to said pier for the tying up of boats, lighters and ships upon and to which which was loaded, placed and carried large quantities of like explosives as described in the preceding paragraphs.

7. On said date and for several days prior thereto said defendant permitted the use of its premises and waters adjacent to said pier to be used for the tying up of tugs and other vessels, as well as by boats and lighters carrying large quantities of like explosives as described in the preceding paragraphs hereof.

8. By reason of the accumulation on said pier and the other lands adjacent thereto of said large quantities of said explosives and munitions, and the danger existing therein and therefrom, said accumulation of explosives and munitions constituted a nuisance.

9. The accumulation of the large quantities of dangerous explosives on boats and vessels in its premises and waters, by the act and with the permission and

knowledge of said defendant, constituted a nuisance on the part of the defendant.

10. On the date aforesaid a fire occurred on the premises occupied by defendant on or in the immediate vicinity of said "Black Tom Island" Pier, and by means thereof, said accumulation of explosives and munitions became and were ignited and exploded, causing severe shocks and violent concussions of the air, which broke, damaged and destroyed the glass doors and windows of the persons, firms and corporations shown upon the schedule marked Schedule "A," hereto attached and made a part hereof.

11. The plaintiff, on the date aforesaid, had lawfully insured the persons, firms and corporations shown on Exhibit "A" against loss and damages to their respective doors, under its several contracts of insurance paid to said persons, firms or corporations, their losses, or provided said persons, firms and corporations with new doors and windows to the amounts and values set opposite their respective names on said Schedule "A," and plaintiff is subrogated to the rights of said parties to demand and receive the amounts of said losses so sustained and paid or replaced by it.

12. The losses so sustained and paid or replaced by the plaintiff were the direct result of the creation and maintenance by the defendant of the nuisances described in paragraphs 6 and 7 hereof.

SECOND COUNT.

1. Plaintiff re-alleges paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count.

2. By reason of the accumulation of said large quantities of explosives and munitions, on and near said pier and premises of the defendant, it was the duty of the defendant to exercise a high degree of care to prevent the occurrence of fires, detonations or other means whereby said explosives and munitions might become exploded,

and to exercise a high degree of care to watch and guard said explosives and the buildings, piers, cars and vessels containing the same or lying in proximity thereto, so as to prevent, and to extinguish and control, when discovered, fires, detonations and other means by which such explosives might be exploded; and to employ a sufficient number of watchmen and guards to police said piers and the waters adjacent thereto, to observe and detect the approach or presence of any person not authorized or licensed to visit said pier, and who might by accident or felonious intent set fire to said pier or property thereon; and to provide and install and keep in good order and repair sufficient fire fighting devices and apparatus on and about said pier, by means of which any fire occurring upon or near said pier might be promptly extinguished and controlled; and to store, handle and dispose of said explosives and munitions so as to prevent and control the ignition and communication of fire and detonation from one portion or mass of the same to any other portion or mass of the same, and to install and provide and keep in good repair sufficient means of communication, whereby the occurrence of any fire or other agency capable of igniting such said explosives could be immediately communicated from said pier to the fire and police departments of Jersey City, said municipality at said time maintaining large police and fire departments, whose duty it was, to the knowledge of defendant, to respond immediately to all alarms of fire for the purpose of extinguishing the same; and to, immediately upon the happening and discovery of a fire on or near said pier, notify the fire department of Jersey City of the existence and location of said fire.

3. Said defendant, notwithstanding the duty aforesaid, negligently and carelessly failed and neglected to perform the same.

4. On the date aforesaid, on the premises possessed by the defendant, a fire occurred on or in the immediate

vicinity of the pier of said defendant, and by reason of the negligence of said defendant in failing to perform its several duties in the premises, the defendant suffered a part of said explosives and munitions, and the cars, boats and containers thereof, to become ignited, whereby the same exploded, which fire and detonations of said explosion the defendant suffered to be communicated to other masses and quantities of explosives on said pier and on vessels adjacent thereto, which likewise exploded with great force and violence, causing severe shocks and concussions of the air, which simultaneously broke, damaged and destroyed the glass doors and windows of the persons and corporations shown on Schedule "A."

5. Plaintiff re-alleges paragraphs 10 and 11 of the first count.

6. The losses so sustained and paid or replaced by the plaintiff were the direct result of the negligence of the defendant as aforesaid.

Plaintiff demands as damages the sum of nineteen thousand six hundred and twenty-five dollars and ninety-five cents ($19,625.95), with lawful interest.

EDWARDS & SMITH,
Attorneys of Plaintiff.

Schedule "A."

BROOKLYN

505 Rogers Ave.	Conrad Hubert and Wanda G. Michalis..	$ 41.33
1622 Coney Island Ave.	Antonio Stigtiano and Donata Stigtiano	42.24
409 Church Ave.	Elizabeth Schaff	49.22
441 7th Ave.	ulia Hahne	54.60
63 Hamilton Ave.	Rosena A. Pitcher	44.76
671 Henry St.	Ferdinand Munch, Brewery	33.72
685 Broadway	A. Westheim	85.83
56 Graham Ave.	William F. Braun	119.16
63 Columbus St.	Edward Reilly	66.62
305 Van Brunt St.	Rosina D. Amato	63.36
347 Van Brunt St.	James Butler, Inc.	86.54
495-5 Fulton St.	Oppenheim, Collins & Co.	100.29
109-111 Franklin St.	A. Walcott	5.01
62 Atlantic Ave.	Mary A. Hastie	19.07

	64 Atlantic Ave.	Mary A. Hastie	17.65
	52 Court St.	John Garvey	43.65
	104-6 Atlantic Ave.	Mary A. Hastie	21.88
	518 5th Ave.	Epstein and Stooback	52.20
	335 Van Brunt St.	Bernard A. Cruse	62.96
	720 Manhattan Ave.	Ernest A. & Christina S. M. Hoppe	45.60
	413 Broadway	William A. Dommer	12.88
	69 Broadway	Joseph Stamper	31.32
	109-11 Franklin St.	A. Walcott	2.95
	102 Graham Ave.	H. Gross	25.33
10	17 Hamilton Ave.	Mrs. E. Prange	51.06
	199 Columbia St.	Harry Rockman	38.16
	379 5th Ave.	W. A. Smith	3.74
	253 Columbia St.	Peter Duff	173.40
	4-5 Court St.	Kings County & Jeffersonian Assn.	27.06
	345 6th Ave.	John Bossong	54.60
	106 8th Ave., N. Y. C.	Geo. Kiessling	30.10
	521-3 W. 42nd St., N. Y. C.	Nathan L. Ottinger & Leon Ottinger	17.12
	231-5 W. 40th St., N. Y. C.	Leo Feist	129.35
	299 Columbia St., Bklyn.	Elizabeth Duff	77.00
	141 Liberty St., N. Y. C.	Central R. R. Co. of N. J.	92.20
	327 Washington St., Bklyn.	Ehler and Spaight	9.21
	25-7 W. 42d St., N. Y. C.	Robinsons Inc.	77.44
	303 Columbia St., Bklyn.	Henry Moehling and Anna Moehling, his wife	102.30
	200 5th Ave., N. Y. C.	Fifth Ave. Building Company	296.40
20	831 Broadway, N. Y. C.	William Kent and Peter L. Kent as trustees under the last Will and Testament of Emily L. Kent, deceased, and Maud L. Baring	135.95
	401 Hudson St., N. Y. C.	Wenzel Hrmadka and Josef Birkle	171.36
	180 Broadway, N. C. Y.	C. A. Keene	75.12
	308 Broadway, N. Y. C.	Victor Mock	93.68
	166-72 Broadway, N. Y. C.	Edward W. Martin Co., as owner	98.76
	95 Hudson St., N. Y. C.	Egenhardt Bros.	43.97
	224-6 Greenwich St., N. Y. C.	Mary R. Callender	193.03
	227 Greenwich St., N. Y. C.	Henry Kast	101.28
	65 Nassau St., N. Y. C.	N. Y. Life Ins. & Trust Co. as trustees under the will of Mattheis Wilks, decd.	45.60
	59 W. 14th St., N. Y. C.	Alfred Hoffman	99.48
	497 Canal St., N. Y. C.	Marie Levy & Rosalie Abrahams	48.12
	114 Liberty St., N. Y. C.	Louisine W. Havemeyer	292.80
30	56 Canal St., N. Y. C.	Jarmulousky, S.	59.40
	43-7 W. 16th St., N. Y. C.	Louise O'Reilly	91.32
	109 Murray St., N. Y. C.	Mary M. Kornahrens, Ex. & H. P. & Wm. Kornahrens & Annie Vogel	33.24
	110-12 Mulberry St., N. Y. C.	Thomas Farese	40.80
	31 Nassau St., N. Y. C.	Bank of Commerce	58.77
	139-41 Liberty St., N. Y. C.	Central R. R. Co. of N. J.	292.76
	14-20 Wall St., N. Y. C.	Bankers' Trust Co.	71.81
	220 Broadway, N. Y. C.	Louisine W. Havemeyer, Horace Havemeyer and Adaline H. Frelinghuysen, individually and as executors of the estate of H. O. Havemeyer	42.96
	64 Cortlandt St., N. Y. C.	Warren H. Titus	40.91
	132-4 Franklin St., N. Y. C.	D. S. Walton & Co.	10.28
	80 Vesey St., N. Y. C.	Robert J. Masbach	19.50
	95-7 Hudson St., N. Y. C.	Degenhardt Bros.	5.89
40			

Complaint—Schedule A.

39 Union Sq., N. Y. C.	Adeline B. Downes, Ind. as Trustee under the last will and testament of Harriet F. Baker, as interest may appear	38.30
65 Varick St., N. Y. C.	California Fruit Products Co	17.52
152-4 Franklin St., N. Y. C.	D. S. Walton Co	5.14
79-81 Park Place, N. Y. C.	John Lichtenstein	27.40
119 Chambers St., N. Y. C.	Shipley Jones, Agent	22.60
52 Broadway, N. Y. C.	John Jacob Astor	472.77
11-15 Union Sq., N. Y. C.	Tiffany & Co.	56.07
80-6 W. Broadway, N. Y. C.	S. Charles Welsh	42.10
65-7 Leonard St., N. Y. C.	Colonial Real Estate Association	18.70
1333 Broadway, N. Y. C.	Peter Korn & Son	74.02
49 Church St., N. Y. C.	Morse Bros.	38.66
20 W. 34th St., N. Y. C.	John Forsythe Co., Inc	17.45
678 Broadway, N. Y. C.	Banyer Clarkson	64.08
110 W. Houston St., N. Y. C.	Emily C. Thole	23.05
226-8 6th Ave., N. Y. C.	Kellner Bros.	20.20
230-4 W. 17th St., N. Y. C.	Ferdinand Kurzman	46.50
65 Greenwich St., N. Y. C.	Kwilchenhart & Co.	48.30
197 West St., N. Y. C.	S. Radice	11.25
44 Barclay St., N. Y. C.	P. J. Kennedy & Sons, a Corp	104.98
52-4 New St., N. Y. C.	Ed. V. Brokaw & Bro	47.04
201 Broadway, N. Y. C.	John Forsythe Co., Inc	32.04
68 Reade St., N. Y. C.	B. F. Goodrich Rubber Co	47.64
73 West St., N. Y. C.	Archibald Russell	19.22
24½ Fulton St., N. Y. C.	Thomas H. Tucker	19.45
44 Vesey St., N. Y. C.	Caroline Stiner	34.00
349 Van Brunt St., Bklyn.	Mrs. F. M. Kelley	36.50
61 Atlantic Ave., Bklyn.	Nora Walsh	36.96
57 Atlantic Ave., Bklyn.	Nora Walsh	39.80
547 Greenwich St., N. Y. C.	Lorillard Spencer, Alfred E. Marling and Walcott G. Lane, executors and trustees under the last will and testament of William A. Spencer, deceased, and the Albany Perforated Wrapping Paper Co., Albany, N. Y., as their interest may appear	262.95
49 Wall St., N. Y. C.	Atlantic Mutual Ins. Co	44.79
271 Greenwich St., N. Y. C.	Belle V. Raymond	33.84
214 Washington St., N. Y. C.	Rehm & Co	22.07
187 Greenwich St., N. Y. C.	Est. Brent Good	9.58
132 Bowery, N. Y. C.	Ostermoor & Co.	57.36
86 Cortlandt St., N. Y. C.	Elizabeth Bentinick	90.34
19 W. 34th St., N. Y. C.	Bedell & Co., a Corp	178.78
129 Spring St., N. Y. C.	Adam Priester	20.40
513 Broadway, N. Y. C.	David Henry Haight, Elinor C. H. Morell and Mary J. H. Hunt	67.92
552 Greenwich St., N. Y. C.	Chas. W. Mead, et al	67.92
17-19 Walker St., N. Y. C.	Est. S. F. and T. F. Shortland	7.33
129 Washington Place, N. Y. C.	S. J. and E. E. Ashley	26.82
375 West St., N. Y. C.	Marx Ottinger and Moses Ottinger	83.44
259 West St., N. Y. C.	Elizabeth C. Bentinick	43.32
495 Canal St., N. Y. C.	Julia M. Budlong	33.60
391-3 W. Broadway, N. Y. C.	Trustees of Jacob Lorillard	11.93
287 Washington St., N. Y. C.	Geo. W. Schutter	12.46
311-12-19 6th Ave., N. Y. C.	Est. of M. A. Chisolm	171.60
330-40 W. Broadway, N. Y. C.	Ruth Livingston	37.56
634 Washington St., N. Y. C.	Leon Ottinger	17.40

	518 Water St., N. Y. C.	H. Schwartz, et al	19.50
	2-10 Barclay St., & 12-16 Vesey St., N. Y. C.	John Jacob Astor	155.90
	269 W. 4th St., N. Y. C.	Anna M. McGann	31.30
	177 Christopher St., N. Y. C.	Wm. J. Olvany	29.88
	373 West St., N. Y. C.	Marx Ottinger & Moses Ottinger	34.69
	10 Greenwich St., N. Y. C.	E. L. Clarkson	79.92
	70-2 Reade St., N. Y. C.	John Boyle and Co., Inc	87.04
	568-78 Broadway, N. Y. C.	Louisine W. Havemeyer, Horace Havemeyer and Adaline H. Frelinghuysen, individually and as executors of the estate of H. O. Havemeyer	56.00
10			
	10 Wall St., N. Y. C.	John Jacob Astor	3.92
	371-5 Greenwich St., N. Y. C. NE. cor. 190 Franklin St., N. Y. C.	B. Fischer and Co	47.61
	52-6 Broadway, N.Y.C.	John Jacob Astor	204.37
	319 West St., N. Y. C.	Geo. A. Douglass	19.08
	15-21 Wall St., N. Y. C.	The N. Y. Life Insurance and Trust Co., as trustee under the will of Mattheis Wilks, deceased	143.75
	655 6th Ave., Bklyn.	Jane Walsh	37.77
	591 5th Ave., Bklyn.	John Muir	40.44
	7902 3rd Ave., Bklyn.	Asa D. Sawyer	45.30
	783 3rd Ave., Bklyn.	Joseph Chelmowski and Johanna Chelmowski, his wife	53.52
	703 3rd Ave., Bklyn.	Est. of Anna M. Fallesen	81.12
20	1507 Broadway, Bklyn.	Brooklyn Trust Co., as trustee under the will of Christian H. Moller, deceased.	96.96
	1111 Broadway, N. Y. C.	Ira G. Hill	22.91
	773 3rd Ave., Bklyn.	E. W. Davidson	39.36
	787 3rd Ave., Bklyn.	Jacob Schacher	37.80
	33 Sands St., Bklyn.	David Brietman	39.00
	561 Metropolitan Ave., Bklyn.	Guiseppi Crevolo	27.21
	1510 Avenue H, Bklyn.	Geo. E. Parker	27.00
	301-3 Adams St., Bklyn.	The Kings & Westchester Land Co.	86.61
	199 Conover St., Bklyn.	Katherine Elizabeth McGee	43.08
	377 Van Brunt St., Bklyn.	John Sears	20.76
	167 Sands St., Bklyn.	Naval Young Men's Christian Assn.	5.81
	43 Hamilton Ave., Bklyn.	Alfred M. Nelson & Nora R. Nelson	58.32
	417-19 Kent Ave., Bklyn.	Condon & Nally	56.64
	64 Court St., Bklyn.	Eugene Zeisler	67.32
	666-72 Washington St., N.Y.C.	Marx Ottinger & Moses Ottinger	137.43
30	14 Clinton Ave., N. Y. C.	Sailor's Snug Harbor, S. I. Joseph L. Schimansky	16.44
	5525 5th Ave., Bklyn, N. Y.	James Butler, Inc.	40.56
	889-91 5th Ave., Bklyn, N. Y.	William Sanders	106.84
	822 5th Ave., Bklyn., N. Y.	M. Vescho	33.36
	139 West St., N. Y. C.	D. Tonjes	114.12
	364 10th Ave., N. Y. C.	I. Brandwein	12.36
	381 Bleecker St., N. Y. C.	Janet B. Foster	19.47
	115 7th Ave., N. Y. C.	Pierce Buckley	41.64
	513 Hudson St., N. Y. C.	Sartirana and Co.	51.72
	311 Bleecker St., N. Y. C.	Adolph Schrietmuller	29.64
	519 Broome St., N. Y. C.	Citizens' Investing Co.	27.72
	11 Carmine St., N. Y. C.	Emilie Hoffman	16.08
	34 McDougal St., N. Y. C.	Lillian and Harry Tucker	12.00
	401 Canal St., N. Y. C.	Henry H. Jackson	45.00
	261 Greenwich St., N. Y. C.	Clarence Sackett, Gertrude T. Sacekt and Helen L. Sackett	104.21
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Complaint—Schedule A.

87-9 Barclay St., N.Y.C.	S. Chas. Welsh	62.40
25 Ann St., N. Y. C.	Hitchcock Publishing Co.	98.04
19-25 East 24th St., N.Y.C.	Carlisle Construction Co.	203.00
133 Columbia St., Bklyn., N. Y.	Raphael Scotto	28.88
104 Franklin Ave., Bklyn., N. Y.	Lewis F. Anderson	28.68
76 Greenpoint Ave., Bklyn.	A. Wolcott	32.47
627 Marcy Ave., Bklyn, N. Y.	Paul Finkelstein, as owner	27.01
331 Van Brunt St., Bklyn, N.Y.	James J. Cruse	34.52
976 Manhattan Ave., Bklyn.	B. Raphael	2.40
2115 Nostrand Ave., Bklyn, N.Y.	Guiseppe Monteleone	49.63
133 Conover St., Bklyn, N. Y.	Ruth Livingston	61.80
622 Wythe Ave., Bklyn., N.Y.	Henry D. Lemcke	25.11
655½ Vanderbilt Ave., Bklyn.	John Finkeldey	23.04
651 Flatbush Ave., Bklyn, N.Y.	Ann Harvey	9.49
653 Flatbush Ave., Bklyn., N.Y.	William P. Harvey	13.71
287 Van Brunt Ave., Bklyn.	Est. of James Lamont	45.72
723 Fifth Ave., Bklyn., N. Y.	James J. Kennedy	73.92
120 W. 23d St., N. Y. City	Frances O'Neill, Receiver	114.74
1584 Fulton St., Bklyn, N.Y.	Alexander Schwartz	70.44
50 Broadway, N. Y. City	Caldwell—Wingate	652.44
108-11 Atlantic Ave., Bklyn.	Diker and Chaiton	19 44
231-5 W. 40th St., N. Y. City	Leo Feist	6.24
500 Canal St., N. Y. City	James McClenhan	39.36
479-85 Fulton St., Bklyn, N. Y.	Oppenheim Collins	753.00
793 Fulton St., Bklyn, N. Y.	Rochelle Realty Co.	89.27
1115 De Kalb Ave., Bklyn., N.Y.	Tompkins Realty League	48.24
210 Fulton St., Bklyn., N.Y.	New Jersey Wire Cloth Co.	4.75
1017 Manhattan Ave., Bklyn.	M. Levitt	6.59
33-35 W. 17th St., N. Y. City	Ormand Realty Co.	130.00
50 Broadway, N. Y. City	Caldwell-Wingate Co.	993.88
35 Washington St., N.Y. City	Est. of Geo. Wardenburg	3.10
200 Fifth Ave., N. Y. City	5th Ave. Building Co.	22.30
1582 Ave. J, Bklyn., N. Y.	Louis F. Licht & Frank Dehn	33.82
20 Union St., Bklyn., N. Y.	E. L. Prange	66.72
18 Union St., Bklyn., N. Y.	E. L. Prange	60.72
49 Hamilton Ave., Bklyn., N.Y.	Jennie Moskowitz	39.60
15 Hamilton Ave., Bklyn., N.Y.	Minnie Koerner	55.44
283 Van Brunt St., Bklyn., N. Y.	Domenico Azzariti	30.72
44-8 Whitehall St., N. Y. City	Hartfield Solari	33.75
59 W. 14th St., N. Y. City	A. Hoffman	22.00
Richmond Rd., Richmond, S. I.	F. Trestz	40.78
196 Broad St., Stapleton, S. I.	Catherine Drummond	44.76
319 Hamilton Ave., Bklyn., N.Y.	James Whelan	63.28
108-10 Atlantic Ave., Bk., N.Y.	Diker & Charten	10.27
1727 Broadway, Bk., N. Y.	Ray Reisenburger & L. K. Altkrug	46.40
417 Kent Ave., Bk., N.Y.	Condon & Nally	104.94
308 Broadway, N. Y. City	Victor Mock	40.00
395 Bleecker St., N. Y. City	M. Bayard Brown	34.40
116 E. 19th St., N. Y. City	Leona Holding Corporation	23.45
52-6 Broadway, N. Y. City	John Jacob Astor	10.48
685 Fifth Ave., Bklyn., N. Y.	James J. Cruse	4.98
62 Bedford St., N. Y. City	Est. of John F. Aomussen	21.32
10 Barclay St., N. Y. City	John Jacob Astor	46.44
8 Barclay St., N. Y. City	John Jacob Astor	78.89
505-7 West St., N. Y. City	The American Seaman's Friend Society	13.46
479-81 Fulton St., Bklyn., N. Y.	Oppenheim Collins	11.41
752 Broadway, N. Y. City	Sinclair Realty Co. (Letter of Liab.)	154.00
363 Canal St., N. Y. City	C. Moelich	.40
230-4 W. 17th St., N. Y. City	Schelling and Co.	19.00

Fidelity and Casualty Company Case.

			95 Hudson St., N. Y. City	Degenhardt Bros.	33.20
			331 Nostrand Ave., Bk., N. Y.	Herman Budelman	2.56
			5th Ave. & 23d St., N. Y. City	5th Ave., Building Co.	11.66
			204 Humboldt St., Bklyn., N. Y	Meltor Realty Co.	87.20
			142 Liberty St., N. Y. City	Standard Lunch	6.10
			440 Pearl St., N. Y. City	Eugene Higgins	7.49
			311-13 Bleecker St., N. Y. C.	Adolph Schreitmuller	16.45
			121 Mercer St.	New York Eye & Ear Infirmary	38.70
	119868		F. A. Bongartz	355 Palisade Ave., Jersey City	71.52
10	119996		Ed. Haas	71-3 Newark Ave., Jersey City	282.48
	119997	2749	McCurdy & Ford	207 Washington St., Hoboken	15.31
	119998	12367	S. J. Crawford Co.	801-3 Westside Ave., Jersey City	37.20
	119999	20129	J. Butler Gro. Co.	429 Jackson Ave., Jersey City	128.47
	120000	12376	A. Behrmann	207 Washington St., Jersey City	26.44
	120001	1180	Mrs. W. Ehlbeck	316 Central Ave., Jersey City	41.76
	120002		E. S. Mason	258 Broadway, S. Amboy	95.40
	120003	16115	J. P. Rangan	429 Jersey Ave., Jersey City	44.76
	120004	20056	Mrs. E. Fried	554 Grand St., Jersey City	14.88
	120005	2755	E. Driscoll	161 Pavonia Ave., Jersey City	34.32
	120006	12380	A. Behrens	221 Warren St., Jersey City	11.53
	120007	16119	Morris Simon	202 Warren St., Jersey City	23.28
	120008	5323	J. Butler Gro. Co.	222 Newark Ave., Jersey City	62.64
	120009	26078	C. Doering	336 3rd St., Jersey City	21.48
	120010		Trust Co. of N. J.	12-14 Hudson Place, Jersey City	58.80
	120011	8661	M. E. Degnan	330 Barrow St., Jersey City	44.64
20	120012	20051	M. C. O'Reilly	562 Grand St., Jersey City	54.24
	120013	12371	Irving Hat Co.	157 Newark Ave., Jersey City	31.13
	120014	20048	L. Gloistein	314 7th St., Jersey City	26.40
					1,126.68
	120015	12373	Miss E. Murphy	86 Montgomery St., Jersey City	41.09
	120016	29	Fred B. Kopf	105 Green St., Jersey City	96.60
	120017	16106	Mrs. E. Glaser	58 Paterson Ave., Hoboken	38.28
	120018	21573	Louis Jacobs	12 Newark Ave., Jersey City	150.00
	120019	16118	Thomas Purcell	172 Pavonia Ave., Jersey City	3.99
	120020	23021	Nicholas Bach	690 Newark Ave., Jersey City	25.13
	120021		A. J. Everitt	62 Harrison Ave., Jersey City	55.68
	120022		A. P. McDavit	11 W. Blackwell St., Dover	7.27
	120023		D. Wolf	95 Morris St., Jersey City	56.64
	120024		John Currid	401 Ocean Ave., Jersey City	123.06
	120025		Adam Beyer	122 Maple St., Weehawken	24.96
	120026		Rena Katz	106-8 Oakland Ave., Jersey City	40.38
30	120027		Geo. Duncanson	695 Ocean Ave., Jersey City	117.84
	120028		McQuinn	149 Erie St., Jersey City	43.92
	120029		J. E. Haggerty	203 Halladay St., Jersey City	61.63
	120030		R. Specker	121 Palisade Ave., Union	15.86
	120090	26085	F. A. Whitehall	232 Pine St., Jersey City	121.33
	120091		W. G. Elliott	139 Monticello Ave., Jersey City	
	120093	26080	State Realty Co.	862 Garfield Ave., Newark	24.78
	120168		State Realty Co.	30 News St., Jersey City	5.93
	120576		Strohmeier Bros.	126 Hudson St., Hoboken	15.81

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Complaint—Schedule A.

NEW YORK

64042 S. S. Kresge Co.	526-28 Fulton St., Brooklyn.....	68.91
Butterick Pub. Co.	326-30 Hudson St., New York City.....	82.09
N. Y. Stock Exchange	30 Broad St., New York City.....	24.84
N. Y. Stock Exchange	30 Broad St., New York City.....	6.78
N. Y. Stock Exchange	30 Broad St., New York City.....	8.27
Sixty Wall Street	60 Wall St., New York City.....	40.80
N. Y. Stock Exchange	30 Broad St., New York City.....	6.58
N. Strauss	622 5th Ave., New York City.....	40.71
Pedro Caram & Co.	109 Washington St., New York City....	5.60
Two-Fifty-Six Broadway	256 Broadway, New York City.....	37.52
E. A. Ridley	321 Grand St., New York City.....	75.82
Sixty Wall Street	60 Wall Street, New York City.....	15.45
N. Y. Stock Exchange	30 Broad St., New York City.....	852.39
N. Y. Stock Exchange	30 Broad St., New York City.....	47.36
Pedro Caram & Co.	109 Washington St., New York City....	45.19
N. Y. Stock Exchange	30 Broad St., New York City.....	73.85
Johnston Bldg.	30 Broad St., New York City.....	4.28
		$19,625.95

ANSWER.

(Filed Jan. 17, 1918.)

NEW JERSEY SUPREME COURT.

FIDELITY AND CASUALTY COMPANY,
Plaintiff,

vs.

LEHIGH VALLEY RAILROAD COMPANY,
Defendant.

Answer.

Defendant, a body corporate of the State of Pennsylvania, having its principal office in the State of New Jersey, at the foot of Washington street, Jersey City, says that:

FIRST DEFENSE TO FIRST COUNT.

1. It admits paragraph 1.

2. It admits paragraph 2.

3. It admits that on July 30, 1916, it possessed, used, occupied and controlled (but only to the extent provided by and in accordance with the terms of a certain lease hereinafter mentioned) a certain dock or pier, among others, in the City of Jersey City, extending into the waters of New York Bay, but denies that said dock or pier was locally known as "Black Tom Island." It admits that it possessed, used, occupied and controlled (but only to the extent provided by and in accordance with the terms of a certain lease hereinafter mentioned) certain lands covered by the waters of New York Bay adjacent to said pier, as well as certain upland likewise adjacent to said pier. It admits that the said pier, with others and that the said upland, were used as a railroad yard in connection with defendant's business of a common carrier

of freight. It further says that it possessed, used, occupied and controlled certain docks and piers together with certain waters and upland adjacent thereto in the City of Jersey City, locally known as Black Tom yard, in accordance with the terms and provisions of a certain lease dated June 24, 1913, from the National Storage Company to the Lehigh Valley Railroad Company of New Jersey, and thereafter assigned to this defendant, wherein the said premises are described as follows: "a tract of land containing about one hundred and eleven acres, more or less, together with all the tracks, wharves, piers, docks, bulkheads, stores, warehouses, elevators and power houses, and all other buildings and structures of every kind whatsoever erected thereon; excepting and reserving therefrom about one hundred and forty-nine thousand and five hundred (149500) square feet, together with the following structures erected thereon: Stores 'A,' 'E,' 'F,' 'G,' 'H,' 'I,' 'K,' 'L,' 'M,' 'N,' 'O,' 'P,' 'Q' and 'R,' and Pier 6 and Shed No. 2 on Pier 7 and the office building (40′ x 25′) located between Stores 'F' and 'G,' together with the right of access thereto and wharfage rights in connection therewith."

4. It admits that on and prior to July 30, 1916, it used a certain dock or pier, and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, for the handling and holding (but only to the extent and in the manner hereinafter mentioned) of carload lots of certain munitions and explosives, as hereinafter mentioned; it denies that said dock or pier was locally known as "Black Tom Island" and says that the lands and premises described in paragraph 3 of the first defense to first count, known as the Black Tom yard, on and prior to July 30, 1916, were used by it as a freight terminal for making delivery to the consignees of carload lots of shells, shrapnel and other ammunitions and munitions of war, including trinitrotoluol (but not including gunpowder, dynamite, nitrocellulose or other high and dan-

gerous explosives) and for the transferring of the same by consignees from cars to barges or lighters for transshipment to steamers for export; and it says that there was no handling or holding by this defendant of the cars containing the same, except as lawfully incidental to the transportation and delivery thereof in the course of interstate commerce and commerce with foreign countries; and its says that all of the materials so held or handled were in the course of interstate or foreign commerce at the times set forth in the complaint.

5. It admits that on July 30, 1916, and for several days prior thereto it had placed and on said date was holding (but only to the extent and in the manner hereinafter mentioned) on a certain dock or pier and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, certain carloads (not many) of shells, shrapnel, and other ammunitions and munitions of war including trinitrotoluol (but not including gunpowder, dynamite, nitrocellulose or other high and dangerous explosives); it denies that said dock or pier was locally known as "Black Tom Island" and says that the lands and premises described in paragraph 3 of the first defense to first count were known as the Black Tom yard; it denies that the said explosives, ammunitions and munitions of war referred to in paragraph 3 of the complaint, or any of them, were to the knowledge of this defendant highly dangerous and capable and liable in the event of fire to explode and thereby to cause incalculable or any injury to residents of Jersey City and their buildings, chattels and other property; it says that on July 30, 1916, on the lands and premises herein described as Black Tom yard, there were carloads of the explosives, ammunition and munitions of war herein described, for the purpose of making delivery of the same to the consignees, and that for several days prior thereto there had been other carloads of explosives of the same nature on the said lands and premises for

the like purpose; but it says that there was no holding on said lands and premises of any carloads of the said explosives, ammunitions and munitions of war, either on July 30, 1916, or at any time prior thereto, except as lawfully incidental to the transportation and delivery of the contents of said cars, in the course of interstate commerce and commerce with foreign countries; it says that all of the carloads of said explosives so held were in the course of interstate or foreign commerce at the times set forth in the complaint.

6. It denies paragraph 6.

7. It admits that on July 30, 1916, and for several days prior thereto, it permitted the use of certain of its premises and waters, as described in paragraph 3 of the first defense to first count, known as the Black Tom yard (but only to the extent and in the manner hereinafter mentioned), for the tying up of certain tugs and other vessels, but it says that it limited its said premises (for the tying up of barges and lighters carrying or to carry explosives) to one pier, namely, the pier known as "North Pier," and only when the said barges or lighters were being loaded; and it says it did not permit the tying up of tugs and/or other vessels to that pier or near or adjacent thereto; and it says that on July 30, 1916, at the time of the explosion mentioned in the complaint there were two barges at said North Pier, with its permission, partly loaded, one with shrapnel and the other with trinitrotoluol.

8. It denies paragraph 8.

9. It denies paragraph 9.

10. It admits that on July 30, 1916, it possessed a certain dock or pier and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, but denies that said dock or pier was locally known as "Black Tom Island," and says that the said lands and premises so described were known as the Black Tom

yard; it admits that on July 30, 1916, a fire occurred on the lands and premises known as the Black Tom yard, but it has no knowledge nor information sufficient to form a belief as to whether, by means of said fire, the said explosives or munitions or any of them became and were ignited and exploded; it admits that certain explosives and munitions exploded on said date, thereby causing severe shocks and violent concussions of the air, but it has no knowledge nor information sufficient to form a belief as to whether the said severe shocks and concussions or any of them broke or damaged or destroyed the glass doors and windows of the persons and corporations, or any or either of them, shown upon Schedule "A" attached to the complaint.

11. It has no knowledge nor information sufficient to form a belief as to the allegation of paragraph 11.

12. It has no knowledge nor information sufficient to form a belief as to the allegation of paragraph 12, except that it denies that it created and maintained any nuisance, as alleged in paragraphs 6 and 7 of the complaint, or otherwise.

In lieu of a motion to strike out said first count, the defendant objects thereto on the ground that it discloses no cause of action against the defendant.

SECOND DEFENSE TO FIRST COUNT.

1. On July 30, 1916, and for many days prior thereto, the defendant was a common carrier engaged in interstate and foreign commerce, and therein transporting by land ammunitions and munitions of war, including explosives.

2. As such common carrier defendant was compelled by law to receive, carry, convey and transport the said ammunition and munitions of war, including explosives, in the course of interstate and foreign commerce, provided the same were packed, marked, loaded and handled,

and when offered for transportation were in proper condition to transport in accordance with and pursuant to the Act of Congress of the United States entitled "An Act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation," approved March 4, 1909, and the Act of said Congress entitled "An Act to regulate commerce," as amended June 18, 1910, and the regulations prescribed by the Interstate Commerce Commission by authority of said acts.

3. The ammunition and munitions of war and explosives that exploded on July 30, 1916, were packed, marked, loaded and handled, and when offered for transportation were and until and at the time of said explosion continued to be in proper condition to transport in accordance with said acts of the Congress of the United States and the regulations prescribed by the Interstate Commerce Commission by virtue thereof, and were carried, conveyed and transported and held by the defendant in the course of interstate and foreign commerce lawfully and strictly in accordance with said acts and regulations.

THIRD DEFENSE TO FIRST COUNT.

1. The presence of such explosives as were on July 30, 1916, on the premises of the defendant did not constitute a nuisance.

2. The explosion mentioned in the complaint was due to a fire caused by incendiarism, of which defendant had no knowledge or suspicion.

3. Said fire occurred notwithstanding due diligence by the defendant to prevent incendiarism.

FIRST DEFENSE TO SECOND COUNT.

1. Defendant repeats and makes part hereof the allegations contained in paragraphs 1 to 7 inclusive of its first defense to the first count.

2. It denies paragraph 2, except that it admits that the municipality of Jersey City at the time of the explosion referred to in said count maintained police and fire departments, but as to the size of said departments, or as to what their duty was at the time of said explosion, this defendant has no knowledge nor information sufficient to form a belief.

3. It denies that it was chargeable with any such alleged duty as stated in paragraph 2 of the second count of the complaint and denies that it negligently and carelessly failed or neglected to perform said alleged duty.

4. It admits that on July 30, 1916, it possessed a certain dock or pier and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, but denies that said dock or pier was locally known as "Black Tom Island," and says that the said lands and premises so described were known as the Black Tom yard; its admits that on July 30, 1916, a fire occurred on the lands and premises known as the Black Tom yard; it denies that there was any negligence on its part in failing to perform its several alleged duties and denies that by reason of said alleged negligence it suffered a part of said explosives and munitions, and the cars, boats and containers thereof, to become ignited; it has no knowledge nor information sufficient to form a belief as to whether, by means of said fire, the said explosives or munitions, or any of them, or the said cars, boats, and containers thereof, or any of them, became ignited, nor whether thereby the same, or any of them, exploded; it has no knowledge nor information sufficient to form a belief as to whether the said fire and detonation of said explosives was communicated to other masses and quantities of explosives on the piers in said Black Tom yard or on any vessels adjacent thereto, nor whether the said explosives, or any of them, likewise exploded with great force and violence, nor whether the same caused severe shocks and concussions of the air, nor whether said shocks and con-

cussions, or any of them, simultaneously, or otherwise, broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Schedule "A" attached to complaint.

5. It repeats and makes part hereof the allegations of paragraphs 10 and 11 of its first defense to the first count.

6. As to the allegations of paragraph 6, it has no knowledge nor information thereof sufficient to form a belief, except that it alleges that it was in no manner negligent in the premises.

In lieu of a motion to strike out said second count, defendant objects thereto on the ground that it discloses no cause of action against the defendant.

SECOND DEFENSE TO SECOND COUNT.

Defendant repeats and makes a part hereof the allegations of its second defense to the first count.

THIRD DEFENSE TO SECOND COUNT.

Defendant repeats and makes a part hereof the allegations of its third defense to the first count.

COLLINS & CORBIN,
Attorneys of Defendant.

REPLY.

(Filed February 10, 1918.)

NEW JERSEY SUPREME COURT.

FIDELITY & CASUALTY COMPANY, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*At Law.* *Reply.*

Plaintiff, replying to the answer of the defendant herein, says:

1. Replying to first defense to first count, plaintiff denies all affirmative matter therein set up.

Replying to the second defense to first count, plaintiff says:

1. It admits paragraph one (1).

2. It denies paragraphs two (2) and three (3).

Replying to the third defense to first count, plaintiff says:

1. It denies paragraphs one (1), two (2) and three (3).

Replying to first defense to second count, plaintiff denies all affirmative matter therein set up.

Replying to second defense to second count, plaintiff denies the same.

Replying to third defense to second count, plaintiff denies the same.

EDWARDS & SMITH,
Attorneys of Plaintiff.

POSTEA AND JUDGMENT.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

FIDELITY & CASUALTY COMPANY,

vs.

LEHIGH VALLEY RAILROAD COMPANY.

This case was tried before the Honorable William H. Speer, Circuit Court Judge (to whom the same was referred for trial) and a jury on the 20th, 23rd, 24th, 25th, 26th and 27th days of June, 1919, and the same having been submitted to the jury, the jury returned a general verdict in favor of the plaintiff and against the defendant Lehigh Valley Railroad Company in the sum of nineteen thousand six hundred and twenty-five dollars and ninety-five cents ($19,625.95).

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of nineteen thousand six hundred twenty-five dollars and ninety-five cents, and its costs which are taxed at the sum of

Damages $19,625.95

making in the whole the sum of

Judgment entered July 3, 1919.

WM. S. GUMMERE,
C. J.

NOTICE OF APPEAL.

(Filed July 17, 1919.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

COMMERCIAL CASUALTY INSURANCE COMPANY, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*Action at Law.* *Notice of Appeal.*

To W. E. Holmwood, Esq.,
Attorney for Plaintiff.

TAKE NOTICE, that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in above stated cause.

COLLINS & CORBIN,
Attorneys for Defendant.

GROUNDS OF APPEAL.

(Commercial Casualty Insurance Company of Newark, N. J.)

(Filed August 25, 1919.)

These are the same as Grounds of Appeal Nos. one to seventy-one in the case of Royal Indemnity Company.

COMPLAINT.

(Filed July 30, 1918.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

COMMERCIAL CASUALTY INSURANCE CO. OF NEWARK, NEW JERSEY, a corp., *Plaintiff,*

vs.

LEHIGH VALLEY RAILROAD CO., a corp., *Defendant.*

Action at Law.

Complaint.

FIRST COUNT.

1. Plaintiff is a corporation of the State of New Jersey, having its principal office at 31 Clinton street in the City of Newark, and is engaged in the business of insuring persons and corporations against loss caused by the breakage of glass doors and windows.

2. The defendant is a corporation engaged in the maintenance and operation of a railroad in and through the State of New Jersey for the transportation of freight and passengers.

3. On July 30, 1916, the defendant possessed, used, occupied and controlled a certain dock or pier in the City of Jersey City, known as the "Black Tom" Pier, extending into the waters of New York Bay, and also possessed, used, occupied and controlled certain lands covered by the waters of the New York Bay adjacent to the "Black Tom" Pier, as well as certain upland likewise adjacent to said pier used as a railroad yard in connection with its business of a common carrier of freight.

4. Said "Black Tom" Pier and said lands adjacent thereto on and prior to July 30, 1916, were used by the defendant for the handling, holding, and trans-shipment of carload lots of gunpower, trinitrotoluol, dynamite, nitroglycerine, and other high and dangerous explosives, and shells, shrapnel and other ammunitions and munitions of war..

5. On July 30, 1916, and for several days prior thereto the defendant had placed and on said day was holding on said pier and lands adjacent thereto many carloads of said explosives, ammunitions and munitions of war, which explosives were to the knowledge of said defendant highly dangerous and capable and liable in the case of fire to explode and thereby cause incalculable damage and injury to residents of Jersey City and their buildings, chattels and other property; and to residents of adjacent towns and other municipalities and their buildings, chattels and property.

6. On July 30, 1916, and for several days prior thereto the defendant used its premises and waters adjacent to said pier for the tying up of boats, lighters, and ships upon and to which was loaded, placed and carried large quantities of high explosives as described in the preceding paragraphs.

7. On July 30, 1916, and for several days prior thereto said defendant permitted its said premises and waters adjacent to said pier to be used for tying up tugs and other vessels as well as by boats and lighters carrying large quantities of like explosives as described in the preceding paragraphs.

8. By reason of the accumulation on said pier and on the lands adjacent of said large quantities of explosives and munitions and the danger existing therein and therefrom, such accumulation of explosives and munitions constituted a nuisance.

9. The accumulation of the large quantities of like dangerous explosives on boats and vessels in the premises and waters adjacent to said pier of the defendant by the act and with the permission and knowledge of said defendant, constituted a nuisance.

10. On July 30, 1916, a fire occurred on the premises possessed by the defendant on or in the immediate vicinity of said "Black Tom" Pier, and by means thereof said accumulations of explosives and munitions became and were ignited and exploded, causing severe shocks and violent concussions of the air which broke, damaged and destroyed the glass doors and windows of the persons, firms and corporations shown upon the schedule marked "A" hereto attached, and hereby made a part hereof.

11. The plaintiff on said July 30, 1916, had lawfully insured the persons, firms and corporations shown on Exhibit "A" against loss from damage to their respective glass, glass doors and windows, and by reason of its obligations under its several contracts of insurance paid to said persons, or firms or corporations their losses, or provided said persons, firms or corporations with new doors and windows to the amounts and values set opposite their respective names on said Schedule "A" and the plaintiff is subrogated to the rights of said parties to demand and receive the amounts of said losses so sustained and paid or replaced by it.

12. The losses so sustained and paid or replaced by the plaintiff were the direct result of the creation and maintenance by the defendant of the nuisance described in paragraphs six and seven of this count.

SECOND COUNT.

1. The plaintiff re-alleges paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count.

2. By reason of the accumulations of said large quantities of explosives and munitions on and near said pier and premises of the defendant, it was the duty of the defendant to exercise a high degree of care to prevent the occurrence of fires, detonation or other means whereby said explosives and munitions might become exploded.

3. Said defendant negligently failed and omitted to perform said duty.

4. By reason of the accumulations of the explosives and munitions, as aforesaid, it was the duty of the defendant to exercise a high degree of care to watch and guard said explosives and the yard, piers, cars and vessels containing the same or lying in proximity thereto, so as to prevent and to extinguish and control when discovered, fires, detonations and other means by which such explosives might be exploded.

5. The defendant negligently omitted and failed to perform said duty.

6. It was also the duty of the defendant in the premises to exercise due care to employ a sufficient number of watchmen and guards to police its said pier, yard and approaches and the waters adjacent thereto to observe and detect the approach or presence of any persons not authorized or licensed to visit said pier, and who might by accident or felonious intent set fire to said pier or property thereon.

7. The defendant negligently failed and omitted to perform said duty.

8. It was also the duty of the defendant in the premises to exercise due care to furnish, provide and install, and keep in good order and repair sufficient water supply, fire fighting devices and apparatus on and about its said pier and adjacent lands, by means which any fire occurring upon or near said pier might be promptly extinguished and controlled, and to furnish, provide and maintain an adequate supply of water for that purpose.

9. The defendant negligently omitted and failed to perform said duty.

10. It was also the duty of the defendant in the premises to exercise a high degree of care to store, handle and dispose of said explosives and munitions so as to prevent and control the ignition and communication of fire and detonations from one portion or mass of the same to any other part or mass of the same.

11. The defendant negligently failed to perform said duty.

12. The municipality of Jersey City at the time of said explosion maintained large police and fire departments, whose duty and custom it was, to the knowledge of the defendant, to respond immediately to all alarms of fire for the purpose of extinguishing the same.

13. It was also the duty of the said defendant to exercise due care to install and provide and keep in good order and repair sufficient means of communication whereby the occurrence of any fire or other agency capable of igniting said explosives, could be immediately communicated from said pier to the fire and police departments of Jersey City.

14. Said defendant negligently failed and neglected to perform said duty.

15. It was also the duty of the defendant in the premises, immediately upon the happening and discovery of fire on or near said pier, to notify the Fire Department of Jersey City of the existence and location of said fire.

16. Said duty, the defendant negligently failed and omitted to perform.

17. On July 30th, 1916, a fire occurred on the premises possessed by the defendant, on or in the immediate vicinity of said pier of the defendant, and by reason of negligence of the defendant in failing to perform its several duties in the premises the defendant suffered a

part of said explosives and munitions and the cars and containers thereof to become ignited, whereby the same exploded, which fire and detonation of said explosion the defendant suffered to be communicated to other masses and quantities of explosives on said pier and in said yard which likewise exploded with great force and violence, causing severe shocks and concussions of the air, which simultaneously broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit "A".

18. The plaintiff re-alleges paragraphs 10 and 11 of the first count.

19. The losses so sustained and paid or replaced by the plaintiff were the direct result of the negligence of the defendant aforesaid.

THIRD COUNT.

1. The plaintiff re-alleges paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count.

2. By authority of certain acts of Congress approved March 4th, 1909, and June 18th, 1910, the Interstate Commerce Commission in October, 1914, promulgated, and on July 30th, 1916, there remained in force and effect, certain regulations for the handling and transportation by freight of carloads of explosives by carriers in interstate commerce, which regulations were then and there binding upon the defendant and applicable to the explosives hereinabove mentioned, to which regulations the plaintiff refers as fully as if here set forth.

3. The defendant negligently failed and refused to comply with the requirements of said regulations.

4. On July 30th, 1916, a fire occurred on the premises possessed by the defendant, on or in the immediate vicinity of said pier of the defendant, and by reason of negligence of the defendant in failing to perform its several duties in the premises the defendant suffered

a part of said explosives and munitions and the cars and containers thereof to become ignited, whereby the same exploded, which fire and detonation of said explosion the defendant suffered to be communicated to other masses and quantities of explosives in said yard, which likewise exploded with great force and violence, causing severe shocks and concussions of the air, which simultaneously broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit "A".

5. The plaintiff re-alleges paragraphs 10 and 11 of the first count.

6. The losses so sustained and paid or replaced by the plaintiff were the direct result of the negligence of the defendant as aforesaid.

The plaintiff demands, on the first count, the sum of $22,557.54.

The plaintiff demands, on the second count, the sum of $22,557.54.

The plaintiff demands, on the third count, the sum of $22,557.54.

WM. E. HOLMWOOD,
Attorney for Plaintiff.

Schedule "A".

Commercial Casualty Insurance Company of Newark, New Jersey.

Statement of Losses.

Actual cost of replacement of glass broken by the explosion in the Harbor of New York July 30th, 1916, and which losses were insured against by this company.

Assured.	Location.	Cost of Replacement
	JERSEY CITY	
Morris & Emma Gross	246 Erie St.	$ 44.88
Hugh R. MacKenzie	82 Montgomery St.	106.77
Louis Vogel	600-2 Newark Ave.	196.76
John J. Finegan	810 Newark Ave.	89.58
David Klein	831-3 Newark Ave.	33.72
Christian Feigenspan, a corp.	382 Henderson St.	51.09
John F. Schulte	635 Newark Ave.	21.87
Mary Glennon	733 Newark Ave.	26.38
John Imhoff	425 Central Ave.	32.29
Mueller Brothers	477 Central Ave.	58.66
Patrick & Rosolina Desiena	503 Central Ave.	21.07
John F. Schult	631 Newark Ave.	18.04
Mrs. Annie T. Davis	214 Warren St.	52.29
Oraton Investment Co.	120 Rutger Ave.	45.04
Harris Lesser	724-6½ Newark Ave.	49.16
Nathan Scher	772 Newark Ave.	71.02
Alexander MacKenzie	103 Montgomery St.	50.06
George Fleckenstein	424-6 Central Ave.	40.09
William and Anna Lenk	507 Palisade Ave.	37.57
David Bornstein	365-9 Central Ave.	59.40
Ganz & Goodman	337 Central Ave.	152.81
Simon Bauman	392-4 Central Ave.	252.48
N. J. Distributing Co.	54 Montgomery St.	167.51
Thomas F. O'Brien	96 Hudson St.	55.69
Thomas J. Miskel	196 Grand St.	102.91
M. Albansius	215-17 Monticello Ave.	289.13
Sol Leibowitz	89-92 Claremont Ave. & 635-41 Ocean Ave.	461.96
H. J. Levy	683-5 Ocean Ave.	461.77
John Hillman	605 Ocean Ave.	14.18
Theodore Budelmann	677 Ocean Ave.	114.79
Anton Kruszona	88 Garden St.	59.76
Benjamin Landau	662 Ocean Ave.	63.99
William J. Gately	573 Ocean Ave.	56.81
Liberty Estates	493-5 Jackson Ave. & 50-4 Atlantic St.	321.49
John and Kate Bobowitz	346 Henderson St.	112.15
Emanuel Gross	353 Henderson St.	46.33
Philip Kelaher	268 Varick St., cor. Bright St.	308.79
Charles Katz	562 Grove St.	30.89
Winnifred Kimball	381-3 Summit Ave.	148.65

Complaint—Schedule A.

Assured.	Location.	Cost of Replacement
Phoenix Investment & Trading Co.	507-9 Summit Ave.	53.76
Joseph A. Sprouls	301 Monmouth St.	75.09
George C. Simon	176 Jackson Ave.	51.83
Gunsburg Brothers	441-3 Jackson Ave.	192.10
Oraton Investment Co.	1521-3 Boulevard	32.52
Morris and Emma Gross	218 Second St.	191.27
William Symes	584 Ocean Ave.	82.09
Estate of Mary Wilson	238 New York Ave.	52.28
William Symes	584 Ocean Ave.	80.04
Mary Alexander	48 Laidlaw St.	34.45
Thomas Morrison, Sr.	973 West Side Ave.	51.83
Michael J. Griffin	73 Palisade Ave.	30.04
Celie Cohen	301 Third St.	61.18
Rosina Cafiro	360 Seventh St.	59.60
Estate of Morris Steierman	173 Seventh St.	35.64
Liberty Estates	72 Orient Ave.	165.25
John Karlan	697 Ocean Ave.	87.32
Thomas Lynch	54-2 Grand St.	136.92
Mekoly Rydzewski	225 Grand St.	16.93
Harry Levy	138-40 Jackson Ave.	19.27
Peter Hauck & Co.	197 Washington Ave.	41.28
Jennie L. Henderson	183 Monticello Ave.	159.49
A. Levine	280 First St.	212.10
Adolph Flegenheimer & Henry Herz	89 Newark Ave.	86.51
Elizabeth Templeton	344 Jackson Ave.	361.35
Thomas H. Love	138 Newark Ave.	73.21
Claus Ehrich	647 Communipaw Ave.	85.98
Lena D. Sauer	46 Laidlaw Ave.	51.83
Max Potoshkin & Max Goldberg	106-12 Baldwin Ave.	107.20
Isaac Robbins	279-85 Jackson Ave.	852.92
James A. Joans	745 Grand St.	41.58
Louis Eckoff	174 Jackson Ave.	91.25
John Nimmo	427 Jackson Ave.	121.45
Andre Nielson	436 Jackson Ave.	98.30
Harry Levy	136 Jackson Ave.	32.05
Fred H. Mertens (Lessee)	248 Jackson Ave.	69.01
Christian Feigenspan, a corp.	85 Jackson Ave.	52.77
Sam Falcone	114 Brunswick St.	44.37
Samuel Cohen	127 Brunswick St.	22.47
Ester Gordon & Sophia Rosenburg	262 Jackson Ave.	29.21
Frederick Kraemer	269-9A Jackson Ave.	162.02
Mary Reilly	449 Grove St.	124.11
John Hogan	551 Mercer St.	57.44
Edward W. and Mary A. Blacker	416 Jackson Ave.	28.71
F. William Wahlers	264 Jackson Ave.	74.35
Harris Lesser	83 Coles St.	31.53
J. Neimann	228-8½ Newark Ave.	160.75
Louis Seiler	636 Communipaw Ave.	33.72
Edward Leber Son & Co.	39 Coles St.	28.83
Nathan Garmize	226 Railroad Ave.	25.10
Rosie Hershenstein	314 First St.	24.11
Guiseppi Venutele	222 Wayne St.	82.37

Commercial Casualty Insurance Company Case.

	Assured.	Location.	Cost of Replacement
	John Moracco	232 Wayne St.	63.06
	Simon Susser	389 Summit Ave.	13.17
	Edward Phillip	465 Jackson Ave.	90.39
	Mary V. McGonnell	177 Montgomery St.	24.84
	Mathilda Luhrman	33 Hudson St. & 34-6 Essex St.	321.81
	August Wengert	300 Jackson Ave.	44.66
	Jacob I. Hass & Lewis Hass	195 Jackson Ave.	113.78
10	Frederick Frederickson	216 Newark Ave.	49.29
	Max Jordan	291-3 Jackson Ave.	308.87
	Chas. E. Browne and Sarah Browne	160-6 Monticello Ave.	165.82
	Lewis Jordan	432 Jackson Ave.	2.60
	Louis Gottlieb	602 Grand St.	31.63
	Oraton Investment Co.	284 Jackson Ave.	112.74
	Liberty Estates	326-8 Jackson Ave.	183.75
	Charles W. Moessner	441 Ocean Ave.	279.54
	Carl A. Mornmeier	801 Ocean Ave.	33.59
	Mrs. S. J. Halprin	437 Jackson Ave.	197.68
	Max Loeb	142 Morris St.	97.55
	Rosie Hershenstein	41 Newark Ave.	33.72
	Diedrick Wohltman	207-9 Jackson Ave.	165.25
	Adolph Strubing	301 Jackson Ave.	124.07
	John Segel	591 Communipaw Ave.	42.21
20	Peter Schult	307 Jackson Ave.	71.56
	John V. Bridge	467A Jackson Ave.	83.78
	Herz Brothers	176 Newark Ave.	165.00
	M. Lurie	79 Colgate St.	27.03
	Owen Foley	320 Van Horne St.	48.71
	Julius G. Gluck	313 Jackson Ave.	93.85
	A. Zglejc	170 Steuben St.	24.95
	Jenny Lackman	150 Monticello Ave.	113.60
	Oraton Investment Co.	302 St. Pauls Ave.	2.80
	J. J. Kinkhead	712 Bergen Ave. & 281-3 Fairmount Ave.	161.24
	Minnie Steierman	351 Jackson Ave.	94.50
	Philip Tumulty, Sr.	59 Brunswick St. and 211 Mercer St.	104.25
	Philip Tumulty, Sr.	234 Wayne St.	45.94
	J. F. Cofferata & C. M. Fermier	16 Newark Ave.	143.24
	Philip Tumulty	295 Monmouth St.	50.58
	Walter S. & Addie W. Allardice	757 West Side Ave.	16.85
30	Gerhard Piano Co.	190 Newark Ave.	124.84
	Nathan Frank	43 Coles St.	24.81
	Andrew Sawicki	174 Steuben St.	28.00
	Louis Sachs	74 Jefferson Ave.	28.56
	Edward C. Gately	61 Ocean Ave.	155.17
	H. H. Wouters, Inc.	555 Ocean Ave.	14.05
	M. Shakowsky, Annie Zeilengold and Minnie Kreps	245 Central Ave.	61.33
	Louis Dorison	434 West Side Ave.	28.50
	J. N. Fedden	328 Bergen Ave.	44.46
	Catherine S. Hogan	380 Henderson St.	46.07
	Thomas D. Keegan	SW. cor. Randolph Ave. and Union St.	149.54
	A. Marchitto	212 Monticello Ave.	31.40
	W. & E. Amusement Co.	618 Newark Ave.	107.46
	Julia A. Puster	299 Grand St.	127.20
	John Coppenger	237 Henderson St.	54.57
	Bernard & Mary E. Donnelly	569 Grand St.	6.52
40	Lewis Hass, Executor, etc.	245 Grand St.	18.54

Complaint—Schedule A.

Assured.	Location.	Cost of Replacement
Louis Finkelstein	736 Newark Ave.	33.59
Fred A. Keller	338 Communipaw Ave.	150.01
Carl Luck	398 Pacific Ave.	28.70
John Dilworth	388 Communipaw Ave.	359.59
Mrs. Josephine Mootz	263 York St.	20.98
William Kraut	200 Warren St.	70.01
Ambrogio Artaserse	526 Ocean Ave.	.91
P. G. Schoenwetter	310 Jackson Ave.	4.71
Louis Amodio	1591 Hudson Boulevard	60.23
Benjamin & Henrietta Edelman	157-63 Jackson Ave.	54.69
Gottfried Krueger Brewing Co.	290 Duncan Ave.	61.78
Samuel Gordan	377 Jackson Ave.	75.12
Benjamin Edelman	209 Wegman Place	29.96
Wm. J. Nimmo and Mary, his wife	589 Grove St.	19.18
Miss Lizzie Brady	293 Halliday St.	34.31
Helen Grissler	747 West Side Ave.	33.61
C. E. Trautmann	SE. cor. Hudson Boulevard and Linden Ave.	39.12
Owen J. Igoe	740 West Side Ave.	57.14
Helen Bolland	1755 Hudson Boulevard	22.52
Michael Aita	444 York St.	22.65
Miss Annie Ramsey	99 Monticello Ave.	125.72
Patrick Maguire	NW. cor. Mercer and Fremont Sts.	58.17
Jacob I. Hass	113 Monticello Ave.	119.72
Washburn Brothers Co.	716 West Side Ave.	11.22
Jacob Hass	115 Monticello Ave.	162.80
Annie Schwartz	136 Essex St.	65.89
Helen Johnson	509 Newark Ave.	107.98
M. B. Asurowitz	310 Pacific Ave.	34.11
F. W. Klein Co.	46 Gregory St.	114.54
C. N. Corrigan & T. R. Carroll	160 Newark Ave.	89.96
K. Duane	28 Morris St. and 51 Hudson St.	34.49
Helen Johnson	154 Chestnut Ave.	81.08
Meyer A. Jasper	77-9 Coles St.	48.21
Catherine S. Hogan	380 Henderson St.	46.08
Edward Prendergast	437 West Side Ave.	44.75
Peter Rienzo	212 Sip Ave.	38.74
Estate of Leopold Serge	233 Monticello Ave.	34.62
Fred Klein	279 Grove St.	107.27
Wolf Schustrin	227 Montgomery St.	45.30
John Meyer	137 Morris St.	63.5[illegible]
Margaretha Binder	453 West Side Ave. and 263 Virginia Ave.	20.33
Tony Miranti	769 West Side Ave.	36.30
Abelsky & Lichenstein	351 Henderson St.	240.42
Marcus Singer	215 Warren St.	71.09
W. H. Dykeman	1846 Boulevard	88.65
Valentine Wenz	303 Pacific Ave.	24.28
George Brandt	NW. cor. Ocean & Linden Aves.	30.30
Annie Newman	170 Morgan St.	26.77
Harry Hansen	17 Long St.	38.85
Helen Johnson	509 Newark Ave.	34.08
Goldstein & Fineburg	144 Essex St.	62.57
Helen Johnson	513 Newark Ave.	166.02
Joseph Friedman	277 Pine St.	65.03
Mary Eisen	305 West Side Ave.	42.21
Theresa M. Hill	411-13 Pacific Ave.	143.23

Assured.	Location.	Cost of Replacement
Samuel Rothstein	340 Johnston Ave.	132.30
Philip Heller	304 Pacific Ave.	30.07
Sarah J. Speer	217 Halladay St.	15.57
Rudolph E. Wilhelm	322 Pacific Ave.	155.98
Pauline Maither	111 Mallory Ave.	51.00
Herman Fleisher & Josephine, wife	413 Palisade Ave.	4.00
Dickson Brothers	385 Grand St.	59.97
Dickson Brothers	387 Grand St.	52.75
Herman Horwitz	74 Orient Ave.	29.62
Jacob Heyman	75 Sherman Ave.	18.09
Edward Prendergast	439 West Side Ave.	97.68
W. R. Taft	613 Ocean Ave.	76.04
Benjamin & H. Edelman	185 Jackson Ave.	163.65
Jacob I. Hass	152 York St.	76.34
Patrick J. Lynch	29 Grand St.	50.61
A. Brauer	769-771A Ocean Ave.	125.98
J. C. Ryan	361 Jackson Ave.	74.80
W. E. & Mary Haubrich	312-14 Baldwin Ave.	24.03
J. H. Cafferata & C. M. Fermier	15 Newark Ave.	54.18
S. A. Shurr	SW. cor. Seventh & Monmouth Sts.	52.46
J. J. Powlosky	176 Steuben St.	10.00
Louis J. Douglas	334 Grand St.	118.62
Davis Bornstein	369 Central Ave.	20.91
Robert Portizio	591 Grove St.	66.15
Charles Rochet	NE. cor. Erie St. and Newark Ave.	56.50
George Morgan	SW. cor. Wade St. & Ocean Ave.	74.88
Milton Cahart	250 Jackson Ave.	20.00
G. Zingoro	320 Third St.	18.93
G. Di Felice	57 Wright Ave.	8.51
A. B. Rosenthal	764 Newark Ave.	33.25
Leo Herz & Emil Herz	492-8 Jersey Ave.	234.63
Isaac Glatzer, etc.	340 Fourth St.	24.00
Louis Goldfarb	321 Baldwin Ave.	1.38
M. Siperstein	369 Montgomery St.	8.68
	Total	$19,848.27

NEWARK

Oraton Investment Co.	188 Pacific St.	$ 3.91
Emil Germanus	214 Ferry St.	78.42
Arion & Abraham Klivansky	489 18th Ave.	51.30
	Total	$133.63

HOBOKEN

Christian & Chas. Kreuzmann	112 Fourteenth St.	$ 5.50
Eichner Brothers	366-8 First St.	376.00
Rosa Cella	56 Second St.	38.37
Abraham Glassner	611-15 First St.	40.15
Hoboken Land & Improvement Co.	716 First St.	26.46
A. Cochanes	130 Hudson St.	24.71
Pauline Cella	604 First St.	42.67
Joseph E. Quirolo	76 River St.	80.34

Complaint—Schedule A.

Assured.	Location.	Cost of Replacement
Estate of George Focht	456 First St.	116.47
P. Cuneo	210 Adams St.	28.75
N. J. Isle Pine Land Co.	309-11 First St.	35.00
Grace Colandriello	116 Jefferson St.	28.90
Louis S. Fugazzi	264 First St.	94.03
Louis S. Fugazzi	300 Willow Ave.	47.28
Victor J. Tipula	600-2 Newark St.	24.41
George Focht	452 First St.	111.47
John Podesta	350 First St., cor. Clinton	76.78
John Podesta	841 Willow Ave., cor. 225 9th St	10.38
Nichola Palihnich	234 Park Ave.	23.17
Michael Riccio	500 Jefferson St.	10.73
John Podesta	104 Clinton St.	5.71
William F. Puth	304 Monroe St.	5.96
George Caldes	20 Hudson Place	64.03
Marco Bulat	328 Adams St.	32.35
Estate of George Focht	450 First St.	27.09
J. & R. Ortolano	358-60 Sixth St.	69.26
	Total	$1,445.97
	PERTH AMBOY	
C. Hilton	125 Smith St.	$ 190.00
	BAYONNE	
Philip Mazzola	927 Broadway	$ 5.00
Oraton Investment Co.	781 Avenue E	3.12
Oraton Investment Co.	781 Broadway	66.02
	Total	$ 74.14
	NEW YORK CITY	
Louis Slater	194 Pearl St.	$ 60.23
Marino & Florio	40 Maiden Lane	49.44
F. O. Pierce Co.	12 West Broadway	69.70
Paul Herzog	160 Greenwich St.	119.42
Samuel Levin	30 East Broadway	21.37
John Nemeth	457 Washington St.	1.49
Estate of Levi Morris	136 McDougal St.	29.06
J. A. Stuart	128 Park Row	21.74
Wilson Trading Co.	46 Cortland St.	62.05
William J. McLaughlin	13 E. 59th St.	34.46
H. L. Judd Co., a corp.	87-9 Chambers St.	6.34
The Woolnap Co.	150-2 E. 14th St.	.99
	Total	$ 476.29

Assured.	Location.	Cost of Replacement
	BROOKLYN	
Coleman Goldman & Julian Friedman	269 Kingston Ave.	$ 22.08
John D. Gaynor	219 Broadway	152.78
Vincent Buono	365 Columbia St.	7.41
Emma Cordes	5801-3 Seventh Ave.	19.77
Goldenberg Brothers	233 Fifth Ave.	21.99
Frank S. Aliano	5505 Fifth Ave.	3.47
John J. Whalen Co.	1318 Kings Highway	52.27
John Kriete	92 So. 8th St.	55.37
A. Ratnoff	6303 18th Ave.	20.19
George & Lena Ritz	6901-3 New Utrecht Ave.	9.65
Bernard Schubert	2091 Nostrand Ave.	19.36
	Total	$ 384.34
	ARLINGTON	
De Vincenzi Brothers	469 Elm St.	$ 4.90

SUMMARY

Jersey City, New Jersey	$19,848.27
Newark, New Jersey	133.63
Hoboken, New Jersey	1,445.97
Perth Amboy, New Jersey	190.00
Bayonne, New Jersey	74.14
New York City, New York	476.29
Brooklyn, New York	384.34
Arlington, New Jersey	4.90
Grand Total	$22,557.54

ANSWER.

(Filed September 11, 1918.)

NEW JERSEY SUPREME COURT.

COMMERCIAL CASUALTY INSURANCE COMPANY OF NEWARK, NEW JERSEY, a corporation, *Plaintiff,* vs. LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*Answer.*

Defendant, a body corporate of the State of Pennsylvania, having its principal office in the State of New Jersey at the foot of Washington street, Jersey City, says that:

FIRST DEFENSE TO FIRST COUNT.

1. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 1.

2. It admits the allegations of paragraph 2.

3. It admits that on July 30, 1916, it possessed, used, occupied and controlled (but only to the extent provided by and in accordance with the terms of a certain lease hereinafter mentioned) a certain yard in the City of Jersey City, extending into the waters of New York Bay, and locally known as the "Black Tom" yard; it admits that it possessed, used, occupied and controlled (but only to the extent provided by and in accordance with the terms of a certain lease hereinafter mentioned) certain lands covered by the waters of New York Bay adjacent to said yard, as well as certain upland likewise adjacent to said yard. It admits that the said yard and that the said upland were used in connection with its business of a common carrier of

freight, but denies that the same or any part thereof were used in connection with its business of a common carrier of passengers. It further says that it possessed, used, occupied, and controlled certain docks and piers, together with certain waters and upland adjacent thereto in the City of Jersey City, locally known as Black Tom yard, in accordance with the terms and provisions of a certain lease dated June 24, 1913, from the National Storage Company to the Lehigh Valley Railroad Company of New Jersey, and thereafter assigned to this defendant, wherein the said premises are described as follows: "A tract of land containing about one hundred and eleven acres, more or less, together with all the tracks, wharves, piers, docks, bulkheads, stores, warehouses, elevators and power houses, and all other buildings and structures of every kind whatsoever erected thereon; excepting and reserving therefrom about one hundred and forty-nine thousand and five hundred (149,500) square feet, together with the following structures erected thereon: Stores "A", "E", "F", "G", "H", "I", "K", "L", "M", "N", "O", "P" "Q", and "R" and Pier 6 and Shed No. 2 on Pier 7 and the office building (40'x25') located between Stores "F" and "G", together with the right of access thereto and wharfage rights in connection therewith."

4. It admits that on and prior to July 30, 1916, it used said yard, and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, for the handling and holding (but only to the extent and in the manner hereinafter mentioned) of carload lots of certain munitions and explosives, as hereinafter mentioned; it says that the lands and premises described in paragraph 3 of the first defense to first count, known as the Black Tom yard, on and prior to July 30, 1916, were used by it as a freight terminal for making delivery to the consignee of carload lots of shells, shrapnel and other ammunitions and munitions of war, including trinitrotoluol

(but not including gunpowder, dynamite, nitro-cellulose or other high and dangerous explosives) and for the transferring of the same by consignees from cars to barges or lighters for trans-shipment to steamers for export; and it says that there was no handling or holding by this defendant of the cars containing the same, except as lawfully incidental to the transportation and delivery thereof in the course of interstate commerce and commerce with foreign countries; and it says that all of the materials so held or handled were in the course of interstate or foreign commerce at the times set forth in the complaint.

5. It admits that on July 30, 1916, and for several days prior thereto it had placed and on said date was holding (but only to the extent and in the manner hereinafter mentioned) in said yard and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, certain carloads (but not many) of shells, shrapnel and other ammunitions and munitions of war, including trinitrotoluol (but not including gunpowder, dynamite, nitro-cellulose or other high and dangerous explosives); denies that the said explosives, ammunitions and munitions of war referred to in paragraph 5 of the complaint, or any of them were to the knowledge of this defendant highly dangerous and capable and liable in the event of fire to explode and thereby to cause incalculable or any injury to residents of Jersey City of their buildings, chattels and other property; it says that on July 30, 1916, on the lands and premises herein described as Black Tom yard, there were carloads of the explosives, ammunitions and munitions of war herein described, for the purpose of making delivery of the same to the consignees, and that for several days prior thereto there had been other carloads of explosives of the same nature on the said lands and premises for the like purpose; but it says that there was no holding on said lands and premises of any carloads of the said explosives,

ammunitions and munitions of war, either on July 30, 1916, or at any time prior thereto, except as lawfully incidental to the transportation and delivery of the contents of said cars, in the course of interstate commerce and commerce with foreign countries; it says that all of the carloads of said explosives so held were in the course of interstate or foreign commerce at the times set forth in the complaint.

6. It denies paragraph 6.

7. It admits that on July 30, 1916, and for several days prior thereto, it permitted the use of certain of its premises and waters, as described in paragraph 3 of the first defense to first count, known as the Black Tom yard (but only to the extent and in the manner hereinafter mentioned) for the tying up of certain tugs and other vessels, but it says that it limited its said premises (for the tying up of barges and lighters carrying or to carry explosives) to one pier, namely, the pier known as "North Pier," and only when the said barges or lighters were being loaded; and it says it did not permit the tying up of tugs and/or other vessels to that pier or near, or adjacent thereto; and it says that on July 30, 1916, at the time of the explosion mentioned in the complaint there were two barges at said North Pier, with its permission, partly loaded, one with shrapnel and the other with trinitrotoluol.

8. It denies paragraph 8.

9. It denies paragraph 9.

10. It admits that on July 30, 1916, it possessed a certain yard and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, known as the Black Tom yard; it admits that on July 30, 1916, a fire occurred on the said lands and premises, but it has no knowledge nor information sufficient to form a belief as to whether, by means of said fire, the said explosives or munitions, or any of them, became and were ignited

and exploded; it admits that certain explosives and munitions exploded on said date, thereby causing severe shocks and violent concussions of the air, but it has no knowledge nor information sufficient to form a belief as to whether the said severe shocks and concussions or any of them broke or damaged or destroyed the glass doors and windows of the persons and corporations, or any or either of them, shown upon Schedule "A" attached to the complaint.

11. It has no knowledge nor information sufficient to form a belief as to the allegations of paragraph 11.

12. It has no knowledge nor information sufficient to form a belief as to the allegations of paragraph 12, except that it denies that it created or maintained any nuisance as alleged in paragraphs 8 and 9 of the first count of the complaint, or otherwise.

In lieu of a motion to strike out said first count, the defendant objects thereto on the ground that it discloses no cause of action against the defendant.

SECOND DEFENSE TO FIRST COUNT.

1. On July 30, 1916, and for many days prior thereto, the defendant was a common carrier engaged in interstate and foreign commerce, and therein transporting by land ammunitions and munitions of war, including explosives.

2. As such common carrier defendant was compelled by law to receive, carry, convey and transport the said ammunitions and munitions of war, including explosives, in the course of interstate and foreign commerce, provided the same were packed, marked, loaded and handled, and when offered for transportation were in proper condition to transport in accordance with and pursuant to the act of Congress of the United States entitled "An Act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation," approved March 4,

1909, and the act of said Congress entitled "An Act to regulate commerce," as amended June 18, 1910, and the regulations prescribed by the Interstate Commerce Commission by authority of said acts.

3. The ammunition and munitions of war and explosives that exploded on July 30, 1916, were packed, marked, loaded and handled, and when offered for transportation were and until and at the time of said explosion continued to be in proper condition to transport in accordance with said acts of Congress of the United States and the regulations prescribed by the Interstate Commerce Commission by virtue thereof, and were carried, conveyed and transported and held by the defendant in the course of interstate and foreign commerce lawfully and strictly in accordance with said acts and regulations.

THIRD DEFENSE TO FIRST COUNT.

1. The presence of such explosives as were on July 30, 1916, on the premises of the defendant did not constitute a nuisance.

2. The explosion mentioned in the complaint was due to a fire caused by incendiarism, of which defendant had no knowledge or suspicion.

3. Said fire occurred notwithstanding due diligence by the defendant to prevent incendiarism.

FIRST DEFENSE TO SECOND COUNT.

1. Defendant repeats and makes part hereof the allegations contained in paragraphs 1 to 7, inclusive, of its first defense to first count.

2. It denies paragraph 2.

3. It denies that it was chargeable with any such alleged duty as stated in paragraph 2 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

4. It denies paragraph 4.

Answer.

5. It denies that it was chargeable with any such alleged duty as stated in paragraph 4 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

6. It denies paragraph 6.

7. It denies that it was chargeable with any such alleged duty as stated in paragraph 6 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

8. It denies paragraph 8.

9. It denies that it was chargeable with such alleged duty as stated in paragraph 8 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

10. It denies paragraph 10.

11. It denies that it was chargeable with any such alleged duty as stated in paragraph 10 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

12. As to paragraph 12, it admits that the municipality of Jersey City, at the time of the explosion referred to in said count, maintained police and fire departments; but as to the size of said departments or as to what their duty and custom was at the time of said explosion this defendant has no knowledge nor information sufficient to form a belief.

13. It denies paragraph 13.

14. It denies that it was chargeable with any such alleged duty as stated in paragraph 13 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

15. It denies paragraph 15, and says that in fact it did, immediately, upon the happening and discovery of the fire referred to in the complaint, notify the Fire Department of Jersey City of the existence and location of said fire.

16. It denies that it was chargeable with any such alleged duty as stated in paragraph 15 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

17. It admits that on July 30, 1916, it possessed a certain yard and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count; it admits that on July 30, 1916, a fire occurred on the said lands and premises; it denies that there was any negligence on its part in failing to perform its several alleged duties and denies that by reason of said alleged negligence it suffered a part of said explosives and munitions, and the cars, boats and containers thereof, to become ignited; it has no knowledge nor information sufficient to form a belief as to whether by means of said fire, the said explosives or munitions, or any of them, or the said cars, boats or containers, thereof, or any of them, became ignited, nor whether thereby the same, or any of them, exploded; it has no knowledge nor information sufficient to form a belief, as to whether the said fire and detonation of said explosives was communicated to other masses or quantities of explosives on the piers in said Black Tom yard or on any vessel adjacent thereto, nor whether the said explosives, or any of them, likewise exploded with great force and violence, nor whether the same caused severe shocks and concussions of the air, nor whether said shocks and concussions of the air, or any of them, simultaneously, or otherwise, broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit "A" attached to complaint.

18. It repeats and makes part hereof the allegations of paragraphs 10 and 11 of the first defense to the first count.

19. As to the allegations of paragraph 19, it has no knowledge nor information thereof sufficient to form a

belief, except that it alleges that it was in no manner negligent in the premises.

In lieu of a motion to strike out said second count, defendant objects thereto on the ground that it discloses no cause of action against the defendant.

SECOND DEFENSE TO SECOND COUNT.

Defendant repeats and makes a part hereof the allegations of its second defense to the first count.

THIRD DEFENSE TO SECOND COUNT.

Defendant repeats and makes a part hereof the allegations of its third defense to the first count.

FIRST DEFENSE TO THIRD COUNT.

1. Defendant repeats and makes part hereof the allegations contained in paragraphs 1 to 7, inclusive, of its first defense to first count.

2. It admits that by authority of certain acts of Congress, approved March 4th, 1909, and June 18th, 1910, and the Interstate Commerce Commission in October, 1914, promulgated, and on July 30, 1916, there remained in force and effect certain regulations for the handling and transportation by freight of carloads of explosives by carriers in interstate commerce, and that such regulations were then and there binding upon the defendant, but as to whether or not the said regulations, or any or either of them, were applicable to the explosives mentioned in the complaint, it prays reference to the original of said regulations.

3. It denies paragraph 3.

4. It admits that on July 30, 1916, a fire occurred on the premises possessed by the defendant, or in the immediate vicinity thereof; but denies that by reason of any negligence on its part in failing to perform its several alleged duties, or any or either of them, as set forth in the complaint, it suffered a part or any of said explosives

and ammunitions, and the cars and containers thereof, or any of them, to become ignited, whereby the same, or any of them, exploded; it denies that it suffered said fire and detonation of said explosion to be communicated to other masses and quantities of explosives in said yard, and denies that said other masses and quantities of explosives in said yard likewise exploded with great force and violence, or otherwise; it admits that certain explosives and ammunitions exploded on said date, thereby causing severe shocks and violent concussions of the air, but it has no knowledge nor information sufficient to form a belief as to whether said severe shocks and concussions, or any of them, broke or damaged, or destroyed the glass doors and windows of the persons and corporations, or any or either of them, shown upon Schedule "A" attached to the complaint.

5. It repeats and makes part hereof the allegations of paragraphs 10 and 11 of the first defense to the first count.

6. As to the allegations of paragraph 6, it has no knowledge nor information thereof sufficient to form a belief, except that it alleges that it was in no manner negligent in the premises.

In lieu of a motion to strike out said third count defendant objects thereto on the ground that it discloses no cause of action against the defendant.

SECOND DEFENSE TO THIRD COUNT.

Defendant repeats and makes a part hereof the allegations of its second defense to the first count.

THIRD DEFENSE TO THIRD COUNT.

Defendant repeats and makes a part thereof the allegations of its third defense to the first count.

COLLINS & CORBIN,
Attorneys of Defendant.

REPLY.

(Filed March 21, 1919.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

COMMERCIAL CASUALTY INSURANCE COMPANY OF NEWARK, NEW JERSEY, a corporation, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*Action at Law.* *Reply.*

REPLY TO FIRST DEFENSE TO FIRST COUNT.

1. Plaintiff denies the special defenses set forth in paragraph 4.

2. It denies the special defenses set forth in paragraph 5.

3. It denies the special defenses set forth in paragraph 7.

REPLY TO SECOND DEFENSE TO FIRST COUNT.

1. Plaintiff admits paragraph 1.
2. It denies paragraph 2.
3. It denies paragraph 3.

REPLY TO THIRD DEFENSE TO FIRST COUNT.

1. Plaintiff denies paragraph 1.
2. It denies paragraph 2.
3. It denies paragraph three.

REPLY TO FIRST DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in paragraphs 1, 2 and 3 of this reply to the first defense to the first count.

It denies the special defenses set forth in paragraph 15.

REPLY TO SECOND DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the second defense to the first count.

REPLY TO THIRD DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the third defense to the first count.

REPLY TO FIRST DEFENSE TO THIRD COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in paragraphs 1, 2 and 3 of this reply to the first defense to the first count.

REPLY TO SECOND DEFENSE TO THIRD COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the second defense to the first count.

REPLY TO THIRD DEFENSE TO THIRD COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in this reply to the third defense to the first count.

WILLIAM E. HOLMWOOD,
Attorney for Plaintiff.

POSTEA AND JUDGMENT.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

COMMERCIAL CASUALTY INSURANCE COMPANY OF NEWARK, N. J.,

vs.

LEHIGH VALLEY RAILROAD COMPANY,

This case was tried before the Honorable William H. Speer, Circuit Court Judge (to whom the same was referred for trial), and a jury on the 20th, 23rd, 24th, 25th, 26th and 27th days of June, 1919, and the same having been submitted to the jury, the jury returned a general verdict in favor of the plaintiff and against the defendant Lehigh Valley Railroad Company in the sum of twenty-two thousand five hundred and fifty-seven dollars and fifty-four cents ($22,557.54).

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of twenty-two thousand five hundred and fifty-seven dollars and fifty-four cents and its costs, which are taxed at the sum of forty-seven dollars and thirty-eight cents, making in the whole the sum of twenty-two thousand six hundred and four dollars and ninety-two cents.

$22,557.54	
47.38	
$22,604.92	

Judgment entered July 10, 1919.

WM. S. GUMMERE,
C. J.

Childs Company Case.

NOTICE OF APPEAL.

(Filed July 17, 1919.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

CHILDS COMPANY, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*Action at Law.* *Notice of Appeal.*

To Messrs. Congleton, Stallman & Hoover,
Attorneys for Plaintiff.

TAKE NOTICE, that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in above-stated cause.

COLLINS & CORBIN,
Attorneys for Defendant.

GROUNDS OF APPEAL.

(Childs Company, a Corporation.)

(Filed August 25, 1919.)

These are the same as Grounds of Appeal Nos. 1 to 70 in the case of Royal Indemnity Company.

Complaint..

COMPLAINT.

(Filed Oct. 28, 1918.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

CHILDS COMPANY,
Plaintiff,
vs.
LEHIGH VALLEY RAILROAD COMPANY,
Defendant.

Action at Law.
Complaint.

1. The plaintiff is a corporation of New York, having its principal office in the City of New York, County and State of New York, and is authorized to do business in the State of New Jersey.

2. The defendant is a corporation engaged in the maintenance and operation of a railroad in and through the State of New Jersey, for the transportation of freight and passengers.

3. On July 30th, 1916, the defendant possessed, used, occupied and controlled a certain dock or pier in the City of Jersey City, locally known as the "Black Tom" Pier, extending into the waters of New York Bay, and also possessed, used, occupied and controlled certain lands covered with the waters of New York Bay adjacent to said "Black Tom" Pier, as well as certain upland, likewise adjacent to said pier, used as a railroad yard in connection with its business of a common carrier of freight and passengers.

4. Said "Black Tom" pier and the said lands adjacent thereto and prior to July 30th, 1916, were used by the defendant for the handling, holding and trans-shipment

of carload lots of gunpowder, trinitrotoluol, dynamite, nitroglycerine and other high and dangerous explosives, and shell, shrapnel and other ammunitions and munitions of war.

5. On July 30th, 1916, and for several days prior thereto the defendant had placed and on said date was holding on said pier and lands adjacent thereto many carloads of said explosives, ammunitions and munitions of war, which explosives were to the knowledge of said defendant highly dangerous and capable and liable, in the event of fire, to explode and thereby cause incalculable damage and injury to residents of Jersey City and their buildings, chattels and other property.

6. On July 30th, 1916, and for several days prior thereto, the defendant used its premises and waters, adjacent to said pier, for the tying up of boats, lighters and ships upon and to which was loaded, placed and carried large quantities of like explosives as described in the preceding paragraphs.

7. On said July 30th, 1916, and for several days prior thereto, said defendant permitted the use of its premises and waters, adjacent to its said pier, to be used for the tying up of tugs and other vessels, as well as by boats and lighters carrying large quantities of like explosives as described in the second preceding paragraph.

8. By reason of the accumulation, on said pier, and on the lands adjacent thereto, of said large quantities of said explosives and munitions, and the danger existing therein and therefrom, said accumulation of explosives and munitions constituted a nuisance.

9. The accumulation of the large quantity of like dangerous explosives on boats and vessels in its premises and waters adjacent to said pier of the defendant, by the act and with the permission and knowledge of said defendant, constituted a nuisance on the part of the defendant.

Complaint.

10. On July 30th, 1916, a fire occurred on the premises possessed by defendant on or in the immediate vicinity of said "Black Tom" Pier, and by means thereof said accumulations of explosives and munitions became and were ignited and exploded, causing severe shocks and violent concussions of the air, which broke, damaged and destroyed the glass doors and windows of the plaintiff as shown upon the schedule marked Schedule "A" hereto attached and hereby made a part hereof.

11. The losses so sustained by the plaintiff were the direct result of the creation and maintenance by the defendant of the nuisances described in paragraphs 6 and 7.

SECOND COUNT.

1. The plaintiff re-alleges paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count.

2. By reason of the accumulations of said large quantities of explosives and munitions on and near said pier and premises of the defendant, it was the duty of the defendant to exercise a high degree of care to prevent the occurrence of fires, detonations or other means whereby said explosives and munitions might become exploded.

3. Said defendant negligently failed and omitted to perform said duty.

4. By reason of the accumulations of the explosives and munitions, as aforesaid, it was the duty of the defendant to exercise a high degree of care to watch and guard said explosives and the buildings, piers, cars and vessels containing the same or lying in proximity thereto, so as to prevent, and to extinguish and control when discovered, fires, detonations and other means by which such explosives might be exploded.

5. The defendant negligently omitted and failed to perform said duty.

6. It was also the duty of the defendant in the premises to employ a sufficient number of watchmen and

guards to police its said pier and approaches and the waters adjacent thereto, to observe and detect the approach or presence of any persons not authorized or licensed to visit said pier, and who might by accident or felonious intent set fire to said pier or property thereon.

7. The defendant negligently failed and omitted to perform said duty.

8. It was also the duty of the defendant in the premises to furnish, provide and install, and keep in good order and repair sufficient fire fighting devices and apparatus on and about its said pier, by means of which any fire occurring upon or near said pier might be promptly extinguished and controlled.

9. The defendant negligently omitted and failed to perform said duty.

10. It was also the duty of the defendant in the premises to exercise a high degree of care to store, handle and dispose of said explosives and munitions so as to prevent and control the ignition and communication of fire and detonation from one portion or mass of the same to any other part or mass of the same.

11. The defendant negligently failed to perform said duty.

12. The municipality of Jersey City at the times of said explosion maintained large police and fire departments, whose duty and custom it was, to the knowledge of the defendant, to respond immediately to all alarms of fire for the purpose of extinguishing the same.

13. It was also the duty of said defendant to install and provide and keep in good order and repair sufficient means of communication whereby the occurrence of any fire or other agency capable of igniting said explosives could be immediately communicated from said pier to the fire and police departments of Jersey City.

14. Said defendant negligently failed and neglected to perform said duty.

Complaint.

15. It was also the duty of the defendant in the premises, immediately upon the happening and discovery of a fire on or near said pier, to notify the Fire Department of Jersey City of the existence and location of said fire.

16. Said duty the defendant negligently failed and omitted to perform.

17. On July 30th, 1916, a fire occurred on the premises possessed by the defendant on or in the immediate vicinity of said pier of the defendant, and by reason of negligence of the defendant in failing to perform its several duties in the premises the defendant suffered a part of said explosives and munitions and the cars, boats and containers thereof to become ignited, whereby the same exploded, which fire and detonation of said explosion the defendant suffered to be communicated to other masses and quantities of explosives on said pier and on vessels adjacent thereto, which likewise exploded with great force and violence, causing severe shocks and concussions of the air, which simultaneously broke, damaged and destroyed the glass doors and windows of the plaintiff as shown upon Exhibit "A."

18. The losses so sustained by the plaintiff were the direct result of the negligence of the defendant as aforesaid.

The plaintiff demands, on the first count, the sum of $2,515.95.

The plaintiff demands, on the second count, the sum of $2,515.95.

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff.

Schedule "A."

Statement of exact cost of furnishing and setting new glass in different restaurants of Childs Company, to replace glass destroyed by Black Tom explosion on July 30th, 1916:

House.	Amount of Bills	Total.
No. 3 Beaver street	$1.75	
" " " "	17.00	
" " " "	107.20	
" " " "	396.40	
		$522.35
No. 47 Broadway	468.20	
" " "	377.60	
		845.80
No. 31 Cortlandt street	15.70	
" " " "	57.00	
" " " "	141.20	
" " " "	462.00	
		675.90
No. 194 Broadway	6.00	
" " "	12.40	
" " "	84.20	
		102.60
No. 102 Park Row	167.60	167.60
No. 270 Sixth avenue	103.40	103.40
No. 41 West 33rd street	1.50	1.50
No. 527 Sixth avenue	12.50	
" " " "	24.00	
		36.50
No. 602 Sixth avenue	1.60	1.60
No. 366 Fulton street	58.70	58.70
Total		$2,515.95

AMENDMENT OF COMPLAINT.

(Filed June 10, 1919.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

CHILDS COMPANY, *Plaintiff,*	*Action at Law.*
vs.	*Amendment of Complaint.*
LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	

The plaintiff amends the complaint in the above entitled action by adding thereto as follows:

"THIRD COUNT.

1. Plaintiff re-alleges all of the allegations of this complaint with the same force and effect as if the same were set forth at length hereunder.

2. By authority of certain acts of Congress approved March 4th, 1909, and June 18th, 1910, the Interstate Commerce Commission in October, 1914, promulgated, and on July 30th, 1916, there remained in force and effect, certain regulations for the handling and transportation by freight of carloads of explosives by carriers in interstate commerce, which regulations were then and there binding upon the defendant and applicable to the explosives hereinabove mentioned, to which regulations the plaintiff refers as fully as if here set forth.

3. The defendant negligently failed and refused to comply with the requirements of said regulations.

4. On July 30th, 1916, a fire occurred on the premises possessed by the defendant, on or in the immediate

vicinity of said pier of the defendant, and by reason of negligence of the defendant in failing to perform its several duties in the premises the defendant suffered a part of said explosives and munitions and the cars and containers thereof to become ignited, whereby the same exploded, which fire and detonation of said explosion the defendant suffered to be communicated to other masses and quantities of explosives in said yard, which likewise exploded with great force and violence, causing severe shocks and concussions of the air, which simultaneously broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit 'A.'

5. The losses so sustained and paid or replaced by the plaintiff were the direct result of the negligence of the defendant as aforesaid."

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff.

ANSWER.

(Filed October 31, 1918.)

NEW JERSEY SUPREME COURT.

CHILDS COMPANY, a corporation,
Plaintiff,

vs.

LEHIGH VALLEY RAILROAD COMPANY,
Defendant.

Answer.

Defendant, a body corporate of the State of Pennsylvania, having its principal office in the State of New Jersey at the foot of Washington street, Jersey City, says that:

FIRST DEFENSE TO FIRST COUNT.

1. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 1.

2. It admits the allegations of paragraph 2.

3. It admits that on July 30, 1916, it possessed, used, occupied and controlled (but only to the extent provided by and in accordance with the terms of a certain lease hereinafter mentioned) a certain yard in the City of Jersey City, extending into the waters of New York Bay, and locally known as the "Black Tom" yard; it admits that it possessed, used, occupied and controlled (but only to the extent provided by and in accordance with the terms of a certain lease hereinafter mentioned) certain lands covered by the waters of New York Bay adjacent to said yard, as well as certain upland likewise adjacent to said yard. It admits that the said yard and that the said upland were used in connection with its business of a common carrier of

freight, but denies that the same or any part thereof were used in connection with its business of a common carrier of passengers. It further says that it possessed, used, occupied, and controlled certain docks and piers, together with certain waters and upland adjacent thereto in the City of Jersey City, locally known as Black Tom yard, in accordance with the terms and provisions of a certain lease dated June 24, 1913, from the National Storage Company to the Lehigh Valley Railroad Company of New Jersey, and thereafter assigned to this defendant, wherein the said premises are described as follows: "A tract of land containing about one hundred and eleven acres, more or less, together with all the tracks, wharves, piers, docks, bulkheads, stores, warehouses, elevators and power houses, and all other buildings and structures of every kind whatsoever erected thereon; excepting and reserving therefrom about one hundred and forty-nine thousand and five hundred (149,500) square feet, together with the following structures erected thereon: Stores "A", "E", "F", "G", "H", "I", "K", "L", "M", "N", "O", "P" "Q", and "R" and Pier 6 and Shed No. 2 on Pier 7 and the office building (40'x25') located between Stores "F" and "G", together with the right of access thereto and wharfage rights in connection therewith."

4. It admits that on and prior to July 30, 1916, it used said yard, and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, for the handling and holding (but only to the extent and in the manner hereinafter mentioned) of carload lots of certain munitions and explosives, as hereinafter mentioned; it says that the lands and premises described in paragraph 3 of the first defense to first count, known as the Black Tom yard, on and prior to July 30, 1916, were used by it as a freight terminal for making delivery to the consignee of carload lots of shells, shrapnel and other ammunitions and munitions of war, including trinitrotoluol

(but not including gunpowder, dynamite, nitro-cellulose or other high and dangerous explosives) and for the transferring of the same by consignees from cars to barges or lighters for trans-shipment to steamers for export; and it says that there was no handling or holding by this defendant of the cars containing the same, except as lawfully incidental to the transportation and delivery thereof in the course of interstate commerce and commerce with foreign countries; and it says that all of the materials so held or handled were in the course of interstate or foreign commerce at the times set forth in the complaint.

5. It admits that on July 30, 1916, and for several days prior thereto it had placed and on said date was holding (but only to the extent and in the manner hereinafter mentioned) in said yard and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, certain carloads (but not many) of shells, shrapnel and other ammunitions and munitions of war, including trinitrotoluol (but not including gunpowder, dynamite, nitro-cellulose or other high and dangerous explosives); denies that the said explosives, ammunitions and munitions of war referred to in paragraph 5 of the complaint, or any of them were to the knowledge of this defendant highly dangerous and capable and liable in the event of fire to explode and thereby to cause incalculable or any injury to residents of Jersey City of their buildings, chattels and other property; it says that on July 30, 1916, on the lands and premises herein described as Black Tom yard, there were carloads of the explosives, ammunitions and munitions of war herein described, for the purpose of making delivery of the same to the consignees, and that for several days prior thereto there had been other carloads of explosives of the same nature on the said lands and premises for the like purpose; but it says that there was no holding on said lands and premises of any carloads of the said explosives,

ammunitions and munitions of war, either on July 30, 1916, or at any time prior thereto, except as lawfully incidental to the transportation and delivery of the contents of said cars, in the course of interstate commerce and commerce with foreign countries; it says that all of the carloads of said explosives so held were in the course of interstate or foreign commerce at the times set forth in the complaint.

6. It denies paragraph 6.

7. It admits that on July 30, 1916, and for several days prior thereto, it permitted the use of certain of its premises and waters, as described in paragraph 3 of the first defense to first count, known as the Black Tom yard (but only to the extent and in the manner hereinafter mentioned) for the tying up of certain tugs and other vessels, but it says that it limited its said premises (for the tying up of barges and lighters carrying or to carry explosives) to one pier, namely, the pier known as "North Pier," and only when the said barges or lighters were being loaded; and it says it did not permit the tying up of tugs and/or other vessels to that pier or near, or adjacent thereto; and it says that on July 30, 1916, at the time of the explosion mentioned in the complaint there were two barges at said North Pier, with its permission, partly loaded, one with shrapnel and the other with trinitrotoluol.

8. It denies paragraph 8.

9. It denies paragraph 9.

10. It admits that on July 30, 1916, it possessed a certain yard and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count, known as the Black Tom yard; it admits that on July 30, 1916, a fire occurred on the said lands and premises, but it has no knowledge nor information sufficient to form a belief as to whether, by means of said fire, the said explosives or munitions, or any of them, became and were ignited

and exploded; it admits that certain explosives and munitions exploded on said date, thereby causing severe shocks and violent concussions of the air, but it has no knowledge nor information sufficient to form a belief as to whether the said severe shocks and concussions or any of them broke or damaged or destroyed the glass doors and windows of the persons and corporations, or any or either of them, shown upon Schedule "A" attached to the complaint.

11. It has no knowledge nor information sufficient to form a belief as to the allegations of paragraph 11.

12. It has no knowledge nor information sufficient to form a belief as to the allegations of paragraph 12, except that it denies that it created or maintained any nuisance as alleged in paragraphs 8 and 9 of the first count of the complaint, or otherwise.

In lieu of a motion to strike out said first count, the defendant objects thereto on the ground that it discloses no cause of action against the defendant.

SECOND DEFENSE TO FIRST COUNT.

1. On July 30, 1916, and for many days prior thereto, the defendant was a common carrier engaged in interstate and foreign commerce, and therein transporting by land ammunitions and munitions of war, including explosives.

2. As such common carrier defendant was compelled by law to receive, carry, convey and transport the said ammunitions and munitions of war, including explosives, in the course of interstate and foreign commerce, provided the same were packed, marked, loaded and handled, and when offered for transportation were in proper condition to transport in accordance with and pursuant to the act of Congress of the United States entitled "An Act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation," approved March 4,

1909, and the act of said Congress entitled "An Act to regulate commerce," as amended June 18, 1910, and the regulations prescribed by the Interstate Commerce Commission by authority of said acts.

3. The ammunition and munitions of war and explosives that exploded on July 30, 1916, were packed, marked, loaded and handled, and when offered for transportation were and until and at the time of said explosion continued to be in proper condition to transport in accordance with said acts of Congress of the United States and the regulations prescribed by the Interstate Commerce Commission by virtue thereof, and were carried, conveyed and transported and held by the defendant in the course of interstate and foreign commerce lawfully and strictly in accordance with said acts and regulations.

THIRD DEFENSE TO FIRST COUNT.

1. The presence of such explosives as were on July 30, 1916, on the premises of the defendant did not constitute a nuisance.

2. The explosion mentioned in the complaint was due to a fire caused by incendiarism, of which defendant had no knowledge or suspicion.

3. Said fire occurred notwithstanding due diligence by the defendant to prevent incendiarism.

FIRST DEFENSE TO SECOND COUNT.

1. Defendant repeats and makes part hereof the allegations contained in paragraphs 1 to 7, inclusive, of its first defense to first count.

2. It denies paragraph 2.

3. It denies that it was chargeable with any such alleged duty as stated in paragraph 2 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

4. It denies paragraph 4.

Answer.

5. It denies that it was chargeable with any such alleged duty as stated in paragraph 4 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

6. It denies paragraph 6.

7. It denies that it was chargeable with any such alleged duty as stated in paragraph 6 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

8. It denies paragraph 8.

9. It denies that it was chargeable with such alleged duty as stated in paragraph 8 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

10. It denies paragraph 10.

11. It denies that it was chargeable with any such alleged duty as stated in paragraph 10 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

12. As to paragraph 12, it admits that the municipality of Jersey City, at the time of the explosion referred to in said count, maintained police and fire departments; but as to the size of said departments or as to what their duty and custom was at the time of said explosion this defendant has no knowledge nor information sufficient to form a belief.

13. It denies paragraph 13.

14. It denies that it was chargeable with any such alleged duty as stated in paragraph 13 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

15. It denies paragraph 15, and says that in fact it did, immediately, upon the happening and discovery of the fire referred to in the complaint, notify the Fire Department of Jersey City of the existence and location of said fire.

16. It denies that it was chargeable with any such alleged duty as stated in paragraph 15 of the second count of the complaint and denies that it negligently failed or omitted to perform said alleged duty.

17. It admits that on July 30, 1916, it possessed a certain yard and the lands adjacent thereto, as described in paragraph 3 of the first defense to first count; it admits that on July 30, 1916, a fire occurred on the said lands and premises; it denies that there was any negligence on its part in failing to perform its several alleged duties and denies that by reason of said alleged negligence it suffered a part of said explosives and munitions, and the cars, boats and containers thereof, to become ignited; it has no knowledge nor information sufficient to form a belief as to whether by means of said fire, the said explosives or munitions, or any of them, or the said cars, boats or containers, thereof, or any of them, became ignited, nor whether thereby the same, or any of them, exploded; it has no knowledge nor information sufficient to form a belief, as to whether the said fire and detonation of said explosives was communicated to other masses or quantities of explosives on the piers in said Black Tom yard or on any vessel adjacent thereto, nor whether the said explosives, or any of them, likewise exploded with great force and violence, nor whether the same caused severe shocks and concussions of the air, nor whether said shocks and concussions of the air, or any of them, simultaneously, or otherwise, broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit "A" attached to complaint.

18. As to the allegations of paragraph 18, it has no knowledge nor information thereof sufficient to form a belief, except that it alleges that it was in no manner negligent in the premises.

Answer.

SECOND DEFENSE TO SECOND COUNT.

Defendant repeats and makes a part hereof the allegations of its second defense to the first count.

THIRD DEFENSE TO SECOND COUNT.

Defendant repeats and makes a part thereof the allegations of its third defense to the first count.

COLLINS & CORBIN,
Attorneys of Defendant.

REPLY.

(Filed November 21, 1918.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

CHILDS COMPANY, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*Action at Law.* *Reply.*

The plaintiff denies the truth of the allegations of the special defenses set forth in the Answer herein.

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff.

POSTEA AND JUDGMENT.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

CHILDS COMPANY,

vs.

LEHIGH VALLEY RAILROAD COMPANY,

This case was tried before the Honorable William H. Speer, Circuit Court Judge (to whom the same was referred for trial), and a jury on the 20th, 23rd, 24th, 25th, 26th and 27th days of June, 1919, and the same having been submitted to the jury, the jury rendered a general verdict in favor of the plaintiff and against the defendant Lehigh Valley Railroad Company in the sum of Two Thousand Four Hundred and Twenty-eight Dollars and Ninety-five Cents ($2,428.95).

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of Two Thousand Four Hundred and Twenty-eight Dollars and Ninety-five Cents and its costs, which are taxed at the sum of Forty-four Dollars and Sixty Cents, making in the whole the sum of Two Thousand Four Hundred and Seventy-three Dollars and Fifty-five Cents.

$2,428.95	
44.60	
$2,473.55	

Judgment entered July 8, 1919.

WM. S. GUMMERE,
C. J.

NOTICE OF APPEAL.

(Filed July 17, 1919.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

TRUSTEES OF THE EVANGELICAL LUTHERAN ST. PAUL'S CHURCH OF JERSEY CITY, a body corporate, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, Impleaded, etc., *Defendant.*	*Action at Law.* *Notice of Appeal.*

To Frederick C. Henn, Esq.,
Attorney for Plaintiff.

TAKE NOTICE, that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in above-stated cause.

COLLINS & CORBIN,
Attorneys for Defendant.

GROUNDS OF APPEAL.

(Trustees of St. Paul's Evangelical Lutheran Church.)

(Filed August 25, 1919.)

These are the same as Grounds of Appeal Nos. one to seventy in the case of Royal Indemnity Company. Also the following additional grounds:

Defendant's motion for a direction of verdict should have been granted for one or more of the following additional reasons:

71. There is no proof that the defendant was guilty of the acts alleged in the complaint to be negligent.

72. There is no proof that the negligence alleged in the complaint was the proximate cause of the damage suffered by said plaintiff.

73. There is no proof that the defendant created or maintained a public nuisance as alleged in the complaint.

ORIGINAL COMPLAINT.

(Filed August 6, 1916.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY CIRCUIT.

TRUSTEES OF THE EVANGELICAL LUTHERAN ST. PAUL'S CHURCH OF JERSEY CITY, a body corporate,
Plaintiff,

vs.

NATIONAL STORAGE COMPANY, a corporation; LEHIGH VALLEY RAILROAD COMPANY, a corporation; JOHNSON LIGHTERAGE COMPANY, a corporation, and NEW JERSEY CENTRAL RAILROAD COMPANY, a corporation,
Defendants.

Action at Law.

Complaint.

The plaintiff, a body corporate of the State of New Jersey, says that:

1. It is the owner of a plot of ground situate on the northerly side of Hoboken avenue, Jersey City, known as lot No. 60 in Block No. 571, as laid down on "Fowler's Official Assessment Map of Jersey City," upon which plot it has erected a brick church building.

2. On the 30th day of July, 1916, and for two years or more prior thereto, the defendant, National Storage Company, a corporation, was continuously the owner of large warehouses, situated at Communipaw, within the boundary limits of the City of Jersey City, whereat it conducted a general storage business. On said date, to wit, July 30th, 1916, the said defendant, National Storage Company, did knowingly, willfully and unlawfully keep, store, transport and convey, and did permit and allow

to be kept, stored, transported and conveyed, large quantities, to wit, over 50 pounds of war munitions, consisting of shot, shell, nitro-glycerin, sulphur-chloride, nitro-cellulose, gunpowder, blasting powder, dualin, dynamite, forcite, giant powder and other powder or materials of which nitro-glycerin is an essential ingredient or forms a component part and other highly dangerous explosives and combustibles.

3. On the said date, to wit, July 30th, 1916, and for many days prior thereto, the defendant, Johnson Lighterage Company, a corporation, being the owner of a large number of barges and ships, and conducting a general lighterage business, within the boundary limits of the City of Jersey City, did knowingly, willfully and unlawfully moor, and permit to be moored, a large number of its barges and ships to a pier or piers at Jersey City and to remain there for many days; and did take and receive thousands of pounds of war munitions, consisting of shot, shell, nitro-glycerin, sulphur-chloride, nitro-cellulose, gunpowder, blasting powder, dualin, dynamite, forcite, giant powder, and other highly dangerous explosives and combustibles.

4 On the said 30th day of July, 1916, and for two years or more prior thereto, defendant Lehigh Valley Railroad Company, a corporation, operated and maintained a steam railroad upon tracks laid through the City of Jersey City, particularly at or near the premises of the National Storage Company and the wharf to which the barges and ships of the Johnson Lighterage Company were moored. That said Lehigh Valley Railroad Company, on said date and for many days prior thereto, did knowingly, willfully and unlawfully store, carry, convey and transport, and permit and allow to be stored, carried, conveyed and transported, large quantities, to wit, over 50 pounds of war munitions, consisting of shot, shell, nitro-glycerin, sulphur-chloride, nitro-cellulose, gunpowder, blasting powder, dualin, dynamite, forcite, giant powder,

and other powder or materials of which nitro-glycerin is an essential ingredient or forms a component part and other highly dangerous explosives and combustibles.

5. On the said 30th day of July, 1916, and for two years or more prior thereto, the defendant, New Jersey Central Railroad Company, a corporation, operated and maintained a steam railroad upon tracks laid through the City of Jersey City, particularly at or near the premises of the National Storage Company, the wharf of the Johnson Lighterage Company, and the freight yard of the Lehigh Valley Railroad Company. That the said New Jersey Central Railroad Company did, for such time, knowingly, willfully and unlawfully store, carry, convey and transport, and did permit and allow to be stored, carried, conveyed and transported, thousands of pounds of war munitions, consisting of shot, shell, nitro-glycerin, sulphur-chloride, nitro-cellulose, gunpowder, blasting powder, dualin, dynamite, forcite, giant powder, and other powder or materials of which nitro-glycerin is an essential ingredient or forms a component part, and other highly dangerous explosives and combustibles.

6. That on the said 30th day of July, 1916, the said defendants, and each of them, while in the process of storing, keeping, shipping, conveying and transporting the said large quantities of war munitions, consisting of shot, shell, nitro-glycerin, sulphur-chloride, nitro-cellulose, gunpowder, blasting powder, dualin, dynamite, forcite, giant powder, and other powder or materials of which nitro-glycerin is an essential ingredient or forms a component part and other highly dangerous explosives and combustibles, which they, and each of them, well knew, at the time, to be dangerous, within the boundary limits of the City of Jersey City, permitted said dangerous explosives and combustibles to remain exposed for many hours, and by reason of said negligence the said explosives and combustibles contracted with fire and caused violent explosions, concussions and reverborations. That defendants,

and each of them, created and maintained a public nuisance by virtue of their said illegal acts.

7. That, because of the said violent explosions, concussions and reverberations, the property of the plaintiff suffered great damage and injury.

Plaintiff demands of the defendants $5,000.00 damages.

FREDERICK C. HENN,
Attorney of Plaintiff.

AMENDED COMPLAINT.

(Filed July 8, 1919.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

TRUSTEES OF ST. PAUL'S EVANGELICAL LUTHERAN CHURCH, *Plaintiff,*	*At Law.*
vs.	*Amended Complaint.*
LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	

1. The plaintiff, a body corporate of the State of New Jersey, the owner of a church building situated on the northerly side of Hoboken avenue in the City of Jersey City, County of Hudson, and State of New Jersey, and also the owner of certain art glass windows contained in said church building, and was such owner on the 30th day of July, 1916.

2. The defendant is a corporation engaged in the maintenance and operation of a railroad in and through the State of New Jersey, for the transportation of freight and passengers.

3. On July 30th, 1916, the defendant possessed, used, occupied and controlled a certain yard in the City of Jersey City, locally known as the "Black Tom" yard, extending into the waters of New York bay, and also possessed, used, occupied and controlled certain lands covered with the waters of New York bay adjacent to said "Black Tom" Pier, as well as certain upland, likewise adjacent to said pier, in connection with its business of a common carrier of freight and passengers.

Amended Complaint.

4. Said "Black Tom" yard and the said lands adjacent thereto, on and prior to July 30th, 1916, were used by the defendant for the handling, holding and transshipment of carload lots of gunpowder, trinitrotoluol, dynamite, nitro-glycerin, and other high and dangerous explosives, and shells, shrapnel and other ammunitions and munitions of war.

5. On July 30th, 1916, and for several days prior thereto, the defendant had placed, and on said date was holding on said pier and lands adjacent thereto, many carloads of said explosives, ammunitions and munitions of war, which explosives were to the knowledge of said defendant highly dangerous and capable and liable, in the event of fire, to explode and thereby cause incalculable damage and injury to residents of Jersey City and their buildings, chattels and other property.

6. On July 30th, 1916, and for several days prior thereto, the defendant used its premises and waters, adjacent to said pier, for the tying up of boats, lighters and ships upon and to which was loaded, placed and carried large quantities of like explosives as described in the preceding paragraphs.

7. On said July 30th, 1916, and for several days prior thereto, said defendant permitted the use of its premises and waters, adjacent to its said pier, to be used for the anchorage and tying up of tugs, boats and other vessels, as well as by boats and lighters carrying large quantities of like explosives as described in the second preceding paragraph.

8. By reason of the accumulation, on said pier and on the lands adjacent thereto, of said large quantities of said explosives and munitions, and the danger existing therein and therefrom said accumulation of explosives and munitions constituted a nuisance.

9. The accumulation of the large quantity of like dangerous explosives on boats and vessels in its premises and waters adjacent to said pier of the defendant, by the

act and with the permission and knowledge of said defendant, constituted a nuisance on the part of the defendant.

10. On July 30th, 1916, a fire occurred on the premises possessed by defendant known as "Black Tom" yard, and by means thereof said accumulations of explosives and munitions became and were ignited and exploded, causing severe shocks and violent concussions of the air, which broke, damaged and destroyed the glass doors and windows of the persons and corporations shown upon the schedule marked Schedule "A" hereto attached and hereby made a part hereof.

11. The plaintiff on said July 30th sustained damage to its said buildings by the breakage of the glass windows and the art glass windows which to restore in said building would cost the sum of $1,059.49.

12. The losses so sustained and paid, together with the costs of replacement, were the direct result of creation and maintenance by the defendant of the nuisance described in paragraphs six and seven.

SECOND COUNT.

1. The plaintiff realleges paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count.

2. By reason of the accumulations of said large quantities of explosives and munitions on and near said pier and premises of the defendant it was the duty of the defendant to exercise a high degree of care to prevent the occurrence of fires, detonations or other means whereby said explosives and munitions might become exploded.

3. Said defendant negligently failed and omitted to perform said duty.

4. By reason of the accumulations of the explosives and munitions, as aforesaid, it was the duty of the defendant to exercise a high degree of care to watch and

guard said explosives and the yard, piers, cars and vessels containing the same or lying in proximity thereto, so as to prevent, and to extinguish and control, when discovered, fires, detonations and other means by which such explosives might be exploded.

5. The defendant negligently omitted and failed to perform said duty.

6. It was also the duty of the defendant in the premises to exercise due care to employ a sufficient number of watchmen and guards to police its said yard and approaches and the waters adjacent thereto to observe and detect the approach or presence of any persons not authorized or licensed to visit said pier, and who might by accident or felonious intent set fire to said pier or property thereon.

7. The defendant negligently failed and omitted to perform said duty.

8. It was also the duty of the defendant in the premises to exercise due care to furnish, provide and install, and keep in good order and repair, sufficient water supply, fire-fiighting devices and apparatus on and about its said pier, by means of which any fire occurring upon or near said pier might be promptly extinguished and controlled.

9. The defendant negligently omitted and failed to perform said duty.

10. It was also the duty of the defendant in the premises to exercise a high degree of care to store, handle and dispose of said explosives and munitions so as to prevent and control the ignition and communication of fire and detonation from one portion or mass of the same to any other part or mass of the same.

11. The defendant negligently failed to perform said duty.

12. The municipality of Jersey City at the times of said explosion maintained large police and fire depart-

ments, whose duty and custom it was, to the knowledge of the defendant, to respond immediately to all alarms of fire for the purpose of extinguishing the same.

13. It was also the duty of said defendant to exercise due care to install and provide and keep in good order and repair sufficient means of communication whereby the occurrence of any fire or other agency capable of igniting said explosives could be immediately communicated from said pier to the fire and police departments of Jersey City.

14. Said defendant negligently failed and neglected to perform said duty.

15. It was also the duty of the defendant in the premises, immediately upon the happening and discovery of a fire on or near said pier, to notify the Fire Department of Jersey City of the existence and location of said fire.

16. Said duty the defendant negligently failed and omitted to perform.

17. On July 30th, 1916, a fire occurred on the premises possessed by the defendant, on or in the immediate vicinity of said pier of the defendant, and by reason of negligence of the defendant in failing to perform its several duties in the premises the defendant suffered a part of said explosives and munitions and the cars and containers thereof to become ignited, whereby the same exploded, which fire and detonation of said explosion the defendant suffered to be communicated to other masses and quantities of explosives in said yard, which likewise exploded with great force and violence, causing severe shocks and concussions of the air, which simultaneously broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit "A."

18. The plaintiff realleges paragraphs 10 and 11 of the first count.

19. The losses so sustained and paid or replaced by the plaintiff were the direct result of the negligence of the defendant as aforesaid.

THIRD COUNT.

1. The plaintiff realleges paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count.

2. By authority of certain acts of Congress approved March 4th, 1909, and June 18th, 1910, the Interstate Commerce Commission in October, 1914, promulgated, and on July 30th 1916, there remained in force and effect, certain regulations for the handling and transportation by freight of carloads of explosives by carriers in interstate commerce, which regulations were then and there binding upon the defendant and applicable to the explosives hereinabove mentioned, to which regulations the plaintiff refers as fully as if here set forth.

3. The defendant negligently failed and refused to comply with the requirements of said regulations.

4. On July 30th, 1916, a fire occurred on the premises possessed by the defendant, on or in the immediate vicinity of said pier of the defendant, and by reason of negligence of the defendant in failing to perform its several duties in the premises the defendant suffered a part of said explosives and munitions and the cars and containers thereof to become ignited, whereby the same exploded, which fire and detonation of said explosion the defendant suffered to be communicated to other masses and quantities of explosives in said yard, which likewise exploded with great force and violence, causing severe shocks and concussions of the air, which simultaneously broke, damaged and destroyed the glass doors and windows of the several persons and corporations shown upon Exhibit "A."

5. The plaintiff realleges paragraphs 10 and 11 of the first count.

6. The losses sustained and paid and the cost of the repairing and installing of glass by the plaintiff were the direct result of the negligence of the defendant as aforesaid.

The plaintiff demands, on the first count, the sum of $1,059.49.

The plaintiff demands, on the second count, the sum of $1,059.49.

The plaintiff demands, on the third count, the sum of $1,059.49.

FREDERICK C. HENN,
Attorney of Plaintiff.

ANSWER OF LEHIGH VALLEY RAILROAD CO.

(Filed September 7, 1916.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

TRUSTEES OF THE EVANGELICAL LUTHERAN ST. PAUL'S CHURCH OF JERSEY CITY, a body corporate, *Plaintiff,* *vs.* NATIONAL STORAGE COMPANY, a corporation; LEHIGH VALLEY RAILROAD COMPANY, a corporation; JOHNSON LIGHTERAGE COMPANY, a corporation, and NEW JERSEY CENTRAL RAILROAD COMPANY, a corporation, *Defendants.*	*Action at Law.* *Answer of Lehigh Valley Railroad Company.*

Defendant, Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, having its principal office in New Jersey, at the foot of Washington street, Jersey City, says:

FIRST DEFENSE.

1. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 1.

2. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 2.

3. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 3.

4. It admits that on July 30, 1916, and for two years or more prior thereto, it operated and maintained a steam railroad upon tracks laid through the City of Jersey City, including tracks at or near the premises of the National Storage Company and a certain wharf to which barges and ships were moored; but it has no knowledge or information sufficient to form a belief as to whether barges and ships of the Johnson Lighterage Company were moored to said wharf.

It denies that on said date and for many days prior thereto, or at any other time, it knowingly, willfully or unlawfully, or otherwise, stored or permitted and allowed to be stored large quantities of war munitions, to wit, over 50 pounds of war munitions, consisting of shot, shell, nitro-glycerin, sulphur-chloride, nitro-cellulose, gunpowder, blasting powder, dualin, dynamite, forcite, giant powder and other highly dangerous explosives and combustibles.

It admits that on said date and for many days prior thereto it carried, conveyed and transported and permitted and allowed to be carried, conveyed and transported certain quantities (though not large) of war munitions, consisting of shot and shell, but denies that said war munitions consisted of nitro-glycerin, sulphur-chloride, nitro-cellulose, gunpowder, blasting powder, dualin, dynamite, forcite, giant powder, or other powder, or materials of which nitro-glycerin is an essential ingredient or forms a component part; and it denies that on said date or at any other time it conveyed or transported other or any highly dangerous explosives or combustibles.

5. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 5.

6. It denies that on July 30, 1916, or at any other time, it stored or kept the said large quantities of war munitions or any other war munitions or the said or any highly dangerous explosives or combustibles; it admits that it conveyed and transported certain quantities (though not large) of war munitions, consisting of shot

and shell, and says that it conveyed and transported the same strictly in accordance with and as required by law; it denies that said war munitions consisted of nitro-glycerin, sulphur-chloride, nitro-cellulose, gunpowder, blasting powder, dualin, dynamite, forcite, giant powder, or other powder or materials of which nitro-glycerin is an essential ingredient or forms a component part, and it denies that on said date or at any other time it conveyed or transported other or any highly dangerous explosives or combustibles; it denies that it knew that said war munitions and explosives and combustibles were dangerous; it denies that it permitted said or any explosives or combustibles to remain exposed for many hours; it denies that by reason of any negligence on its part the said explosives and combustibles contracted with fire and thereby caused violent explosions, concussions and reverberations; it denies that on said date or at any other time it created and maintained a public nuisance; and it denies that said acts, or any or either of them, set forth in paragraph 6 of the complaint were illegal; and, if illegal, it denies that it committed said acts, or any or either of them.

7. It denies paragraph 7.

Second Defense.

1. All the war munitions, explosives and combustibles carried, conveyed or transported by this defendant on July 30, 1916, and for many days prior thereto, were so carried, conveyed and transported in the course of interstate or foreign commerce.

2. On said date and for many days prior thereto this defendant was a common carrier engaged in interstate or foreign commerce which transported explosives by land.

3. Said war munitions, explosives and combustibles contracted with fire and caused the alleged explosions,

concussions and reverberations while the same were in the course of transportation by land in interstate or foreign commerce.

4. On said date and for many days prior thereto this defendant, as a common carrier, was compelled by law to carry, convey and transport the said war munitions, explosives and combustibles in the course of interstate and foreign commerce, provided the same were packed, marked, loaded and handled, and when offered for transportation were in proper condition to transport, in accordance with and pursuant to the act of Congress of the United States, entitled "An act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation," approved March 4, 1909, and the act of said Congress entitled "The act to regulate commerce," as amended June 18, 1910, and the regulations prescribed by the Interstate Commerce Commission by authority of said acts.

5. Said war munitions, explosives and combustibles were packed, marked, loaded and handled and when offered for transportation were in proper condition to transport in accordance with said acts of Congress of the United States and the regulations prescribed by the Interstate Commerce Commission by virtue thereof, and were carried, conveyed and transported by this defendant strictly in accordance with said acts and regulations.

COLLINS & CORBIN,
Attorneys of Defendant Lehigh Valley Railroad Company.

ANSWER OF NATIONAL STORAGE CO.

(Filed September 7, 1916.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

TRUSTEES OF THE EVANGELICAL LUTHERAN ST. PAUL'S CHURCH OF JERSEY CITY, a body corporate, *Plaintiff,* *vs.* NATIONAL STORAGE COMPANY, a corporation; LEHIGH VALLEY RAILROAD COMPANY, a corporation; JOHNSON LIGHTERAGE COMPANY, a corporation, and NEW JERSEY CENTRAL RAILROAD COMPANY, a corporation, *Defendants.*	*Action at Law.* *Answer of National Storage Company.*

Defendant National Storage Company, a corporation of the State of New Jersey, having its principal office in New Jersey, at 243 Washington street, Jersey City, New Jersey, says that:

1. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 1.

2. It denies all of the allegations of paragraph 2, except that it admits that on July 30, 1916, and for two years or more prior thereto it was continuously the owner of large warehouses situate at Communipaw within the boundary limits of the City of Jersey City, whereat it conducted a general storage business.

3. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 3.

4. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 4, except that it admits that on July 30, 1916, and for two years or more prior thereto the defendant Lehigh Valley Railroad Company operated and maintained a steam railroad upon certain tracks at or near the premises of this defendant.

5. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 5.

6. It denies that on July 30, 1916, or at any other time it stored, kept, shipped, conveyed or transported the said large quantities of war munitions or any other war munitions or the said or any highly dangerous explosives and combustibles; it denies that it knew that said war munitions and explosives and combustibles were dangerous; it denies that it permitted said or any explosives or combustibles to remain exposed for many hours; it denies that by reason of any negligence on its part the said explosives and combustibles contracted with fire and thereby caused violent explosions, concussions and reverberations; it denies that on said date or at any other time it created and maintained a public nuisance; it denies that said acts or any other or either of them set forth in paragraph 6 of the complaint were illegal; and, if illegal, it denies that it committed said acts, or any or either of them.

7. It denies paragraph 7.

COLLINS & CORBIN,
Attorneys of Defendant National Storage Company.

POSTEA AND JUDGMENT.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

TRUSTEES OF ST. PAUL'S EVANGELICAL LUTHERAN CHURCH,

vs.

LEHIGH VALLEY RAILROAD COMPANY.

This case was tried before the Honorable William H. Speer, Circuit Court Judge (to whom the same was referred for trial), and a jury on the 20th, 23rd, 24th, 25th, 26th and 27th days of June, 1919, and the same having been submitted to the jury the jury returned a general verdict in favor of the plaintiff and against the defendant Lehigh Valley Railroad Company in the sum of One Thousand and Fifty-nine Dollars and Forty-nine Cents ($1,059.49).

Damages $1,059.49
Costs .....
$.....

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of One Thousand and Fifty-nine Dollars and Forty-nine Cents, and its costs, which are taxed at the sum of..... Dollars, making in the whole the sum of .....Dollars.

Judgment entered July 9, 1919.

WM. S. GUMMERE,
C. J.

NOTICE OF APPEAL.

(Filed July 21, 1919.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

ELEAZER E. CLARK, *et als.*, *Plaintiffs,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, Impleaded, Etc., *Defendant.*	*Action at Law.* *Notice of Appeal.*

To Messrs. Congleton, Stallman & Hoover,
Attorneys of Plaintiff.

TAKE NOTICE, that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in above-stated cause.

COLLINS & CORBIN,
Attorneys for Defendant.

GROUNDS OF APPEAL.

(Eleazer E. Clark, et als.)

(Filed August 25, 1919.)

These are the same as Grounds of Appeal Nos. one to seventy in the case of Royal Indemnity Company. Also the following additional grounds:

(Freight Moneys.)

71. (a) The following questions were admitted to the witness, Eleazer E. Clark:

(1) "Do you know whether or not the vessel had collected the freight moneys on her entire cargo at that time?"

(2) "None had been?"

(3) "Had some freight accrued and was owing by the consignees at that time?"

(4) "Now, Mr. Clark, about the cargo of this boat. What part, if you know, of the cargo had not been discharged?"

(5) "Will you answer the question, Mr. Clark?"

(6) "When you say that you mean the vessel's bill of lading?"

(7) "The Walcott's bill of lading?"

(8) "And that part that you say you collected the amount on, what was done with that wood?"

(9) "Delivered where?"

Defendant's motion for a direction of verdict should have been granted for one or more of the following additional reasons:

71. (b) The proofs show that after the outbreak of the fire the plaintiffs could have removed the schooner Walcott from the proximity of danger therefrom, and the failure on the part of the plain-

tiffs to take reasonable precautions in caring for their property in this respect was the proximate cause of the damage to the property of the plaintiffs for the loss of which they sue.

71. (c) The proofs show that the proximate cause of the damage to the plaintiffs' schooner was the failure on the part of the employes of the plaintiffs to use reasonable care in respect of extinguishing any fire communicated to said schooner, and therefore the plaintiffs cannot recover from the defendant for such damage.

The Trial Judge refused to charge the following further request submitted in behalf of the defendant (said request being No. 43):

71. (d) If the jury finds that after the outbreak of the fire the plaintiffs or their agents or employes could have removed the schooner Walcott from the proximity of danger therefrom and that the failure on the part of the plaintiffs or their agents or employes to take reasonable precautions in caring for their property in this respect was the proximate cause of the damage to the property of the plaintiffs for the loss of which they sue, then the jury must find for the defendant in this case.

The Trial Judge further erroneously charged the jury in one or more of the following respects:

72. (a) "The negligence charged is in failing to give the schooner safe berth; in collecting explosive cars to such an extent that the combustion and detonation thereof would result in great damage to property * * *"

(b) "So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of dan-

ger; and the burden therefore rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out then the plaintiff is entitled to have a verdict and have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict, but the verdict would have to be for the defendant."

73. "The negligence charged is * * * in permitting the accumulation of inflammable material. * * *"

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in subhead (b) of Ground of Appeal No. 72.

74. "The negligence charged is * * * in failing to provide competent men and sufficient facilities for patrolling and guarding the yard." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

75. "The negligence charged is * * * in neglecting to exclude trespassers or incendiaries." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

76. "The negligence charged is * * * in failing to provide hydrants and water." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

77. "The negligence charged is * * * in failing to provide firemen." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

78. "The negligence charged is * * * in failing to instruct employees as to duties in case of fire." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

79. "The negligence charged is * * * in failing to provide facilities for removing or isolating burning cars." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

80. "The negligence charged is * * * in failing to dispose of the cars so as to control communication of fire, etc." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

81. "The negligence charged is * * * in permitting barges to tie up at the piers." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

82. "The negligence charged is * * * in failing to give alarm." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

83. "The negligence charged is * * * in failing to prevent fire." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

84. "The negligence charged is * * * in failing to discover and extinguish the fire." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk

in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

85. "The negligence charged is * * * in failing to warn the schooner of the presence of danger." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

86. "The negligence charged is in failing to give the schooner safe berth; in collecting explosive cars to such an extent that the combustion and detonation thereof would result in great damage to property; in permitting the accumulation of inflammable material; in failing to provide competent men and sufficient facilities for patrolling and guarding the yard; in neglecting to exclude trespassers or incendiaries; in failing to provide hydrants and water; in failing to provide firemen; in failing to instruct employees as to duties in case of fire; in failing to provide facilities for removing or isolating burning cars; in failing to dispose of the cars so as to control communication of fire, etc.; in permitting barges to tie up at the piers; in failing to give alarm; in failing to prevent fire; in failing to discover and extinguish the fire; in failing to warn the schooner of the presence of danger."

"So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger; and the burden therefore rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate

with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out then the plaintiff is entitled to have a verdict and have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict, but the verdict would have to be for the defendant."

COMPLAINT.

(Filed July 31, 1918.)

SUPREME COURT OF THE STATE OF NEW JERSEY.

HUDSON COUNTY.

Eleazer E. Clark, Melvina C. Winslow, James W. Parker, Edward L. Foss, Norman C. Reed, Trustee for the next of kin of George M. Adams, deceased; Kate M. Hitchcock, F. N. Sewall, Richard E. Goodwin, Executor under the Last Will and Testament of Clara P. Goodwin, deceased; A. L. Young, M. Reed, W. R. Kreger, Elizabeth G. Brown, Administratrix *de bonus non* of the goods, chattels and credits of Johnson Rideout; Isabella M. Reed, Lizzie E. Adams, Executrix under the Last Will and Testament of Andrew Adams, deceased; J. R. McDougall, W. R. Lincoln, Ann E. Merryman, Sarah A. Purington, E. Raymond Haggett, James S. Conant, Richard F. Barrett, James H. Smith, B. Frank Marsh, Mary E. Wade, John M. Wadhams, Charles W. Clifford, Alicia B. Crosby, Fred P. Ring, Nellie McCutcheon, Virginia Clark, E. R. Haggett, Executor under the Last Will and Testament of Ebenezer Haggett, deceased; Kate H. Warren, George D. Curtis, Martha P. Small, as Administratrix of the goods, chattels and credits of Frank A. Small, deceased; Rosalie Stimpson, Abbie N. Peterson, A. B. Thwing, Eleanor Haggett, A. C. Manson, J. B. Bassett, Executor and Trustee under the Last Will and Testament of Frank E. Bassett, deceased; Alexander J. McCabe, Executor under the Last Will and Testament of Jennie A. McCabe; John Chaney, William M. Mills, Lottie E. Mills and Henry J. Mills, Executors under the Last Will and Testament of Stephen H. Mills, deceased; Elizabeth T. Merrill, Executrix under the Last Will and Testament of John L. Merrill, deceased; Addie H. Foss, John J. Cullinan and Thomas M. Cullinan, doing business under the firm name of Cullinan & Cullinan; Frederick J. Hinckley, Harry P. Hoff, Lillian E. Wood, Leslie B. Clark, E. Winslow Clark, Elizabeth M. Rogers, Ralph Holden, Atlantic Coast Company, Alice M. Strout, Administratrix of the goods, chattels and credits of Frank N. Strout; Pearl Horseman, and Mark L. Jamieson,

Plaintiffs,

against

Lehigh Valley Railroad Company and National Storage Company,

Defendants.

Action at Law.

Complaint.

Complaint.

The plaintiffs above named, whose residences are set forth in the schedule annexed to the complaint and made a part thereof and marked "A", say that:

FIRST COUNT.

1. The plaintiffs Eleazer W. Clark, Melvina C. Winslow, James W. Parker, Edward L. Foss, Norman C. Reed, trustee for the next of kin of George M. Adams, deceased; Kate M. Hitchcock, F. N. Sewall, Richard E. Goodwin, executor under the last will and testament of Clara P. Goodwin, deceased; A. L. Young, M. Reed, W. R. Kreger, Elizabeth G. Brown, administratrix *de bonus non* of the goods, chattels and credits of Johnson Rideout; Isabella M. Reed, Lizzie E. Adams, executrix under the last will and testament of Andrew Adams, deceased; J. R. McDougall, W. R. Lincoln, Ann E. Merryman, Sarah A. Purington, E. Raymond Haggett, James S. Conant, Richard F. Barrett, James H. Smith, B. Frank Marsh, Mary E. Wade, John M. Wadhams, Charles W. Clifford, Alicia B. Crosby, Fred P. Ring, Nellie McCutcheon, Virginia Clark, E. R. Haggett, executor under the last will and testament of Ebenezer Haggett, deceased; Kate H. Warren, George D. Curtis, Alexander J. McCabe, executor under the last will and testament of Jennie A. McCabe; John Chaney, Elizabeth T. Merrill, executrix under the last will and testament of John L. Merrill, deceased; Addie H. Foss, Frederick J. Hinckley, Harry P. Hoff, Lillian E. Wood, Leslie B. Clark, E. Winslow Clark, Elizabeth M. Rogers, Ralph Holden, Alice M. Strout, administratrix of the goods, chattels and credits of Frank N. Strout, and Pearl Horseman, were, on and before July 30, 1916, and at all the times mentioned in the complaint, each the owner of an undivided fractional share in the schooner George E. Walcott, her tackle, apparel and equipment, and all stores on board of her.

2. The plaintiff Atlantic Coast Company is a corporation organized and existing under and by virtue of the

laws of the State of Maine, with an office at 131 State street, Boston, State of Massachusetts, and at all the said times was the owner of an undivided 5/128ths share in the schooner George E. Walcott, her tackle, apparel and equipment, and all stores on board of her.

3. The plaintiffs William M. Mills, Lottie E. Mills and Henry J. Mills, executors under the last will and testament of Stephen H. Mills, deceased, were at all said times the joint owners of an undivided 1/128th share in the said schooner, her tackle, apparel and equipment, and all stores on board of her.

4. At all said times up to the time of his death, Frank A. Small, intestate of the plaintiff Martha P. Small, was the owner of an undivided 1/128th share in said schooner, her tackle, apparel and equipment, and all stores on board of her. Said Frank A. Small died on or about June 21, 1917. Thereafter, on or about July 3, 1917, the plaintiff, Martha P. Small, his widow, by decree of the Probate Court of Sagadahock County, in the State of Maine, was appointed administratrix of his goods, chattels and credits and is at the present time the owner of any cause of action formerly belonging to the said Frank A. Small arising out of the loss or destruction of or damage to said schooner, her tackle, apparel and equipment, and all stores on board of her, to the extent of the said fractional share therein.

5. The plaintiffs John J. Cullinan and Thomas M. Cullinan were at all the times mentioned in the complaint and still are co-partners doing business under the firm name of Cullinan & Cullinan in the City of Bridgeport and State of Connecticut, and on July 30 and theretofore were the owners of an undivided 1/128th share in the said schooner George E. Walcott, her tackle, apparel and equipment, and all stores on board of her.

6. The residence of each plaintiff hereinabove mentioned is set forth opposite the name of each plaintiff

respectively, in the column headed "Residence" in the schedule annexed to this complaint and marked "A" and made a part hereof. The fractional share owned by each plaintiff is set forth in said schedule opposite the name of each plaintiff in the column headed "Fractional Share."

7. The defendant Lehigh Valley Railroad Company at all times mentioned in the complaint was and still is a corporation organized and existing under the laws of the State of Pennsylvania, and engaged in business as a common carrier in interstate commerce.

8. At all the times mentioned in the complaint the defendant National Storage Company was and still is a corporation organized and existing under the laws of the State of New Jersey and at all said times was the owner of a certain tract of land, and storage warehouses, docks, piers and other terminal facilities known as the National Docks, situated on a peninsula commonly called Black Tom Island, extending from the shore of Communipaw, Jersey City, Hudson County, New Jersey, into the waters of New York Bay. At all said times said defendant was engaged in operating a portion of said property in its business as public warehouseman and in leasing the remainer thereof.

9. On or about June 24, 1913, the National Storage Company leased to the Lehigh Valley Railroad Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, for a term of ten years from July 1, 1913, at a fixed annual rental, all the land belonging to the National Storage Company situated at the National Docks, Jersey City, Hudson County, New Jersey, with all the tracks, rails, piers, docks, bulkheads, stores and warehouses of every kind whatsoever erected thereon (excepting and reserving therefrom about 149,500 square feet, together with certain warehouses erected thereon, Pier 6, Shed No. 2 on Pier 7, and an office building located on said premises) together with

all the rights of access thereto and wharfage rights in connection therewith. The National Storage Company in addition to the property hereinabove mentioned, under the terms of the lease, reserved certain rights in the premises leased, including the right to the use and control in common with the defendant Lehigh Valley Railroad Company of the wharfage rights in said leased premises, and electric light, electric power, steam heat, steam power, water and fire protection. Thereafter, on or about June 17, 1914, the Lehigh Valley Railroad Company of New Jersey leased all the above described premises to the defendant Lehigh Valley Railroad Company, subject to all the terms and conditions of the lease of June 24, 1913, hereinabove referred to.

10. Said leases were in full force and effect at all times hereinabove mentioned, and at all said times the defendant Lehigh Valley Railroad Company possessed, used, occupied and controlled the property leased as aforesaid in its business of common carrier, subject to the reservations in favor of the defendant, National Storage Company, hereinabove referred to, as a railroad yard in which freight was received and dispatched. The said premises were known as Black Tom yards.

11. At all times mentioned in the complaint up to her destruction on July 30, 1916, the schooner George E. Walcott was tight, staunch and strong, fully equipped and seaworthy, and was of the reasonable value of about $135,000. At the time of the fire and explosion hereinafter mentioned she was rightfully and properly moored by invitation of the defendants on the southeast side of Pier 6, Black Tom Island, which was a part of the premises known as National Docks, immediately adjoining the Black Tom yards of the defendant Lehigh Valley Railroad Company and with the waters adjacent thereto was in the use, occupation and control of the defendants. At said time there were on board of her stores and equipment of the reasonable value of $15,000 and property of the

plaintiff Mark L. Jamieson, her master, consisting of clothing, nautical instruments and other personal effects of the reasonable value of $700.

12. For a long time prior to July 29, 1916, the defendant Lehigh Valley Railroad Company had, to the knowledge of both defendants, but without the knowledge of the plaintiffs, used Black Tom yards in considerable part for the transportation, storage and trans-shipment of vast quantities of dangerous explosives, explosive projectiles and ammunition and munitions of war of an explosive and inflammable nature, known to the defendants to be such, and had caused to be stored and kept in said yards large numbers of railroad cars laden with said explosives, ammunition and munitions, together with other cars laden with general merchandise, including inflammable chemicals, known to the defendant to be such. The defendants had also caused and permitted to be moored to the piers forming part of said premises large numbers of barges and lighters containing, and known to the defendants to contain ammunition and munitions of war of an explosive and highly inflammable nature, much of which had not been transported over the line of the defendant Lehigh Valley Railroad Company.

13. On the night of July 29th and the early morning of July 30th, 1916, defendant Lehigh Valley Railroad Company had caused to be accumulated in said Black Tom yards, as a transfer station or interchange point, a large number of cars containing a great quantity of explosives, explosive projectiles, ammunition and munitions of war of an explosive and inflammable nature which were being, or had been transported by railroads in interstate commerce, and were destined to a point beyond the line of the defendant railroad company. Said explosives were known to the defendants to be contained in said cars, and were known to them to be highly dangerous and liable in the event of fire or concussion to explode

New Jersey State Library

with great danger to human life, and with calamitous effect upon surrounding property.

14. In addition to the said cars of explosives the defendant railroad company had on the night of July 29th and the early morning of July 30th and for some time prior thereto stored and allowed to remain in said Black Tom yards, a large number of cars laden with general merchandise, including highly inflammable chemicals known to the defendants to be such.

15. On the said days, and for some time prior thereto, defendants had caused or allowed the piers which formed a part of the said leased premises and the waters adjacent thereto to be used for the tying up and mooring of boats, lighters and other craft on which were laden, and known to the defendants to be laden, large quantities of explosives, explosive projectiles, ammunition and munitions of war of an explosive and inflammable character, a large part of which had not been transported over the railroad of the defendant Lehigh Valley Railroad Company. One or more of the barges which defendants had permitted to be moored at said piers on the night of July 29th and the early morning of July 30th contained a cargo which consisted of both high explosives and detonating fuses.

16. Among said explosives, explosive projectiles, ammunition and munitions of war hereinabove referred to as being on the night of July 29th and the early morning of July 30th on the defendants' said premises, and upon barges or lighters lying at the defendants' said piers were vast quantities of trinitrotoluol, smokeless powder, black powder, picric acid, gun cotton and nitro-cellulose and also a large quantity of detonating and other fuses. Said explosives were carried both in bulk and in shrapnel or other projectiles, cartridges and munitions of war.

17. On the early morning of July 30th defendants permitted a fire to break out in said Black Tom yards

which resulted in the explosion of a great portion of the accumulation of explosives and munitions in and near said yards. The explosion of said explosives and munitions caused injuries to a great number of persons, the loss of several lives and enormous damage to property over a great area; and together with the fire which was spread thereby to all parts of Black Tom Island completely destroyed a number of piers, warehouses and other structures on said Black Tom Island.

18. As a result of the explosion of said munitions and the said fire, and by reason of the negligence and misconduct of the defendants in the respects hereinafter mentioned, the schooner George E. Walcott, together with all her tackle and equipment and stores on board, including all the personal effects of the master, Mark L. Jamieson, were destroyed and lost.

19. Before and at the time of said explosion of munitions and fire it became and was the duty of the defendants in connection with the management and control of said Black Tom yards and the property adjacent thereto and the custody and handling of said explosives, explosive projectiles, ammunition and munitions of war, to see the berth at which said ship lay was in all respects safe and proper for her; to prevent the accumulation in and near the Black Tom yards of such a quantity of said explosives that the combustion or detonation thereof would result in injury to persons in the vicinity, loss of life and great damage to surrounding property; to exercise a degree of care commensurate with the risk of the situation hereinabove described, for the purpose of preventing, discovering, controlling and extinguishing fires on said premises, and preventing and limiting the damage from any explosion of a part of the explosives kept thereon; to exercise the same degree of care to prevent access of unauthorized persons to said explosives, and especially in view of the existence of the European war and the common knowledge and report of depredations committed

by evilly disposed persons in connection with munitions of war, to take all reasonable precautions to prevent said depredations being committed on the premises owned or controlled and operated by the defendants or either of them; and to warn the plaintiff of the dangerous situation created by the presence on the said premises of the explosives hereinabove described.

20. The regulations of the Interstate Commerce Commission for the transportation of explosives and other dangerous articles by freight and express, issued January 15, 1910, as amended and revised July 2, 1914, promulgated by authority of the act of Congress of March 4, 1909, and Section 15 of the Act to Regulate Commerce as amended June 16, 1910, provide in part as follows:

"1428. Before any shipment of dangerous explosives as named in paragraph 1661 destined to a point beyond the lines of the initial carrier is accepted from a shipper, the initial carrier must ascertain that the shipment can go forward via the route designated.

"1433. Carriers must forward shipments of explosives promptly and within 48 hours after acceptance at originating point or receipt at transfer station or at interchange point, and consignees must remove such shipments from the carriers' property within 48 hours after notice of arrival at destination, Sundays and holidays not included.

"1643 (a). Careful men must be chosen to handle explosives, the platform and the feet of the men must be as free as possible from grit, and all possible precautions must be taken against fire. Suitable provisions must be made, outside of the station when practicable, for the safe storage of explosives, and every effort possible must be made to reduce the time of this storage. If a shipment of explosives is not removed within 48 hours after notice of arrival at destination, it must be disposed of by return

to the shipper, or by storage at the expense of the owner, or by sale, or when necessary to safety by destruction under supervision of a competent person.

(b) Unauthorized persons must not have access to explosives or other dangerous articles at any time while such articles are in the custody of the carrier.

"1682. Every possible effort must be made to expedite the movement of cars containing explosives and no unnecessary delay must occur at initial, interchange or transfer stations.

"1689 * * *. Other cars must not be cut off and allowed to strike a car containing explosives. They must be so placed in yards or on sidings that they will be subject to as little handling as possible, and be removed from all danger of fire."

The regulations hereinabove referred to were in force and effect prior to and at the time of the fire and explosion hereinabove described, and they had the force and effect of law, and it was the duty of the Lehigh Valley Railroad Company at all times mentioned in the complaint strictly to observe them with respect to the acceptance, custody and care of said explosives, explosive projectiles, ammunition and munitions of war.

21. The said fire and explosions and the damage to the plaintiffs resulting therefrom were not caused or contributed to by any negligence on the part of the plaintiffs or any of them, but were caused by the negligence and misconduct of the defendants, and each of them, in the following particulars, among others:

(a) By failing to see that the berth at which the said schooner lay was safe and proper for said schooner, and in failing to keep it so.

(b) In collecting freight cars containing explosives, explosive projectiles, ammunition and munitions of war subject to detonation by fire or concussion and permitting them to accumulate in the said Black Tom yards to such

an extent that the detonation and explosion or combustion of their contents might result in a great casualty with great danger to human life and damage to surrounding property.

(c) In permitting the accumulation of inflammable material, and especially cars containing highly inflammable chemicals in said Black Tom yards and in the vicinity thereof.

(d) In failing to provide an adequate system and sufficient competent men and proper facilities for patroling, policing and guarding said yards and other premises in the vicinity thereof under the control of the defendants, and the cars and their contents stored therein for the purpose of preventing, discovering and extinguishing fires and preventing explosions; and in failing adequately to patrol, police and guard said premises and the cars and their contents and other property stored therein.

(e) In neglecting to take due care to exclude unauthorized persons from the said yards and leased premises and from the adjoining premises who might, by accident or design, set fire to the property on said premises or cause explosions thereon.

(f) In failing to provide adequate hydrants, fire apparatus and sufficient pressure of water on and in the vicinity of the premises where the fire and explosions occurred.

(g) In failing to provide sufficient and competent men, adequate fire drills and proper facilities for fire protection and prevention on and in the vicinity of the premises where the fire occurred.

(h) In failing properly to instruct their employees on and in the vicinity of the premises where the fire occurred as to their duties in case of fire.

(i) In failing to provide adequate facilities and to take proper measures and precautions both before and after the fire started for removing or insulating cars

which caught fire and cars loaded with dangerous explosives likely to explode by fire in or near which fire might be discovered.

(j) In failing to store, handle and dispose of said explosives, explosive projectiles and ammunition and munitions and the cars containing them so as to enable the defendants to prevent or control the communication of fire or concussion from one part of the mass of explosives to another.

(k) In permitting barges and other vessels containing explosives, explosive projectiles, ammunition and munitions of war to remain for an undue period of time moored to or near the piers and bulkheads in the vicinity of the place where the fire and explosions occurred; and in permitting barges and other vessels laden with explosives, not transported over the line of the defendant Lehigh Valley Railroad Company, to moor at or in the vicinity of said piers and bulkheads.

(l) In failing to install, maintain and keep in repair adequate means for communicating alarms and summoning assistance in case of fire.

(m) In failing to give the alarm of fire and summon assistance promptly.

(n) In failing to prevent the said fire.

(o) In failing promptly to discover the said fire and to take proper measures to extinguish it and to prevent damage therefrom.

(p) In neglecting to give plaintiff or those in charge of the schooner George E. Walcott warning of the presence of dangerous explosives and of the dangers proceeding from the conduct and omissions of the defendants described in the complaint.

22. The said fire and explosion of munitions and the damage to the plaintiffs resulting therefrom were caused by the negligence and default of the defendant Lehigh

Valley Railroad Company in the following particulars in addition to those hereinabove enumerated:

(a) In that in violation of §1428 of the regulations of the Interstate Commerce Commission for the transportation of explosives it did not ascertain from the shipper or preceding carrier before accepting the shipments of explosives which were accumulated in the Black Tom yards in the early morning of July 30, 1916, whether said shipments could go forward by the route designated.

(b) In that in violation of §1433 of the said regulations of the Interstate Commerce Commission it did not forward the said shipments of explosives promptly and within forty-eight hours after receipt at the transfer station or interchange point.

(c) In that in violation of §1643 of the said regulations of the Interstate Commerce Commission it did not take all possible precautions against fire, nor make suitable provision for the safe storage of said explosives, nor make every effort possible to reduce the time of such storage, and in that when such shipments were not removed within forty-eight hours after notice of arrival at destination they were not disposed of by return to the shipper or by storage at the expense of the owner or by sale or by destruction under supervision of a competent person.

(d) In that in violation of §1643 of said regulations of the Interstate Commerce Commission it permitted unauthorized persons to have access to said explosives while said articles were in its custody.

(e) In that in violation of §1682 of said regulations of the Interstate Commerce Commission it did not make every possible effort to expedite the movement of cars containing explosives, and unnecessary delay was permitted to occur at interchange and transfer station.

(f) In that in violation of §1689 of said regulations it did not remove the cars containing explosives from all danger of fire.

(g) In that in other respects it failed to observe the regulations of the Interstate Commerce Commission for the transportation of explosives.

23. As a result of said fire and explosion of munitions and by reason of the negligence and misconduct of the defendants the plaintiff Mark L. Jamieson has suffered damage in respect of the loss of his personal property and effects in the sum of seven hundred dollars ($700); and the other plaintiffs have suffered damage in respect of the loss of their shares in the schooner George E. Walcott and the equipment and stores on board of her in the sums set opposite their respective names in Schedule A attached to the complaint, aggregating the sum of $150,000.

SECOND COUNT.

1. The plaintiffs re-allege each and every allegation contained in paragraphs 1 to 23 inclusive of the first count of the complaint as fully and with the same effect as if expressly re-alleged herein.

2. Said explosives, explosive projectiles, ammunition and munitions of war were placed and kept by the defendants and permitted by them to be kept in proximity to dwellings and boats, lighters and ships on which large numbers of persons resided and to cars, warehouses and other structures where vast quantities of property were stored and in such a location and in such quantities were the combustion or detonation thereof was certain to endanger large numbers of persons residing in the neighborhood not employed by the defendants and to destroy vast amounts of surrounding property, both real and personal, not owned by defendants.

3. By reason of the matters aforesaid the defendants and each of them were guilty of maintaining a public nuisance in the said Black Tom yards and in the vicinity thereof, and said explosion of munitions and the damage

resulting to the plaintiffs therefrom as hereinabove described were caused by such public nuisance.

The plaintiff Mark L. Jamieson demands as damages the sum of seven hundred dollars ($700) on the first count.

The plaintiff Mark L. Jamieson demands as damages the sum of seven hundred dollars ($700) on the second count.

The plaintiffs, excepting Mark L. Jamieson, each demand as damages on the first count the amounts set opposite their respective names in Schedule A attached to this complaint.

The plaintiffs, excepting Mark L. Jamieson, each demand as damages on the second count the amounts set opposite their respective names in Schedule A attached to this complaint.

CONGLETON, STALLMAN & HOOVER,
Attorneys for Plaintiffs.

Schedule A.

Name of Plaintiff.	Residence.	Fractional Share.	Damages.
Eleazer W. Clark	Portland, Maine	6/64	$14,062.50
Melvina C. Winslow	Cape Elizabeth, Maine	3/64	7,031.25
James W. Parker	Portland, Maine	3/64	7,031.25
Edward L. Foss	Portland, Maine	3/64	7,031.25
Norman C. Reed, Trustee for the next of kin of George M. Adams, deceased	Boston, Massachusetts	2/64	4,687.50
Kate M. Hitchcock	Bath, Maine	2/64	4,687.50
F. N. Sewall	Bath, Maine	2/64	4,687.50
Richard E. Goodwin, Executor under the last will and testament of Clara P. Goodwin, deceased	Augusta, Maine	2/64	4,687.50
A. L. Young	Auburn, Maine	3/128	3,515.625
M. Reed	Boothbay Harbor, Maine	1/64	2,343.75
W. R. Kreger	Fairfield, Maine	1/64	2,343.75
Elizabeth G. Brown, administratrix de bonus non of the goods, chattels and credits of Johnson Rideout	Augusta, Maine	1/64	2,343.75

Complaint—Schedule A.

Name of Plaintiff.	Residence.	Fractional Share.	Damages.
Isabella M. Reed	Boothbay Harbor, Maine	1/64	2,343.75
Lizzie E. Adams, executrix under the last will and testament of Andrew Adams, deceased	Portland, Maine	1/64	2,343.75
J. R. McDougall	East Boothbay, Maine	1/64	2,343.75
W. R. Lincoln	Brunswick, Maine	1/64	2,343.75
Ann E. Merryman	Brunswick, Maine	1/64	2,343.75
Sarah A. Purington	Winnegance, Maine	1/64	2,343.75
E. Raymond Haggett	Baltimore, Maryland	1/64	2,343.75
James S. Conant	Boston, Massachusetts	1/64	2,343.75
Richard F. Barrett	Concord, Massachusetts	1/64	2,343.75
James H. Smith	Washington, District of Columbia	1/64	2,343.75
B. Frank Marsh	Hartford, Connecticut	1/64	2,343.75
Mary E. Wade	Waldoboro, Maine	1/64	2,343.75
John M. Wadhams	Torrington, Connecticut	1/64	2,343.75
Charles W. Clifford	Bath, Maine	1/64	2,343.75
Alicia B. Crosby	Bath, Maine	1/64	2,343.75
Fred P. Ring	West Bath, Maine	1/64	2,343.75
Nellie McCutcheon	Bath, Maine	1/64	2,343.75
Virginia Clark	Portland, Maine	1/64	2,343.75
E. R. Haggett, Executor under the last will and testament of Ebenezer Haggett, deceased	Baltimore, Maryland	1/80	1,875.00
Kate H. Warren	Spencer, Massachusetts	7/640	1,640.625
George D. Curtis	Hartford, Connecticut	1/128	1,171.875
Martha P. Small, administratrix of the goods, chattels and credits of Frank A. Small, deceased	Bath, Maine	1/128	1,171.875
Rosalia Stimpson	Bath, Maine	1/128	1,171.875
Abbie N. Peterson	Brunswick, Maine	1/128	1,171.875
A. B. Thwing	West Woolwich, Maine	1/128	1,171.875
Eleanor Haggett	Newcastle, Maine	1/128	1,171.875
A. C. Manson	Boston, Massachusetts	1/128	1,171.875
J. B. Bassett, executor and trustee under the last will and testament of Frank F. Bassett, deceased	Hyannis, Massachusetts	1/128	1,171.875
Alexander J. McCabe, executor under the last will and testament of Jennie A. McCabe, deceased	2163 Eighth Avenue, New York City, New York	1/128	1,171.875
John Chaney	Boston, Massachusetts	1/128	1,171.875
William M. Mills, Lottie E. Mills, Henry J. Mills, Executors under the last will and testament of Stephen H. Mills, deceased	Sea Cliff, New York Kinderhook, New York Kinderhook, New York		
Elizabeth T. Merrill, Executrix under the last will and testament of John L. Merrill, decd.	.....	1/128	1,171.875
Addie H. Foss	53 South Street, New York City, New York	1/128	1,171.875
	Portland, Maine	1/128	1,171.875

Name of Plaintiff.	Residence.	Fractional Share.	Damages.
John J. Cullinan, Thomas M. Cullinan, Co-partners, doing business under the firm name of Cullinan & Cullinan	Bridgeport, Connecticut Bridgeport, Connecticut		
Frederick J. Hinckley	Bath, Maine	1/128	1,171.875
Harry P. Hoff	Philadelphia, Pennsylvania	1/128	1,171.875
Lillian E. Wood	Milford, Massachusetts	1/128	1,171.875
Leslie B. Clark	Portland, Maine	1/128	1,171.875
E. Winslow Clark	Portland, Maine	1/256	585.94
Elizabeth M. Rogers	Canton, Massachusetts	1/256	585.94
Ralph Holden	Concord, Massachusetts	2/64	4,687.50
Atlantic Coast Company	Boston, Massachusetts	5/128	5,859.375
Alice M. Strout, administratrix of the goods, chattels and credits of Frank N. Strout	Portland, Maine	2/64	4,687.50
Pearl Horseman	Baltimore, Maryland	1/64	2,343.75
Mark L. Jamieson	New Bedford, Massachusetts		

AMENDMENT OF COMPLAINT.

(Filed June 10, 1919.)

NEW JERSEY SUPREME COURT.

ELEAZER E. CLARK, *et als.*, *Plaintiffs*, *vs.* LEHIGH VALLEY RAILROAD COMPANY, *et al.*, *Defendants.*	*Action at Law.* *Amendment of Complaint.*

Plaintiffs amend their complaint in the above entitled action as follows:

1. By adding to paragraph eighteen a new sentence reading as follows:

"Also by reason of the premises, a part of the cargo of said schooner, to wit, 691 tons of Quebracho-wood was burnt or destroyed, whereby the plaintiffs lost the freight moneys accruing thereon at the rate of $8.50 per ton."

2 By adding to paragraph twenty-three the following:

"And also the sum of $5,874.00 loss of freight earnings described in paragraph eighteen."

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiffs.

It is hereby stipulated and agreed by and between the above named parties by their respective attorneys, that the foregoing amendment to the complaint may be filed, and that the answer of the defendants shall stand and be taken as the answer to the complaint as above amended.

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiffs.

COLLINS & CORBIN,
Attorneys of Defendants.

ANSWER OF LEHIGH VALLEY RAILROAD CO.

(Filed September 19, 1918.)

NEW JERSEY SUPREME COURT.

ELEAZER E. CLARK, *et als.*, *Plaintiffs,* *vs.* LEHIGH VALLEY RAILROAD COMPANY and NATIONAL STORAGE COMPANY, *Defendants.*	*Answer of Lehigh Valley Railroad Company.*

Defendant, a body corporate of the State of Pennsylvania, having its principal office in the State of New Jersey at 243 Washington street, Jersey City, says that:

FIRST DEFENSE TO FIRST COUNT.

1. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 1.

2. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 2.

3. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 3.

4. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 4.

5. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 5.

6. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 6.

7. It admits the allegations of paragraph 7.

8. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 8.

9. It admits the allegations of paragraph 9.

10. It admits the allegations of paragraph 10, except that it says that it possessed, used, occupied and controlled the said premises solely in connection with its business of a common carrier of freight, and did not use the said premises or any part thereof in connection with its business of a common carrier of passengers.

11. It admits that at the time of the fire and explosion mentioned in the complaint the schooner "George E. Walcott" was rightfully and properly moored on the southeast side of Pier 6, Black Tom Island, forming a part of the premises known as National Docks; it admits that the Black Tom yard mentioned in the complaint and certain of the waters adjacent thereto were in the use, occupation and control of this defendant; it has no knowledge nor information thereof sufficient to form a belief as to the remaining allegations of paragraph 11.

12. It denies the allegations of paragraph 12, except that it says that for a short time prior to July 29, 1916, it used said Black Tom yard (but only in small part) for the handling and holding (but only to the extent and the manner hereinafter mentioned) of carload lots of certain ammunitions and explosives, as hereinafter described, and it says that said yard was used as a general freight terminal for the delivery of all kinds of merchandise transported by the defendant as a common carrier of freight, of which merchandise, explosives, explosive projectiles and ammunitions and munitions of war were only a small proportion; it further says that the said yard was not used generally for the transportation and trans-shipment of explosives, explosive projectiles and ammunitions and munitions of war, but only a small part of said yard was used for that purpose, to wit, the northerly portion of said yard and a certain pier located near thereto known as the North Pier; it further says that said portion of said yard and the said pier was used in part for the purpose of making delivery to the consignee of carload lots of shells, shrapnel and other

ammunitions and munitions of war, and for the transferring of the same by the consignee thereof from cars to barges or lighters, or trans-shipment to steamers for export; and it further says that there was no handling or holding of the cars containing the same, except such as was lawfully incidental to the transportation and delivery thereof in the course of interstate commerce and commerce with foreign countries; and it further says that all of the materials so held or handled were in the course of interstate or foreign commerce at the time set forth in the complaint; it further says that there was no storage of any shells, shrapnel or other ammunitions and munitions of war, and that there was no trans-shipment thereof by this defendant.

13. It admits that on the night of July 29th and the early morning of July 30, 1916, there were some cars in said Black Tom yard, which contained certain explosives, to wit, shells, shrapnel and other ammunitions and munitions of war, including trinitrotoluol; it admits that the same were being transported by it in interstate commerce and were destined to a point beyond its line; it denies that the same were of an explosive or inflammable nature; it denies that it knew that said explosives or any of them were contained in said cars and says that its knowledge on the subject was limited to the statements on the placards placed on said cars at the time the same were received by it for transportation, and to the statements on the waybills or bills of lading issued at the time the same were received for transportation; it denies that it knew that the said alleged explosives were highly dangerous or liable in the event of fire or concussion to explode; it denies that it had caused a large number or any cars containing said explosives to be accumulated in said yard and denies that a large number of said cars were in fact accumulated therein.

14. It denies the allegations of paragraph 14, except that it says that on the night of July 29 and the early

morning of July 30, there was a small number of cars in said Black Tom yard containing general merchandise.

15. It denies the allegations of paragraph 15, except that it says that on July 30, 1916, and for several days prior thereto, it permitted the use of certain of the premises and waters, occupied and controlled by it, for the tying up of certain tugs and other vessels, but it says that it limited its said premises (for the tying up of barges and lighters carrying or to carry explosives) to one pier, namely, the pier known as "North Pier," and that, only while the said barges or lighters were being loaded; and it says it did not permit the tying up of tugs or other vessels to said pier or near or adjacent thereto except in the manner aforesaid; it further says that if there were any other barges, lighters or other craft containing explosives, moored at or near said Black Tom yard at the time of said explosion, as alleged in the complaint, the same were unlawfully so moored for the reason that the said mooring was in violation of the rules and regulations relating to the anchorage of vessels in the Port of New York, issued by the Bureau of Navigation of the Department of Commerce and Labor, which were in effect on said dates.

16. It admits that on the night of July 29 and the early morning on July 30, 1916, there were on said premises certain carloads of shells, shrapnel and other ammunitions and munitions of war, including trinitrotoluol (but not including smokeless powder, black powder, picric acid, gun cotton, nitro-cellulose, or detonating or other fuses); it denies that there were upon barges or lighters lying at any of its piers in or near said yard, vast or other quantities of trinitrotoluol, smokeless powder, black powder, picric acid, gun cotton, nitro-cellulose, or a large or any quantity of detonating or other fuses, except that it says that there were two barges at said North Pier partly loaded, one with shrapnel and the other with trinitrotoluol.

17. It denies the allegations of paragraph 17, except that it admits that in the early morning of July 30th there were one or more fires and explosions in or near said Black Tom yard and that by reason thereof several persons were injured or killed and certain property was damaged or destroyed.

18. It has no knowledge or information sufficient thereof to form a belief as to whether as a result of said fire and explosion, the schooner "George E. Walcott," together with her tackle, equipment and stores, and the personal effects of the master were destroyed and lost; it says that if the same were destroyed and lost it was not by reason of any negligence or misconduct on its part.

19. It denies the allegations of paragraph 19.

20. It admits the allegations of paragraph 20, except that it prays reference to the original regulations of the Interstate Commerce Commission for certainty as to the exact provisions thereof; and except that it says that said regulations did not impose upon this defendant the absolute duty of strictly observing the same with respect to the acceptance, custody and care of such explosives, explosive projectiles, ammunitions and munitions of war.

21. It denies the allegations of paragraph 21.

22. It denies the allegations of paragraph 22.

23. It has no knowledge or information thereof sufficient to form a belief as to the allegations of paragraph 23, except that it says that if the said plaintiff suffered damage as alleged in the complaint, the same was not due to any negligence or misconduct on the part of this defendant.

SECOND DEFENSE TO FIRST COUNT.

1. On July 30, 1916, and for many days prior thereto, the defendant was a common carrier engaged in inter-

state and foreign commerce, and therein transporting by land ammunitions and munitions of war, including explosives.

2. As such common carrier defendant was compelled by law to receive, carry, convey and transport the said ammunitions and munitions of war, including explosives, in the course of interstate and foreign commerce, provided the same were packed, marked, loaded and handled, and when offered for transportation were in proper condition to transport in accordance with and pursuant to the act of Congress of the United States entitled "An Act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation," approved March 4, 1909, and the act of said Congress entitled "An Act to regulate commerce," as amended June 18, 1910, and the regulations prescribed by the Interstate Commerce Commission by authority of said acts.

3. The ammunition and munitions of war and explosives that exploded on July 30, 1916, were packed, marked, loaded and handled, and when offered for transportation were and until and at the time of said explosion continued to be in proper condition to transport in accordance with said acts of Congress of the United States and the regulations prescribed by the Interstate Commerce Commission by virtue thereof, and were carried, conveyed and transported and held by the defendant in the course of interstate and foreign commerce lawfully and strictly in accordance with said acts and regulations.

THIRD DEFENSE TO FIRST COUNT.

1. The presence of such explosives as were on July 30, 1916, on the premises of the defendant did not constitute a nuisance.

2. The explosion mentioned in the complaint was due to a fire caused by incendiarism, of which defendant had no knowledge or suspicion.

3. Said fire occurred notwithstanding due diligence by the defendant to prevent incendiarism.

FIRST DEFENSE TO SECOND COUNT.

1. Defendant repeats and makes part hereof the allegations contained in paragraphs 1 to 23, inclusive, of its first defense to first count.

2. It denies the allegations of paragraph 2.

3. It denies the allegations of paragraph 3.

SECOND DEFENSE TO SECOND COUNT.

It repeats and makes part hereof the allegations of the second defense to first count.

THIRD DEFENSE TO SECOND COUNT.

It repeats and makes a part hereof the allegations of its third defense to first count.

COLLINS & CORBIN,
Attorneys of Defendant
Lehigh Valley Railroad Company.

ANSWER OF NATIONAL STORAGE COMPANY.

(Filed September 19, 1918.)

NEW JERSEY SUPREME COURT.

ELEAZER E. CLARK, *et als.*, *Plaintiffs*, *vs.* LEHIGH VALLEY RAILROAD COMPANY and NATIONAL STORAGE COMPANY, *Defendants.*	*Answer of National Storage Company.*

Defendant, National Storage Company, a corporation of the State of New Jersey, having its principal office at No. 243 Washington street, Jersey City, says that:

It denies the truth of the matters contained in the complaint insofar as the same relate to this defendant, except that it admits that:

(a) It was and still is a corporation organized and existing under the laws of the State of New Jersey as all the times mentioned in the complaint;

(b) At all said times it was the owner of a certain tract of land and other property, known as the "National Docks," situated on Black Tom Island, Jersey City, New Jersey;

(c) At all said times it was engaged in operating a portion of said property in its business as public warehouseman and in leasing the remainder thereof.

(d) On or about June 24, 1913, it leased certain of its property to the Lehigh Valley Railroad Company of New Jersey, under the terms and conditions set forth in the complaint.

(e) At all said times said lease was in full force and effect.

COLLINS & CORBIN,
Attorneys of Defendant
National Storage Company.

Reply.

REPLY.

(Filed November 21, 1918.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

ELEAZER E. CLARK, *et als.*, *Plaintiffs,*

vs.

LEHIGH VALLEY RAILROAD COMPANY and NATIONAL STORAGE COMPANY, *Defendants.*

Action at Law.

Reply.

FIRST DEFENSE TO FIRST COUNT.

1. Plaintiffs deny the special defenses set forth in paragraph twelve.

2. They deny the special defenses set forth in paragraph fourteen.

3. They deny the special defenses set forth in paragraph twenty.

SECOND DEFENSE TO FIRST COUNT.

1. Plaintiffs admit paragraph one.
2. They deny paragraph two.
3. They deny paragraph three.

THIRD DEFENSE TO FIRST COUNT.

1. Plaintiffs deny paragraph one.
2. They deny paragraph two.
3. They deny paragraph three.

FIRST DEFENSE TO SECOND COUNT.

Plaintiffs repeat and make a part hereof the allegations contained in paragraphs one, two and three of this reply to the first defense to the first count.

SECOND DEFENSE TO SECOND COUNT.

Plaintiffs repeat and make a part hereof the allegations in this reply to the second defense to the first count.

THIRD DEFENSE TO THIRD COUNT.

Plaintiffs repeat and make a part hereof the allegations of this reply to the third defense to the first count.

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff.

POSTEA AND JUDGMENT.

SUPREME COURT OF THE STATE OF NEW JERSEY.

HUDSON COUNTY.

Eleazer E. Clark, Melvina C. Winslow, James W. Parker, Edward L. Foss, Norman C. Reed, Trustee for the next of kin of George M. Adams, deceased; Kate M. Hitchcock, F. N. Sewall, Richard E. Goodwin, Executor under the Last Will and Testament of Clara P. Goodwin, deceased; A. L. Young, M. Reed, W. R. Kreger, Elizabeth G. Brown, Administratrix *de bonus non* of the goods, chattels and credits of Johnson Rideout; Isabella M. Reed, Lizzie E. Adams, Executrix under the Last Will and Testament of Andrew Adams, deceased; J. R. McDougall, W. R. Lincoln, Ann E. Merryman, Sarah A. Purington, E. Raymond Haggett, James S. Conant, Richard F. Barrett, James H. Smith, B. Frank Marsh, Mary E. Wade, John M. Wadhams, Charles W. Clifford, Alicia B. Crosby, Fred P. Ring, Nellie McCutcheon, Virginia Clark, E. R. Haggett, Executor under the Last Will and Testament of Ebenezer Haggett, deceased; Kate H. Warren, George D. Curtis, Martha P. Small, as Administratrix of the goods, chattels and credits of Frank A. Small, deceased; Rosalie Stimpson, Abbie N. Peterson. A. B. Thwing, Eleanor Haggett, A. C. Manson, J. B. Bassett, Executor and Trustee under the Last Will and Testament of Frank E. Bassett, deceased; Alexander J. McCabe, Executor under the Last Will and Testament of Jennie A. McCabe, deceased; John Chaney, William M. Mills, Lottie E. Mills, and Henry J. Mills, Executors under the Last Will and Testament of Stephen H. Mills, deceased; Elizabeth T. Merrill, Executrix under the Last Will and Testament of John L. Merrill, deceased; Addie H. Foss, John J. Cullinan and Thomas M. Cullinan, co-partners, doing business under the firm name of Cullinan & Cullinan, Frederick J. Hinckley, Harry P. Hoff, Lillian E. Wood, Leslie B. Clark, E. Winslow Clark, Elizabeth M. Rogers, Ralph Holden, Atlantic Coast Company, Alice M. Strout, Administratrix of the goods, chattels and credits of Frank N. Strout, and Pearl Horsemen and Mark L. Jamieson,

Plaintiffs,

vs.

Lehigh Valley Railroad Company,

Defendant.

Action at Law.

Complaint.

This case was tried before the Honorable William H. Speer, Circuit Court Judge (to whom the same was re-

ferred for trial), and a jury on the 20th, 23rd, 24th, 25th, 26th and 27th days of June, 1919, and the same having been submitted to the jury, the jury returned a verdict in favor of the plaintiffs Eleazer E. Clark, Melvina C. Winslow, James W. Parker, Edward L. Foss, Norman C. Reed, trustee for the next of kin of George M. Adams, deceased; Kate M. Hitchcock, F. N. Sewall, Richard E. Goodwin, executor under the last will and testament of Clara P. Goodwin, deceased; A. L. Young, M. Reed, W. R. Kreger, Elizabeth G. Brown, administratrix *de bonus non* of the goods, chattels and credits of Johnson Rideout; Isabella M. Reed, Lizzie E. Adams, executrix under the last will and testament of Andrew Adams, deceased; J. R. McDougall, W. R. Lincoln, Ann E. Merryman, Sarah A. Purington, E. Raymond Haggett, James S. Conant, Richard F. Barrett, James H. Smith, B. Frank Marsh, Mary E. Wade, John M. Wadhams, Charles W. Clifford, Alicia B. Crosby, Fred P. Ring, Nellie McCutcheon, Virginia Clark, E. R. Haggett, executor under the last will and testament of Ebenezer Haggett, deceased; Kate H. Warren, George D. Curtis, Martha P. Small, as administratrix of the goods, chattels and credits of Frank A. Small, deceased; Rosalia Stimpson, Abbie N. Peterson, A. B. Thwing, Eleanor Haggett, A. C. Manson, J. B. Bassett, executor and trustee under the last will and testament of Frank F. Bassett, deceased; Alexander J. McCabe, executor under the last will and testament of Jennie A. McCabe, deceased; John Chaney; William M. Mills, Lottie E. Mills and Henry J. Mills, executors under the last will and testament of Stephen H. Mills, deceased; Elizabeth T. Merrill, executrix under the last will and testament of John L. Merrill, deceased; Addie H. Foss; John J. Cullinan and Thomas M. Cullinan, co-partners, doing business under the firm name of Cullinan & Cullinan; Frederick J. Hinckley, Harry P. Hoff, Lillian E. Wood, Leslie B. Clark, E. Winslow Clark, Elizabeth M. Rogers, Ralph Holden, Atlantic Coast Company, Alice M. Strout,

administratrix of the goods, chattels and credits of Frank N. Strout and Pearl Horseman; and against the defendant Lehigh Valley Railroad Company in the sum of Ninety-five Thousand Dollars ($95,000) for damages to the schooner "George E. Walcott" and Five Thousand Eight Hundred and Seventy-four Dollars ($5,874) for loss of freight moneys, making a total of One Hundred Thousand Eight Hundred and Seventy-four Dollars ($100,874), and the jury also returned a general verdict in favor of the plaintiff Mark L. Jamieson, and against the defendant Lehigh Valley Railroad Company, in the sum of Five Hundred Dollars ($500).

Whereupon it is adjudged that all the plaintiffs above mentioned except Mark L. Jamieson recover of the defendant the sum of One Hundred Thousand Eight Hundred and Seventy-four Dollars, and, also, that the plaintiff, Mark L. Jamieson, recover of the defendant the sum of Five Hundred Dollars, together with their costs, which are taxed at the sum of

Damages	$100,874
"	500
	$101,374
Costs	

making in the whole the sum of

Judgment entered July 17, 1919.

WM. S. GUMMERE,
C. J.

NOTICE OF APPEAL.

(Filed July 17, 1919.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

IRA W. ALLEN, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, Impleaded, Etc., *Defendant.*	*Action at Law.* *Notice of Appeal.*

To Messrs. Congleton, Stallman & Hoover,
Attorneys for Plaintiff.

TAKE NOTICE, that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in above-stated cause.

COLLINS & CORBIN,
Attorneys of Defendant.

GROUNDS OF APPEAL.

(Ira W. Allen.)

(Filed August 25, 1919.)

These are the same as Grounds of Appeal Nos. one to seventy in the case of Royal Indemnity Company. Also the following additional grounds:

Defendant's motion for a direction of verdict should have been granted for the following additional reasons:

71. The proofs show that the said plaintiff could have removed himself from the proximity to danger if he had exercised reasonable care for his own safety, and since he did not exercise reasonable care in this respect he may not recover against the defendant.

The Trial Judge further erroneously charged the jury in one or more of the following respects:

72. (a) "The negligence is * * * in collecting explosive cars to such an extent that the combustion and detonation thereof would result in great damage to property. * * *"

(b) "So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger, and the burden therefore rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out then the plaintiff is entitled to have a verdict and have you assess

damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict, but the verdict would have to be for the defendant."

73 to 86.

These are the same as Grounds of Appeal Nos. seventy-three to eighty-six in the case of Eleazer E. Clark.

COMPLAINT.

(Filed July 28, 1918.)

SUPREME COURT OF THE STATE OF NEW JERSEY.

HUDSON COUNTY.

IRA W. ALLEN,
Plaintiff,

vs.

LEHIGH VALLEY RAILROAD COMPANY and NATIONAL STORAGE COMPANY,
Defendants.

Action at Law.

The plaintiff above named, residing at 21 Revers street, in the Town of Malden, State of Massachusetts, says that:

FIRST COUNT.

1. The defendant, Lehigh Valley Railroad Company, at all times mentioned in the complaint was and still is a corporation organized and existing under the laws of the State of Pennsylvania and engaged in business as a common carrier by railroad of freight in interstate commerce.

2. At all the times mentioned in the complaint the defendant National Storage Company was and still is a corporation organized and existing under the laws of the State of New Jersey and at all said times was the owner of a certain tract of land, and storage warehouses, docks, piers and other terminal facilities known as the National Docks, situated on a peninsula commonly called Black Tom Island, extending from the shore of Communipaw, Jersey City, Hudson County, New Jersey, into the waters of New York bay. At all said times the defendant was

engaged in operating a portion of said property in its business as public warehouseman and in leasing the remainder thereof.

3. On or about June 24, 1913, the National Storage Company leased to the Lehigh Valley Railroad Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, for a term of ten years from July 1, 1913, at a fixed annual rental, all the land belonging to the National Storage Company situated at the National Docks, Jersey City, Hudson County, New Jersey, with all the tracks, rails, piers, docks, bulkheads, stores and warehouses of every kind whatsoever erected thereon (excepting and reserving therefrom about 149,500 square feet, together with cerain warehouses erected thereon Pier 6 and Shed No. 2 on Pier 7 and an office building located on said premises), together with all the rights of access thereto and wharfage rights in connection therewith. The National Storage Company in addition to the property hereinabove mentioned under the terms of the lease reserved certain rights in the premises leased, including the right to the use and control in common with the defendant Lehigh Valley Railroad Company of the wharfage rights in said leased premises, and electric light, electric power, steam heat, steam power, water and fire protection. Thereafter, on or about June 17, 1914, the Lehigh Valley Railroad Company of New Jersey leased all the above-described premises to the defendant Lehigh Valley Railroad Company, subject to all the terms and conditions of the lease of June 24, 1913, hereinabove referred to.

4. Said leases were in full force and effect at all times hereinabove mentioned, and at all times the defendant Lehigh Valley Railroad Company possessed, used, occupied and controlled the property leased as aforesaid, subject to the reservations in favor of the defendant, National Storage Company, hereinabove referred to, in its business of common carrier as a railroad yard in which

freight was received and dispatched. The said premises were known as Black Tom yards.

5. On July 29 and 30, 1916, the plaintiff was rightfully and lawfully on board the schooner George E. Walcott, which was rightfully and lawfully moored on the south side of Pier 6, National Docks, adjoining the leased premises hereinabove described. The plaintiff was the owner of certain property and effects on board said schooner, consisting of clothing and personal belongings, of the reasonable value of $500.00.

6. For a long time prior to July 29, 1916, the defendant Lehigh Valley Railroad Company had, to the knowledge of both defendants but without the knowledge of the plaintiff, used Black Tom yards in considerable part for transportation, storage and trans-shipment of vast quantities of dangerous explosives, explosive projectiles and ammunition and munitions of war of an explosive and inflammable nature, known to the defendants to be such, and had caused to be stored and kept in said yards large numbers of railroad cars laden with said explosives, ammunition and munitions, together with other cars laden with general merchandise, including inflammable chemicals, known to the defendants to be such The defendants had also caused and permitted to be moored to the piers forming part of said premises large numbers of barges and lighters containing, and known to the defendants to contain ammunition and munitions of war of an explosive and highly inflammable nature, much of which had not been transported over the line of the defendant Lehigh Valley Railroad Company.

7. On the night of July 29th and the early morning of July 30th, 1916, defendant Lehigh Valley Railroad Company had caused to be accumulated in said Black Tom yards, as a transfer station or interchange point, a large number of cars containing a great quantity of explosives, explosive projectiles, ammunition and munitions of war of an explosive and inflammable nature which

were being or had been transported by railroad in interstate commerce, and were destined to a point beyond the line of the defendant Railroad Company. Said explosives were known to the defendants to be contained in said cars, and were known to them to be highly dangerous and liable in the event of fire or concussion to explode with great danger to human life, and with calamitous effect upon surrounding property.

8. In addition to the said cars of explosives, the defendant Railroad Company had on the night of July 29th and the early morning of July 30th, and for some time prior thereto, stored and allowed to remain in said Black Tom yards a large number of cars laden with general merchandise, including highly inflammable chemicals, known to the defendants to be such.

9. On the said days, and for some time prior thereto, defendants had caused or allowed the piers which formed a part of the said leased premises and the waters adjacent thereto to be used for the tying up and mooring of boats, lighters and other craft on which were laden, and known to the defendants to be laden, large quantities of explosives, explosive projectiles, ammunition and munitions of war of an explosive and inflammable character, a large part of which had not been transported over the railroad of the defendant Lehigh Valley Railroad Company. One or more of the barges which defendants had permitted to be moored at said piers on the night of July 29th and the early morning of July 30th contained a cargo which consisted of both high explosives and detonating fuses.

10. Among said explosives, explosive projectiles, ammunition and munitions of war hereinabove referred to as being on the night of July 29th and the early morning of July 30th on the defendants' said premises (and upon barges or lighters lying at the defendants' said piers) were vast quantities of trinitrotoluol, smokeless powder, black powder, picric acid, gun-cotton and nitro-cellulose, and also a large quantity of detonating and other fuses.

Said explosives were carried both in bulk and in shrapnel or other projectiles, cartridges and munitions of war.

11. On the early morning of July 30th defendants permitted a fire to break out in said Black Tom yards which resulted in the explosion of a great portion of the accumulation of explosives and munitions in and near said yards. The explosion of said explosives and munitions caused injuries to a great number of persons, the loss of several lives and enormous damage to property over a great area; and, together with the fire which was spread thereby to all parts of Black Tom Island, completely destroyed a number of piers, warehouses and other structures on said Black Tom Island.

12. As a result of said fire and the explosion of said explosives and munitions, and by reason of the negligence and misconduct of the defendants in the respects hereinafter mentioned, the schooner George E. Walcott, together with all the property and effects of the plaintiff, which were on board of her, were completely destroyed, to the plaintiff's damage in the sum of $500; and the plaintiff sustained severe personal injuries, consisting in part of a broken leg, impairment of hearing and bruises and lacerations of various parts of his body, together with a severe shock, from all of which he experienced great pain and suffering, was sick, sore and disabled for a period of more than a year, completely lost his earnings for that period and was obliged to spend large sums for medical attendance and expenses, to his damage in the sum of $25,000.

13. Before and at the time of said explosion of munitions and fire it became and was the duty of the defendants in connection with the management and control of said Black Tom yards and the property adjacent thereto and the custody and handling of said explosives, explosive projectiles, ammunition and munitions of war, to prevent the accumulation in and near the Black Tom yards of such a quantity of said explosives that the com-

bustion or detonation thereof would result in injury to persons in the vicinity, loss of life and damage to surrounding property; to exercise a degree of care commensurate with the risk of the situation hereinabove described, for the purpose of preventing, discovering, controlling and extinguishing fires on said premises, and preventing and limiting the damage from any explosion of a part of the explosives kept thereon; to exercise the same degree of care to prevent the access of unauthorized persons to said explosives, and especially in view of the existence of the European war and the common knowledge and report of depredations committed by evilly disposed persons in connection with munitions of war, to take all reasonable precautions to prevent said depredations being committed on the premises owned or controlled and operated by the defendants, or either of them; and to warn the plaintiff of the dangerous situation created by the presence on the said premises of the explosives hereinabove described.

14. The regulations of the Interstate Commerce Commission for the transportation of explosives and other dangerous articles by freight and express, issued January 15, 1910, as amended and revised July 2, 1914, promulgated by authority of the act of Congress of March 4, 1909, and Section 15 of the Act to Regulate Commerce, as amended June 16, 1910, provide in part as follows:

"1428. Before any shipment of dangerous explosives as named in paragraph 1661 destined to a point beyond the lines of the initial carrier is accepted from a shipper, the initial carrier must ascertain that the shipment can go forward via the route designated.

"1433. Carriers must forward shipments of explosives promptly and within 48 hours after acceptance at originating point or receipt at transfer station or at interchange point, and consignees must remove such shipments from the carriers' property within

48 hours after notice of arrival at destination, Sundays and holidays not included.

"1643. (a) Careful men must be chosen to handle explosives, the platform and the feet of the men must be as free as possible from grit, and all possible precautions must be taken against fire. Suitable provisions must be made, outside of the station when practicable, for the safe storage of explosives, and every effort possible must be made to reduce the time of this storage. If a shipment of explosives is not removed within 48 hours after notice of arrival at destination, it must be disposed of by return to the shipper, or by storage at the expense of the owner, or by sale, or when necessary to safety by destruction under supervision of a competent person.

"(b) Unauthorized persons must not have access to explosives or other dangerous articles at any time while such articles are in the custody of the carrier.

"1682. Every possible effort must be made to expedite the movement of cars containing explosives and no unnecessary delay must occur at initial, interchange or transfer stations.

"1689. * * * Other cars must not be cut off and allowed to strike a car containing explosives. They must be so placed in yards or on sidings that they will be subject to as little handling as possible, and be removed from all danger of fire."

The regulations hereinabove referred to were in force and effect prior to and at the time of the fire and explosion hereinabove described, and they had the force and effect of law, and it was the duty of the Lehigh Valley Railroad Company strictly to observe them with respect to said explosives, explosive projectiles, ammunition and munitions of war.

15. Said fire and explosion or explosions and the damage to the plaintiff resulting therefrom were not

caused or contributed to by any negligence on the part of the plaintiff, but were caused solely by the negligence and misconduct of the defendants, and each of them, in the following particulars, among others:

(a) In collecting freight cars containing explosives, explosive projectiles, ammunitions and munitions of war subject to detonation by fire or concussion and permitting them to accumulate in the said Black Tom yards to such an extent that the detonation and explosion or combustion of their contents might result in a great casualty with great danger to human life and damage to surrounding property.

(b) In permitting the accumulation of inflammable material, and especially cars containing highly inflammable chemicals, in said Black Tom yards and in the vicinity thereof.

(c) In failing to provide an adequate system and sufficient competent men and proper facilities for the purpose of patrolling, policing and guarding said yards and other premises in the vicinity thereof under the control of the defendants, and the cars and their contents stored therein, and for the purpose of discovering and extinguishing fires; and in failing adequately to patrol, police and guard said premises and the cars and their contents and other property stored therein.

(d) In neglecting to take due care to exclude unauthorized persons from the said yards and leased premises and from the adjoining premises who might, by accident or design, set fire to the property on said premises or cause explosions thereon.

(e) In failing to provide adequate hydrants, fire apparatus and sufficient pressure of water on and in the vicinity of the premises where the fire and explosions occurred.

(f) In failing to provide sufficient and competent men, adequate fire drills and proper facilities for fire

protection and prevention on and in the vicinity of the premises where the fire occurred.

(g) In failing properly to instruct their employees on and in the vicinity of the premises where the fire occurred as to their duties in case of fire.

(h) In failing to provide adequate facilities and to take proper measures and precautions both before and after the fire started for removing or insulating cars which caught fire and cars loaded with dangerous explosives likely to explode by fire in or near which fire might be discovered.

(i) In failing to store, handle and dispose of said explosives, explosive projectiles and ammunition and munitions and the cars containing them so as to enable the defendants to prevent or control the commuication of fire or concussion from one part of the mass of explosives to another.

(j) In permitting barges and other vessels containing explosives, explosive projectiles, ammunition and munitions of war to remain for an undue period of time moored to or near the piers and bulkheads in the vicinity of the place where the fire and explosions occurred; and in permitting barges and other vessels laden with explosives, not transported over the line of the defendant Lehigh Valley Railroad Company, to moor at or in the vicinity of said piers and bulkheads.

(k) In failing to install, maintain and keep in repair adequate means for communicating alarms and summoning assistance in case of fire.

(l) In failing to give the alarm of fire and summon assistance promptly.

(m) In failing to prevent the said fire.

(n) In failing promptly to discover the said fire and to take proper measures to extinguish it and to prevent damage therefrom.

(o) In neglecting to give plaintiff or those in charge of the schooner George E. Walcott warning of the presence of dangerous explosives and of the dangers proceeding from the conduct and omissions of the defendants described in the complaint.

16. The said fire and explosion of munitions and the damage to the plaintiff resulting therefrom were caused by the negligence and default of the defendant Lehigh Valley Railroad Company in the following particulars in addition to those hereinabove enumerated:

(a) In that in violation of Section 1428 of the regulations of the Interstate Commerce Commission for the transportation of explosives it did not ascertain from the shipper or preceding carrier before accepting the shipments of explosives which were accumulated in the Black Tom yards in the early morning of July 30, 1916, whether said shipments could go forward by the route designated.

(b) In that in violation of Section 1433 of the said regulations of the Interstate Commerce Commission it did not forward the said shipments of explosives promptly and within 48 hours after receipt at the transfer station or interchange point.

(c) In that in violation of Section 1643 of the said regulations of the Interstate Commerce Commission it did not take all possible precautions against fire, nor make suitable provision for the safe storage of said explosives, nor make every effort possible to reduce the time of such storage, and in that when such shipments were not removed within 48 hours after notice of arrival at destination they were not disposed of by return to the shipper or by storage at the expense of the owner or by sale or by destruction under supervision of a competent person.

(d) In that in violation of Section 1643 of said regulations of the Interstate Commerce Commission it permitted unauthorized persons to have access to said explosives while said articles were in its custody.

(e) In that in violation of Section 1682 of said regulations of the Interstate Commerce Commission it did not make every possible effort to expedite the movement of cars containing explosives, and unnecessary delay was permitted to occur at interchange and transfer stations.

(f) In that in violation of Section 1689 of said regulations it did not remove the cars containing explosives from all danger of fire.

SECOND COUNT.

1. The plaintiff realleges each and every allegation contained in paragraphs one to 16, inclusive, of the first count of the complaint as specifically and with the same effect as if expressly realleged herein.

2. Said explosives, explosive projectiles, ammunition and munitions of war were placed and kept by the defendants and permitted by them to be kept in proximity to dwellings and boats, lighters and ships on which large numbers of persons resided, and to cars, warehouses and other structures where vast quantities of property were stored and in such a location and in such quantities that the combustion or detonation thereof was certain to endanger large numbers of persons residing in the neighborhood not employed by the defendants and to destroy vast amounts of surrounding property, both real and personal, not owned by defendants.

3. By reason of the matters aforesaid the defendants, and each of them, were guilty of maintaining a public nuisance in the said Black Tom yards and in the vicinity thereof, and said explosion of munitions and the damage resulting to the plaintiff therefrom were caused by such public nuisance.

Plaintiff demands as damages on the first count in respect of the loss of personal effects the sum of Five Hundred ($500) Dollars, and in respect of his personal injuries the sum of Twenty-five Thousand ($25,000) Dol-

lars, making in all Twenty-five Thousand Five Hundred ($25,500) Dollars.

Plaintiff demands as damages on the second count in respect of the loss of personal effects the sum of Five Hundred ($500) Dollars, and in respect of his personal injuries the sum of Twenty-five Thousand ($25,000) Dollars, making in all Twenty-five Thousand Five Hundred ($25,500) Dollars.

CONGLETON, STALLMAN & HOOVER,
Attorneys for Plaintiff.

ANSWER OF LEHIGH VALLEY RAILROAD CO.

(Filed September 19, 1918.)

NEW JERSEY SUPREME COURT.

IRA W. ALLEN, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY and NATIONAL STORAGE COMPANY, *Defendants.*	*Answer of Lehigh Valley Railroad Company.*

Defendant, a body corporate of the State of Pennsylvania, having its principal office in the State of New Jersey at the foot of Washington street, Jersey City, says that:

FIRST DEFENSE TO FIRST COUNT.

1. It admits the allegations of paragraph one.

2. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph two.

3. It admits the allegations of paragraph three.

4. It admits the allegations of paragraph four, except that it says that it possessed, used, occupied and controlled the said premises solely in connection with its business of a common carrier of freight, and did not use the said premises or any part thereof in connection with its business of a common carrier of passengers.

5. It admits that on July 29 and 30, 1916, the schooner "George E. Walcott" was rightly and lawfully moored on the south side of Pier 6, National Docks, adjoining the leased premises described in the complaint; it has no knowledge nor information thereof sufficient to form

a belief as to the remaining allegations of paragraph five.

6. It denies the allegations of paragraph six, except that it says that for a short time prior to July 29, 1916, it used said Black Tom yard (but only in small part) for the handling and holding (but only to the extent and in the manner hereinafter mentioned) of carload lots of certain ammunitions and explosives, as hereinafter described, and it says that said yard was used as a general freight terminal for the delivery of all kinds of merchandise transported by the defendant as a common carrier of freight, of which merchandise, explosives, explosive projectiles and ammunitions and munitions of war were only a small proportion; it further says that the said yard was not used generally for the transportation and trans-shipment of explosives, explosive projectiles and ammunitions and munitions of war, but only a small part of said yard was used for that purpose, to wit, the northerly portion of said yard and a certain pier located near thereto known as the North Pier; it further says that said portion of said yard and the said pier was used in part for the purpose of making delivery to the consignee of carload lots of shells, shrapnel and other ammunitions and munitions of war, and for the transferring of the same by the consignee thereof from cars to barges or lighters, or trans-shipment to steamers for export; and it further says that there was no handling or holding of the cars containing the same, except such as was lawfully incidental to the transportation and delivery thereof in the course of interstate commerce and commerce with foreign countries; and it further says that all of the materials so held or handled were in the course of interstate or foreign commerce at the time set forth in the complaint; it further says that there was no storage of any shells, shrapnel or other ammunitions and munitions of war, and that there was no trans-shipment thereof by this defendant.

7. It admits that on the night of July 29th and the early morning of July 30th, 1916, there were some cars in said Black Tom yard, which contained certain explosives, to wit, shells, shrapnel and other ammunitions and munitions of war, including trinitrotoluol; it admits that the same were being transported by it in interstate commerce and were destined to a point beyond its line; it denies that the same were of an explosive or inflammable nature; it denies that it knew that said explosives or any of them were contained in said cars, and says that its knowledge on the subject was limited to the statements on the placards placed on said cars at the time the same were received by it for transportation, and to the statements on the waybills or bills of lading issued at the time the same were received for transportation; it denies that it knew that the said alleged explosives were highly dangerous or liable in the event of fire or concussion to explode; it denies that it had caused a large number or any cars containing said explosives to be accumulated in said yard and denies that a large number of said cars were in fact accumulated therein.

8. It denies the allegations of paragraph eight, except that it says that on the night of July 29 and the early morning of July 30 there was a small number of cars in said Black Tom yard containing general merchandise.

9. It denies the allegations of paragraph nine, except that it says that on July 30, 1916, and for several days prior thereto, it permitted the use of certain of the premises and waters, occupied and controlled by it, for the tying up of certain tugs and other vessels, but it says that it limited its said premises (for the tying up of barges and lighters carrying or to carry explosives) to one pier, namely, the pier known as "North Pier," and that, only while the said barges or lighters were being loaded; and it says it did not permit the tying up of tugs or other vessels to said pier or near or adjacent thereto except in the manner aforesaid; it further says

that if there were any other barges, lighters or other craft containing explosives moored at or near said Black Tom yard at the time of said explosion, as alleged in the complaint, the same were unlawfully so moored, for the reason that the said mooring was in violation of the rules and regulations relating to the anchorage of vessels in the port of New York, issued by the Bureau of Navigation of the Department of Commerce and Labor, which were in effect on said dates.

10. It admits that on the night of July 29 and the early morning of July 30, 1916, there were on said premises certain carloads of shells, shrapnel and other ammunitions and munitions of war, including trinitrotoluol (but not including smokeless powder, black powder, picric acid, gun cotton, nitro-cellulose, or detonating or other fuses); it denies that there were upon barges or lighters lying at any of its piers in or near said yard, vast or other quantities of trinitrotoluol, smokeless powder, black powder, picric acid, gun cotton, nitro-cellulose, or a large or any quantity of detonating or other fuses, except that it says that there were two barges at said North Pier partly loaded, one with shrapnel and the other with trinitrotoluol.

11. It denies the allegations of paragraph 11, except that it admits that in the early morning of July 30th there were one or more fires and explosions in or near said Black Tom yard, and that by reason thereof several persons were injured or killed and certain property was damaged or destroyed.

12. It has no knowledge nor information thereof sufficient to form a belief as to whether as a result of said fire and explosion the schooner "George E. Walcott," together with the property and effects of the plaintiff, was completely destroyed, nor whether the plaintiff by reason thereof suffered severe or any personal injuries, or whether by reason thereof he was disabled for more

than a year, lost his earnings and was obliged to spend large sums for medical attendance and expenses; it says that if the said schooner and property of the plaintiff were destroyed and if he did sustain any personal injuries, did suffer any disability or loss of earnings by reason thereof, the same were not caused by any negligence or misconduct on the part of this defendant.

13. It denies the allegations of paragraph 13.

14. It admits the allegations of paragraph 14, except that it prays reference to the original regulations of the Interstate Commerce Commission for certainty as to the exact provisions thereof; and except that it says that said regulations did not impose upon this defendant the absolute duty of strictly observing the same with respect to the acceptance, custody and care of such explosives, explosive projectiles, ammunitions and munitions of war.

15. It denies the allegations of paragraph 15.

16. It denies the allegations of paragraph 16.

SECOND DEFENSE TO FIRST COUNT.

1. On July 30, 1916, and for many days prior thereto, the defendant was a common carrier engaged in interstate and foreign commerce, and therein transporting by land ammunitions and munitions of war, including explosives.

2. As such common carrier defendant was compelled by law to receive, carry, convey and transport the said ammunitions and munitions of war, including explosives, in the course of interstate and foreign commerce, provided the same were packed, marked, loaded and handled, and when offered for transportation were in proper condition to transport in accordance with and pursuant to the act of Congress of the United States entitled "An Act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation," approved March 4,

1909, and the act of said Congress entitled "An Act to regulate commerce," as amended June 18, 1910, and the regulations prescribed by the Interstate Commerce Commission by authority of said acts.

3. The ammunition and munitions of war and explosives that exploded on July 30, 1916, were packed, marked, loaded and handled, and when offered for transportation were and until and at the time of said explosion continued to be in proper condition to transport in accordance with said acts of Congress of the United States and the regulations prescribed by the Interstate Commerce Commission by virtue thereof, and were carried, conveyed and transported and held by the defendant in the course of interstate and foreign commerce lawfully and strictly in accordance with said acts and regulations.

THIRD DEFENSE TO FIRST COUNT.

1. The presence of such explosives as were on July 30, 1916, on the premises of the defendant did not constitute a nuisance.

2. The explosion mentioned in the complaint was due to a fire caused by incendiarism, of which defendant had no knowledge or suspicion.

3. Said fire occurred notwithstanding due diligence by the defendant to prevent incendiarism.

FIRST DEFENSE TO SECOND COUNT.

1. Defendant repeats and makes part hereof the allegations contained in paragraphs 1 to 16 inclusive of its first defense to first count.

2. It denies the allegations of paragraph 2.

3. It denies the allegations of paragraph 3.

SECOND DEFENSE TO SECOND COUNT.

It repeats and makes part hereof the allegations of the second defense to first count.

THIRD DEFENSE TO SECOND COUNT.

It repeats and makes part hereof the allegations of its third defense to first count.

COLLINS & CORBIN,
Attorneys of Defendant
Lehigh Valley Railroad Company.

Ira W. Allen Case.

ANSWER OF NATIONAL STORAGE COMPANY.

(Filed September 19, 1918.)

NEW JERSEY SUPREME COURT.

IRA W. ALLEN, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY and NATIONAL STORAGE COMPANY, *Defendants.*	*Answer of National Storage Company.*

Defendant, National Storage Company, a corporation of the State of New Jersey, having its principal office at No. 243 Washington street, Jersey City, says that:

It denies the truth of the matters contained in the complaint insofar as the same relate to this defendant, except that it admits that:

(a) It was and still is a corporation organized and existing under the laws of the State of New Jersey at all the times mentioned in the complaint;

(b) At all said times it was the owner of a certain tract of land and other property, known as the "National Docks," situated on Black Tom Island, Jersey City, New Jersey;

(c) At all said times it was engaged in operating a portion of said property in its business as public warehouseman and in leasing the remainder thereof.

(d) On or about June 24, 1913, it leased certain of its property to the Lehigh Valley Railroad Company of New Jersey, under the terms and conditions set forth in the complaint.

(e) At all said times said lease was in full force and effect.

COLLINS & CORBIN,
Attorneys of Defendant
National Storage Company.

Reply.

REPLY.

(Filed November 21, 1918.)

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

IRA W. ALLEN, *Plaintiff,* vs. LEHIGH VALLEY RAILROAD COMPANY and NATIONAL STORAGE COMPANY, *Defendants.*	*Action at Law.* *Reply.*

FIRST DEFENSE TO FIRST COUNT.

Plaintiff denies the special defenses set forth in paragraphs six, nine, eleven and fourteen.

SECOND DEFENSE TO FIRST COUNT.

1. Plaintiff admits paragraph one.
2. He denies paragraphs two and three.

THIRD DEFENSE TO FIRST COUNT.

Plaintiff denies paragraphs one, two and three.

FIRST DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in this reply to the first defense to the first count.

SECOND DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in this reply to the second defense to the first count.

THIRD DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in this reply to the third defense to the first count.

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff.

POSTEA AND JUDGMENT.

SUPREME COURT OF THE STATE OF NEW JERSEY.

HUDSON COUNTY.

IRA W. ALLEN,

vs.

LEHIGH VALLEY RAILROAD COMPANY, Impleaded, &c.

This case was tried before the Honorable William H. Speer, Circuit Court Judge (to whom the same was referred for trial) and a jury on the 20th, 23rd, 24th, 25th, 26th and 27th days of June, 1919, and the same having been submitted to the jury, the jury returned a general verdict in favor of the plaintiff and against the defendant Lehigh Valley Railroad Company in the sum of seven thousand four hundred dollars ($7,400.00).

Damages	$7,400.00
Costs	44.60
	$7,444.60

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of seven thousand four hundred dollars and his costs which are taxed at the sum of forty-four dollars and sixty cents, making in the whole the sum of seven thousand four hundred forty-four dollars and sixty cents.

Judgment entered July 8, 1919.

WM. S. GUMMERE,
C. J.

FIRST DAY.

NEW JERSEY SUPREME COURT.

HUDSON CIRCUIT.

ROYAL INDEMNITY COMPANY,
vs.
LEHIGH VALLEY R. R. Co.

THE OCEAN ACCIDENT & GUARANTEE CORP. OF LONDON, ENGLAND,
vs.
LEHIGH VALLEY R. R. Co.

IRA W. ALLEN,
vs.
LEHIGH VALLEY R. R. Co. and NATIONAL STORAGE Co.

E. E. CLARK, et als.,
vs.
LEHIGH VALLEY R. R. Co. and NATIONAL STORAGE Co.

LLOYDS PLATE GLASS INS. Co. OF NEW YORK,
vs.
LEHIGH VALLEY R. R. Co. and NATIONAL STORAGE Co.

CHILDS COMPANY, a corporation,
vs.
LEHIGH VALLEY R. R. Co.

METROPOLITAN CASUALTY INS. Co.
vs.
LEHIGH VALLEY R. R. Co. and NATIONAL STORAGE Co.

CHICAGO BONDING & INSURANCE Co.
vs.
LEHIGH VALLEY R. R. Co.

NEW YORK PLATE GLASS INS. Co.
vs.
LEHIGH VALLEY R. R. Co.

COMMERCIAL CASUALTY INS. Co.
vs.
LEHIGH VALLEY R. R. Co.

FIDELITY & CASUALTY Co.,
vs.
LEHIGH VALLEY R. R. Co.

TRUSTEES OF ST. PAUL'S CHURCH,
vs.
LEHIGH VALLEY R. R. Co.

The above cases were tried together in the Supreme Court, Hudson Circuit, before William H. Speer, Circuit Judge, and a jury, beginning on Friday, June 20, 1919.

Motion to Consolidate Actions.

Appearances:

For plaintiffs, M. M. Stallman, Edwin F. Smith, W. E. Holmwood, F. C. Henn, Esqs.

For defendants, Collins & Corbin (Gilbert Collins, George S. Hobart), Lindley M. Garrison, E. W. Barrett, E. H. Boles, Esqs.

Mr. Stallman. I have not the list of actions by number, but I now move the actions of New York Plate Glass Insurance Company versus Lehigh Valley Railroad; Royal Indemnity Company versus Lehigh Valley Railroad; Chicago Bonding & Insurance Company against the same defendant; Ocean Accident & Guarantee Corporation, Limited, of London, England, against the same defendant; Lloyds Plate Glass Insurance Company of New York against the Lehigh Valley Railroad & National Storage Company; Metropolitan Casualty Insurance Company of New York against Lehigh Valley and National Storage Company; the Childs Company against Lehigh Valley Railroad; Eleazer E. Clark, *et al,* versus Lehigh Valley Railroad and National Storage Company; Ira W. Allen versus Lehigh Valley Railroad and National Storage Company—and I move the Court as to each of those cases that they be tried together, on the ground that each of them involves the same question of law and fact and arose out of the same transaction within the meaning of Section 4 of the Practice Act of 1912.

Mr. Smith. I make the same motion in reference to the case of Fidelity & Casualty Company against the Lehigh Valley Railroad Company.

Mr. Holmwood. And I make the same motion in reference to the case of Commercial Casualty Insurance Company against the Lehigh Valley Railroad Company upon the same grounds.

Mr. Heyman. I make the same motion in the case of E. M. Schachter against the Lehigh Valley Railroad Company on the same grounds.

Mr. Garrison. I have not that case on the list.

Mr. Henn. I have the same motion to make in reference to the Trustees of St. Paul's Evangelical Lutheran Church.

Mr. Rosenberg. I represent Robert Griffin, and we have a similar action. I will hold my motion until just before this case is called on Monday. I do not want to ask leave to join and then at the last moment possibly withdraw. I desire to get in direct touch with the officer of the concern who made a tabulation of the damages. If I do not get that by tomorrow I should like my case to go over; if I do get it by tomorrow I should like to participate in this present action. May I hold my motion?

The Court. I do not see how we can do that. The case is about to be moved and the jury impanelled and the case opened today.

Mr. Rosenberg. Well, under the circumstances, I will let it go over until fall.

Mr. Garrison. Specifically, with respect to the case of Schachter against the Lehigh Valley, no motion has been served upon us, and we object to that motion specifically upon that ground, and generally, upon the grounds which I will state with respect to all of the other motions with respect to all of the cases, but I think your Honor probably would be justified in disposing of the Schachter matter first. We received no notice whatever with respect to that.

The Court. What do you say about that, Mr. Heyman?

Mr. Heyman. I suppose that is right. I would not think it would be necessary to give notice of motion in each specific case. I thought we could come in under this notice.

The Court. All the other counsel who have come to me before have been immediately referred to Mr. Hobart, so that they might confer with him, and if they could not get a consent at least a few days' notice of motion would be required. I think if in respect to the Schachter case

no notice was given—and that appears openly—I will not order it.

Mr. Garrison. I desire on behalf of the defendants and each of them, to object to the Court ordering the trial in one proceeding by consolidation, concurrently or otherwise, of more than one action, and we urge that, by requiring the defendants to try in one proceeding by consolidation, concurrently or otherwise, more than one action, the rights of the respective defendants are violated, there being no law of the State of New Jersey to justify the same, and we insist that the rights of the defendants are violated by any such order of the Court, both under the laws and Constitution of the State of New Jersey and under the Constitution of the United States of America, in respect of the latter, particularly the fourteenth amendment thereto; and we insist that to force the defendants to try in one proceeding, by consolidation, concurrently or otherwise, more than one action, is to deprive the respective defendants of property without due process of law, in violation of the above specified clause of the amendments to the Constitution of the United States; and we insist further that it is not within the judicial power of this Court to try several such actions at one time, and that the jurisdiction of this Court is so limited by the Constitution of the State of New Jersey, and especially by Section 1 of Article 10 thereof, that it cannot exercise the power to try the issues in two or more actions at once, there being no power at common law or under said Constitution for such method of procedure; and we further insist that, even if such power existed, it should not be exercised in these actions in that the issues therein are dissimilar, and that such method of procedure is prejudicial to the fundamental right of the respective defendants to have distinct issues in separate actions separately tried; and we insist that the proposed method of trial prevents the proper adjudication, the adequate protection and the due enforcement of the rights of the

respective defendants, and that the trial of dissimilar issues between different parties at the same time, before the same jury, is contrary to the course of the common law, without justification under the laws of the State of New Jersey, and violative of the rights of the defendants thereunder and under the Constitution of the United States as aforesaid. In respect to the Constitution of New Jersey especially does it violate the rights of the respective defendants to trial by jury within the meaning of the provisions of paragraph 7 of Article 1 of the Constitution of the State of New Jersey; and we make this objection in each of the actions which has been moved for trial and which the Court may order consolidated, concurrently tried or otherwise proceeded with before the same jury at the same time, and in each case where there are two defendants, we make it on behalf of each of the said two defendants, and in the cases where there is only one defendant, we make it on behalf of such single defendant.

The Court. I do not care to hear you, Mr. Stallman. I will order the consolidation, and you may have your objection entered on the record.

Mr. Garrison. My exception.

The Court. Your objection. Exceptions are done away with. You may have an objection in the nature of an exception.

Mr. Garrison. I did not know that.

Mr. Hobart. It is just as good.

(The clerk called the roll of the jury.)

Mr. Smith. We have agreed that there shall be only six challenges for all of the plaintiffs, just as if it were one plaintiff and one defendant.

The Court. All right.

Mr. Hobart. There are two defendants. I suppose we are entitled to twelve, if necessary.

The Court. Each defendant is entitled to six.

Mr. Garrison. We are entitled to twelve times six. There are twelve cases.

The Court. I think not. We are trying them before one jury.

Mr. Garrison. I do not think the question need arise until I have exhausted all—

The Court. No, I do not think so.

Mr. Garrison. But I just want all my rights.

The Court. I will tell you what I will do, Vice-Chancellor. I will let you have that many challenges. We are not going to have a mistrial. I will just have a new panel drawn, and we will try it in the middle of the summer, if necessary. I will not let the case go off on that ground.

Mr. Garrison. Very well, sir.

The Court. You may go ahead with the case.

George I. Kelly, Deputy County Clerk:

Emil Christiansen.

Samuel Hecht.

James Alfred Connelly.

Michael J. Sullivan.

Mr. Sullivan. Your Honor, I just got out of the army. I am a physician.

The Court. The gentleman said he is a medical doctor and he has gotten out of the army, and I have no doubt he is entitled to be excused.

Mr. Garrison. We will agree.

The Court. You will be excused.

Mr. Kelly. That is by consent, your Honor, isn't it?

The Court. Yes.

Mr. Kelly. Edward S. Lyons. (Called as juror No. 4.)

Percy Devoe.

C. Ernest Richter.

William L. Delahunt.

George Van Bussen.

Mr. Van Bussen. Your Honor, my mother was stricken with paralysis and she has pneumonia and I am liable to be sent for at any time.

The Court. Just tell that to counsel and see whether they agree.

(Juror speaks to counsel.)

Mr. Smith. I did not hear what he said.

Mr. Garrison. His mother is stricken with paralysis.

Mr. Smith. Oh, I will consent that he be excused.

Mr. Kelly. Hugh V. Keenan. (Called as juror 8.)

Cornelius J. Ryerson.

Theodore W. Hannon.

Edward H Dickerson.

Mr. Dickerson. Your Honor, I am assistant to the vice-president of the American Locomotive Company. I do not believe that in a case against a railroad I would be accepted as a juror in any event. I do business with all the railroads of the country. Another thing, there is the Atlantic City Convention on now and almost every official of the company is there, and I am really needed at my office. I would like to be excused if I could.

The Court. You gentlemen heard what the man had to say.

Mr. Stallman. I think I can challenge for cause.

The Court. I do not think that it is a challenge for cause; but if you will agree to excuse him under the circumstances—

Mr. Smith. He said he could not give a fair verdict against the railroad.

Mr. Garrison. No, he did not say that; he just said he could not give a fair verdict.

The Court. Do you consent to excuse him?

Mr. Smith. Yes.

Mr. Garrison. I have no objection.

Mr. Kelly. Edward Joseph Cook. (Called as juror No. 11.)

Mr. Cook. Judge, your Honor, I do not think I am a resident of the State of New Jersey. I never voted in the State of New Jersey. My furniture is still in New York, paying rent for it in New York. I am living out here with my folks because they are a little bit old, for the last three years.

The Court. Well, I think you would better take your seat. You have been living here for three years, that is quite a residence.

Mr. Kelly. Charles B. Cokeman. (Called as juror No. 12.)

The Court. Now, No. 2, you wished to say something to the Court. Do you? What is is that you wish to say?

Mr. Hecht. I just come back from overseas service last month, and I am employed now in my profession of accountancy, and my service—my position would not be kept for me and I would like to be excused.

The Court. The juror says he has just returned from overseas service and he has just gotten a position as accountant, and his position would be jeopardized if he were required to serve here.

Mr. Smith. I think he ought to be excused.

Mr. Garrison. We will consent.

The Court. Very well. You may step aside. Call another juror. Excused by consent.

Mr. Christiansen. Your Honor, I would like to be excused from this jury. I have a business in New York that requires my constant attendance, a small business in New York that requires my constant attendance. It is practically closing up shop if I don't remain there.

The Court. I cannot accept a mere business reason as an excuse because I supposed everybody would be somewhat inconvenienced by being required to serve

here; and if I followed your reason out to its logical conclusion only the idlers and bums would be jurors here. We want business men and that is why we want you.

Mr. Connolly. Your Honor, I would like to be excused.

The Court. What is your reason?

Mr. Connolly. Because I am not educated a bit.

The Court. Because you are not educated a bit?

Mr. Connolly. No, sir.

The Court. You talk pretty well. I think you would better take your seat.

Mr. Connolly. I have a long way to travel and a long ways to get here.

The Court. Well, that is a different reason, but I do not think I can excuse you.

Mr. Connolly. I am not educated a bit. That is telling the truth.

The Court. Some of the best men I ever knew thought they were not educated a bit, and some of the most educated men think they have the least education. I think you would better take your seat.

Mr. Kelly. John Frederick Carstens. (Called as juror No. 2.)

Mr. Kelly. Counsel for the plaintiff any challenge to make?

Mr. Stallman. Mr. Delahunt, may I ask what your business is?

Mr. Delahunt. Adjuster for the American Sugar Refinery Company.

Mr. Stallman. American what?

Mr. Delahunt. American Sugar Refinery Company.

Mr. Stallman. Where is your place of business?

Mr. Delahunt. 117 Wall street, New York City.

Mr. Smith. We will excuse No. 10, Mr. Hannon.

Mr. Kelly. The next juror is Robert B. Snow. Mr. Snow is returned by the sheriff as not being found. Joseph S. Cortelyou. (Called as juror No. 10.)

Counsel for the defendant any challenge to make?

Mr. Hobart. Challenge No. 9, Mr. Ryerson, challenge on behalf of the railroad company.

Mr. Kelly. Adolph Nushorn. (Called as juror No. 9.)

Counsel for the other defendant any challenge to make?

Mr. Hobart. I challenge Mr. Nushorn on behalf of the National Storage.

The Clerk. Charles R. Jones, number 122.

(Mr. Jones takes the ninth seat in the jury box.)

The Clerk. Counsel for the plaintiff any challenge to make?

Mr. Smith. Mr. Jones.

The Clerk. Ludlow D. Neats, number 163.

Mr. Neats. Your Honor, will acquaintance with the directors of the plaintiff company disqualify me as a juror?

The Court. No, acquaintance will not disqualify you. You may take your seat.

The Clerk. Counsel for the railroad company any challenge to make?

Mr. Hobart. May I inquire of the last juror, Mr. Neats, with what company or what officials of what company he is acquainted?

Mr. Neats. I knew Mr. Ashforth, a director of the New York Plate Glass Company, and I also know Whiting.

Mr. Hobart. All right. We will excuse Mr. Neats.

The Court. You mean you will challenge?

Mr. Hobart. Yes, we will challenge him for the railroad.

The Clerk. Alfred F. Barnard, number 15.

(Mr. Barnard takes the 9th seat in the jury box.)

The Clerk. Counsel for the National Storage Company any challenge to make?

Mr. Hobart. Mr. Delahunt, I will challenge for the storage company, number 6.

The Clerk. Leon H. Canfield. I understand Mr. Canfield has been excused by consent of Mr. Smith and Mr. Markley. I have a letter here if you wish to see it.

Mr. Smith. Mr. Markley, of Collins & Corbin.

Mr. Garrison. Almost as many lawyers as they have plaintiffs.

The Clerk. He claims he is exempt under the School Act.

The Court. This man is undoubtedly engaged in one of the schools and the examination is taking place today. The statute excuses him, but I thought I would also be supercautious and let him get the consent of counsel as well.

The Clerk. John Woodruff Dickinson, number 67.

(Mr. Dickinson takes the 7th seat in the jury box.)

Has counsel for the plaintiff any challenge to make?

Mr. Stallman. May I ask whether any of you are in any way connected with the Lehigh Valley Railroad or the National Storage Company, the defendant in these cases, or with any of the officers or directors of those corporations?

Juror No. 5. I am employed by a bank which handles money for the Lehigh Valley, if that is of any interest.

Mr. Stallman. Which bank is that?

Juror No. 5. Liberty National.

Mr. Stallman. May I ask if any of you gentlemen are connected with any other railroad companies or transportation companies?

Mr. Garrison. What if they are?

Mr. Stallman. Asking for information.

Mr. Garrison. I am asking the Court.

The Court. I suppose, if I am obliged to answer, which I am not, but I will, the statute provides that counsel has the right to ask questions for the purpose of enabling him to exercise his peremptory challenge intelligently. Now he may have a notion that anybody that is connected with another railroad might have a sympathetic notion in his mind that he ought to stand for a railroad, and he might want to challenge peremptorily.

Mr. Garrison. Did not use to be the old practice.

The Court. Oh, no, the old practice was against it. I remember I had it settled in Clifford against the State. I tried to challenge before the statute was enacted, and I assigned for error that the judge would not let me, and then I was knocked out, in the Court of Errors and Appeals, and then the Legislature passed the act.

Mr. Garrison. I had the experience, too.

The Court. The act has been passed since to permit that, just that thing to be done.

Mr. Garrison. I haven't any objection. I did not see that under the old practice it would be of any avail what railroad companies he knew.

The Clerk. Counsel for the plaintiff any challenge?

Mr. Stallman. I will excuse Mr. Devoe.

The Clerk. Archie R. Andrews.

(Mr. Andrews took the fifth seat in the jury box.)

The Clerk. Counsel for the railroad company any challenge to make?

Mr. Hobart. The railroad company will challenge Mr. Christianson, number 1.

The Clerk. Charles Goddard, number 90.

(Mr. Goddard took the first seat in the jury box.)

The Clerk. Counsel for the National Storage Company any challenge to make?

Mr. Hobart. Challenge Mr. Cook, number 11.

The Clerk. Arthur D. Greenfield, number 94.

Mr. Greenfield. Question of citizenship.

The Court. What about it?

Mr. Greenfield. My father's naturalization is in dispute and I don't know whether I am a citizen or not.

The Court. You may take a seat. He says his father's naturalization papers are in dispute.

Mr. Garrison. Was he born in this country?

Mr. Greenfield. No.

The Court. No, he was not.

The Clerk. Counsel for the plaintiff any challenge to make?

Mr. Stallman. We will excuse Mr. Greenfield.

The Clerk. Elder P. Deturt, No. 63.

Mr. Deturt. Your Honor, I am under the care of a doctor, who gave me a letter that he advises me not to serve on a jury just now.

The Court. What is the trouble, Mr. Deturt?

Mr. Deturt. Tuberculosis.

The Court. The gentleman says he is under the care of a doctor, the doctor gave him a certificate suggesting or certifying that he ought not to serve, and his complaint is tuberculosis, so I think if you gentlemen consent he may stand aside.

Mr. Smith. I think we will consent.

Mr. Garrison. We consent.

Mr. Hobart. We consent.

The Court. You may go.

The Clerk. John G. Bischoff, number 24.

(Mr. Bischoff takes the eleventh seat in the jury box.)

The Clerk. Counsel for the railroad company any challenge to make?

Mr. Hobart. Challenge number 12 for the railroad.

The Clerk. Clarence E. Bennett.

Mr. Bennett, the Sheriff says, has gone to Nova Scotia.

The Court. Did he go before or after?

The Sheriff. Before.

The Clerk. William Henry Baker.

(Mr. Baker takes the twelfth seat in the jury box.)

The Clerk. Counsel for the National Storage Company any challenge to make?

Mr. Hobart. Challenge number 10 for the storage company, Mr. Corderly.

The Clerk. James F. Cunningham, number 56.

(Mr. Cunningham takes the twelfth seat in the jury box.)

The Clerk. Counsel for the plaintiff any challenge to make?

Mr. Stallman. Excuse number 2, Mr. Carson.

The Clerk. Clarence A. Cloud, number 44.

(Mr. Cloud takes the second seat in the jury box.)

The Clerk. Counsel for the railroad any challenge to make?

Mr. Hobart. Challenge Mr. Cloud.

The Clerk. Hugh M. Hughes, number 115.

Mr. Hughes. Your Honor, I would like to be excused on account of business.

The Court. Can't do it on account of business.

(Mr. Hughes takes the second seat in the jury box.)

The Clerk. Counsel for the National Storage Company any challenge to make?

Mr. Hobart. We will excuse Mr. Hughes, or challenge Mr. Hughes.

The Clerk. Arthur H. Jorns, number 124.

Mr. Jorns. I would like to be excused on account of my very bad hearing. I cannot hear at all on the left side and very little on the other.

Mr. Garrison. We will consent.

Mr. Jorns. I have been excused once before at the Hackensack court.

The Court. He says he cannot hear at all on one ear and very little on the other.

Mr. Smith. We will consent.

The Court. All right. You may step aside by consent.

The Clerk. Thomas Wilson Mabie.

(Mr. Mabie takes the second seat in the jury box.)

The Clerk. Counsel for plaintiff any challenge to make?

Mr. Stallman. Mr. Mabie, are you related to Mr. Clarence Mabie, of Hackensack?

Mr. Mabie. Distantly.

Mr. Stallman. Now, I would like to ask the men who have gone in the box since I asked before whether any of you are connected directly or indirectly with the Lehigh Valley Railroad Company, or the National Storage Company, or any of their officers or directors, or are you connected in any way or interested in any other railroad or transportation company?

(No answer.)

Mr. Stallman. No challenge at this time.

Mr. Kelly. Counsel for the railroad company any challenge to make?

Mr. Hobart. Challenge Mr. Mabie, number 2.

The Clerk. E. J. Howlett. (Called as juror number 2.)

Counsel for the National Storage Company any challenge to make?

Mr. Hobart. Challenge Mr. Howlett.

Mr. Kelly. William M. Carroll. (Drawn as juror number 2.)

Has the counsel for the plaintiff any challenge to make?

Mr. Smith. We consent that Mr. Carroll be excused.

Mr. Kelly. Frederick H. Frick. (Called as juror number 2.)

Counsel for the plaintiff any further challenge to make?

Mr. Stallman. Not at this time.

Mr. Kelly. Defendants have six challenges apiece, your Honor. The railroad company had six challenges and the National Storage Company had six challenges.

The Court. Has the defendant any further challenges?

Mr. Garrison. No; we are satisfied.

The Court. Very well. You may swear the jury.

(The jury was duly empanelled, accepted and sworn.)

Mr. Garrison. At this time I desire on behalf of the defendants, and each of them, to object to the Court ordering the trial in one proceeding by consolidation, concurrently or otherwise, of more than one action, and we urge that, by requiring the defendants to try in one proceeding by consolidation, concurrently or otherwise, more than one action, the rights of the respective defendants are violated, there being no law of the State of New Jersey to justify the same, and we insist that the rights of the defendants are violated, by any such order of the Court, both under the laws and Constitution of the State of New Jersey, and under the Constitution of the United States of America, in respect of the latter, particularly the fourteenth amendment thereto; and we insist that to force the defendants to try in one proceeding, by consolidation, concurrently or otherwise, more than one action, is to deprive the respective defendants of property without due process of law, in violation of the above specified clause of the amendments to the Constitution of the United States; and we insist further that it is not within the judicial power of this Court to try several such actions at one time, and that the jurisdiction of this Court is so limited by the Constitution of the State of New Jersey, and especially by Section 1 of Article 10 thereof, that it cannot exercise the power to try the issues in two

or more actions at once, there being no power at common law or under said Constitution for such method of procedure; and we further insist that, even if such power existed, it should not be exercised in these actions in that the issues therein are dissimilar, and that such method of procedure is prejudicial to the fundamental right of the respective defendants to have distinct issues in separate actions separately tried; and we insist that the proposed method of trial prevents the proper adjudication, the adequate protection and the due enforcement of the rights of the respective defendants, and that the trial of dissimilar issues between different parties at the same time, before the same jury, is contrary to the course of the common law, without justification under the laws of the State of New Jersey and violative of the rights of the defendants thereunder, and under the Constitution of the United States as aforesaid. In respect to the Constitution of New Jersey especially does it violate the rights of the respective defendants to trial by jury within the meaning of the provisions of paragraph 7 of Article 1 of the Constitution of the State of New Jersey, and we make this objection in each of the actions which has been moved for trial and which the Court may order consolidated; concurrently tried or otherwise proceeded with before the same jury at the same time, and in each case where there are two defendants, we make it on behalf of each of the said two defendants, and in the cases where there is only one defendant we make it on behalf of such single defendant.

The Court. I deny the motion.

Mr. Garrison. Objection.

Mr. Stallman opens for plaintiffs.

Mr. Hobart opens for defendant.

Mr. Stallman. Counsel on the other side suggested to me the other day, if your Honor would permit, that we

might go on now before the jury and put in some documentary evidence. Under the arrangement we made we have brought no witnesses today.

The Court. I did not know there was going to be anything put in.

Mr. Stallman. Suppose we have until one o'clock.

The Court. All right, it will save time.

Mr. Stallman. It will save time on Monday. It will take us until lunch time.

I offer on behalf of the plaintiff the map on the easel.

Mr. Garrison. No objection.

Mr. Stallman. As plaintiff's Exhibit No. 1.

(Marked Plaintiff's Exhibit in evidence No. 1.)

Mr. Stallman. I would like to offer plaintiff's Exhibit No. 2—that part of the regulations of the Interstate Commerce Commission relating to the transportation of explosives and other articles by freight which are contained in pamphlet form T-686 of the Lehigh Valley Railroad Company on pages 4 to 18 inclusive.

Mr. Garrison. I have no objection.

The Court. All right; they will be admitted.

Mr. Stallman. This was issued and distributed by the Lehigh Valley Railroad Company for the government of its employees and others who have anything to do with it.

The Court. All right.

Mr. Garrison. But I understand that from pages 16 to 18 is a reprint of the United States Interstate Commerce Commission's rules and regulations, which we repeat to our employees in this pamphlet.

The Court. All right.

Mr. Stallman. Well, we might put right there at the same time that the pages 4 and 5 are the American Railway Association's rules as to the transportation of explosives.

Mr. Garrison. Which we reprinted and circulated among our employees.

Mr. Stallman. I will have the pamphlet marked.

(Marked P. 2 in evidence.)

Mr. Stallman. I will now read in evidence the interrogatories and answers thereto which have been served by plaintiffs on the Lehigh Valley Railroad Company for the purpose of obtaining certain information and the defendant has given specific answers to each one of these questions.

Mr. Smith. There is no dispute about the fact that these are to apply to all the plaintiffs.

Mr. Garrison. Yes, I understand that we have stipulated, whatever the facts may be as the record shows, that what Mr. Stallman is about to read shall be considered as if each of the plaintiffs had served these interrogatories on us and we had made the answers that we made to the particular questions Mr. Stallman will read.

1. Describe by means of map or otherwise, the dimensions of the Black Tom pier referred to in the pleadings in this action, and therein show or describe the location and extent of the tracks, buildings and other structures upon said pier as the same existed on July 30th, 1916.

2. Describe by showing on said map or otherwise the location of the fire hydrants, if any, on said pier.

Answer: On the assumption that the "pier" referred to in these interrogatories is intended to include all the lands and premises commonly known as the "Black Tom yard" at Jersey City, and the tracks, buildings and other structures, including fire hydrants located therein or thereon, the defendant answers that the map thereto attached correctly indicates the dimensions of said lands and premises and the tracks, buildings and other structures therein or thereon, including fire hydrants, as the same existed on July 30, 1916.

In answer to these two interrogatories the map was furnished which is on the easel, and which we accept as a complete description of the *locus in quo,* and the fire hydrants in question.

3. State as nearly as possible the actual number of cars on said pier on the night of July 30th, 1916.

4. State how many of said cars containing or marked as containing explosives or explosive munitions were on said pier on the night of July 30th, 1916.

5. How long had said cars containing explosives or explosive munitions been on said pier up to twelve o'clock midnight of July 30, 1916?

Answer: On the assumption that the "pier" referred to in these interrogatories is intended to include all the lands and premises commonly known as the "Black Tom yard" at Jersey City, defendant answers that the total number of cars on the night of July 30, 1916, was 228. None of the defendant's officers, agents or employees has any personal knowledge of the contents of any of the cars, excepting as shown by the shipping orders furnished by the respective consignors to this defendant (with respect to traffic originating on the defendant's line), or as shown by the waybills furnished by connecting lines to the defendant at the point of connection (with respect to traffic originating on such other lines). According to the statements in said shipping orders or waybills defendant answers that there were 17 cars, the contents whereof were described and designated in said shipping orders or waybills as "Ammunition for cannon"; there were 11 cars, the contents of which were similarly described and designated as "High Explosives"; there were 3 cars, the contents whereof were similarly described and designated as "Wet Nitro Cellulose"; there were 2 cars, the contents whereof were similarly described and designated as "Combination Fuses."

The following is a list containing a description and the number of each of said cars, the contents thereof as shown by the said shipping orders or waybills and the number of days each of said cars had been on said pier prior to July 30, 1916:

Car		Lading	On hand
C. St. P. M. & O.	33602	High explosives	2 days
C. & N. W.	129112	" "	2 "
C. St. P. M. & O.	32452	" "	2 "
C. & N. W.	139900	" "	2 "
C. & N. W.	135762	" "	2 "
C. St. P. M. & O.	32194	" "	2 "
C. St. P. M. & O.	30484	" "	2 "
C. & N. W.	131112	" "	2 "
C. & N. W.	137046	" "	2 "
C. & N. W.	126960	" "	2 "
C. St. P. M. & O.	30832	" "	2 "
Wabash	67166	Wet nitrocellulose	6 "
C. P.	128766	" "	6 "
P. R. R.	517708	" "	6 "
P. M.	52932	Ammunition for cannon	3 "
Erie	102070	" " "	4 "
P. R. R.	11832	" " "	4 "
P. L.	517981	" " "	4 "
P. L.	536125	" " "	4 "
H. V.	32020	" " "	3 "
G. T.	26343	" " "	3 "
B. & A.	37330	" " "	3 "
P. L.	517930	" " "	3 "
N. C. & St. L.	10194	" " "	3 "
P. R. R.	84422	" " "	3 "
C. & E. I.	61659	" " "	4 "
L. V.	85282	" " "	1 "
C. C. C. & St. L.	54578	" " "	4 "
P. & R.	14537	" " "	9 "
P. & R.	12275	" " "	11 "
P. R. R.	84146	" " "	part day

Car		Lading	On hand
N. H.	77254	Combination fuses	6 days
N. H.	84321	" "	6 days

6. To whom were said cars consigned?

Answer: The contents of the cars described as "Ammunition for Cannon" were consigned to the Bethlehem Steel Co.; the contents of the cars described as "High Explosives" were consigned to C. J. Medziknovsky; the contents of the cars described as "Wet Nitro-cellulose" were consigned to G. W. Sheldon & Co.; the contents of the cars described as "Combination Fuses" were consigned to Bethlehem Steel Co.

7. On July 30th, 1916, did the defendant own or lease, occupy and use said pier known as Black Tom pier and the lands covered with water immediately adjacent thereto?

Answer: On the assumption that the "pier" referred to in this interrogatory is intended to include all the lands and premises commonly known as the "Black Tom yards" at Jersey City, defendant answers that it did not own the said lands or premises; it leased, occupied and used the same in accordance with the terms and provisions of a certain lease made by National Storage Company dated June 24, 1913. Copy of said lease and of the map therein referred to is hereto attached as a part of this answer.

A copy of that lease is annexed herewith, but I will not bother to read it.

Additional interrogatories:

1. Were the tracks in the B. T. yard severally numbered or otherwise designated or identified on or prior to July 30, 1916?

2. If so, state how said tracks were numbered or identified.

3. State where, with reference to such identified tracks, said cars containing explosives and munitions were placed

and held immediately prior to the fire and explosion of July 30, 1916.

Answer: With respect to these interrogatories, the attorneys for the plaintiff have expressed themselves as satisfied with the information conveyed to the plaintiff in and by a map furnished to the plaintiff by the defendant on November 10, 1917. Later information has caused the defendant to make certain corrections in the said map, which corrections are shown on the map furnished herewith.

4. Referring to the amended answer, paragraph 3 second defense to first count, did said cars bear signs or placards indicating the nature of the contents and instructions re handling and transportation as prescribed by law and the rules or regulations of the Interstate Commerce Commission? If so, state the text of each of such placards on each of said cars.

Answer: Yes. The placards on the following cars which originated at Barksdale, Wis., and which had been placed thereon at point of origin were in the form and of the size and contained thereon the printing prescribed by Section 1666 of the rules and regulations for the transportation of explosives and other dangerous articles by freight and express, issued by the Interstate Commerce Commission, effective October, 1914, which regulations were in effect on July 29th and 30th, 1916:

Initial	Number	Contents	Point of Origin
Omaha	32194	Trinitrotoluol	Barksdale, Wis.
"	30484	"	"
C N W	131112	"	"
Omaha	33602	"	"
C N W	129112	"	"
Omaha	32452	"	"
C N W	139900	"	"
C N W	135762	"	"
C N W	126960	"	"
Omaha	30832	"	"
C N W	137046	"	"

"EXPLOSIVE" PLACARD.

1666. Placard—A certified car for the dangerous explosives specified in paragraph 1666, must be protected by attaching to each outside end, and the side door, the lower edge not less than 4½ feet above the car floor, a standard placard 12 by 14 inches, on which appears in conspicuous red and black printing on strong tag board the following notice:

..... 14 inches .....

12 inches

.....R ..... Company

EXPLOSIVES
(Printed in red.)

HANDLE CAREFULLY.

Keep fire away.
(Printed in red.)

.....Station ..... 19..

Condensed rules for handling this car.

(1) This car must not be placed in a passenger train or in a mixed train if avoidable.

(2) Cars containing explosives must be near center of train and may be together if desired; must be at least 15 cars from engine and 10 cars from caboose when length of train will permit.

(3) Cars containing explosives must not be placed next to cars bearing the inflammable or the acid placard or cars containing lighted heaters. Whenever it is possible to avoid so doing, they must not be placed next to tank cars or flat cars or next to carloads of lumber, poles, iron, pipe, or other articles liable to break through any car from rough handling.

(4) The air and hand brakes must be in service.

(5) In shifting have a car between this car and engine whenever possible, and do not cut this car off while in motion.

(6) Avoid all shocks to this car and couple carefully.

(7) Avoid placing it near a possible source of fire.

(8) Engines on parallel track must not be allowed to stand opposite or near this car when it can be avoided.

(9) This placard must be removed from car when explosives are unloaded.

The placards on the following cars, which originated at Redington, Pa., were those required by paragraph 1666 of the rules and regulations of the Interstate Commerce Commission for the transportation of explosives and other dangerous articles by freight and express, which paragraph is quoted above and in which quotations the wording contained on the said placards is set forth. The placards on each of the said cars in accordance with the requirements of the said paragraph 1666:

Initial	Number	Contents
		Ammunition for cannon with explosive projectiles.
P & R	12275	"
Erie	102070	"
P R R	11832	"
P L	536124	"
P L	51981	"
Big 4	54578	"
C & E I	61659	"
P R R	84146	"
L V	85282	"
P L	517930	"
P R R	84422	"
H V	32020	"
G T	26343	"
P M	52932	"
B & A	37330	"
N C St L	10194	"

The placard on car P & R 14537, containing ammunition for cannon with empty projectiles, which originated at Redington, Pa., was what was known as an "inflammable" placard and was in accordance with the provisions of paragraph 1913 of the rules and regulations of the Interstate Commerce Commission for the transportation of explosives and other dangerous articles by freight and

express. The said paragraph, with a copy of the wording required to be placed upon said "inflammable" placards, is as follows:

"INFLAMMABLE" PLACARD.

1913. Placard of diamond shape, printed on strong, thin, white paper for pasting on tank cars containing an inflammable liquid, and on strong tag board for tacking to wooden cars or to wooden boards of suitable size attached for this purpose to metal box cars or tank cars, measuring 10¾" on each side, and bearing in red and black letters the following inscription, must be securely attached to each outside end and to each side door of a car containing one or more packages protected by the red or the yellow diamond label:

10¾ inches.

.....R R Co.

INFLAMMABLE

(Printed in Red)

Keep Lights and Fires Away.

Handle Carefully.

.....Station.....19

1.—This car must not be next to a car containing Explosives.

2.—Do not enter with exposed flame, nor with lighted lantern, until car has been ventilated and vapors allowed to escape.

3.—When lading requiring this placard is unloaded from box or stock cars, Agents, Yardmasters and Conductors must remove the placards. Tank cars must retain placards until cleaned.

(Par. 1903.)

The placards on the following cars which originated at Aetna, Ind., and which contained wet nitrocellulose, were the "Inflammable" placards required by the said Section 1913 of the said regulation of the Interstate Commerce Commission, hereinbefore quoted in full:

PL	517708
CP	128766
Wab.	67166

The following cars which originated at Waterbury, Conn., and contained combination fuses, contained no placards:

NH	77254
NH	84321

Said signs or placards as above stated remained upon the said cars in the Black Tom yard up to and on the 30th day of July, 1916.

5. State which of said cars, by initial and number, were burned, or the contents thereof exploded, or were otherwise destroyed, by said fire and explosion.

6. State which of said cars of explosives were not so burned, exploded or destroyed.

Answer: Without attempting to state whether destruction resulted from fire or explosion or otherwise, it is the fact that the contents of the following cars were destroyed:

Initial	Number	Contents
Omaha	32194	Trinitrotoluol
"	30484	"
C N W	131112	"
Omaha	33602	"
C N W	129112	"
Omaha	32452	"
C N W	139900	"
C N W	135762	"
C N W	126960	"

	Initial	Number	Contents
	Omaha	30832	Trinitrotoluol
	C N W	137046	"
	P L	517708	Wet Nitrocellulose
	C P	127766	"
	Wah.	67166	"
10	N. H.	77254	Combination fuses
	N. H.	84321	"
	Erie	102070	Ammunition for cannon with explosive projectiles.
	P R R	11832	"
	P L.	536124	"
	P L	517981	"
	Big 4	54578	"
	C & E I	61659	"
20	P R R	84146	"
	L V	85282	"
	P L	517930	"
	P R R	84422	"
	H V	32020	"
	G T	26343	"
	P M	52932	"
	B & A	37330	"
	N C & St. L	10194	"

30 The contents of the following cars were partially destroyed:

P & R	14537	"
P & R	12275	"

7. When did the fire begin? Or when was the fire first discovered by the defendants, its agents or employees?

Answer: The defendant does not feel obligated to make statements based upon derivative information and therefore does not answer so much of this interrogatory as relates to the beginning of the fire. It states, with
40 respect to the time when the said fire was first discovered

by any of its agents or employees, that the hour was between 12:15 and 12:45 A. M., July 30, 1916.

8. Describe the location or place on premises known as Black Tom yards where the fire was burning when first discovered by any agent or employee of the defendant company?

Answer: The same agent or employee who first observed the fire is not able to place the exact location of the fire, but states that, from his point of observation, which was in front of Store G, the fire was to the east of him, but he was unable to determine whether it was on or adjacent to the North Pier or at some point in the yard near the North Pier and between him and the North Pier.

9. Referring to paragraph 7 of said answer, state the quantities of shrapnel and trinitrotoluol on the two barges referred to in the said paragraph of the answer, and whether the explosives on said two barges were destroyed.

Answer: On the Barge "Frank," of the Johnson Lighterage Company, there were the contents of the following cars which the billing indicated to be trinitrotoluol:

C N E	141052	57675 lbs.
C St P M O	30764	57675 lbs.
"	29468	57675 lbs.
C N W	121346	57675 lbs.
"	139326	57675 lbs.
		288375 lbs.

On Moran Barge No. 64 there were the contents of the following cars, as indicated on the billing therefor:

Initial.	Number.	Contents.	Weight.
R I	37594	Comb. fuzes	56160 lbs.
N H	72192	" "	56160 "
L V	86456	" "	56160 "
N Y C St L	27117	" "	49060 "

Erie	105020	Ammunition for cannon,	86366	lbs.
N Y C	248647	"	67200	"
C P	123132	"	72800	"
B & A	39526	"	71475	"
S P	21499	"	71475	"
U P	123964	"	101256	"
L S M S	85754	"	86366	"
L & N	101543	"	86366	"
F W D	6369	"	84000	"
			944844	"

The defendant, excepting from derivative information, does not know whether the ammunition and explosives on the said barges were destroyed or not.

10. On the night of July 30, 1916, were there any cars or tanks of naphtha, gasoline or other volatile or explosive liquids or gases in said Black Tom yard?

Answer. There were no cars or tanks of naphtha or gasoline at the time mentioned, and with respect to other cognate products, there were present four cars of chlorbenzol and one car of monochlorbenzol, of which plaintiff has knowledge from the map referred to in the answer to Interrogatories Nos. 1, 2 and 3, showing the cars containing the same and the location thereof. The defendant does not by this answer commit himself as to the characteristics or properties of the said chlorbenzol or of the said monochlorbenzol.

11. What was the result or effect of said fire and explosion upon said Black Tom yard, and the piers extending therefrom, and the cars, tracks and structures?

Answer: Defendant's counsel, having conferred with plaintiff's counsel respecting the interrogatories, and having learned from the plaintiff's counsel that they did not expect defendant to give an all-inclusive answer to this question, in that light answers the same as follows:

Among the results of explosion was the presence, at the place shown by dotted lines on the map furnished plaintiff, of a hole in the ground generally referred to as a crater, approximately 375 feet long, 175 wide and from 7.7 to 10.5 feet deep, and in the vicinity thereof evidences of the destructive effect at that point.

Some of the other effects of explosion best observable by results on the North Pier and the South Pier were disarrangements of track, shattering of cars and of the timbers of the piers, the penetrating of one of said timbers by a shell and other similar effects of explosion from some point north of the North Pier.

Mr. Stallman. The owners of the schooner "George E. Walcott" were examined on their depositions, and by the consent of counsel I will now read to you the testimony of the owner and the steward and the captain of the schooner "Walcott":

Mr. Garrison. Is there some stipulation made about any objections to the evidence?

Mr. Stallman. No. We agreed we should read this testimony. In fact, it was taken on notice.

Mr. Garrison. Was there any stipulation made about any objections, have to urge them at the time or could we urge them afterwards?

Mr. Stallman. If you wanted to object at the time of the examination the objection was made. That is the way we did it.

Mr. Garrison. It is not your idea that we can object to it now?

Mr. Stallman. No. I am now about to read some depositions.

Mr. Garrison. I am trying to find out about objections. I understand from counsel who took it that only such objections would be urged as were noted at the time.

The Court. Yes.

Mr. Stallman. I think that is the practice.

Eleazer E. Clark— I might say, if the Court please, that Mr. Clark informed us that we had his name wrong, that his proper name is Eleazer W. Clark.

The Court. I suppose I might say that it might not make any difference what the middle name is, because under the law the middle name is strictly of no account as long as you identify the name.

Mr. Garrison. We will admit that Eleazer E. and Eleazer W. is the same man.

Mr. Stallman. (Reading:)

"ELEAZER E. CLARK, after being duly sworn, testified as follows:

Direct examination by Mr. Stallman.

Q Mr. Clark, where do you reside? A Portland, Maine.

Q Are you one of the plaintiffs in this suit of Clark and others against Lehigh Valley Railroad Company? A Yes, sir.

Q What is your business, Mr. Clark? A Ship broker and ship owner.

Q How long have you been in the ship business? A Since the first day of July, 1881.

Q Did you know the schooner George E. Walcott? A I did.

Q And what was your personal interest in that vessel? A I was personally an owner of six sixty-fourths interest and managing owner for the balance of the owners.

Q Have you prepared a list of the owners of the vessel and the fraction of the shares in which they owned the boat? A I have.

Q And have you got it with you? A I have.

Q This paper which you hand me is a correct list of the owners and the interests in which they own the

shares in that vessel? A After the time she was lost, as far as I know.

Q Did you keep a record of the owners? A I did.

Q And their shares? A I did.

Q And this is made from that record? A Made from that record."

Mr. Stallman. I now offer in evidence the list identified by the witness, which was marked at that time Exhibit P. 1, and I would like to have it marked at this time P. 3. I do not know how else to keep the record straight.

The Court. All right.

Mr. Stallman. It is marked P. 1 on the depositions. As long as I am reading the deposition I thought it may have another number.

Typewritten list marked Exhibit P. 3.)

Mr. Garrison. The testimony is, after the loss. Of course we are not interested in that. It should be at the time of the loss. We are willing that he should change it.

The Court. Yes; all right. That will be noted on the record.

Mr. Garrison. How many of them are there?

Mr. Stallman. There must be thirty or thirty-five names there. The statement or list of owners is headed "Ownership Schr. George E. Walcott, as shown by J. S. Winslow & Co. books."

The next question is—

(Continues reading.)

"Q Who is J. S. Winslow & Company? A J. S. Winslow & Company is a corporation organized under the laws of the State of Maine, of which I was president and manager.

Q And that is the name under which you do your ship broking business? A That is the name under which I do my ship broking business.

Q Did you know the schooner George E. Walcott? A Yes, sir.

Q And how long have you owned her or had any interest in her? A From the time she was built.

Q And when was she built? A Completed in December, 1890.

Q Now, just in general, what was the character of the George E. Walcott? In the first place, what kind of a boat did you call her? A She was a four-masted wooden schooner.

Q And in the month of July, 1916, do you know what her general condition was? A She was in the very best of repairs.

Q What was she equipped with generally; what articles if any constituted a part of the ship? A She was thoroughly equipped in every way for an ocean-going schooner.

Q And that includes what, in a general way? A Well, that includes sails, rigging, chains, anchors, gear, engine, pumps—why, you could go on indefinitely.

Q Had the vessel been overhauled or any extensive work in repairs done in a comparatively short time before July, 1916? A In 1915, the schooner was at Bath, Maine, put in thoroughly good condition. Again in the fall of 1915, before starting on this voyage, she had everything put to her that she required to make a long voyage.

Q Do you remember generally about the time when she was injured or destroyed? A July 30th, 1916.

Q And where was she at that time? A At Black Tom dock.

Q In Jersey City? A I presume that is Jersey City; I am not sure.

Q Where had she been just before arriving at that place? A Why, she arrived in New York from Buenos Aires.

Q When did she go to Buenos Aires? A Upon arriving at Black Tom.

Q When you say that she just came back from Buenos Aires, had she made a trip from these parts down there? A She loaded coal in Philadelphia, which she discharged in Buenos Aires, and after discharging the coal she entered a load of quebracho wood consigned to the Central Leather Company, New York.

Q Do you happen to know whether that cargo discharged at the time of this accident? A Partially discharged.

Q Give us the general description of this schooner as to her size or capacity or other things, so that we will have some idea what kind of a boat she was. A She was 212.7 feet long on her measuring line, 44.1-foot beam, 19.6 depth of hold, with a poop deck running to her forward hatch, 1,553 tons gross.

Q When you say that she was fifteen hundred odd tons, does that give her capacity? A That is her gross tonnage.

Q And can you say what her capacity was, or did she have any capacity? Was she rated as having any particular capacity? A She was not rated for any particular capacity, but her dead weight carrying capacity was from twenty-one to twenty-five hundred tons, owing to the time of year she loaded and the voyage she was performing.

Q Can you say, Mr. Clark, whether this schooner was an ocean-going schooner or not? A She was supposed to be capable of performing any voyage to any part of the world.

Q Was a voyage to Buenos Aires and back such a voyage that requires a good, staunch vessel? A It certainly does.

Q What experience have you had, Mr. Clark, in buying and selling vessels of the general character like the Walcott? A That was one of the branches of my business for the last twenty-five years.

Q Now, during the year 1916 were you familiar with the general market conditions of a vessel of this class? A I was.

Q Did you see any vessels which could be compared with the Walcott in size and capacity during that year? A I sold one just previous to the Walcott being lost that was practically the same plan vessel as the Walcott.

Q What was the name of that vessel? A Schooner Mary E. Palmer.

Q And as to size and capacity and the other features that go to make up a vessel, how did the Palmer compare with the Walcott? A 1456 gross tons as compared with 1553 for the Walcott.

Q That is, she was slightly smaller? A Slightly smaller.

Q In general condition how did she compare with the Walcott—condition and equipment? A She was not as good a schooner as the George E. Walcott. Her equipment was equally as good.

Q And when you say she was not quite as good, wherein was the difference? A She was not as good a built vessel; received less number of years' rating and cost at least $18,000 less money to build.

Q Now, at or before that same time did you sell any other schooners? A Schooner James W. Paul, Junior; but she was a larger vessel.

Q Before you get to that—what did you sell the Palmer for? A $100,000.

Q Could you give us about the month when you sold her? Can't you give it to us generally, without looking at the record? A I have got the exact date here.

Q You do not have to get it down to a day or two. Just about the time. A (Looking at papers.) April 24th, 1916.

Q You also spoke of having sold a schooner called the Paul. A James W. Paul, Junior.

Q And when did you sell that vessel? A February 19th, 1916.

Q And how did she compare with the Walcott as to her size and general conditions? A She was 1808 tons, gross, compared with the Walcott's 1553 tons; a larger dimension and capacity vessel in every way.

Q And in condition how did she compare? A She was for equipment in first-class shape in every way; not as near as good a built vessel; never worth as much money per ton as the Walcott.

Q And what did you sell the Paul for? A $115,000.

Q Did you sell any other vessels about that time—schooners? A I did not sell any, but I was an owner in two others that were sold at that time.

Q Well, I mean— A (Interrupting.) I sold my interest with the other vessels there.

Q What schooners were they? A Ellis M. Colborn.

Q And what was the general description of that schooner? A She was 1603 tons.

Q That is about fifty tons more than the Walcott? A Just fifty tons more.

Q And do you have personal knowledge of that boat and her general condition? A I have.

Q And how did that vessel compare with the Walcott? A She was equally as good a vessel in every way.

Q And what did that boat sell for? A $110,000.

Q And when was she sold? A June, 1916.

Q Was there any other boat in which you had an interest that was sold about that same year? A Yes, sir; Schooner Ada F. Brown.

Q And what was her general dimensions and condition? A She was 1456 tons register, never as good a built vessel as the Walcott.

Q And what was that boat sold for? A $105,000.

Q When was she sold? A In May, 1916.

Q Is there any other boat that you were interested in that was sold about that time? A There were other schooners, but larger vessels.

Q From your knowledge of the Walcott, Mr. Clark, and your experience in the sale of those schooners that you mentioned, what do you consider to be the fair market value of the Walcott at the time she was destroyed? A $100,000.

Q Now, you said a while ago that she had partly discharged a cargo of some kind of wood at Black Tom. A Yes, sir."

The Court. I think at this point, Mr. Stallman—you have gotten to the point of value of it—we will adjourn until ten o'clock on Monday morning.

(Adjourned till Monday, June 23, 1919, 10 a. m.

"Ownership Schr. George E. Walcott," as shown by J. S. Winslow & Co. books:

Eleazer W. Clark	6/64
Malvina C. Winslow	3/64
James W. Parker	3/64
F. N. Sewall	2/64
Edward L. Foss	3/64
Est. Frank N. Strout	2/64
Kate M. Hitchcock	2/64
Est. Clara P. Goodwin	2/64
Norman C. Reed, Trustee	2/64
Atlantic Coast Co	5/128
Ralph Holden	2/64
Asa L. Young	3/128
Est. Andrew Adams	1/64
Charles W. Clifford	1/64
Est. Johnson Rideout	1/64
S. A. Purington	1/64
Alicia B. Crosby	1/64
Nellie McCutcheon	1/64
Virginia Clark	1/64
J. H. McDougall	1/64
Isabella M. Reed	1/64
Mitchell Reed	1/64

F. P. Ring..... 1/64
W. R. Lincoln..... 1/64
Ann E. Merryman..... 1/64
Mary E. Wade..... 1/64
E. Raymond Haggett..... 1/64
James S. Conant..... 1/64
W. R. Kreger..... 1/64
James H. Smith..... 1/64
R. F. Barrett..... 1/64
John M. Wadhams..... 1/64
B. Frank Marsh..... 1/64
Pearl Horseman..... 1/64
Leslie B. Clark..... 1/128
Addie H. Foss..... 1/128
F. J. Hinckley..... 1/128
Rosalia Stimpson..... 1/128
Emma G. Small..... 1/128
Abbie N. Peterson..... 1/128
Eleanor Haggett..... 1/128
A. B. Thwing..... 1/128
A. C. Manson..... 1/128
Lillian E. Wood..... 1/128
John Clancy..... 1/128
George D. Curtis..... 1/128
John C. Cullinan & Thos. M. Cullinan 1/128
Est. Stephen H. Mills..... 1/128
I. B. Bassett, Trustee..... 1/128
Est. J. A. McCabe..... 1/128
Est. John L. Merrill..... 1/128
Harry P. Hoff..... 1/128
Est. Ebenezer Haggett..... 4/320
Kate H. Warren..... 7/640
Elizabeth M. Rogers..... 1/256
E. Winslow Clark..... 1/256

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SECOND DAY.

ROYAL INDEMNITY COMPANY (and eleven other plaintiffs),

vs.

LEHIGH VALLEY RAILROAD CO., *et als.*

Transcript of shorthand notes of testimony taken on the 23rd day of June, 1919, before Judge Speer and a Jury.

Mr. Stallman. We were reading the testimony of Mr. Clark and he had given the value of this vessel, and I will continue from there, where we left off on Friday.

(Continues reading.)

"Q Do you know whether or not the vessel had collected the freight moneys on her entire cargo at that time? Q She had not. No freight had been collected at the time she was destroyed.

Q None had been? A No.

Q Had some freight accrued and was owing by the consignees at that time? A Yes, sir."

Mr. Stallman. At that part of the testimony I said to Mr. Hobart that I would like to take some testimony regarding the freight earned by this vessel on the part of the cargo which had not yet been discharged and as to which she did not collect the freight from the consignees, and that I would amend the complaint so as to cover that item, and I subsequently filed an amendment to the complaint to cover the loss of freight moneys that had not been earned.

"Q Now, Mr. Clark, about the cargo of this boat. What part, if you know, of the cargo had not been discharged?"

Mr. Collins. Now, at this point Mr. Hobart, who was attending the taking of the testimony, objected, and I

make the objection now. "I object," he said—and I renew it now—"to this evidence on two grounds. First, it does not appear that this witness had any personal knowledge of how much of the cargo had been discharged up to the time the boat is said to have been destroyed; and, second, on the ground it is not a proper element of damages." Now, of course, that was not proved at that time—I think later perhaps they did prove the amount that had been discharged—but this second ground is vital, and I think your Honor should give it very serious consideration. I cannot see how there can be any claim for damage by reason of freight that had not been collected up to the time of the destruction of the vessel. As I understand it, the vessel was under a charter party—I do not know whether that is in evidence or not.

Mr. Stallman. Yes.

Mr. Collins. Has your Honor seen the charter party? Under this charter party the party of the second part is to pay to the party of the first part for the use of said vessel during the voyage $8.50 per ton of 2240 pounds delivered, payable at port of discharge in United States currency free of discount or commission. Cash sufficient for vessel's disbursements at point of loading to be advanced master there, subject to usual charges for interest, commission, and so forth, if required by master. The customs of the trade at such point to be observed. When not otherwise expressed, vessels to be free of address commission.

Now, they were to receive pay for the use of the vessel and they measured it by the tonnage, but that is merely the method of arriving at what the compensation should be, and when the vessel came all the way from Buenos Aires and did its duty and got to this point, I think their freight was earned and is collectible from the party obligated to pay it, and I do not see how the fact that they had not yet got that freight, some of it, en-

titles them to include as damage the amount of the freight they had not collected. I have been unable to find any solid ground on which it could rest, and we urge this objection.

The Court. What is your point with respect to it, Mr. Stallman?

Mr. Stallman. The point is, as the testimony develops, that the consignees under the charter party only pay freight on that part of the cargo which is delivered, and that the vessel at this dock was burned, and we contend destroyed, when she only had about two-thirds of the cargo delivered, so that she did not complete her agreement, her charter party, and make delivery to the consignees, or the consignees' agent, of the freight, and therefore she lost the freight moneys represented by the freight that was burned. She had performed her obligation to carry the wood up from Buenos Aires to the port of New York, and had there started to unload it, but owing to this catastrophe she was unable to unload all of it. She was unable to make delivery of all of it, and therefore the obligation of the consignee to pay that freight should not accrue.

The Court. I see your point. What do you say to that? I do not see any answer to that.

Mr. Garrison. It is a question of whether the vessel was chartered by the Central Leather Company, as it seems to be, or whether the vessel itself was undertaking this voyage. Under this document it is doubtful whether the vessel itself was not chartered to the Central Leather Company.

The Court. I understand, but by reason, as the plaintiff charges, of the negligence of the defendant, they were prevented from earning the proportion of the freight which but for the negligence of the defendant they would have earned.

Mr. Garrison. If this vessel were chartered to the Central Leather Company, they may have some right

of action against the negligent parties, but how can the charterer of the vessel ask for freightage? I think it is a question of the construction of this document. You see, what they do is to agree to provide and furnish a vessel, and so forth, and they shall pay for the use of the vessel so much.

The Court. Yes, but they do not have to pay for the use of that vessel except to the extent of the freight delivered.

Mr. Garrison. If that is the correct construction of this document, I agree with your Honor.

The Court. Isn't that what it said?

Mr. Garrison. No; it simply says, "and to pay to the said party of the first part for the use of the vessel aforesaid $8.50 per ton of 2240 pounds."

Mr. Stallman. Delivered.

The Court. Delivered.

Mr. Garrison. Yes.

The Court. I think I shall admit the evidence, and you gentlemen may have your objections entered to the ruling on the record.

Mr. Collins. Please note the objection.

The Court. It will be noted.

(Mr. Stallman continues reading:)

"Q Will you answer the question, Mr. Clark? A The bill of lading called for 1862 tons.

Q When you say that you mean the vessel's bill of lading? A Yes.

Q The Walcott's bill of lading? A Yes. And this is the amount. We paid stevedore bill loading at Buenos Aires. We collected freight on 1171.53 tons at $8.50 per ton.

Q And that part that you say you collected the amount on, what was done with that wood? A This amount of cargo had been discharged and delivered.

Q Delivered where? A Delivered within reach of the vessel's tackles.

Q At what point? A At her discharge berth at Black Tom.

Q What became of that wood, do you know? A I do not.

Q Do you know whether it was shipped from that point or just laying there? A I do not know.

Q Do you know Ira W. Allen? A I do.

Q Was he connected with the schooner Walcott? A He was steward aboard that schooner.

Q And how long have you known him? A Twenty-five years.

Q And during that time what has been his occupation? A Always acted as steward aboard our schooners.

Q And in July, 1916, he was so employed? A He was.

Q And do you know what his compensation was—how he was paid? A Monthly pay.

Q And what was his pay? A I could not answer that now off-hand. You will have to refer to our records. Probably $60 per month.

Q Have you been in touch with him since the time of this accident at Black Tom? A I have never seen him until today.

Q You do not know anything about his capacity of work? A I do not.

(Mr. Collins reading:)

Cross examination by Mr. Hobart.

Q You say the schooner Walcott was built in 1890? A Yes, sir.

Q What did she cost?''

Mr. Stallman. I object to that your Honor, on the ground that it is immaterial and incompetent, and not proof of value at the time of her destruction. She was built in 1890.

The Court. I have not any doubt at all about the propriety of that question. The case of Luce against Jones, 10 Vroom, is authority on the subject, and it was held that the cost or price of an article is some evidence in determining value, and I have no doubt whatever about the propriety of proving the cost and then showing the amount of depreciation, or whatever it is that enters into the problem to determine what the real value is.

(Mr. Collins continues reading:)

"A $74,002.84.

Q And did the cost price that you have just given include the tackle and apparel and equipment? A Everything fit in the vessel ready to sail.

Q That would include, then, the equipment—sails, anchors, and all the things that go with it? A Yes, sir.

Q And when you gave your estimate of the value at the time of the destruction as $100,000, did that also include the tackle and equipment? A Yes, sir.

Q Have you attempted to prepare any estimate of the tackle and equipment separate from the schooner itself? A No, sir.

Q Are you in a position to do that? A I would not be in a position because I have not been on board the vessel after she made the last voyage.

Q How long before July 30th, 1916, had you been on board this schooner? A I was on board the schooner in Portland in 1915.

Q And what time of the year? A In the fall, I should say; about October.

Q Was that just before she made the trip to Buenos Aires? A She left Portland to enter on that trip.

Q And it took from that time, the fall of 1915, to the following July for her to make that trip and return? A She went to Philadelphia and loaded outward to Buenos Aires.

Q And do you happen to know how long a trip that is from Philadelphia? A To Buenos Aires?

Q Yes. A About seventy days for the passage. She was a little longer.

Q Seventy days each way? A Yes, sir.

Q And how many miles? A Well, that is a pretty hard question for me to answer; but I should think offhand it was 6,000 miles. I do not know from memory.

Q Each way? A Each way.

Q It was a sailing boat without any auxiliary power? A No auxiliary power.

Q Was this what you might call a regular trip for the boat, or was she sent all over the world, wherever she would get a charter? A We always intended to send her wherever we could secure the best business.

Q Well, is that the kind of a boat that we sometimes call a tramp? A No. She might answer to that description; but I think you might speak of a tramp as a tramp steamer. I never heard a tramp to apply to anything else but a steamer.

Q But, at any rate, she had no regular run? A No, sir.

Q She was sent wherever the business might be best? A Any part of the world.

Q I understand, Mr. Clark, that you did not see the schooner from the time you saw her some time in the fall of 1915. You haven't seen her since that time? A No, sir.

Q You, of course, were not on the schooner at the time of the explosion? A Oh, no.

Q How large a crew did she carry? A She carried—would you like to have me enumerate?

Q Yes. A She carried a master, two mates, steward, engineer and six and sometimes seven sailors, all owing to the trip she was performing.

Q Do you remember who the master was? A M. L. Jamieson.

Q When was the last time the Walcott was repaired, so far as you have any knowledge? A At Philadelphia prior to leaving for Buenos Aires.

Q Did you see her at that time? A I did not.

Q You, of course, then, have no personal knowledge of her condition when she left Philadelphia? A Not from observation more than in the fall before leaving Portland.

Q That is, before she went to Philadelphia? A Yes.

Q Was there a considerable demand for vessels of this kind during the first six months of 1916? A Yes, sir.

Q Very unusual demand, wasn't there? A Not as much as there was in 1917.

Q More so in 1917? A Yes.

Q Of course, we all know that that demand has been soon after the war started? A Well, it commenced in 1915.

Q And those other vessels that you have referred to that you either owned or had an interest in and which you sold from time to time were all sold during that period of this unusual demand, were they not? A They were sold when there was a good demand, in 1916.

Q Now, had you had any offers for this schooner? A Yes, sir.

Q And what were they? A I was offered $95,000 for her.

Q When? A Just prior to being destroyed, a few days.

Q And I may assume that that offer included the apparel when she started? A Everything.

Q Without any cargo, of course? A Certainly.

Q By whom was that offer made? A Mutual Export and Import Corporation of America, 24 Stone street, New York City.

Q And what is the date that you have on record there? A I haven't the exact date, but around July 20th.

Q Was the schooner already in dock on July 20th, or thereabouts? A Yes, she was.

Q At the time of the explosion did you have some negotiations for the sale? A I did.

Q But you had not gotten the contract completed? A I refused their offer.

Q Now, you referred to this Mutual Company. A Mutual Export and Import Corporation of America.

Q I noticed you reading that name from a letter. Was that offer in the form of a letter? A It was not.

Q But you had some correspondence with them in regard to the sale? A We had.

Q And this letter that you have in front of you is part of the correspondence? A Yes, sir.

Q Was this offer of $95,000 made before or after this letter of July 20th, to which you have referred? A It must have been after. I expected to produce the telegram, but I was unable to locate it in my files. But if it is material it can be had from this end, the telegram making an offer of $95,000.

Q And you declined it because you wanted more? A I asked him $100,000, and expected to get it.

Q Isn't that the principal reason why you put a value of $100,000 on it? A Undoubtedly one of the reasons.

Q It is the principal reason, isn't it? A Well, I will answer that by saying that no doubt the market warranted $100,000 for that schooner at that time.

Q Have you with you the charter party for the trip from Buenos Aires? A Yes. (Witness produces it.) That is a certified copy. It is not the original. The original is in the hands of Miller & Houghton, ship brokers, New York.

(Charter party marked Exhibit P. 2.)

(Marked at the trial Exhibit P. 4.)

Q What did you say the tonnage of the Walcott was? A 1533 gross. I think she is 1338 net, if I remember correctly.

Q When you gave the tonnage of the Walcott as 1553 you meant the gross tonnage? A I did.

Q And the so-called net tonnage is 1338, as shown by the charter party? A Yes.

Q Now, I noticed from the charter party, Exhibit P. 2, that this calls for a voyage from Buenos Aires to New York. Do you know how it happened that this boat landed at one of the docks at Black Tom? A Not from my personal knowledge, only that Black Tom would be considered New York.

Q On this part of New York harbor? A Yes.

Q But did you have any agreement or any arrangement with the owners of the Black Tom Piers whereby your boats would have the right to unload at those piers? A I can only answer that in a usual way. I wasn't here and have no personal knowledge; but custom required you to accept from the consignees any orders as long as there is a safe and suitable berth.

Q In other words, the selection of the berth is left to the consignees? A Entirely.

Q And who pays the wharfage charges? A All owing to the trade that the vessel is chartered. Usually the vessel pays it.

Q Well, so far as you know, then, Mr. Clark, this schooner docked at the Black Tom Pier under some direction or order of the consignee? A Yes, sir.

Q And do you happen to know whether, as a matter of fact, you—by that I mean the owners of the boat or its agents—paid for the use of the Black Tom dock? A I would have to refer to our records to answer that correctly. I would only speak from memory here. I should say under the conditions of that charter party that the schooner paid the wharfage.

Q You can easily obtain that fact from the vessel's accounts? A Yes.

Q Will that same account, so far as you can tell now, also show the date when the vessel arrived at the Black

Tom dock? A If we have a receipted bill. It usually does.

Q Do you know how long it would ordinarily take to unload a cargo such as this vessel had, when the bill of lading shows 1862 tons of this wood? A That depends entirely upon how anxious consignees are to receive it. They work one or two or three gangs. One gang it would take, I would estimate, 150 tons a day discharging, and that would depend upon the facilities of discharging berth for handling cargo.

Q Referring to the steward, Mr. Allen, who, I understand, was on board the vessel at the time. How long had he worked for you, Mr. Clark? A Well, let me understand that. You mean altogether, or on this vessel?

Q Well, this vessel. A It is my impression only the last voyage.

Q And previously to that he worked for you for some years? A In various vessels off and on for twenty-five years.

Q Do you know him personally? A I do.

Q And this deafness from which he is suffering now is not the result of this explosion, is it? A Well, he is very deaf all the time I have known him, twenty-five years.

Q Do you know whether he ever had an accident before this? A I do not.

Q Is Mr. Allen working for you now? A No, sir.

Q Do you know where he is working, if at all? A He tells me today that he is not at work at all.

Q Did he ever work for you after 1916? A No, sir.

Q You didn't personally see him after the accident, did you? A No, sir.

Re-direct examination by Mr. Stallman.

Q Mr. Clark, Mr. Hobart mentioned the increasing demand for schooners of this type during the year 1916. Did that demand for this class of vessels affect the market price of those vessels? A In 1916?

Q Yes. A Yes, undoubtedly.

Q And how long did that demand and its effect upon the market price continue? A It continued to increase during all of 1917 and a good part of 1918—all of 1918.

Q Can you tell from your knowledge and experience whether or not the general conditions in the selling of ships increased the price of the vessels over the prices which you gave a while ago? A Very materially.

Q Do you know of your own knowledge, or from knowledge that you have as a ship broker, whether any of these vessels that you mentioned as having been sold were sold subsequently at higher prices? A I could not state that from my actual knowledge. I sold vessels in 1917 at a very much higher price.

Q Than the prices that you mentioned? A Than the prices that I obtained in 1916.

Q Did those vessels compare in any way with the Walcott as to general value? A Why, I sold one schooner, "Major Pickands," a vessel of far less value than the Walcott, much smaller, same age, capacity 1600 tons, as compared with the Walcott's 2400, for $100,000 in 1917, and many others.

Q You mean by that the market prices were higher in 1917 than they were in 1916? A Very much higher.

Re-cross examination by Mr. Hobart. (Read by Mr. Collins.)

Q Do you know whether the Walcott was burned up or blown up? A No, sir. I could not testify to that.

Q I thought perhaps you might have seen some of the remains. A No.

Q Didn't those fellows pay for anything except the 1171.53 tons? A No, sir.

Q They refused to pay the freight on the other? Was there any insurance on this boat or on the cargo?"

Mr. Stallman. There is an objection to that.

Mr. Collins. There is an objection to that.

Mr. Stallman. I objected to the question, Mr. Clark not having anything to do with the cargo. I objected to it on the ground that it is immaterial. We are not suing for the cargo, but for the boat. And the witness answered.

Mr. Collins. Do you suppose it makes any difference?

Mr. Stallman. The witness answered to his knowledge there was no insurance on the vessel.

The Court. I suppose there is no use fighting about it if there is nothing in it that you do not want.

Mr. Garrison. He said there was none on the vessel. He did not say there was none on the cargo. I believe he said he did not know.

Mr. Stallman. He did not know anything about that.

Mr. Collins. That is all.

"A To my knowledge there was no insurance upon the vessel itself."

"IRA W. ALLEN, after being duly sworn by Mr. Bindseil, testified as follows:

Direct examination by Mr. Stallman.

Q You are Ira W. Allen? A Yes.

Q And you were the steward on the Walcott? A Yes.

Q Do you remember the explosion at Black Tom? A Yes, sir; I remember the explosion at Black Tom.

Q Were you on the Walcott at the time of the explosion? A Yes, sir.

Q Can you tell us what happened at that time? A About half-past one o'clock in the morning on Saturday night the skylight in the vessel was bright, and there was a lot of noise from shrapnel exploding. It was all going up in the air from the fire, right over that way from the vessel (indicating) in the cars.

Q Where was the Walcott laying? A Before the fire she was laying somewhere else.

Q Before the fire started? A Yes, sir.

Q Where was the Walcott laying before the fire? A Where the sugar factory is. (Witness refers to a map of the Black Tom, points out the storehouses, and calls them the sugar houses.)

Q Before the fire started the Walcott was laying near the North Pier? A On the south side of the North Pier and near the easterly end.

Q After the fire started where was the Walcott laying? A On the easterly side of a wooden pier (which the witness indicates to be Pier No. 6).

Q When was she pulled from the North Pier over to Pier 6? A Four days before the explosion.

Q When you were laying here (indicating) at the North Pier, did you unload any wood at that place? A When she was unloading wood at the North Pier the water wasn't deep enough to unload the wood, so they moved her over to Pier 6.

Q How long had you been laying over there (indicating)? A Saturday paid the men off—five days.

Q You were over there five days, and then did you move around to the other place after that? A On Wednesday. We were laying on the south side of the North Pier from Friday to Wednesday, and then moved over to Pier 6.

Q Now, at the time of the explosion were you asleep on the boat? A I was awake.

Q Were you in the berth? A When the fire started I and the ship keeper were on each side of a table.

Q Were you asleep when the fire started? A When the fire started, yes; until the shells began to explode.

Q Well, then what happened after that? A We came up on deck. We got out and went on the deck, looked over there and see the fire and see shells going up in the air, and we said we better get out or we will be struck.

Q What is the name of that man? A Quinn.

Q What did you and Quinn do? A Mr. Quinn went into the cabin and I was going in behind him, and before I could get in a shrapnel hit me and threw me to the floor. Then the heaviest explosion came, and I was down on the floor and could not move, and I was bleeding to death. I laid there until I came to. I was fainting. While I was lying there the ship keeper walked by me, and the door of the cabin hit him in the head. He didn't know that I was hurt. And the ship keeper came up on the deck and I came up on the deck too, and fainted again. And then the ship keeper crawled up on the dock and I crawled up on the dock, too. We thought we were going off and leave the vessel, and when we got on the dock the dock was all crowded up with all sorts of stuff, and that building fell to the dock all to pieces. That sugar house was cut in two, and all fell down, and the fire kept a-going all the time and the shells kept a-going, and everything became quiet. So we thought we would go back to the vessel. We went back, and after we got back I found the mizzel sail cover was on fire. So I called for some water to put it out, and he did it. And then we both went down to the cabin and thought we would stay there till the morning; but everything was all mixed up in the cabin. In about half an hour the second explosion came and scared the wits out of us. So the ship keeper took his grip, and went up on deck, and was going to leave for good. He went off and left me. The ship keeper went to shore and I didn't see him again.

Q Where were you crawling on the deck? A On my hands and knees.

Q Where? A I was crawling on my hands and knees on the dock when an ambulance driver grabbed me by the arm.

Q Were you hurt? A Yes; I was all covered with blood.

Q Where were you hurt? A All up here (witness points to his left arm and chest). Cut up all my chest and face.

Q What about your leg? A My bone in my leg was broken and my shoe was blowed off.

Q Did you receive those injuries at the time of the first explosion or at the time of the second explosion? A The first explosion. Then I got hurt more in the second one, too.

Q Which explosion was it when you had your leg broken? A The heavy explosion.

Q Was the heavy explosion the first one or the second one? A The first one.

Q Did a shrapnel burst near you? A The shrapnel bursted and threw me to the deck, and then the heavy explosion came on and that shook the cabin all to pieces inside.

Q Was that the time when you had your leg broken? A Yes.

Q Did you have any cuts on your arm and around your body and your face? A I had cuts all over me.

Q Did you go to the hospital? A When I left the vessel an ambulance driver came over and took me to the ambulance and right to the hospital, and I was on the table at three o'clock and the doctor commenced sewing me up.

Q What did the doctor do to you? A Stitched me all up here (pointing to his right arm and chest), and I was hurt so bad and sore. I was hurt all over. A day or two later they found the bone broken in my leg, and I was in the hospital about near eight weeks.

Q How many stitches did the doctor make in you? A Maybe about twenty-five.

Q How many cuts did you have? A All over my arm and face.

Q In how many places were you hurt? A I never counted them.

Q What was the name of the doctor? A Benner. I thought it was Doctor Baker, but it is Benner.

Q What hospital was that? A Jersey City Hospital.

Q Do you know what street it is on? A No, I do not know.

Q Where do you live? A Linden, Massachusetts.

Q After you got out of the hospital were you able to walk on your leg? A I wasn't able to walk for a year. I was on crutches all the time.

Q How about your arm and your chest and your face; did that all heal up afterwards? A It took a long time to heal up, but they healed up all right. I have pain in my arm all the time (witness touches the muscle of the upper right arm).

Q Have you any other pain at this time resulting from these injuries? A I have pains down there where my leg was broken, and when I walk I have to lay up. About a year later I was working on another vessel when my injured arm pained me so much that I had to let go, and I fell and broke the other arm.

Q How long after this explosion did you suffer pain? A All the time. I have pain yet.

Q What wages were you making at the time of the explosion? A Sixty dollars a month.

Q How soon did you go back to work? A About fifteen months after I was hurt.

Q What kind of work did you do then? A Steward.

Q On what boat? A On the schooner Luna. And eight months after I went to work on that schooner I broke my left arm.

Q What was it that broke your leg? How did you get your leg broken at the time of the explosion? A I do not know, but it took my shoe off with it.

Q Was it the shrapnel that exploded near you, or was it the big explosion that broke your leg? A No; shrapnel hit me in the right arm.

Q Was your leg broken when you fell down at the time of the explosion? A When the heaviest explosion came and sent me to the floor, then my leg was broke.

Q After the heavy explosion were you able to walk around the boat? A No; I crawled.

Q Now, when you pointed to your right arm. What was the matter with your arm up there? Was your arm broken? A It felt as if the bone was broken, but it wasn't. The flesh was cut in so deep that it pained me all the time.

Q Did you have any cuts on your face? A My face was cut all up (pointing to his forehead and alongside of his nose and on his cheek and on his chin), and I was all stitched up.

Q Besides your wages did the ship furnish your board and your meals? A Yes.

Q After you left the hospital did you go back to Linden? A Yes, sir; I went home.

Q Did you have a doctor there? A Yes, sir; I had a doctor all the time—Doctor Louges.

Q What was your doctor's bill up in Linden? A I haven't figured it up. I have got it at home. I haven't paid him all yet, so I don't know how much it was.

Q Have you paid the doctor anything? A Some; not all.

Q Do you know how much you owe him? A It is on the bills at home; I don't know.

Q Did you have any clothes or money or anything on the ship? A I had about $390 worth of clothes and $92 in cash.

Q Anything else? A And my watch.

Q What kind of a watch was it? A Gold watch.

Q Do you know what it was worth? A About $75; and also a diamond locket with the watch, and the watch and locket together being worth about $100.

Q When you went back to work were you able to do the same kind of work that you did before? A No, sir.

When I went back to work I went with my own brother. I had my own way. When I went to work for by brother I only had five men to work for.

Q Are you working at the present time? A I cannot work. I cannot raise my hand up. My hand is numb.

Q Did you have any ship stores in your charge on the Walcott? A I had stores enough to last three months on the Walcott.

Q Generally, what did these stores consist of? A All kinds of stuff—lots of kinds of goods, canned goods and four barrels of beef. We had seven barrels of beef when we started for Rio, and I didn't use three of them.

Q What else did you have? A All kinds of canned stuff; flour; about $800 worth of stuff.

Q Do you know what happened to the Walcott? A She got on fire; the whole wharf.

Q Did you see the Walcott on fire? A No, I didn't see the Walcott on fire. It was just coming over, spreading all around. The lighter that laid alongside of my vessel caught fire first, and we caught fire from the lighter. The lighter was on fire first.

Q How near the end of Pier 6 was your vessel laying? A About fifty feet from the end.

Cross examination by Mr. Hobart.

Q What was the name of the lighter that your boat caught fire from? A The lighter that was taking the dye-wood out of the Walcott.

Q When you worked for your brother on the Luna, how much did you earn? A $100 a month.

Q And did you get your board and lodging when you worked for your brother? A Board just the same.

Q How long did you work for your brother? A A year and five months.

Q Did you work for him up to the time you hurt your left arm? A Yes.

Q The reason you stopped work was because you hurt your left arm, wasn't it? A Yes.

Q You said you could not raise your arm now. Do you mean your left arm? A It pains me here (indicating on arm) when I try to lift it up (indicating left arm).

Q How did you come to hurt your left arm? A I was getting out of the boat to get up on the wharf, and I was holding myself up by my right arm, and that pained me so bad that I let go of the right arm, and I was holding myself by the left arm; but I wasn't strong enough to hold myself with the left arm, so I fell.

Q Were you using a ladder? A I wasn't using a ladder; stepped out onto the wharf. There was no use for a ladder.

Q How high were you trying to lift yourself? A About five feet, from the boat to the wharf.

Q How long were you in the hospital at Jersey City? A From August 1st to the 28th of September.

Q Did you ever break your right leg before this explosion? A When I was a little boy six years old.

Q You broke the big bone then, did you? A I split the bone of my leg when I was a boy six years old.

Q Was it the big bone? A Yes.

Q How old are you? A Sixty years old today.

Q How long have you been deaf? A Since I was six years old.

Q While the cargo was on the North Pier did you unload any part of the cargo? A They were unloading for three days, which was awfully slow. They put the logwood up on the cars on the end of the North Pier.

Q Who told you to move the boat from the North Pier to Pier 6? A The ship broker, I think.

Re-direct examination by Mr. Stallman.

Q Did you see any flames of the fire before you got hurt? A Yes; I saw the shells up in the air.

Q Did you see anything burning? A The cars were burning. The explosives in the cars was all on fire. The cars were burning. That is what started the explosives. The explosives were in small boxes about that size (illustrating), and it was them that exploded that set the cars afire.

Q Where was this fire that you saw? A There (indicating on map the easterly end of the North Pier).

Q Were you on the Walcott when you saw the fire the first time? Were you on the ship? A Yes, sir; I was on the Walcott.

Q When you first saw the fire? A Yes, sir. I was on the Walcott when I saw the fire, about half-past one in the morning.

Q When you saw the fire was the sugar house burning at the same time? A The storehouses were off again, and the fire was on top of it.

Q And then it fell over? A The fire came over and knocked the building down.

Q Do you know how many cars were burning when you saw the fire? A They were all burning along the North Pier. I couldn't count them.

Q What time was that? A That was half-past one in the morning.

Re-cross examination by Mr. Hobart.

Q What time did you first see any fire? A Half-past one o'clock.

Q You showed Mr. Stallman where you first saw the fire. Show me again. A Right there (showing the first several cars beginning at the easterly end of the North Pier and extending in a westerly direction).

Q How far? A I first saw the fire on the North Pier, burning in a number of cars, including six or seven cars around from the easterly end, and also a schooner on the south side of the North Pier was burning. I could see the fire blazing in her rigging.

(The map to which the witness referred is the one marked Plate 1 attached to the report of Colonel Dunn.)

By Mr. Stallman.

Q Mr. Allen, how long a time was it from when you first saw the fire until the explosion happened? A Half an hour. In a half an hour the second explosion occurred."

(The following testimony was taken on Tuesday, May the 27th, 1919, at 3 p. m.)

"MARK L. JAMIESON, called as a witness on plaintiff's behalf, after being sworn, testified as follows:

Direct examination by Mr. Stallman.

Q Where do you reside, Captain? A New Bedford, Massachusetts.

Q What is your business? A Master mariner.

Q How long have you been a mariner? A All my life mariner. I have been master mariner twenty-five years.

Q Did you know the schooner George E. Walcott? A Yes.

Q Were you the master of that vessel? A Yes.

Q How long had you known that schooner? A Well, I have known her for twenty years.

Q What was the last trip the Walcott made? A Philadelphia to Buenos Aires and back to New York.

Q You took her to Buenos Aires from Philadelphia? A Yes.

Q At the time she sailed from Philadelphia what was the condition of that schooner? A She was all right. First class in every shape and form—that is, for a vessel of her age.

Q Was there any work done on her at Philadelphia before you left for South America? A Oh, yes. She

was hauled out, cleaned, painted, butts overhauled and caulked where found necessary. New boilers installed, and few minor repairs.

Q Was there anything done to the pumps or circulating system? A Not in Philadelphia.

Q Well, at about that time? A No. Her circulating pump was broken in Buenos Aires and I put a new one in.

Q When did you arrive in the Harbor of New York upon the return from South America? A I could not say the date, some time in July.

Q Of 1916? A Yes.

Q Do you recall the date of the fire at Black Tom? A I remember the day of the week, but I wouldn't swear to the date, because I haven't looked it up.

Q How long before the time of the fire was it? A Oh, a week or ten days.

Q And upon arrivel at Black Tom, what was the condition of the Walcott? A Coming in there first, you mean?

Q Yes. A She was just as good as she ever was, except her bottom perhaps was a little dirty from the long trip.

Q What did you have on board the schooner coming back to this country? A Quebracho wood.

Q And where did you cargo on? A Buenos Aires.

Q Do you know how much of a cargo of that wood you had on board? A 1,860 odd tons '62 or '65.

Q Where was that cargo stowed in your vessel? A In the two holds, in the poop and all under deck.

Q When you arrived at the port of New York with that cargo, where did you berth the vessel? A We berth first at the end of Black Tom Pier. You mean to an anchor?

Q No; when you berth her for discharging? A At the end of the pier at Black Tom.

Q And when you say "the end of the pier" you mean the long pier at the north side of Black Tom? A Yes, sir.

Q What did you do there? A We tried to discharge the cargo, but found we could only work at high water, when the tide receded the vessel would slide away from the dock and we could not reach the cars. We could not land the logs in the cars on account of the distance.

Q When you speak of landing the logs in the cars do you mean freight cars? A Yes, freight cars.

Q Now, about how many days did you lay there at the end of the North Pier discharging into the cars. A Well, two days, I think. The stevedore complained that he could not work only at high water and we had to get a new berth. The leather company were the only people to whom the cargo was consigned and they were to get the berth for the vessel, of course. So they told us to move around and get a berth for us somewhere on the other side.

Q What pier did you berth at? A I believe it was called Pier No. 6.

Q And on which side of Pier 6 were you berth? A On the south or southeast side, the right-hand side of the pier.

Q Was that the side nearest to the Hudson River or nearest to the bay? A Yes, we were in the slip, you know. We were not at the end, we were up in the slip.

Q And do you know how many days you laid there before the fire? A I could not say exactly; four or five days.

Q During all that time were you discharging cargo? A Yes.

Q Into what? A Into railroad cars, freight cars.

Q And how was that work done? A Well, we employed the stevedore. We had steam hoists on the north side of the vessel, with winches, and had the gear rigged to gaff.

Q What were these hoists on—that is, the hoisting apparatus? A On scows. I could not say the dimension of them.

Q And these hoisting scows were moored alongside the schooner? A Moore alongside the schooner, that is right.

Q And the logs were then hoisted out of the holds and put on to the docks somewhere? A Swung out on the gaff and launched in the car.

Q Do you remember whether they were box cars or gondola cars—that is, open tops? A They were open tops; but that is what I saw.

Q This fire I think occurred on Saturday night. What time did you leave the vessel? A I left the vessel late Friday afternoon.

Q And at the time you left can you say generally about how much cargo had been discharged? A I couldn't say exactly, somewhere around two-thirds.

Q And when you left her on Friday afternoon was she in good condition? A As far as I know she was all right.

Q When did you see her again? A Tuesday morning.

Q The following Tuesday morning? A The following Tuesday morning.

Q And what did you find then? A Well, I couldn't get near her. She was all in flames, as far as I could see.

Q Well, was she still laying on the easterly side of Pier Six? A No, her stern had swung away.

Q How about the bow? A The bow was practically in the same place where she was made fast.

Q About how far from the pier had her stern swung? A Well, I should say an angle of about forty-five degrees from the position where she laid at the pier. Probably I can judge from the length of the vessel. At an angle of forty-five, sixty or eighty feet her stern was away from the pier.

Q You say at that time she was burning? A Yes, sir.

Q Well, how much of the boat had been burned on that Tuesday morning? A Well, her spars were all gone. They weren't all burned up. They fell over. They were partially burned, but they were all done. They were not standing up. The tops were just burned.

Q How about her deck? A Her deck was burned through in places; the top of the house.

Q And did I understand you to say that at that time the fire on the boat was still in progress? A Oh, yes, the fire was still burning. I couldn't get close enough to make a minute survey; I was standing on the next pier south looking at it; that was as near as I could get.

Q Then when did you next see her? A The following morning. I used to go down there.

Q And what finally became of the boat? A Well, her bottom sunk. The last I saw of it she was burned practically to the water's edge. I wouldn't say what afternoon it was now. I don't remember.

Q About how many days after the Tuesday when you first saw her? A Well, I should say it was either Thursday or Friday night. Either Friday or Saturday morning, when I came down, she was entirely gone. I mean the bottom had sunk.

Q Did you notice whether any log wood that you had in the hold was burning? A Well, the last time I saw her her upper deck frame had all burned away and you could see into the lower hold. I could see one fastening standing up like this (illustrating). The ceiling had burned away around it, and the logs were burning with the vessel of course.

Q Captain, at the time that you arrived at Black Tom and tied up at the North Pier, or at any time after that, did you see any cars of explosives or ammunitions of war around the Black Tom? A Not knowingly. I saw plenty of cars there, but never knew what was in them.

Q Had you ever been the owner of or had any shares in a boat of that general character? A Yes, sir.

Q Are you acquainted or was you acquainted at that time with the value of such a schooner as the Walcott? A In a casual way, yes. I knew practically what they were worth.

Q Where did you derive such knowledge as you may have of the value of the schooner? A Well, by owning parts in them myself.

Q And over what periods of years, Captain, have you been interested in financially in such vessels? A Twenty-five years.

Q What in your opinion was the value of the Walcott at the time of this fire''

Mr. Collins. Objected to on the ground the witness does not show himself qualified to testify to the value. He says he knows in a casual way something—had been captain.

The Court. Repeat the question.

(Question repeated.)

Mr. Collins. The witness has shown by the previous questions no expert knowledge as to the value of it.

(Mr. Stallman reads the previous testimony.)

The Court. Oh, I think I will permit that question.

Mr. Collins. Your Honor, note an exception?

The Court. You may have an exception.

''Q I ask you what, in your opinion, the value of the Walcott was at the time of the fire? A Well, in the way ship property was going, she was worth from a hundred to a hundred and twenty-five thousand dollars.

Q Captain, do you know Ira W. Allen? A Yes, sir.

Q And was he connected with the Walcott? A Yes, sir.

Q In what capacity? A Cook and steward.

Q Before the time of this fire how long had you known him? A Twenty-five years.

Q And during that time what generally was his occupation? A Cook and steward on sailing vessels.

Q What can you say about his ability to perform the work required of a man in that position up to the time of the fire? A At the head of his class.

Q Have you seen or known anything of him since the time of the fire? A I have seen him once. I saw him last year in Atlanta, Georgia, and I saw him here today.

Q You weren't in touch with him then after the explosion? A Oh, yes. I went to the hospital to see him just after this explosion.

Q And what hospital was that? A In Jersey City. I think it is the General Hospital. I don't know its exact name.

Q And what was the matter with him? A Oh, he was all cut up with glass. His ankle was broken and some bones were broken, as he told me; I don't know. But his general appearance looked as if he had been through a sausage mill.

Q On what part of his body were these cuts so far as you could see? A The upper part of his body, face and neck.

Q Could you say how many cuts he had? A Oh, no; I couldn't say.

Q Can you tell us whether he appeared to be suffering any pain when you saw? A Yes, he was suffering from pain.

Q Captain, did you have any personal property on board the Walcott? A I did.

Q And what became of that property so far as you know? A Burned up.

Q Have you made a list of the articles which you had on board? A Yes, sir.

Q I show you a paper headed "List of Personal Effects Lost by Fire on Board Schooner George E. Walcott" and ask you if this is a statement that you have prepared— A (Interrupting.) Yes, sir.

Q —of your personal belongings? A Yes, sir."

Mr. Stallman. I would like to have that marked. It was marked Exhibit P. 3.

(Paper marked Exhibit P. 5.)

"Q Referring to this statement Exhibit P. 5, Captain, you have put down these articles and certain figures after them representing values, I suppose? A Yes, sir.

Q And these are the prices at which you valued these articles?"

Mr. Garrison. Mr. Smith, has he a separate suit against us for this? It is a separate account in the general complaint of people who own vessels.

Mr. Stallman. Yes.

"Q The prices on the clothing and your navigating instruments and books were the prices that they cost you new. Are these prices new? A Oh, no. It was the prices that they were valued at that time. Today it would be double that.

Q No. I mean, at that time were these the new prices or prices considering the fact that they had been used? A Considering the fact that they had been used.

Q I want to ask you, Captain, about the power equipment of this vessel; just what it consisted of? A Boiler, hoisting engine, rigging pump, small bilge pump, and a circulating pump.

Q And this power equipment was used for what purpose? A Hoisting sails, anchors, handling cargo necessary.

Q Did you ever have occasion, Captain, after you first tied up at Black Tom, to leave your vessel and go away from Black Tom and come back again to the

place where your vessel was tied up? A Oh, yes. I had been back several times, before I went home.

Q Had you been accustomed to berthing your vessel at Black Tom before that? A No.

Q Never? A No.

Q On your way from the mainland out to Black Tom, going back to your vessel, had you ever been challenged by anybody to know what your business was there? A Never.

Q Did you ever see anybody there that you knew or had reason to believe was a guard or private policeman of that kind? A I was never challenged or met by anybody. I went straight to the vessel. I was not asked any questions.

Q Did you ever notice any persons smoking around the Black Tom piers? A Yes. I smoked myself going down there. I smoked cigars.

Q Anybody ever say anything to you about it? A No.

Q This cargo that you had on board, which you described as being quebracho wood, is that a hard wood, or soft wood? A Hard wood.

(Mr. Collins, reading.)

Cross examination by Mr. Hobart.

Q I notice on this list Exhibit P. 5 you have certain articles which I suppose are used for navigating purposes, such as sextant and rules and dividers. Don't such articles as that usually go with the ship? A Not in the sails ships, no.

Q They belong to the captain personally? A The master of the vessel.

Q And how about the charts? A The same thing.

Q Then this list Exhibit P. 3 covers only your own personal property? A That is all.

Q Do you recall who it was that directed you to berth at the Black Tom Pier when you first went there? A

Well, the orders came by telephone to our brokerage offices, Miller & Houghton. I could not say the man.

Q Came by telephone to you? A No; to Miller & Houghton.

Q Where was your vessel when you received the message? A She was at anchor down the harbor.

Q How did you move the vessel to the Black Tom Pier? A Tugboats, of course.

Q And she was placed at first at what was called the North Pier, wasn't it? A Yes.

Q The long pier that extends out in the easterly direction? A Yes.

Q Now, bearing in mind that the fire was on a Saturday night, can you tell us what day you were berthed at that long pier, what we call the North Pier? A I think it was on a Friday, I am not sure of that. I think it was on a Friday.

Q You do not mean the day before? A Oh, no.

Q On Friday of the previous week, nine days? A Yes.

Q And you remained at that pier you said about four or five days before you moved over to Pier 6? A Yes. Probably Tuesday or Wednesday of the next week we moved.

Q Do you recall who it was that had charge of the unloading of the cargo? A I know the stevedore had my end of it. I don't know who was receiving it on the dock.

Q Who had charge of it on the dock? A Charles Miller.

Q He is a stevedore with offices in New York City? A Yes.

Q And the orders that came to you while you were in the harbor were to land at this particular pier? A Yes, sir.

Q At the North Pier? A At the North Pier.

Q Did they describe it as the North Pier, do you remember? A They must have described it as that or we wouldn't have put the vessel in there.

Q You had never been there before? A No.

Q All new ground? A All new ground to me.

Q And you passed the orders to the tugboat? A Yes.

Q Can you recall whether your schooner was placed near the outer end of the pier, the end furthest to the water? A Well, as I remember, it was laid east and west right alongside of the pier.

Q Did she extend out beyond the pier, beyond the end? A I don't remember that.

Q How many men did the stevedore have to work at a time on this wood? A I don't know.

Q You had nothing to do with that? A We just gave them so much a ton for taking the stuff out and putting it in those cars.

Q Do you remember what the price was per ton? A No, I do not.

Q At any rate, the stevedore took full charge of the unloading? A Unloading, yes.

Q And do you remember how many hours a day they worked? A I do not.

Q Did they work any at night? A Not to my knowledge.

Q Did you work on the schooner at night? A Some nights.

Q But not every night? A No, sir.

Q Who was in charge when you were away? A Shipkeeper Quinn and the steward.

Q You call Quinn the shipkeeper. Did he class as a mate or what? A Yes; he classed as a mate.

Q First mate? A Yes.

Q How many men did you have in your crew? A I had no crew. We never keep a crew in the boat.

Q I mean before you got to port? A Eleven all told.

Q And all of them were discharged, I suppose, when you came to port except Quinn? A Quinn wasn't with me. Quinn I employed after I got there.

Q Then you discharged all of them except Allen? A That is right.

Q And then you employed Quinn afterwards to come in and help take charge of the ship? A Yes.

Q What was he, a watchman or a guard, or what? A Oh, he was just acting as every shipkeeper would do; as a mate would do. He was a competent man in every way. He was a good engineer; knew all about those classes of vessels, a good, competent, all around man for the vessel.

Q Had you ever known him before? A Yes; I had him as engineer on other vessels.

Q Was Quinn supposed to be on duty all the time whether you were there or not? A Night and day. He was supposed to be there all the time. If anything turned up he was to attend to it, whether it be night or day.

Q Well, I don't know whether he had anywhere to—he lived on the boat? A He lived on the boat.

Q And he was in charge then on the boat and responsible for it under your orders? A Yes.

Q Do you remember this man's first name? A No, I do not.

Q Where does he live? A New York somewhere.

Q New York City? A I think so.

Q Don't you know where to find him? A I do not.

Q How did you find him on July 30th or thereabouts, 1916? A At the shipping office.

Q What was the office? A Colcord's clothing store.

Q That is in New York City? A Yes. He was looking for work and I gave him.

Q What is the street number? A I don't know the number. It is on Pearl street now, near Broad.

Q Well, did the stevedore complain to you about the place where the boat was lying at the North Pier? A

Yes. He said she slipped off on low water and couldn't work.

Q And did you order it to be changed? A We took it up with the consignee, and they got the berth for us.

Q You had nothing to do with that? A We had nothing to do with that.

Q And how was she taken around to Pier 6—by tugboat? A Yes.

Q You do not know what tugboat it was? A I do not know.

Q It wasn't a railroad tug? A I don't know that.

Q Were you there when she was taken out? A I was not.

Q Where were you? A New York.

Q Did you know she was going to be moved? A I did.

Q And your recollection is that she was moved to Pier 6 about the Wednesday before the time of the fire? A Yes, sir.

Q Were you on board the boat on Wednesday night? A Yes.

Q On Thursday night? A No. I was during the day, but not over night.

Q Then on Friday afternoon you went home to New Bedford? A Yes, sir.

Q And you were at home when the explosion or the fire happened? A I am happy to say I was.

Q When you left the boat on Friday afternoon I suppose that Quinn remained in charge? A Oh, yes.

Q Now, you have described a number of pumps that were on the boat. Could they be used to put out fire? A One was a circulating pump.

Q How many men would it take to operate it? A It didn't work by hand, it worked by steam.

Q Well, how many would it take to operate the steam? A One. We do not keep steam lying along the dock that way.

Q How long would it take to get up steam? A An hour and a half—two hours.

Q But there wasn't any steam on? A It wasn't practical to do so when the stevedores were working.

Q If there had been any steam on this pump, it could have been put in operation by one man, couldn't it? A Well, the pump could be put in operation if there was someone to handle the hose.

Q If one man was at the hose and another man at the pump, then two men could work on the fire? A Yes.

Q And Quinn knew how a handle the engine, didn't he? A He certainly did.

Q Was that the only thing you had on the boat by which you could put out fire? A We had extinguishers hanging around the cabin.

Q How many extinguishers did you have? A I wouldn't say for sure.

Q Do you remember what kind they were? A I do not know the name of them. They were in a tin contained tube.

Q And it takes one man to handle then, doesn't it? A I do not know. I never used one in my life. I seldom use them.

Q But you know how to use them? A If I read the directions an hour before.

Q Isn't it a fact, Captain, all you have got to do is to grab them, turn them upside down and squirt? A I do not know.

Q Did you ever tell Quinn how to work it? A I did not.

Q Did you ever tell Allen how to work it? A I do not know that I did.

Q Did you ever give either of them any instructions what to do in case of fire? A No. They knew what to do. They can read the directions as well as I can.

Q What were they to do—read the directions? A What is your question?

Q What were these men to do in case of fire? A Put it out, I suppose.

Q Did you ever tell them to do that? A Intelligent people can put a fire out without being told.

Q Did you ever tell them what to do in case of fire on the boat? A You mean fire drill. We never had fire drills.

Q You never had fire drills? A No.

Q Well, without regard to fire drills, did you ever tell either Quinn or Allen what to do in case of a fire while the boat was lying at the dock? A Ring in an alarm.

Q Did you tell them that? A I told all of the crew to "get to an alarm box as quick as you can."

Q Did you ever tell either Quinn or Allen when they were lying at the wharf to use the fire extinguishers in case of fire? A No, I did not tell them.

Q Did you ever tell them to get up steam on the pump and pour water on it? Well, it gets down to this Captain, I will try to sum it all up in one question. You never gave any instructions to Quinn or Allen what to do in case of fire while lying at the dock except to ring in a fire alarm; is that the fact?"

Mr. Smith. Go ahead.

"A Intelligent people do not need to be instructed.

Q Answer my question, Captain. A No, I have not.

Q What would you have done in case of fire while the boat was lying in the dock?"

Mr. Smith. I think that is a good objection, but the Court is out.

(The Court returns to the bench.)

Mr. Smith. There is one question, "What would you have done in case of fire while the boat was lying in the dock?"

Mr. Collins. He has already said he didn't give any instructions to the men. He went off.

Mr. Smith. Mr. Hobart asked what he would have done.

The Court. I do not see that it makes any difference what the witness would have done, so I think I will sustain the objection. You may have your objection entered.

Mr. Collins. Objection sustained. Of course I do not read the answer.

"Q Now, you have said, Captain, that you knew this schooner for about twenty years? A Yes.

Q It was much older than that, wasn't it? A Some years older. I couldn't say how old. I knew of her ever since she was built.

Q Had you ever been captain on her before? A Never.

Q You spoke of the pump. I think it was about being broken while you were at Buenos Aires? A Yes.

Q She was repaired at that point? A It was renewed. The whole pump was taken out and a new one put in.

Q Well, is that the pump that you would use for fire or another one? A That is the circulating pump.

Q That pump was in first class condition, wasn't it? A New.

Q When you got back to New York on Tuesday morning I assume that you had read in the newspapers of the fire and the explosion at Black Tom? A Yes.

Q What time did you get over to the pier? A Around seven o'clock; I wouldn't say exactly.

Q And when you arrived you found that the stern of the boat had swung away? A Yes.

Q Where was the bow? A Practically in the same way where she was. It had a different angle, of course.

Q Right close to the pier? A Right close. I couldn't get over to the pier to see. I was looking at the stern from another side.

Q From another pier? A From the southeast of her.

Q Why couldn't you get over there to the pier where the boat was? A There was a fire in the warehouse.

Q What part of Pier 6 was your boat? Was she near the outer end or was she near the shore? A She was up at the bulkhead—her bow was.

Q Were there firemen there when you got there? A Yes. I saw firemen playing water.

Q Did you see any fire boats? A That I don't know; I wouldn't say.

Q Did you see any tugboats? A I don't know if there was any tugboats there or not.

Q Did you try to get a tugboat to pull your boat out? A No.

Q Did you communicate in any way with the brokers or agents to see if a tugboat could be found to pull the boat out? A No.

Q So far as you know, there was no effort whatever made to put out the fire on your boat or get it away from there? A Nobody could board her five minutes after the fire.

Q (Last question read.) A No.

Q Just let her stay there and burn out. Is that the fact? A Yes.

Q That is the fact? A What is that?

Q The boat was just allowed to stay there and allowed to burn up? A Yes; that is the fact. She did stay there and burned up.

Q And nobody tried to get her away so far as you know. Nobody tried to get her away; you didn't? A No, it was too hot.

Q Who was responsible for that boat while she was at that berth in case of fire? Were you responsible as captain or were the agents responsible, or who was? A It depends on where the fire came from.

Q Well, suppose a fire started aboard the boat itself while you were away? A The people there would take care of that.

Q By these fire extinguishers? A Yes.

Q Take the case of a fire communicated from some outside source. Who would be responsible to take care of that boat? A Well, the outside people would take care of her. She didn't go there to be burned up; she went there to discharge cargo.

Q Now, Captain, having said all that, will you tell me again who was responsible to take care of that boat while lying at that dock? Were you responsible as captain? A Yes, I suppose I was. I left responsible people there in my absence.

Q While you were away the people that you left there were responsible for it, weren't they? A They probably were.

Q Have you any doubt about it? A Oh, no; I have no doubt about people I left there. They were perfectly capable to take care of her under any ordinary circumstances.

Q I am not questioning whether they were capable or first class men. A It is very evident they were there on the spot.

Q The men that you left there while you were absent at home; those are the men that were responsible for taking care of the boat, and not the boat's agents or brokers; is that right? A The brokers had nothing to do with her over there.

Q Then it was the man that you left on board who was supposed to take care of the boat; isn't that the fact? A Yes.

Q Now, when you got there on Tuesday morning and saw the boat burning, did you observe just where the fire was at that time? A On the boat. It was all over.

Q Was it in the hold? A Well, I couldn't say in the hold. When I first went there the upper works were on fire.

Q Did you attempt to communicate with the owners of the boat or with the brokers or agents to see if anything could be done to save her? A I went right back to New York. The Lehigh Valley wouldn't allow anybody to go around there; streams of water flying all around.

Q Did you ask any of these firemen who were playing these streams of water to play any on board your boat? A No. I did not interfere with other people's business.

Q Then, if I understand you right, Captain, you did not make any effort whatever to get out a tugboat or fireboat or anything else to put out the fire on that boat? A Not then.

Q Not at that time? A Yes.

Q When? A When I went back to New York and talked to the brokers about it.

Q And do you remember who they were? A Miller & Houghton.

Q That is the same name you mentioned before, Miller & Houghton? A Yes.

Q Well, did you ask them to get out a tug? A We wouldn't be allowed in there.

Q Answer my questions, Captain. Did you ask them to get a tug? A I asked them if there was any chance of saving the vessel, and they said no.

Q Was it because the brokers told you that you— A (Interrupting.) The brokers had nothing at all to do with her.

Q Why did you go there? A Because they were the agents of the vessel. I had charge of the vessel myself, personally. They had nothing to do with it except to do what I requested them to.

Q Well, did you go anywhere else to see if you could do anything to save the boat? A I didn't.

Q Did you go to the Lehigh Valley people to see if you could get anything from them? A I did not.

Q Just let her stay and burn up? A Yes.

Q When did she finally sink? A I wouldn't say for sure; Thursday night or Friday night.

Q So she was burning all day Tuesday, all day Wednesday and at least part of the day on Thursday; is that right? A I guess so.

Q Is that right, Captain? A I wouldn't say for sure; I don't remember the dates.

Q Your recollection is that she sank some time on Thursday night? A Probably did; yes.

Q Do you know whether anybody has made any effort to raise the boat or raise the hull? A I don't know.

Q You haven't? A I haven't.

Q Have you any interest in the boat as a part owner? A I have not.

Q Do you know whether any effort was made to save any part of the cargo that was still on board at the time of the fire? A I do not know.

Q You never made any effort? A I have not.

Q Did you report to the owners or to the brokers that part of the cargo was still on board? A I do not know whether I did or did not. I could not report anything that I do not know. When I last saw the cargo it was all going up in smoke.

Q You do not know whether it was all burned? A I do not.

Q Then, if I understand you right, Captain, so far as you know nobody has ever made the slightest effort to salvage or save any part of that boat or its cargo; is that right? A As far as I know, that is correct.

Q And she is still at the bottom of the bay, as far as you know? A She is.

Q What is left of her? A Yes.

Q Now, you have referred also to the value of this boat. Have you ever bought or sold any schooners, Captain? A Not wholly.

Q You have merely bought and sold whatever your interest might have been in any particular boat? A That is right.

Q And about what proportion would that be? What part share would it be, half or a quarter? A From a quarter to a sixty-fourth.

Q When was the last time before the 30th of July, 1916, that you had sold or bought any interest?

The Witness. That hasn't anything to do with this vessel, has it, Mr. Stallman?

Mr. Stallman. He is asking you these questions to test your qualifications to give the value.

A Oh, three, four years before. I cannot remember the date.

Q Do you remember what proportion it was you sold then—a fourth or a sixty-fourth? A I sold several small pieces—sixty-fourths, thirty-seconds, a hundred and twenty-eighths.

Q When was the last time you ever bought an interest in a schooner prior to July 30th, 1916? A Five years.

Q About five years before that? A About that.

Q Do you recall while your boat was lying at the North Pier, before she was taken around to Pier 6, you ever had occasion to go out to her at nighttime? A Never.

Q You always went there during the day? A I did.

Q What time of the day? A No particular time; anytime I had to go.

Q It was before dark? A Yes.

Q And while your boat was lying at Pier 6 and when you had occasion to go on Pier 6, having been to New York or anywhere else, did you return during the daytime? A Always; I returned in the daytime or I didn't come at all.

Q Then, if I understand you correctly, you never had occasion while your boat was at the pier to go through the Black Tom yard at night? A No.

Q You observed, did you not, when you did go through the yard, that there were quite a good many men working around there, either on boats or moving cars back and forth? A Yes.

Re-direct examination by Mr. Stallman.

Q Captain, you testified that when you got down to Black Tom on Tuesday morning you found the boat burning. At that time was there anything else burning around Black Tom? A Everything was on fire on that side of the wharf.

Q Do you recall the Pier No. 6 alongside of which you had been tied up, whether that pier was burning up or not? A Well, I couldn't get down to that pier; I was on the other side. After, as I could see, all was smoke and fire, everything in that direction, besides the sugar houses and besides Pier No. 6.

Q Do you recall what became of those hoisting scows that were alongside of your boat? A No; I don't know anything about it.

Q Did you notice any flame in among the smoke where the sugar houses were burning? A Well, that I couldn't answer. There was frame houses in there from the frame side, so to speak; firemen down on that side (illustrating), nothing but smoke on that side. When you get down around this wharf here (indicating) there was rubbish there afire, pieces of cars. I don't know if there was any flames coming out of there or not.

Q I show you a map, Captain, being plate No. 1 attached to Colonel Dunn's report, and indicate to you the location of the warehouses and Pier No. 6 and also the lower part of the yard, which is marked Pier 7, and will ask you, after looking at that map, whether Pier No. 7 is the place you were when you saw the Walcott burning? A Yes, I came down here (indicating going around the big water tank down to the southerly edge of Pier No. 7).

Q Well, that is what you meant when you said you were off on a pier to the southeast? A Yes.

Q You were down on a pier to the southeast of the storage warehouse? A Yes. The vessel laid like this (indicating the bow up in the corner between Pier 6 and the bulkhead behind Store N, with the stern down in the slip on an angle).

Q From the condition of things as you saw them there at the time the Walcott was burning was there anything in your judgment that could have been done to save the Walcott? A Nothing that I know of.

Q She was a wooden vessel, I understand? A Oh, yes.

Q Did you see any firemen at all on the bulkhead side of the storage warehouse? A You mean here (indicating the bulkhead behind Stores "N" to "R").

Q Yes. A No. It wasn't possible for any fireman to get down there.

Re-cross examination by Mr. Hobart.

Q How was that boat fastened to the dock? A Ropes.

Q How many ropes? A Enough to hold it against any gale or wind.

Q How many did you generally have? A We had six or eight parts forward of six-inch line and six parts amidships, three parts each way of six-inch line and six or eight parts aft of six-inch line.

Q How were these ropes fastened to the dock? Were they simply laid over the board or piles? A As I remember it, they were from iron posts on the docks.

Q And the ropes were thrown over these posts? A The ends were tied and the bights thrown over them.

Q Then, in order to let the boat loose from the dock all that was necessary was to lift the bights over the end of the posts? A You wouldn't have to stop for that; you could cut them if you could get to them.

Q I suppose, Captain, that you had plenty of axes on board; did you? A There was a few. I don't know just how many.

Q Do you know whether Mr. Quinn was hurt in any way by the fire or by the explosion? A I don't know.

Q When you got there Tuesday morning do you remember whether at that time there were any shells or ammunition going off? A I did not hear any.

Q When you speak of a six-inch rope in the— A (Interrupting.) Two inches in diameter.

Q Two inches in diameter and six inches in circumference? A Yes."

Mr. Stallman. If the Court please, at this time we will offer in evidence in the case of the New York Plate Glass Insurance Company against the Lehigh Valley Railroad Company an affidavit of Carroll French, secretary of the company, with a statement attached of the details of the losses sustained by that company;

Affidavit of William T. Woods, president of the Lloyds Plate Glass Insurance Company to the same effect, in the case of the Lloyds against the Lehigh Valley Railroad Company;

The affidavit of S. William Burton on behalf of the Metropolitan Casualty Insurance Company of New York against the Lehigh Valley Railroad Company;

Affidavit of Albert Sabbath, the vice-president of the Chicago Bonding & Insurance Company, with a statement attached, in the suit of that company against the Lehigh Valley Railroad Company;

The affidavit of Henry W. Hendrickson, superintendent of the plate glass department of the Ocean Accident Guarantee Corporation, in the suit of that company against the Lehigh Valley Railroad Company;

The affidavit of Charles F. Frizell, vice-president of the Royal Indemnity Company, in the suit of that company against the Lehigh Valley Railroad Company;

The affidavit of S. Willard Smith, the treasurer of Childs Company, in the suit of that company against the Lehigh Valley Railroad Company;

The affidavit of Nelson B. Stilring, vice-president of the Fidelity & Casualty Company, in the suit of that company against the Lehigh Valley Railroad Company;

The affidavit of George E. Wilkinson, manager of the plate glass department of the Commercial Casualty Insurance Company, in the suit of that company against the Lehigh Valley Railroad Company, and ask to have them marked consecutively.

(Papers marked from P. 6 to P. 15 inclusive.)

Mr. Garrison. We have consented on behalf of the defendant to this method of proof to save the time of the Court and expense to the various plaintiffs, so that they might put in an affidavit of a responsible officer, including the names of their insured and the amounts paid them, with an understanding on the part of each of the insurance companies that if hereafter any of the parties named herein should sue us and obtain a judgment of his individual loss, they will indemnify us in the event that they have recovered for that specific insured in this cause.

Mr. Stallman. That is the understanding.

Mr. Garrison. I have not thought it necessary, in view of the fact that I understood your Honor consolidated these cases, to make objection to any piece of evidence which might be relevant in one case but not in the others. Am I right in that; because why must I object to a piece of evidence which may be relevant in one of the cases and not in another?

The Court. I do not want to make an omnibus ruling on a proposition of that kind until I see exactly where it will lead. It may very well be that a ruling like that by me would open these cases on appeal—

if they went up on appeal—to a series of objections that would be practically interminable. I do not know of any evidence yet that has been introduced except so far as it has a direct relation to the value or ownership of the property, that would not be equally applicable to all the cases.

Mr. Garrison. That does not solve my problem. Your Honor might think so and I might disagree with you and the Court above might disagree.

The Court. I suppose it would be practically impossible to solve your problem except by adopting some method of procedure.

Mr. Garrison. I do not want to be continually interposing objections if they could all be covered by one objection. For instance, I would move to strike out all of the depositions in respect of the Walcott as being utterly irrelevant to any other case than the Walcott case and in the case of Allen and in the case of the captain of the Walcott, who sues for his personal effects. I now make that motion on the ground it is not relevant to any of the other numerous cases we are trying in this consolidated case, or whatever is the proper name for what we are doing here; I do no know what to call it.

The Court. Well, I will refuse to strike it all out.

Mr. Garrison. I move to strike out all evidence in the deposition that has to do with the loss alleged to have been suffered by Allen, Jamieson and by the owners of the boat, as being irrelevant to the cases of the other plaintiffs.

The Court. If by "loss" you mean damage, I will strike it out, so far as the others are concerned.

Mr. Garrison. By "loss" I mean damage.

The Court. I will strike it out, of course, and I would upon your application when it came to charg-

ing the jury, without any hesitation whatever—and, indeed, without your application—I would charge the jury that so far as the damage of his person is concerned it has absolutely no relevancy whatever to the damage of another.

Mr. Garrison. But your Honor does not get my point. My point is if the Commercial Insurance Company is suing us for a loss which they say they incurred because they insured somebody else, and that somebody else has been damaged, and they have paid their loss under the policy to that somebody else, then I say proof of Mr. Allen's—or whatever his name is, the ship's steward, whatever it was—

Mr. Collins. Allen was the steward and Jamieson was the master.

Mr. Garrison. Now, I say the fact that he was injured should not be introduced in the same case in which the Commercial Insurance Company sues us for the loss of plate glass. That is the point I want to make.

The Court. Well, so far as his issue is concerned, I agree with you; but if your motion goes to the extent of inferring from anything that I may rule on that point that if there were evidence tending to show that negligence brought about Mr. Allen's injury, that the facts which go to make up that negligence are not considerable by the jury in other cases, I should refuse to strike it out. That is the point.

Mr. Garrison. But your Honor attributes a point of view to me that I do not have.

The Court. I just want to find out.

Mr. Garrison. I want to make myself perfectly clear. I, of course, concede if Allen knows anything about this fire and explosion that is relevant testimony in every case by anybody. I realize that. But after Allen has said what he knows about the fire

and explosion and he begins talking about his leg, arm or breast—I say that is utterly irrelevant.

The Court. I will rule now without hesitation that has nothing to do with the case, and I will strike it out in each case as against any other case.

Mr. Garrison. But your Honor does not get my point. I say that it must be stricken out entirely. I say that anything Allen said about his own personal injuries must be stricken out entirely so far as we are trying anything but Allen's case.

The Court. I agree with you.

Mr. Garrison. But you do not agree with me that you are not going to leave it in for any purpose. You say you are going to leave it in in the Allen case. I say we are not trying the Allen case at the same time we are trying the Commercial case. My point is this: Having made my objection to your Honor consolidating these cases, I should have thought that was efficient and effective; but, of course, I do not want to be caught in the upper court by their saying, "Oh, no; after you made that motion and the Court overruled it and compelled you to go to trial with ten or twelve cases, you should have renewed your objection every time.

The Court. So far as that is relevant, so far as any evidence in this case goes with respect to the injury to Mr. Allen, I will give you an objection that goes from the beginning to the end of the case, so that you may avail yourself of it, when you come to a review, if you should desire a review of the case, or need to review it. I will give you an objection that goes all through the case so that it will be considered as having been illegal in your judgment and objected to in the nature of an exception from the start of the case to the finish.

Mr. Garrison. That I need not renew it?

The Court. Then you need not renew it. That, of course, I want you to have.

Mr. Garrison. What I want is this, if your Honor please: Now, in my exception, as your Honor said, that runs all the way through; so that if they should call some of these plaintiffs, any one of them, and he should testify to his individual injuries, I would say that must not be considered by the same jury that is considering somebody else's injury.

The Court. I understand the point and I say I will allow you to have an objection in the nature of an exception pursue the admission of any testimony throughout the whole case, and the submission of the case to the jury, so that you may have your objection noted thereto on the record.

Mr. Garrison. Thank you.

The Court. Because I am just as anxious as you are if that is a mistake to have it corrected. I understand your specific point and I will write that right into the record.

Mr. Garrison. I make an objection on that point.

The Court. All right. That is the way it will go through.

JOSEPH BINDER, sworn.

Direct examination by Mr. Stallman.

Q Are you a practicing physician, Doctor? A Yes, sir.

Q Where do you practice? A 330 Union street, Jersey City.

Q How long have you been a practicing physician? A Since 1915.

Q Do you recall treating Ira W. Allen, steward to the Schooner Walcott, immediately following the Black Tom explosion in July, 1916? A Yes, sir.

Q Where did you treat him? A Treated him at the hospital, Jersey City Hospital.

Q Jersey City Hospital? A Yes, sir.

Q Do you recall what was the matter with him? A I recall that he had multiple injuries of the face and body in the form of lacerated wounds, inside wounds, depending upon the character of the missile, and that he also had a fractured leg, right leg just above the ankle.

Q Do you recall, Doctor, whether he had anything the matter with either of his arms? A They were just wounds, but no breaks that I remember.

Q Wounds? A Yes, sir.

Q Do you recall what was done for him at the hospital or whether you did anything for him? A I didn't give him the first treatment.

Q What did you do for him? A I was house surgeon then, at the time, and after the initial treatment given by the ambulance surgeon I examined the dressings and the wounds and prescribed the necessary treatment at the time.

Q What did you do about the fracture of the leg above the ankle? A Had it X-rayed and then splinted.

Q You had it X-rayed? A X-rayed and then splinted.

Mr. Garrison. Put a splint on it, I suppose?

The Witness. Splint applied.

Q What kind of a fracture was it? A Simple fracture of the tibia, if I remember rightly.

Q How long was he in the hospital, if you recall? A I left the hospital September the 1st, September the 1st, 1916; and he was still there.

Q I see. Do you know whether he suffered any pain from these injuries which you have described? A The pain that always goes with injuries; yes, sir.

Q Could you say, Doctor, whether those injuries that he had, and especially the injury to his leg, would incapacitate him from work for any length of time? A I

couldn't give any definite statement on that because I don't know how long he remained in the hospital after I left. The cast was on when I left.

Mr. Garrison. The cast was on his arm?

The Court. "Was on when I left."

Q That is the cast on the leg? A Yes.

Q The plaster paris cast? A Yes, sir.

Mr. Stallman. Cross examine.

Cross examination by Mr. Garrison.

Q You remember Allen distinctly, do you? A Yes, sir.

Q What sort of looking man was he? A Well, I should judge he was a man about forty-five, and about five-six; had a moustache light, streaked with gray, and the main characteristic thing about him, I think he was deaf; somewhat deaf.

Q Did he tell you about his injuries? A Yes, sir.

Q He told you himself, did he? A That he had been injured in the Black Tom explosion.

Q Do you speak the deaf and dumb language? A No, sir.

Q He was deaf and dumb, wasn't he? A He wrote.

Q Now, what did he say, please? A We communicated by writing on papers.

Q Have you got the papers? A I—no, sir.

Q Now, you said he had multiple injuries to his face, and what else? A Face and body, covered the chest and arms.

Q And by multiple injuries you mean a good many? A Yes, sir; I do not remember the exact number.

Q Could you tell what made them? A Maybe—well, no, sir; I couldn't tell.

Q I mean, were they such as made by glass or something of that sort? A Could be made by splinters of wood or shell fragments.

Q How many were there on his face, do you recall? A I do not, sir.

Q Were they covered when you saw him? A Yes, sir.

Q The ambulance surgeon had covered them? A Yes, sir.

Q What did he cover them with? A He had sutured them and bandaged them.

Q What is the first word? A Sutured, sewed them up.

Q Tell me what that means—sewing them up? A Yes.

Q How many had he sewn up? A I don't remember.

Q More than one? A Yes, sir.

Q Where were those sewn up? A Around the face, over the forehead, around the bridge of the nose.

Q And they were covered when you saw them? A I have seen these wounds after their bandages had been removed.

Q Well, I didn't ask you that, but I will ask you. Were they covered when you first saw him? A Yes, sir; they were.

Q How soon after you first saw him did you see these places uncovered? A Well, the same day.

Q The same day? A Yes, sir.

Q What were they covered with when you first saw them? A They were covered with bandages.

Q His whole head bandaged? A In portion; right around the forehead and over the face here.

Q Yes. Most of the wounds or scratches, or whatever they were, were on the forehead? A Forehead; yes, sir.

Q Did you see any other part of his body that had any of these places on it? A Yes.

Q Whereabouts? A Over the right breast. I believe there was one at the neck; there was some on his

right arm, upper arm, and may have been some bruises on the back; I couldn't say definitely.

Q Do you remember those—did you treat those on his breast and on his arm? A The subsequent treatment I gave him; yes, sir.

Q What subsequent treatment did you give him as to his right arm? A The application of iodine and just clean dressing, sterile dressing.

Q The iodine was to prevent infection? A Yes, sir.

Q Poison, infection? A Yes, sir.

Q It is a usual treatment for wounds, isn't it? A Yes, sir.

Q Were they open wounds? A Yes, sir.

Q They were not sutured—what did you call it? A Sutured; yes, sir.

Q They were not sutured? A I don't remember exactly what the arm wounds were like.

Q You have not a very clear recollection, have you, about it? A Not of the arms; no, sir.

Q What have you a very clear recollection about? A The fractured leg.

Q That is what you call the tibia? A There are two bones in the leg; yes, sir.

Q I say that fracture was in the bone you call the tibia? A Yes, sir.

Q Which bone is that? A That is the inner bone here.

Q Is it this great big bone here that you feel? A Yes, sir, the heavy—shin bone.

Q Shin bone? A Yes, sir.

Q Runs down the front? A Yes, sir.

Q Front of our legs. A simple fracture, you say? A Simple fracture.

Q You had an X-ray taken? A Yes, sir.

Q Did that reveal that there had been a previous fracture of that same bone in that same leg? A It

didn't reveal a previous fracture; a new fracture was shown.

Q Now, if there had been a previous fracture of the same bone in the same leg, would the X-ray have revealed it? A I believe so.

Q Then are you able to testify whether from the X-ray there was disclosed a previous fracture or whether there was not? A I am not an expert radiographer, and this is not expert testimony I can give you, other than just merely the interpretation of the X-ray man himself.

Q Oh, you take that from somebody else? A Yes, sir.

Q Did you set the fracture? A Yes, sir.

Q About how long in a normal person does it take a simple fracture of the tibia to heal up so that you can put your weight on the leg? A About three months.

Q When was it he came there? A He got there about three or four o'clock in the morning of the night—of the morning of the explosion, in July.

Q When was that? A I believe it was July 30, 1916.

Q And you were there then one month? A Yes, sir.

Q And you left? A Yes, sir.

Q You have never seen him since? A No, sir.

Q You did not privately treat him in any way; you only treated him as house surgeon? A As house surgeon; yes.

Q Did you have entire charge of his case while he was there? A Yes, sir.

Q Was there anything about his arm which led you to believe that he would be detained in the hospital any longer than it took to heal his leg? A No, sir.

Q So far as you could see the arm would quickly heal? A Yes, sir.

Mr. Garrison. That is all, Doctor.

Mr. Stallman. I guess that is all, Doctor.

(Witness excused.)

FREDERICK BOUCHARD, sworn.

Direct examination by Mr. Stallman.

Q Capt. Bouchard, what is your business? A Master of steam vessel, inland waters.

Q Do you remember the fire and explosion at Black Tom in 1916? A Yes, sir.

Q Were you there during the fire? A Yes, sir.

Q Do you remember about what time you got there? Yes, sir.

Q When was that? A Well, between 2:30 and 3 o'clock.

Q Of what day? A June—July 30, 1916.

Q You are speaking now of the morning? A Yes, sir.

Q Early in the morning? A Yes, sir.

Q Did you at any time see the schooner George E. Walcott down there at Black Tom? A Yes, sir.

Q And where was she when you saw her? A Well, she was on the easterly side of the pier that I pulled the steamer out of, pier—it was the next pier to the bulkhead. I have been confused on the number of them piers; I would not want to testify as to the number. I can explain that.

Q Let me call your attention to the map here. The yard upon the easterly end of Black Tom is marked Pier No. 7. A Yes, sir.

Q And the next pier, which is a covered pier, that was a long narrow structure leading into the South Pier No. 6? A Yes, sir.

Q Now, with that data, can you say where the Walcott was? A She laid on that side of the pier.

Q Of Pier No. 6? A Yes, sir.

Q On the easterly side? A Easterly side; yes, sir.

Q Hudson River side? A Yes, sir.

Q Bay side. What time was that when you saw that? A Why it was—it was near three o'clock; it was not a

great way from three o'clock; it was between two and three. We lost track of time.

Q Yes. A I remember the second explosion and I took that from the time we saw given in the paper; it was about ten or fifteen minutes after the second explosion that I went in there fooling around with the steamer and barge 66.

Q And when you saw the Walcott did you notice what condition she was in? A When I went in there there was two of them; there was the steamer and the schooner, and they were both about breaking out afire at the same time, and the steamer looked the largest to me, and I was in there for salvaging purposes, and I went to the steamer, and at that time the Walcott mast all above the deck was all afire; the fire had not reached her deck yet, and I thought I could pull the steamer out because there was very little fire on the steamer, and get back to the Walcott. The steamer was such a large steamer that with one tug boat I couldn't handle the proposition.

Q Did you go away from there then? A No, sir; I worked around there then until in the neighborhood of half-past five.

Q Do you know what the condition was of the Walcott at that time? A Between three and five she got to be a roaring hell, as you would call it. There was nothing there but flames. All that you could see was the outline of her with flames. She burned right down to the water while I was there.

Q At that time, Captain, Judge Collins wants to know what vessel you were master of? A I was master of the tug C. Gallagher.

Mr. Garrison. Spell the last, please.

The Witness. G-a-l-l-a-g-h-e-r. The abbreviation "C" is for Cornelius.

Mr. Garrison. A man's name?

The Witness. Yes, sir.

Q After that time, 5 o'clock that morning, when the Walcott was in flames, did you ever notice what became of her after that? A Why, on a Monday morning about between 10 and 12 o'clock I went in there taking photographs, and she was then laying there partially afloat—sinking.

Q That is all.

Cross examination by Mr. Garrison.

Q What was your position on the C. Gallagher, Captain? A Master.

Q That is the same as captain, is it? A I was master of the vessel and superintendent of floating equipment for Gallagher Brothers.

Q On this particular vessel were you the captain? A Yes, sir.

Q Where were you before you got to Black Tom that night? A Long Dock, Erie Basin.

Q Where is that with respect to Black Tom? A About three-quarters to a mile away.

Q Is it over in Brooklyn? A Yes, sir.

Q What directed your attention to Black Tom? A The first explosion.

Q When was that? A Neighborhood of two o'clock.

Q In the morning? A Yes, sir.

Q Sunday morning? A Yes, sir.

Q And had you steam up? A Yes.

Q Been working that night? A Yes, I was just landing a scow; had just finished landing a scow and let go my lines.

Q That is a little after 1 o'clock? A 2 o'clock—nearer 2 than it was anything.

Q Then you went right across this three-quarters of a mile of water? A Yes.

Q About how long did it take your boat to go that three-quarters of a mile? A Sixteen or eighteen minutes.

Q So you got over there around 2:30? A Yes, sir.

Q Where is the first place you went to on Black Tom, that is, I mean toward what place did you steer? A I was bound in for to get the steamer or the schooner, as I could see them from out in the bay on the way across.

Q I see. So you headed right for this easterly side of Pier 6, where you saw the steamer and the schooner, you headed right in here? (Indicating on map.) A No; I headed straight in.

Q That is straight in. Here is the water out here? A Yes.

Q Couldn't get any straighter than that? A I didn't come that way. I came in straight toward the piers, and went over on the other pier and pulled a barge out.

Q Where did you head? This is Pier 6? A Yes.

Q Your boat was in there? A Yes; that is the "Walcott" laid there.

Q Yes. She lay nearer the land end or nearer the —the length that would be? A She laid full length of the pier. Her stern was in about twenty-five feet of the end of the pier.

Q Her bow was how near to the end? A I don't know.

Q She occupied the whole land side of the pier? A Pretty much, yes.

Q Where was the steamer? A Steamer was on the other side of the pier.

Q This side? A Yes.

Q Oh, I see. Then did you come in that way? A I came in there past where you are standing there—there is a buoy outside, a black buoy; you would come out around there to clear Buckwheat Island, and I headed straight in.

Q Straight in between these two piers? A Yes.

Q Then you didn't go on the side where the Walcott was at all? A Not at that time.

Q You were on this side? A Yes.

Q At that time was the steamer afire? A Yes.

Q What part of the steamer was afire at that time? A The superstructure.

Q What? A The upper works.

Q Was the Walcott afire at that time? A Yes.

Q And the second explosion had not taken place yet, had it? A Oh, yes, the second explosion—I didn't go in there until after the second explosion.

Q Oh, I see. Then it did take you more than eighteen minutes to come across the river? A The second explosion stopped me.

Q How did the second explosion stop you? A It knocked me out, about five minutes.

Q Oh, yourself? A Yes, sir.

Q Then you were more than eighteen minutes? A Getting into the fire, yes.

Q Quite considerably more? A No, not a great deal more.

Q What length of time was there between the second and first explosion? A Oh, I should say twenty or twenty-five minutes.

Q Wasn't it nearer thirty? A Well, might have been thirty, yes.

Q If it took you eighteen to get across— A Yes.

Q Then you would have had a margin of twelve minutes? A Yes.

Q Were you knocked out twelve minutes? A No; I wasn't knocked out twelve minutes. It takes some time to get started from the time of the first explosion. I was hooked up and bound in and I was within about three or four hundred feet from the end of Pier 7, from the breakwater, as we call it, when the second explosion went off.

Q After the second explosion you made for between Pier 5 and 6? A Yes; just as soon as I could get my wits together.

Q At that time you say the superstructure of the steamer was on fire? A Yes.

Q What is the name of the steamer? A Tijuka, Brazilian steamer.

Q Was any part of the Walcott on fire? A Yes.

Q What part? A Why, all her masts was all afire then, it was crawling down towards her decks.

Q Now, you said that it was ten to fifteen minutes after the second explosion that you went fooling in around in there? A Yes.

Q That is what you said? A Yes.

Q And the steamer and the schooner were about to break out in fire? A No, they were broke out.

Q I am telling you what you said. You said they were about to break out. Do you mean they had already broken out? A Yes, sir.

Q Was the steamer loose from the pier when you got there? A No, sir.

Q Did you cast her loose? A No, sir.

Q How did she get loose? A Broke her loose.

Q You broke her loose? A Yes.

Q By the amount of force you put on her when you put your tow line on her? A Yes.

Q Did you pull her stern first or bow first? A Stern first.

Q Where did you take her? A After we got the fire out—

Q Did you put the fire out? A The biggest part of it; yes, sir.

Q Who put out the smallest part? A Why, there were several boats that came in by there at 4:30, and in order to get by the steamer, the steamer was so much—

Q No, no. This is very interesting, but just tell me who did, you or somebody else? A I don't know who done it. There was two or three boats.

Q The answer is you don't know. How did you get out the part of the fire that you put out? A Hose.

Q From your tugboat? A Yes.

Q Did these other boats play hose on it, too? A No, sir.

Q What did they do? A Had towers on their pilot house as they went by.

Q That is a hose held up in the air by something? A No; it is a stationary tower that goes up over the pilot house. The water goes through.

Q Some of those other boats had that kind of standpipe? A Yes, sir.

Q You didn't have any in your boat? A No, sir.

Q So the fire on the steamer was completely put out? A Yes, sir.

Q Where did you take her? A Took her outside of Pier 7 and anchored her between the Statue of Liberty and Black Tom.

Q She was perfectly safe? A Yes.

Q Nothing ever happened to her? A Not after that.

Q And I hope you got your salvage? A I did. I didn't get all of it, though.

Q I wish you had saved the Walcott, too. A I think if I had a tow on her I could have done it.

Q These other boats were around there? A Not at that time.

Q How could they have been there on any other time? You say they put the fire out on the Brazilian boat? A They didn't put the fire out on the Brazilian boat. If I hadn't got there it would have been the same on the Walcott.

Q You said you put out the biggest part of the fire on the Brazilian boat? A Yes.

Q And these other boats put out the smallest part? A Yes.

Q They were there? A Yes, they were there after.

Q After what? A Four o'clock.

Q Didn't you get the fire out on the Brazilian boat until after four o'clock? A No, sir.

Q Didn't he burn there from a little after two-thirty till after four o'clock? A Yes.

Q And how much of her burned between half-past two and four o'clock? A Oh, about one hundred and ten dollars worth of damage to her.

Q I wouldn't know whether that was two feet or two thousand feet. How much of her burned? A I guess the biggest part of her upper works was all scorched and damaged—spars.

Q Where were you when you were putting the fire out on her? A Alongside of her.

Q Where was she? A Lying east and west across Pier 6.

Q You did not begin to pull her out until after you had got the fire out? A No, sir.

Q These other boats were there helping you? A No, sir, there was no other boat helping me at all.

Q Well, the other boats put out the smallest part of the fire? A As they were going by, the boats that rushed in there. The fire on Pier 7, and in along there was so dense and hot that they would rush in by and when they would go by the smoke was coming from the smothering fire that had been on the Tijuka, and they turned the hose on, and also the New York fireboat, about four or five streams on them, which was really the smothering of all the fire.

Q When did that happen? A It all happened after four o'clock.

Q When did you pull her out? A I pulled her out in the neighborhood of three o'clock.

Q Pulled her out in the neighborhood of three o'clock? A Yes.

Q She was still in between the two slips at four o'clock? A Yes, sir.

Q Explain that physical phenomena. If you pulled her out around three o'clock how could she be lying there? A As I pulled her out from where she laid on the west

side of Pier 6, I shoved her over against the bank and held her there, put my hose up against the steamer, and two lengths of hose that my men put on the ship, and the crew of the ship had come back aboard of her and assisted my men with the hose by taking it wherever there was fire to be put out.

Q You got her into the west side of Pier 6? A Yes, sir.

Q You put her up against the bank? A Yes, sir.

Q What bank did you put her up against? A On the south bank of the channel.

Q Over here somewhere? A Down—you haven't got the south bank there.

Q Over toward Brooklyn? A No, sir; over toward Bayonne—toward Staten Island.

Q You must have gotten her up here? A No, sir, that is New York towards there.

Q Where is Bayonne, down here? A Down below.

Q Down here. Shows it down here? A No; she is right—heading east and west. I will draw a sketch of it if you wish me to.

Q Never mind. We will find out. Is it down here where this railing is, for the purpose of illustrating? (Indicating railing in court room.) A Yes.

Q The channel runs up there? A Yes, a narrow channel.

Q Now you have got her over against that bank? A Yes.

Q When do you suppose you got her there, what time in the morning? A About three-fifteen.

Q She was still burning then? A She was just beginning to burn rightly.

Q Just beginning to burn rightly? When did you get your hose on her? A About the same time—everything was being done there about the same time.

Q When did these other boats assist you to put out this fire on her? A After four o'clock, some time after four o'clock.

Q You were on her alone from quarter after three until four o'clock—I mean your boat? A Yes.

Q Where did you say you eventually took her and anchored her? A Half ways between the bulkhead and Bedloe's Island, Statue of Liberty.

Q When did you get her to that anchorage? A About six—in the neighborhood of six-fifteen or six-thirty, in that neighborhood—it is three years ago and I have not looked over anything—I was called on in this yesterday, and I haven't looked over any of the stuff I have had, and it has kind of slipped my memory.

Q What stuff would you have? A I have all the records and all the statements and data I took note of at that time.

Q You did not bring any of that with you? A No, sir; I haven't had a chance to look.

Q Where is all of it? A It is different places—home and some in my attorney's office.

Q Where is home? A Brooklyn.

Q Did you come from there this morning? A Yes.

Q Why didn't you bring them with you? You know you were going to testify in this case? A I didn't think I was going—

Q You didn't think you were coming over here to fool around? A I thought I was brought here to testify as to the location of the Walcott.

Q The location of the Walcott? A Yes.

Q Would your data show you that? A Yes, sir; got pictures of them.

Q Why didn't you bring your pictures? A Because I didn't think it was necessary. I didn't think—I didn't give it a thought.

Q Now you have got down to it. Now you have her out there around—between five o'clock, you say, and six o'clock? A No, a little after six.

Q How far was that from Pier 6? A About half ways—oh, Pier 6?

Q Read the question.

(Question repeated by stenographer.)

Q How far was that from Pier 6—feet or inches or miles, or whatever it is? A I will take it in feet. In the neighborhood of fifteen hundred to two thousand feet.

Q Now after 6:15 did you go back to Black Tom? A No; I went in on the long pier.

Q Why can't you say yes or no? Did you go back to Black Tom? A No, sir.

Q You did not? A No—I won't say no, I went back into Black Tom, because the whole thing is Black Tom.

Q Of course it is? A I went back to the northerly pier of Black Tom.

Q That is what I am asking you, whether you ever went back to Black Tom? A Yes.

Q The whole thing is called Black Tom, for more than a mile up to Jersey City is called Black Tom? A I went back to Black Tom.

Q Where did you go? A Into the northerly pier.

Q The north end or the south end? A The south side of the northerly pier.

Q The north end of the North Pier? A The south side.

Q From there you could not see what was going on down here around Pier 6, could you? A No, sir.

Q When did you take the Walcott away from this bank that was down below Pier 6 and take him over to this anchorage?

Mr. Stallman. He didn't take her over.

A The Walcott?

Q I don't mean the Walcott; I mean the Tijuka. A It was in the neighborhood of about ten or fifteen minutes of six when I started to pull her out of there.

Q Now you said awhile ago that you worked around there until five-thirty; just explain that? Where were you working around until 5:30? A Around that steamer.

Q I thought you worked around the steamer until 6:15? A Right in that position. From the time that I pulled her out until I got the fire so I could leave the vessel and pull her out was in the neighborhood of 5:30. I had no clock and this is only as near as my judgment would tell me and records that was kept on the boat by other people.

Q That is what you meant by saying that you worked around there until 5:30? A Yes.

Q As a matter of fact, you worked around there until 6:15? A Right around that neighborhood—worked there until 8 o'clock.

Q Not around that neighborhood, because you were up to the North Pier? A Yes.

Q That is the long distance? A That is Black Tom.

Q I am not talking about Black Tom; I am talking about what you say you saw of the Walcott; and after you put your steamer at 6:15 at this anchorage you could not see the Walcott? A I seen the Walcott right on up until I will say safely 5:30.

Q That is what I thought. That is what I am talking about, and I think what you are talking about? A Yes.

Q You say between 3 and 5 she got to be a roaring hell? A Yes.

Q Where were you between 3 and 5? A I was laying head on amidship of the steamer Tijuka, with my stern heading towards Pier 6.

Q How far was your stern from Pier 6? A I should judge about twenty or thirty feet.

Frederick Bouchard, cross.

Q You kept looking across that twenty or thirty feet to see what was happening to the schooner? A I didn't keep looking at all; I observed everything that was going on there.

Q By these observations you observed between 3 and 5 that she got to be a roaring hell? A Yes.

Q She burned to the water's edge then and there? A Yes.

Q So that anybody that went there after 5 o'clock in the morning wouldn't have seen anything but the blackened hulk, in the morning? A They would still have seen fire.

Q Of a blackened hulk that was burned to the water's edge? A Yes.

Q That is all.

Mr. Stallman. I guess that is all, Captain.

Mr. Garrison. Captain, I would like to ask you one further question.

By Mr. Garrison.

Q You haven't got any of these photographs here, have you, Captain? A No, sir.

Q You just stated you don't think you took a photograph of the Tijuka? A No, sir—of the Tijuka? Yes, sir, but she laid at anchor.

Q When she laid at anchor? A After six —

Q What else did you take a photograph of? A Took photographs of all the place in there.

Q Took a photograph of the Walcott, did you? A I think I have got the—

Q Did you take a photograph of the Walcott? A I won't positively testify—I have got a photograph of the Walcott in her burnt condition.

Q When did you take that? A Monday morning.

Q That shows her burned to the water's edge, does it? A Yes.

Q Then you could not photograph much, could you? A No.

Q A boat that is burned to the water's edge, you could hardly tell it is a boat? A Photograph of the hulk.

Q Just level with the water? A Yes.

Q Had she sunk then? A It is not just clear in my mind whether she was or not; I would have to see the photograph.

Q If she had sunk you could not take a photograph? A She might not be all the ways down.

Q Did you ever see her after she sunk? A My mind is not just clear on it.

Q You were there Monday? A Yes.

Q What time? A Oh, some time between 10 and 1, or 2 o'clock.

Q 10 in the morning? A Yes, sir.

Q And 1 or 2 o'clock in the afternoon? A Yes, sir.

Q Were you there any later days? A Yes, I was there afterwards on different occasions.

Q How long after Monday was the next time you were there? A Oh, I don't know.

Q Give me some general idea. Was it a month or a week or two days, or what? A I was there several times within a month.

Q Did you still see the Walcott lying there? A I didn't pay any attention to her.

Q When was the last time you paid any attention to the Walcott? A On Monday morning.

Q How did you come to pay attention to her then? A Well, because I remember a conversation that I had with my attorneys regarding the Walcott.

Q Something that directed your attention and you went to take a look at it? A Sir?

Q Something directed your attention to it and you went to take a look at it? A Yes.

Q That is all.

Mr. Stallman. That is all.

John J. Hogan, direct.

JOHN J. HOGAN, sworn.

Direct examination by Mr. Stallman.

Q Captain Hogan, are you a member of the Jersey City Fire Department? A Yes, sir.
Q And were you on July 30, 1916? A Yes, sir.
Q Where was your station at that time? A On Ege avenue near Ocean.
Q Do you remember the fire at Black Tom? A Yes, sir.
Q Did you go down there? A Yes, sir.
Q What time did you get there? A About 1:15 or 20.
Q What is that? A About 1:20 I should judge.
Q About 1:20 in the morning? A Yes.

Mr. Garrison. About 1:15, 1:20 he said.

Q Did you take men down there? A Yes, sir.
Q How many? A Four and myself.
Q Did you take any apparatus? A Yes.
Q What did you take? A Hose wagon.
Q When you got down there to Black Tom, where did you stop? A I stopped in a roadway near the pump house.
Q You mean the pump house near the corner of Store "F"? A It was the first road leading in towards the docks.
Q What is that? A The first opening leading in towards the docks.
Q Is that the opening that leads in to Pier 5? A Yes, sir.
Q The reason I ask you that, Captain, is that the map shows pump house on the map right next to Store "F"? A Yes; that is the place where we stopped.
Q That is where you stopped? A On the main road.
Q Yes; that is the road that leads from Jersey City out towards the end of Black Tom? A Yes, sir.

Q That is a street, isn't it; a sort of a highway that runs out there, a street or something like that? A Yes, sir.

Q And when you got there what did you see? A I saw a number of cars afire.

Q And where were the cars from where you stood? A They were east of where I—of where we stood.

Q East of where you were? A Yes, sir.

Q About how far east? A I should judge about 500 feet.

Q About 500 feet to the east of you, you saw freight cars on fire? A Yes.

Mr. Garrison. Indicate where east is, won't you, from the road?

Q Well, east is in this direction, is it not? A To the water.

Q Towards the water? A To the end—

Mr. Stallman. (Interrupting.) What is the scale of this map?

Mr. Garrison. 25 feet to the inch. Isn't that right?

Mr. Stallman. Yes.

Q And you saw the cars burning about 500 feet in this direction from where you were? A I should judge it was about 500 feet.

Q Now, did you see anything else burning besides freight cars? A There—that was all I saw.

Q Did you notice any buildings or structures there at that time? A Burning? No; not burning.

Q When you saw the freight cars on fire, did you do anything toward extinguishing the fire? A Well, as soon as I got there, why, I sized up the fire and I went in to telephone to headquarters to inform them the extent of the fire.

Q Do you know whether or not you were the first officer of the fire department to get there? A Yes, sir, with my company.

Q You were the first? A Yes.

Q And so you immediately reported to headquarters as soon as you got there? A Yes.

Q Then did you or your men make any effort to put this fire out, and if so what did you do? A Yes; we lined in hose and we tried the hydrants to get the water.

Q Where were these hydrants where you tried to get water? A Along the main roadway.

Q Along the main roadway? A Yes, sir.

Q How far from the roadway itself; along where the curbstone would be if it was a street? A Yes.

Q And how near to this pump house was it; was it right opposite the pump house or east of it or west of it, or where? A I opened a hydrant west of the pump house.

Q West of the pump house? A Yes.

Q And along the road? A Yes.

Q When you tried to get water there what was the result? A We got no water.

Q Do you remember what kind of a hydrant it was that you opened or attached your hose to? A One—there were high pressure hydrants and fresh water hydrants, city hydrants.

Q That was two of them, was it? A I tried two high pressure hydrants and used one city hydrant.

Q When you tried the first hydrant and did not get any water, which way did you go, west or east? A Why, we stood right there.

Q All these hydrants you tried were in one spot, were they? A Over one side of the road, yes, sir.

Q And were they all together or some feet apart? A Oh, some feet apart.

Q Now, just tell us, did you put a hose on this fire? A On the freight cars?

Q Yes. A No, sir.

Q Why not? A Well, we had no water.

Q I understood you to say that you tried the two high pressure hydrants and then used a city hydrant? A Yes.

Q Well, did you get water out of the city hydrant? A We got water out of the city hydrant.

Q And did you turn a hose on the freight cars then? A No, sir.

Q Why not? A Why, the pressure was so poor it did not reach there.

Q Yes. Was there any water at all in the two high-pressure hydrants that you tried? A No, sir; I could not get any from them.

Q After you got some water out of the city hydrants, then what did you do? A Why, we tried to wet down around the storehouses there.

Q You say you went down around the—

Mr. Garrison. He said he tried to wet down, down around the storehouses.

Q Now, Captain, did you try, or did your men try, any more than these three hydrants? A No, sir; that is all I tried, that company there; there was other companies there; I do not know what they were doing.

Q Did you go any nearer to the place where these freight cars were burning than the pump house; did you go any further east than that? A Well, we all stood around there on that road. The hose wagon went down to line in there while we were trying to open the hydrant.

Q And do you know about what time it was when you tried to get water out of the high-pressure hydrants? A I guess it was about—well, right after we got there, after the chief arrived there, why, that was when we were told to line in and tried to get water on the fire.

Q About what time was that? Was it before 1:30 or after 1:30, or when? A Before 1:30.

Q Before 1:30 o'clock? A Yes, sir.

Q Well, was it 1:15? A I do not—

Q Have you any idea in your own mind as to when it was you were trying to get water to put out the fire in the freight car? A It was between 1 and 1:30.

Q Then, you say, you turned whatever water you could get onto the storehouses? A That was after the explosion.

Q Now, just tell the jury what you did, Captain, from the time you got there until the explosion occurred. A Well, we arrived there with our hose wagon, and after I telephoned in to headquarters, headquarters notified me that the chief was on his way there with the other companies—with other companies; and as I came out to get to work the chief was—came there.

Q Who was that, Chief Gately? A Chief Gately, yes; and I told the chief what I had done. "Well," he said, "get a line in."

Q You mean by that, connect up the hose? A Yes, sir; a line in and go to work. So we tried the hydrant and could not get any water. I informed the chief about it. "Well," he said, "go up the line and try another one." Then we tried a fresh water hydrant, and then the pressure was very poor, so we stood—

Q Where was that line? You say a fresh water hydrant. Where was that line; was it right along the highway or the road, or somewhere else? A Along the highway with the high-pressure hydrants.

Q Yes. Go on. A Well, we stood there and there was no water to fight the fire. There was no use of going down there without water, so we all stood there along by the pump house there.

Q And you stood there until the explosion? A Until the explosion, yes, sir.

Q Now, did you see the explosion or the evidences of the explosion? A Yes, sir.

Mr. Garrison. Which? They are two entirely different things. I object to the form of that question.

The Court. I will sustain the objection.

Q Put it this way: Did you see the explosion? A We all stood there watching the shells flying around and I saw a glare there that—different from the others; and I went to turn from it and then we felt the explosion.

Q Where was this glare that you say you saw? A Right in amongst the freight cars where we—that were afire.

Q Will you come down here and point out on the map about where it was that you saw this glare? Take that pointer, Captain. Now, first show us where you were standing.

Mr. Garrison. Here is your pump house and here is your main road. Now, where were you standing?

A I stood in here.

Mr. Stallman. Witness indicates a point opposite Pier 5 on the roadway.

Mr. Garrison. Opposite the pump house?

Mr. Stallman. Yes; opposite the pump house on the roadway.

Q Where were these cars where you saw the glare? A Around in here.

Mr. Stallman. Witness points to a place that is about four and one-half inches southeast of the southeast corner of the pile stockade near car CP-109374.

Mr. Garrison. There is where he pointed (indicating another car).

Mr. Stallman. Car 37330.

Q Then when you saw this glare—what was it you felt? You say you felt the explosion. How did it feel? A A very high fire all went up in the air, or went by

my head, and it seemed to push along the road, and knocked me down; then I tried to get up, and I could hear a rumbling, a roaring, as though there was a roof or something flying overhead.

Q A roof, you say? A It sounded like a tin roof rattling.

Q Now, what time was that? A I should judge about around after 2 o'clock; it seemed about an hour after we were there.

Q Can't you give us about the time when it was; was it 2 o'clock or ten minutes after 2, or when? A I could not say exactly.

Q Well, then, after that explosion—and you said it knocked you down—did you pick yourself up? A Yes; after a while I got up and started—

Q Well, were you knocked unconscious? A No, sir.

Q Well, you got up, and then what did you do after that? Any more fire? A Yes, sir, the storehouses started afire after that.

Q Which storehouses? A Well, the storehouses below the roadway there and along by the pump house there.

Q Now, there are three large blocks of stores down there; you know that, don't you? A Yes.

Q In which one of those blocks of stores did you see the fire? A The two below the pump house road.

Q Come down here and show us where you saw the fire east of the storehouses? A These two rows of stores.

Mr. Stallman. Pointing to row G to M, and N to R.

The Witness. And this here one started after.

Mr. Stallman. Pointing to Store F.

Q What was the extent of that fire in the storehouses? Did you stay there and watch them burn up, or what happened to them? A We stood there—we stayed there and fought the fire.

Q What did you fight it with? A With water.

Q Where did you get the water? A The New York fire boat came in there and we got lines from the New York fire boat and then I attached a line on the fresh water hydrant and was wetting down on—wetting down around the roadways around the storehouses there on the one this side of the pump house.

Q How far did that stream from the fresh water line throw? A It did not throw very far. We had to get behind a pile of coal there, get behind there to get away from the heat, and just try to—we could not do anything with it at all; there was simply no stream at all to fight a fire with.

Q When you say it did not throw very far, we do not know whether if a hose throws 100 feet it is far or not. How many feet? A I should judge about ten feet.

Q And did you have the hydrant turned on full? A Yes.

Q Did you hear anything of another explosion that morning? A Yes, sir.

Q How long after the first one? A I should judge about twenty minutes.

Q And do you know where that second explosion came from? A No, sir.

Q Did you hear it? A Yes.

Q Did you see anything of it? A No, sir.

Q Where were you at the time it occurred? A I was standing at the hose wagon there. I told the driver there to watch—

Mr. Garrison. Never mind what you said to the driver. He asked you where you were at the time.

A I was standing at the hose wagon.

Q And was that near the pump house? A Yes.

Q And what was the effect of that explosion on you personally? Do you understand me? You said in the first explosion it knocked you down and you fell off—

A Well, the second one was nothing like the first one; it didn't seem anything at all towards the first one.

Q Very mild compared with the first one? A Yes, sir.

Q How many freight cars do you think you saw burning when you got there? A There were seven or eight; I could not say exactly how many.

Q Do you know whether any more cars got on fire after that? A Well, it seemed to keep getting larger; as we stood there the fire seemed to be spreading.

Q Did you see any water thrown on those freight cars by anybody? A No, sir.

Q Did you see any hose stretched down at the place where the freight cars were burning? A No, sir.

Q Did you see anybody do anything in an effort to put out the fire? A No, sir.

Q Do you know when it was that you got water by means of the New York fire boat? A What time, you mean?

Q Yes. A I should guess about an hour after the explosion.

Q Which explosion? A The last explosion.

Q About an hour after the last explosion? A Yes, sir.

Q And where did the fire boat lay? A She laid out on the dock side near the piers there.

Q Is that on the south side of the Black Tom? A On the south side; yes, sir.

Q And what did this fire boat do; pump water out of the bay? A Out of the bay; yes, sir.

Q And did you at last get a line over to the fire boat? A Well, they stretched a line to the storehouse and we connected our line to a three-way connection from the end of their line.

Mr. Stallman. Cross examine.

Cross examination by Mr. Garrison.

Q Captain, what were you at that time? A A lieutenant.

Q And what were you in charge of? A An engine company.

Q What was your paraphernalia? What did your apparatus consist of? A A hose wagon and steamer.

Q Steam engine? A Yes, sir.

Q Steam fire engine? A Yes, sir.

Q And where was your hose cart and steam fire engine on the morning of this fire before you got the alarm? A In the house.

Q And where is the house? A On Ege avenue, near Ocean.

Q How far is that from the pump house down toward Black Tom? A I should judge—nearly two miles.

Q Horse-drawn vehicles? A Yes, sir.

Q How long did it take you to get your hose cart down there after you got the alarm? A About fifteen minutes.

Q You did not take the steamer? A No, sir.

Q How many men did you take? A Four men.

Q And when you got down there—that is five all told? A Yes, sir.

Q Yourself and— A Yes, sir.

Q Driver? A Driver.

Q And three other men? A Three other men; yes, sir.

Q And when you got down there you stopped in the roadway between Stores F and G opposite the pump house? A Yes, sir.

Q And the fire seemed to be from you about 500 feet? A Yes, sir.

Q Now, did this explosion that you speak of come from the place where the fire was when you first saw it? A It seemed to be below, because the fire had been spreading.

Q The fire had been spreading more east? A Yes.

Q And about how far had the fire spread at the time of the explosion? A Well, that I could not—

Q Could not say? A Could not say.

Q Give us some idea. Give us the best idea you can of how far this fire had spread from the time you got there and saw these seven or eight cars on fire until you say the explosion came from the place where you say the fire was. A Well, I could not say how far it was.

Q Well, give me some idea, can't you? Can't you give me any idea at all? A It seemed to be right in amongst the fire there, where the fire was burning—

Q Now, the 500 feet would bring you between Stores N and O; that is where you first saw the fire? A No, sir.

Q Well, you said so. You said it was 500 feet east of where you stood, and 500 feet brings you right out here between N and O. A I say I judge it was 500 feet.

Q Well, I can only take what you judge. When you say in your judgment it is 500 feet, between N and O, do you want to change that? A The fire was below those stores.

Q When you first saw it the fire was below the stores? A Yes, sir.

Q It appears that to get below the stores you would have to go 300 feet more. That would make 700 feet. Do you want to correct your testimony that when you first saw the fire it was at least 700 feet from you; is that correct? A The fire was below the stores.

Q All right. Now, then, the measurements show that would be more than 700 feet. Do I understand you want to correct your testimony that when you first saw the fire it was more than 700 feet from it; is that right? A The fire was below the storehouses; I don't know how many feet it was.

Q The fire was below the storehouses? A Yes, sir.

Q Now, how far below the Storehouse R, which is the easternmost storehouse—how far below that were these seven or eight cars on fire when you first saw them? A Well, they seemed from where I was standing only a short distance from the storehouses.

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Q Only a short distance? A Yes, sir.

Q Yet when you came down here to point out for Mr. Stallman you pointed to a place away over here, didn't you, where the fire was? A Where the fire was?

Q Where the fire was. Well, is that where the fire was when you first saw it? A No; it was nearer the storehouses.

Q How much nearer, half-way between the storehouses and the final place that you pointed to? A The fire seemed to be right at the end of these—the spread of the fire seemed to be—the cars that were afire seemed to be just below the storehouses.

Q When you first saw the seven or eight cars they were just below Storehouse R, were they? A From where I stood they seemed to be—

Q Well, never mind where you stood. Where you stood couldn't affect whether they were below Storehouse R or not. Were they below Storehouse R? A Yes, sir, they were below Storehouse R.

Q Was that fire away from Storehouse R? A Seemed to be.

Q Were they south or north of Storehouse R? A They were right along the roadway.

Q Well, the roadway stops away up here, so it couldn't be along the roadway. There is the end of the roadway where I have my finger. Were they below the end of the roadway? A I don't know; I didn't go down that far.

Q Well, you really don't know where the fire was, Captain—that is the truth, isn't it?

Mr. Stallman. I object to that.

Q You really do not know where the fire was? A I do know where the fire was.

Mr. Stallman. That is not proper cross examination. The witness testified that he was watching this fire from the pump house; that the fire was seven or eight hundred feet way, near Storehouse R, and I

think it is unfair for counsel now to try to make the jury believe—to put in the witness' mouth a statement that he did not know what he was talking about.

The Court. I do not think that is the question. The question is, "You do not know where the fire was, do you?" and I think I will permit that question to be asked.

Q Answer the question? A The fire was below the storehouses, below the storehouses.

Q I understand. What I want to know is, was it much below or was it half-way between this point that you finally pointed to and the storehouse, or where was it when you first saw it? A It seemed to be quite a little distance from the storehouse.

Q Did it seem to be down as far as this place that you pointed out to Mr. Stallman when you first saw it? A I cannot go by them maps there.

Q Never mind the map. You came down and pointed out on the map a place, didn't you? A Yes, sir.

Q And then you said when you first saw the fire it was much nearer you than the place you pointed out on the map.

Mr. Stallman. That is where the explosion occurred, he said.

Mr. Garrison. Certainly he did. He said the fire at the time of the explosion seemed to be at the place where he put his finger on the map.

A The fire was nearer to the storehouses, and the explosion was below after we got there.

Q I understood that all the time. Now, how much nearer the store was the fire when you first saw it? Did it seem to be close to the storehouses? A There was quite a little distance between it and the storehouses.

Q What do you mean by quite a little distance? A I couldn't say.

Q That is what I thought. You do not know really where the fire was? A I know it was below the store houses.

Q Now, you really never got any further towards the fire than opposite the pump house, did you? You didn't go down this road? A Moved the line in.

Q No, after the explosion. I am talking before the explosion? A No, sir.

Q Before the explosion you never got nearer the fire than opposite the pump house, did you? A We all stood there together, all the crew stood there together.

Q Precisely. And when you got down there, which you say was between 1:15 and 1:20, the first thing you said you did was to go and telephone the fire headquarters; is that right? A Yes, sir.

Q And you and your four men and the hose cart were all the apparatus that you had there at that time? A Well, I am talking about that time; is that right?

Q Yes. And they told you that Chief Gately was on his way with some more apparatus? A Yes, sir.

Q How soon after that did you see the chief, after you got through telephoning? A Only a few minutes.

Q And before you telephoned you didn't do anything, did you— A We just got there.

Q Before you telephoned you didn't do anything, did you? You walked right over from your wagon into the telephone place? A Yes, sir.

Q You didn't attempt to find any water or put on any hose, or anything else? A No, sir.

Q Now, then, you came out and you were standing around there, weren't you? A No, sir.

Q When you came out from telephoning— A No, sir; I just met the chief there.

Q When you came from telephoning you were simply standing still, weren't you? You were not trying any hydrants or putting on any hose or anything? A I didn't have time when I come out from telephoning.

Mr. Garrison. I move to strike that out.

The Court. It will be.

Q (Repeated by stenographer.) When you came from telephoning you were simply standing still, weren't you. You were not trying any hydrants or putting on any hose or anything? A I just came out and met the chief.

Q And the chief said to you, "Don't stand around here. Get a line in," didn't he? A He said get a line in; yes, sir.

Q He said, "Don't stand around here. Get a line in." That was his exact language as you have previously testified, wasn't it? A I may have said that, but—

Q And it is a fact? A He told us to get a line in.

Q Isn't that a fact, what was said? A Yes.

Q Don't stand around here. Get a line in. A Or words to that effect.

Q Or words to that effect. Now, then, did the chief bring any engines with him, any fire engines, any Jersey City fire engines? A He—

Q Did the chief bring any Jersey City fire engines with him? Do you understand every word of that sentence? A No, sir.

Q He didn't, did he? A Not when he come in.

Q No. No Jersey City fire engines got there until after the second explosion, did it? A I didn't see any.

Q And they were not in there. You would have seen them. Why, my gracious! you were trying to put out this fire, weren't you? A Trying to help put it out.

Q Trying to help put it out. And if there had been any fire engines there that would be the first thing you would do, to help, wouldn't you? A Well, we use all kinds of apparatus.

Q Well, why did not you use all kinds of apparatus before the fire engines got there? You said you would use it. Why didn't you use other kinds of fire apparatus before the fire engines got there? A We had no water there.

Q You had no water. You had the whole bay; you had the whole Atlantic ocean if you had the engines there. Where did this fire boat get its water from. A From the—

Q Bay? A Bay.

Q Where would the fire engines get it if they wanted it, the bay? A Sometimes.

Q Certainly. Any time you want water you can get it out of the bay, can't you? A I saw fire engines couldn't get the water.

Q Oh. I am talking about the fire engines that couldn't. The Jersey City fire engines not only could, but after they got there afterwards, did get water out of the bay, didn't they? A Well, that I couldn't say.

Q Do you mean to say you don't know where your own fire engines got the water that they got there? A Our engine was connected up to a hydrant.

Q I am not talking about only your engine. A There were several engines there, later in the day.

Q And didn't they get water out of the bay? A I couldn't say.

Q You couldn't say? A No, sir.

Q Do you know whether they can or not? Do you know whether a Jersey City fire engine is so equipped it can get water out of the bay? A Yes, sir.

Q It is, isn't it? A Yes.

Q Certainly. And the first water that you got in there was water gotten out of the bay by the agency of a New York fire tug, wasn't it? A Well, we had a small line on the fresh water.

Q Yes, but you didn't do anything with that, did you? You didn't do anything with that did you? A It didn't amount to anything; no, sir.

Q That was Jersey City system, wasn't it, what you call the fresh water system? A That is one—fresh water line run into the—

Q That is a Jersey City system, kept up by the City of Jersey City? A Yes.

Q And what you call the high-pressure system was a salt water system? A Yes, sir.

Q Put in by the Lehigh Valley or by some other private company? A Yes, sir.

Q It was not a city system? A No, sir.

Q And the first plugs you tried, you say, were the company hydrants; I mean those belonging to some private company? A Yes, sir.

Q Not the city pipe? A No, sir.

Q Not the city hydrant. And you say you didn't get any water outside of the company's hydrants? A No, sir.

Q What kind of hydrants were they? A Well, I call them a Corey. They are the same shape as the Corey.

Q Well, call them their right name. What were they? A The name of the hydrant?

Q Yes. A I could not say, sir.

Q Weren't they Corey three-way hydrants? A I couldn't say positively.

Q Had you ever seen one like them before? A Yes, sir; we have Corey three-way hydrants in the city.

Q But you just said you couldn't tell me whether they were Corey or not. Then you say you have seen one before because— A Some hydrants look the same as others, but they are different name.

Q All right. We will get to what this one was called. What did it look like? A Corey hydrant.

Q It looked like a Corey hydrant? A Yes.

Q Was it a three-way hydrant? A No, sir.

Q This high-pressure hydrant was not a three-way hydrant? A No, sir.

Q One-way hydrant? A Two-way hydrant.

Q Two-way hydrant? A Yes.

John J. Hogan, cross.

Q Kindly explain to the jury what a two-way hydrant means. A A two-way hydrant is a hydrant with two outlets.

Q Two places where you can attach a hose? A Yes, sir.

Q And how many valves do you have to open up in order to get a stream of water out of each of these openings where you would attach hose? A The Jersey City Corey hydrant, the Jersey City hydrant here is one valve.

Q One valve opens both? A Opens three.

Q Well, opens three. A Yes, sir.

Q Now, these down there, you say, were two? A Yes, sir.

Q And you tried to open those two by opening one valve, did you? A One, one—each outlet has a separate valve.

Q Now, we will have to start all over. If you have a Corey hydrant which has three openings how many valves do you have to open to get water out of each one of the openings? A One valve.

Q One valve. And then the water will come out of all three openings? A In the city here.

Q In the city. A But these hydrants down there, you have to open a valve for each outlet.

Q Then they are different from the city hydrants? A Yes, sir.

Q Had you ever seen one like them before? A Only down there.

Q You had seen them before down there? A Yes, sir.

Q You had been down there before? A Yes, sir.

Q And had you opened these valves before, these valves on these hydrants before? A No, sir; I never opened them.

Q When had you been down there before? A I had been down there one or two fires before.

Q And had you opened these hydrants? A No, sir.

Q Well, then, did you know how to do it by reason of any knowledge that you had before you got there that night? A Only by trying them.

Q And you tried them that night? A Yes, sir.

Q And how many valves did you open that night? A I just opened the one side, the one valve.

Q One valve? A Yes, sir.

Q You just gave one turn to some kind of a shaft to open one valve; is that right? A Yes, sir. If there is water there, why, that will give you the water.

Q You think so. But just answer my question. You opened just simply one valve? A No answer.

Q And what did you open that with? A With a monkey-wrench.

Q With a monkey-wrench? A Yes, sir.

Q Where did you get the monkey-wrench? A From engine—16 engine.

Q Didn't you see right alongside of the hydrant a tool prepared specially to open those valves? Yes or no. A I found a wrench up around there, but—and tried to open a valve there—

Q Did you see a special tool other than this monkey-wrench, that you say you had yourself, lying on the ground or lying alongside of this hydrant? A I did afterwards.

Q You did afterwards, but you did not before? A No, sir.

Q And that is not the tool you used? A No, sir.

Q You used a monkey-wrench? A Yes, sir.

Q Yes. Now, Captain, do you remember testifying here in the case of the New Jersey Fidelity and Plate Glass Insurance Company against the Lehigh Valley Railroad Company, case where Mr. Stallman was engaged and the same Judge was on the bench, and I was in the case, about two years ago? Do you remember being here before and testifying? A Yes, sir.

Q Now, do you remember when I was cross examining you—

Mr. Garrison. I am going to read from page 165, Mr. Stallman.

"Q"—I asked you this—"And when you got your monkey-wrench you went to what hydrant? I do not mean which one of these hydrants, but what character of hydrant?" And your answer was, "High-pressure hydrant." "Q That is a Corey three-way hydrant? A Yes, sir." Then, again, I said, in the middle of that page, "Three-way hydrant?" And you said, "Yes, sir." And I said, "How did you get the large valve open?" And you said, "There was a wrench there alongside the hydrant." And I said, "Oh, there was a wrench lying right there, was there?" And you said, "It was hanging over on the side." And I said, "Yes, a wrench to open the big valve with: is that right?" And you said, "Yes, sir." And I said, "Now, just tell us what you did to try to get water out of that hydrant." A "I opened the large valve—" I said, "First?" You said, "Yes, sir." "You opened the large valve first?" "Yes, sir." "Is that right?" "Yes, sir." "And then what did you do?" "Then I opened the small valve." Now, then, you testified that you opened both the large and small valve. Do you remember that? Do you remember that? Do you remember testifying to what I read before? A I cannot recall—

Q You cannot recall? A —that.

Q Now, you are sure you only opened one valve, are you? A On the hydrant; yes, sir.

Q That is what I am talking about. What do you think I am talking about except the hydrant? What do you think I have been talking about except the hydrant? A Well, there is valves outside of the hydrant.

Q A valve outside of the hydrant? A Yes, sir.

Q On what? A Running to the hydrant in some places.

Q Running in to the hydrant; an independent valve? A Yes, sir.

Q That has nothing to do with the hydrant? A No, sir.

Mr. Garrison. Well, then, I am not interested in it.

Q Now when you go to a fire, Captain Hogan, in the City of New Jersey—I suppose you have been to many a one? A Yes.

Q Captain in the fire department? A Yes.

Q For twenty-two years? A Yes.

Q The first thing you do is to hunt the nearest fire plug and couple up your hose, isn't it? A Have to couple up the steamer first.

Q You didn't have any steamer down there? A No, sir.

Q You didn't have any steamer down to Black Tom, did you? A It all depends on conditions.

Q All right. Now, then, under ordinary conditions, when you have not got a steamer, the first thing you do is to couple up the hose to the fire plug, isn't it? A If you want the water, yes.

Q Don't you usually want water at a fire? What are you accustomed to putting a fire out with? A Sometimes we use the large hose and sometimes we use the chemical lines.

Q You use the chemical? A Yes, sir.

Q Did you have any chemical engines down there? A Yes.

Q Did you use them? A A combination wagon.

Q Did you use them? A No, sir.

Q Did not attempt to use it, did you? A We don't use it on a large fire.

Q You did not attempt to use it, did you? A No, sir; it would not run there anyhow.

Q What say? A I say the amount of hose wouldn't run there.

Q Amount of what hose? A That we have on the chemical tank, when they have small fires or inside fires.

Q Is it any smaller hose than the big hose? A Yes.

Q How much smaller? A Only inch hose.

Q How many of those chemical things did you have down there? You had one on yours; what was your number? A No. 8.

Q You had one. Did not 10 have one? A I think they had.

Q And 16 had one? A Yes.

Q There were three of them? A Yes.

Q How much hose on each one? A Two hundred feet.

Q Six hundred feet? A Yes.

Q If the fire was only 800 feet from you wouldn't that squirt 200 feet from the end of the hose? A Squirt 200 feet from the end of the hose?

Q Yes. Wouldn't that thing squirt 200 feet from the end of the nozzle end of the hose? A No, sir.

Q How far will it squirt? A Well, depends on the pressure that is on the tank.

Q Depends on what? A On the pressure that is on the tank.

Q Isn't that always kept up to a certain pressure? A No, sir.

Q What puts the pressure on the tank? A Well, you dump the acid bottle and it forms a gas, and you start off with a certain pressure, and as you use it, it keeps going down to nothing.

Q Isn't there any average as to how far those things will squirt? A No, sir.

Q You have to just experiment every time? A You have to take it as it is.

Q I would think they would be pretty useless things to go to any fire with if you wanted to put it out. All right. Then the first thing you do when you go to a fire and you have tried all these other things and your

chemical engine doesn't squirt far enough, or whatever reason you discard it—the first thing you do is to couple a hose up to a fire plug, if you are going to try to get water to try to put out the fire? A Well, we generally fasten the hose on and line in.

Q And then turn the water on? A Yes.

Q You are only wasting time when you try to turn water on first, aren't you? A No, sir. Not always.

Q Why not always? Why isn't it always wasting time to turn the water on before you get the hose attached to the plug? A Well, in the winter time sometimes we save time by it.

Q You rarely have winter on the 30th of July, do you? A No, sir.

Q Let us, then, discard the winter and let us discard everything else and get down to brass tacks. When you were there that night why didn't you attach your hose to the plug as you ordinarily would do and turn the water on? A If you attach your hose to a fire hydrant and start to drive in you are liable to pull the couplings off and it would be no good. You have to wait until after you are lined in.

Q The captain—the chief—the first thing he told you was to line in? A Yes, sir.

Q Did you line in? A Yes.

Q Then when you lined in why didn't you attach your hose to a plug and turn on the plug? Why did you go around trying the hydrants before you hitched your— A Well, I told the men to wait until we got water.

Q Had you any doubt whether you were going to get water? A Well—

Q Had you doubt about that? A Around railroads sometimes you have different obstacles or different—

Q Different obstacles to getting water? A Yes.

Q What is there being around a railroad that makes it an obstacle to get water? A Well, they have the water turned off from the hydrants sometimes.

Q From the city hydrants? A From the—

Q From the city hydrants? A No, sir.

Q Where were you when you first heard the shells going off? A I was going to the fire.

Q Going to the fire? A Yes.

Q As you were driving down the yard? A Yes.

Q How long a drive is that; I mean in feet or miles, or whatever it is, from the time you first strike the yard until you got down to the North Pier, for instance? A I don't know.

Q A mile or a mile and a half? A I should judge about a mile.

Q A mile? A Yes.

Q How far were you off from the yard when you first began to hear the shells? A Well, when we were coming down over the hill, why we—in fact, we didn't know what it was—we heard reports and didn't know what it was.

Q Like somebody shooting off something? A Yes.

Q Where were you when you could first see the things up in the air? A See them coming along through the yard there.

Q When you got down there, it was a right lively battle going on, wasn't there? A They were going off pretty lively.

Q And any man that went down any nearer than you went went at the risk of his life, didn't he? A He was taking a big chance, yes.

Q Yes. That is all.

Re-direct examination by Mr. Stallman.

Q Captain, what kind of an alarm did you get? A Telephone call.

Mrs. Lottie Towne, direct.

Q Did you know what was on fire or what was burning when you got that alarm? A No, sir.

Q Did you know what apparatus to take? A Did I know what apparatus to take?

Q Yes. A There is an order on telephoning call or still alarm to respond with the tenders unless you are otherwise ordered.

Q That is all.

Re-cross examination by Mr. Garrison.

Q Those hydrants that you tried—those high-pressure hydrants—that is the one you were going to couple up to? A The high-pressure; yes, sir.

Q And you never did couple up to it, did you? A No, sir, and never—

Q You cannot tell us when the Jersey City fire engines did get there, can you? A No, sir.

Q Toward morning some time—I mean toward daybreak after the second explosion? A Yes.

Q And toward daybreak? A Yes, sir; after the second explosion, yes.

Q That is all.

ANDREW BAKER, sworn.

The Court. I think we will adjourn at this point until 2 o'clock, gentlemen.

RECESS.

AFTERNOON SESSION, 2 P. M.

MRS. LOTTIE TOWNE, sworn.

The Court. I want to say to you gentlemen that I had the jury come in. I thought they would be freer to talk about their convenience during the noon hour, so I might consult their convenience—

they come from out of town, and I wanted to do what I could to facilitate both their convenience and the progress of this trial; so they and I have arrived at a working arrangement that we will sit late some nights in the hope of getting through as soon as possible. That we are all agreed we want to do, and as soon as any one of the jurors feels that he has had enough of these performances for one day, or if he has an engagement or something of that kind and wants to get away, he is to notify me in that case, and I will stop at that time.

Mr. Garrison. What is the rule tonight?

The Court. We will sit tonight until 5 o'clock or so.

Mr. Garrison. I have to get my train.

The Court. I won't make anybody suffer any more than he has to.

Direct examination by Mr. Stallman.

Q Mrs. Towne, where do you live now? A 251 Canova street, Brooklyn.

Q You can talk just as you do to Zeke.

Mr. Garrison. Not exactly.

Q Did you live down at Black Tom at the time of the fire down there? A Yes, sir.

Q And your house, I believe, was on the pile stockade? A Yes, sir.

Q That is a bunch of piling out on the north side of Black Tom yard? A Well, I don't know if it is the north or not, but it was on the spiles.

Q On the spiles? A Yes.

Q Now, do you remember the fire that night? A Yes, sir.

Q And what was the first you knew of it? A Why, I heard shots.

Q Shots? A Yes, sir; like small report of a gun, and then it got larger until a large portion—as large—something, I don't know what, make a large report which shook the building.

Q Have you any idea what time that was? A No, sir. I didn't get up to see, because I was a little nervous at the time.

Q Well, I suppose you had retired before that, had you? A Yes, sir.

Q And what was the first that you saw of anything in the way of fire? A Well, when I came out, after I woke my husband up good, I came out on the porch part and then I looked at the car—

Q Just a minute, until we get this porch fixed. When you got out on your porch were you facing the yard then, or the Jersey Central? A Well, I don't know, there is only just—I don't know whether they call it—it is not the Jersey Central, it is the Lehigh Valley.

Q You were facing the Lehigh Valley? A Yes, sir.

Q The front of your house is where the porch is, I suppose? A Yes, sir.

Q And then you went out the front door, did you? A Yes, sir.

Q And then what did you see? A I seen the car all afire. The large ball—

Q Well, I just want to get the location of that car. As you stood in your front door or on your front porch, wherever it was, was the fire to your left-hand or directly in front of you or towards your right-hand? A Toward the right, just slanting, that manner.

Q Toward your right? A Yes, the right.

Q And could you tell us about how far away from your house it was? A Well, I couldn't exactly say, but I would judge about as long as this room, perhaps a little longer; I couldn't exactly say.

Mr. Garrison. What is the length of this room, your Honor?

Mrs. Lottie Towne, direct.

The Court. Sixty-five and a half feet.

By Mr. Stallman.

Q You say you saw a car burning? A Yes.

Q How much of a fire was it? A Well, it was all going up on the—up through the car—all going up and shooting out the whole four corners.

Q Now, was there anything at all between the car that was burning and where you were standing; I mean anything that would obstruct your view? A No, sir. I even noticed the ground. There wasn't even a light on the ground.

Q That is, there were tracks or bulkhead or something between you and this car, was there? A There was tracks, yes sir—this was the third track.

Q There were no cars on these tracks? That is what I want? A Yes, there is cars, but not between the place where we could see the fire; there was no cars, but there was one car in the second track.

Q There were cars that were nearer to you than the car that was burning? A Yes, sir.

Q But there was an opening in between those cars, so that you could see the car that was on fire? A Yes, sir.

Q Do I understand you right? I see. Can you tell us about how high the flames were? A Well, I really couldn't say, but it looked as though it was going to the sky and from the sky back—to the car again.

Q Could you tell us whether the car was on fire for its entire length, just one mass of flames, or was it burning different places? A No, sir; it was all in car—going up through the top of the car.

Q Could you see the sides of that car? A Yes, you could see the whole car plain.

Q Was it a box car— A Yes sir.

Q —or an open car? A No, sir; it was a box car, closed car.

Mrs. Lottie Towne, cross.

Q Closed box car? A Yes.

Q Could you tell us whether the sides of the car were on fire or not? A Well, I didn't notice that.

Q Could you tell us whether the ends were on fire? A Well, I didn't notice that. It is all going up through the top of the car.

Q Were you there at the time of the explosion? A No, sir.

Q Where had you gone? A I had took a rowboat—got in a rowboat with my children and husband; we rowed over to Taylor's Dredging Company.

Q Can you say how long it was from the time that you first discovered the fire until you went away? A No, sir; I could not.

Q Well, was it a matter of five minutes or a half hour? A Well, we got away just as soon as we possibly could.

Q I think that is all.

Cross examination by Mr. Garrison.

Q Mrs. Towne, there is a place on this map, Exhibit 1, called "Pile Stockade." Your house was on that piece of land right there, wasn't it? A Yes.

Q And when you came out on your front porch you say you looked off to your right—that is, off in this direction, isn't it? A Well, the house sat this way and you could look this way.

Q Well, I know, but don't you see that won't get on the stenographers' minutes to mean anything? Did your house face the railroad tracks? A Yes, sir.

Q And then when you came out you were looking right across straight toward the yard, weren't you? A Yes, sir.

Q Then you looked off to your right, didn't you? A Yes, sir.

Q And as I understand you there was nothing between you and the car that was on fire? A No, sir.

Mrs. Lottie Towne, cross.

Q You said there was one car on the track nearest you? A Second track, yes.

Q One car on the second track, and this car that was on fire was on the third track or the fourth track? A Yes, the third track.

Q On the third track? A Yes, sir.

Q One, two three. Can you tell us—there seem to be seven cars on that third track. Can you tell us which one of those seven was on fire? A The first one.

Q The very first one? A Yes, sir; the first one.

Q That would be "N. C. L. 10194."

Mr. Stallman. That is the first one to show the map.

Mr. Collins. He only identifies it.

Mr. Garrison. Do you dispute the map? You put it in evidence. I do not see what right you have to dispute it. You do not dispute that map, do you?

Mr. Stallman. No.

Q Well, now, you could see the sides of that car, couldn't you, Mrs. Towne? A Yes, I could see the one side.

Q Yes, see the side towards you? A Yes.

Q Could you say whether that was—was the fire coming out of that side? A Well, I didn't notice on the side. That was going up.

Q All through the top? A In the car, yes.

Q All going up through the top? A Yes.

Q Just as though it was a wooden stove and the wood was burning right out through the top? A Yes.

Q Shells were going off, of course? A Yes, all the time.

Q And you and your children—how many children were there? A Two.

Q Got right into a boat and rowed right away? A Yes.

John Gately, direct.

Q That is all you know about it? A Yes.
Q That is all.

JOHN GATELY, sworn.

Direct examination by Mr. Stallman.

Q Mr. Gately, you are a member of the Jersey City Fire Department? A Yes, sir.
Q What is your position? A Battalion chief.
Q Were you battalion chief on July 30, 1916? A Yes, sir.
Q Do you remember the fire at Black Tom? A Yes.
Q And you went down there, did you? A Yes.
Q What time did you get there? A Oh, I should judge about fifteen minutes after I got word.
Q What time did you get word? A I believe around 1 o'clock.
Q One o'clock? A Around 1 o'clock.
Q How did you get that word? A By a telephone message from headquarters.
Q Do you know whether there was a regular fire alarm turned in for that fire or not?

Mr. Garrison. Yes or no, whether you know.

A No.

Mr. Garrison. Do you know. He asked you. He asked you whether you knew. Do you know, or don't you?

A That there were an alarm sent in?

Mr. Garrison. That is what he asked you.

A All I know is I got a telephone message.

Mr. Garrison. He doesn't know.

Q Now, when you got down to Black Tom, Mr. Gately, just where did you go? A I went down within four or five hundred feet of the blaze.

Q What did you see burning? A Well, I saw some cars burning.

Q How did you get down into Black Tom? A Oh, drove down and went into the roadway.

Q Were you standing on the roadway when you saw the fire? A Oh, yes.

Q Was the fire directly in front of you, or on one hand or the other? A It was in front of me.

Q Was it any more to the left or the right than directly in front? A Faced the east from where I was standing.

Q I understand, but what I want to know is, whether it was directly in front of you or whether it was a little bit more to the left or a little bit more to the right? A Well, seemed to be a little towards the right, I think, from where I was standing.

Q Yes. Have you any idea what part of the road it was where you stood while watching this fire? A Only the road I went down in.

Q You don't know with reference to which one of the storehouses this place was where you stopped? A No.

Q How many cars did you say you saw on fire? A Well, I should judge five or six.

Q What was done, if you know, towards putting that fire out? A Well, we tried to get water.

Q Where? A Out of the hydrants.

Q Where were these hydrants? A Along the roadway—in off the roadway towards my right.

Q On the right-hand side of the roadway? A Well, from where I was standing—

Q Well, as you were standing there you were facing the fire, I understood you to say? A Yes.

Q And the hydrants that you went to were on the right-hand side of the roadway? A Yes.

Q What was the result? A Well, we couldn't get any water worth speaking about.

Q Do you know how many hydrants or attachments you went to to get water?

Mr. Garrison. He hasn't said he went to any. I object to that question.

Mr. Stallman. I will withdraw it.

Q How many hydrants were tried? A Well, two hydrants.

Mr. Garrison. If your Honor please, this witness has not shown he has any knowledge of how many hydrants were tried. He is being asked about certain things of his own knowledge.

(Question repeated by stenographer.)

The Court. I will sustain the objection to that, because it contains at least an implication that he has knowledge of something he has not yet been shown to have knowledge of at all.

Mr. Stallman. He has already testified he went down there and we tried to get water from the hydrants. That was two or three questions ago.

The Court. I understand that, but what I am ruling now, Mr. Stallman, and that is what I insist upon maintaining the ruling on, is this, that it has not yet appeared he knows of his own knowledge what hydrants were approached by a fireman other than himself, and consequently the answer to this question would in all probability involve hearsay, and I am not going to permit him to give evidence of that character.

Q Now, chief, when you say that you tried to get water, just what were the efforts that were made to get water?

Mr. Garrison. I want his to answer of his own knowledge.

The Court. Now, then, Chief Gately, this question only applies to and requests of you what you know of your own knowledge, what you actually saw done.

About anything else don't answer; just your own knowledge.

Q What did you see done towards getting water? A Well, we tried to get water, and we couldn't get any.

Mr. Garrison. I object and move to strike it out.

The Court. I will strike that out. That indicates a trial and not what he saw.

Q Now, when you say we tried to do something, who was it; who do you mean by "we"? A Why, the members of the Fire Department.

Q How many men did you have there? A Around twenty—twenty-four men.

Q Did you see any of those men do anything? A Yes.

Q What did you see them do? A Gave them orders for to try a hydrant or two there and see if they could get any water, and they couldn't get anything worth speaking about, and then I told them to connect the hose there.

Q Well, did they do that? A Yes, sir.

Q What was the result of that? A They didn't get any water until afterwards.

Mr. Garrison. I did not hear that.

(Answer repeated by stenographer.)

Q You said at first they did not get any to speak of. What did you get? A Well, just run out of the opening —might squirt about five or ten feet.

Q Then you say you got water afterwards. Where did you get it afterwards? A I believe the man who had charge of the pumps got his pumps working and gave us water afterwards.

Q How long after you got there was that? A Well, I should judge over an hour.

Q I see. What apparatus was there when you got there, or shortly after you got there? A Well, there was

a hose wagon when I arrived there, and I saw the condition of the fire, and I telephoned the Fire Headquarters and they sent me apparatus, and the chief followed afterwards—the chief of the department—when I telephoned in the chief sent other apparatuses and he came over himself.

Q Who was that? A Chief Boyle.

Mr. Garrison. Boyle, is that name?

The Witness. Boyle.

Q How near did you get to this fire? A Well, I should judge four or five hundred feet.

Q Did you see any efforts being made to put the fire out?

Mr. Garrison. When?

Mr. Stallman. After he got there?

Mr. Garrison. My objection now is directed to the fact that unless the witness' attention is directed to the time his testimony will not really help the jury or myself. He was asked whether he saw any efforts to put the fire out. I think it ought to be limited to either before the explosion or after the explosion. We are not interested in what happened the next morning, for instance, at 9 or 10 o'clock.

The Court. Why not put a time in? What is the use of working over a question when you can just as well say, "Chief, at such a time what did you see?"

Mr. Stallman. Then he would object to that as being leading.

Mr. Garrison. Wait until I do.

Q When you got there were any efforts being made to put the fire out? A We could not do anything.

Q Did you see anybody else except the Jersey City firemen at the time you got there doing anything toward putting out the fire? A No, sir.

Q Now, you say that you could not do anything? Why couldn't you do anything? A What would I do it with?

Q I did not ask you to ask me questions. Why didn't you do something? A I could not do anything.

Q Why not? A Because I could not get any water.

Q Were you there at the time of the explosion? A Yes, sir.

Q Did you see the explosion? A Well, I would not say that I saw it, but I felt it.

Q What effect did it have on you; what did you feel? A Well, it kind of made me feel dumb.

Q Is that all? Did you stay just where you were? A No; it carried me about ten or fifteen feet, I guess.

Q And were you injured in any way? A Well, I fell on my hunkers; did not hurt me much.

Q After that did you hear any other explosion? A Well, when I went away from the fire the second explosion took place while I was away from the fire after the first explosion.

Q How far away were you? A Well, I should judge I was 800 feet away from the fire then. I went inland about 400 feet after.

Q What were you doing at the time of the first explosion? A I was looking on at the fire.

Q How was the fire during that time up to the time of the explosion; how was it burning? A Well, it was burning up in the air.

Q Well, what was burning? A Well, there were some cars burning there—them shells going up.

Q Did you see anything at the time the second explosion occurred; anything happen that you saw?

Mr. Garrison. The second explosion?

Q The first explosion? A Did I see anything?

Q Yes. A Not till after it was over.

Q Well, what did you see; did the explosion do anything around there that you could see? Anything happen

as a result of it? A I did not see anything then when it happened, no; but afterwards.

Q How long afterwards did you see anything? A Well, after the second explosion I went down there and I saw one of the buildings afire.

Q Now, before the second explosion occurred, immediately after the first explosion occurred, didn't you see anything that had happened? A No; I went up the road.

Q You did not stay there? A No; I did not stay there; no.

Q Did you run? A Well, I walked as fast as I could.

Mr. Garrison. Discreet, at least.

The Witness. You couldn't blame me for that.

Mr. Stallman. Cross examine.

Cross examination by Mr. Garrison.

Q Chief, where were you stationed at that time? A In 5 truck on Communipaw avenue, near Monticello.

Q And what apparatus was there at 5 truck house? A A truck company.

Q What is a truck? A It carries ladders.

Q You do not have any fire engine? A No, sir.

Q Or any hose? A No, sir.

Q And you drove right down there and got there about fifteen minutes after you got the alarm? A I should judge about fifteen or twenty minutes.

Q Did—so you got there about 1:15 or 1:20. You said you first heard of the fire about one o'clock? A About that time.

Q How many men went down with you, Chief? A Five men on the truck—six men on the truck.

Q Then there were seven of you? A There was eight of us altogether; six men on the truck and my chauffeur and myself.

Q You were in a separate vehicle from the truck? A I was in my automobile.

Q Your own little automobile? A Yes.

Q So all eight of you got there at the same time from your truck house? A I might have got there a little ahead of them.

Q You practically all went down together? A Yes.

Q When you got there what other Jersey City paraphernalia—apparatus, was there? A The hose wagon, I believe, of 8 engine.

Q The hose wagon attached to 8 engine? The engine was not there? A No, sir.

Q How soon after you got there did some other Jersey City fire apparatus arrive? A Well, I should judge fifteen or twenty minutes afterwards.

Q Then what came? A Then came the engines and the hose wagons.

Q Within fifteen minutes after you got there? A After I reported.

Q I did not ask you a word about reporting? A I judge very nearly half an hour.

Q What I want to know is this: After you got to the fire what was the next Jersey City apparatus of any kind to arrive? A Well, there was 10 engine.

Q The engine? A Engine and hose wagon.

Q All right. Go ahead. A And 16 engine.

Q The engine? A Yes, sir.

Q All right. Well, what else? A And engine No. 8.

Q The engine itself? A Yes—the hose wagon was down before it.

Q Now, when you got there the only thing that was there was the hose wagon from 8? A Yes, sir.

Q Then you brought down this 5 truck? A No; 5 truck was sent with me.

Q That is what I say. Put it any way you please; 5 truck came down with you? A Yes.

Q And then the next thing to arrive was what of these you have mentioned? A 10 engine and 16 engine.

Q Did they come together? A Well, they got orders to leave. Of course—

Q I do not care about orders. I care about things that happened on the ground that you saw while you were there. A They came in afterwards.

Q Which one got there first? A 10 engine.

Q Did it get there before her hose cart or afterwards? A She might have been before it.

Q Before her hose cart. Now, what about 16 engine; when did she get there? A She got there shortly afterwards.

Q And did she have her hose cart there before or afterward? A After—she came with the engine.

Q The hose cart came with the engine? A Yes, sir.

Q When did 8 get there with respect to these other two; was she the last of the engines to come? A I believe she was.

Q Now, then, how long after you got there was it before the first Jersey City fire engine got there? A Well, it might be a half hour.

Q Well, it was after both explosions, wasn't it? A I believe it was.

Q Yes; and you got there about twenty minutes after one? A Yes, sir.

Q And the first explosion was not until eight or ten minutes after two, and the second explosion was not until half-past two. A I guess it was very nearly an hour.

Q Yes; a good deal nearer an hour and a half, wasn't it? A Of course, I did not figure up any time.

Q I am not trying to figure up time; I just want to get conditions. It was after the second explosion before any Jersey City fire engines got on the ground; is that not a fact? A I believe so.

Q Well, you know it is so? A Yes.

Q Now, when you first got there you found these five men of 8 hose wagon there, didn't you? A Yes, sir.

Q And they were not doing anything, were they? A No, sir.

Q You told them to stop standing around, to get a line in? A Yes, sir.

Q Did they hook their line up to a fire plug? A Yes, sir.

Q What kind of a plug? A One of the fire hydrants there.

Q And then they turned the water on after they had hooked up? A Yes, sir.

Q And did any water come out of the hose? A Not worth speaking about; no, sir.

Q Some did? A Some did.

Q That was the high pressure hydrant? A I do not know what pressure it was.

Q Don't you know the difference between the two classes of hydrants that were down there? A I did not pay any attention to the hydrants.

Q You did not pay any attention whatever to the hydrants? A No, sir.

Q You do not know what hydrants they hooked up to? A No, sir.

Q You do not know whether it was a city hydrant or a private hydrant? A No, sir.

Q You do not know whether it was salt water or fresh water? A No, I do not.

Q Now, you said these hydrants were along the right-hand side of the road as you came in; is that correct? A Down where I was.

Q Well, were they any other place than where you were? A I did not notice any other place.

Q And how far down that roadway did you get? Do you know where the pump house is? A No, I do not.

Q Don't you know where this pump house is? A I did not notice the pump house.

Q Did you notice these three blocks of stores? A I noticed a couple of warehouses there in the morning.

Q Well, that night, what did you notice that night when you got in there, so as to tell us where you were?

A All I noticed was the fire there and the cars afire; I did not notice any warehouses there at all.

Q Were you on this roadway, on the roadway that comes down here? A I guess there is only one roadway down there.

Q And you were on that? A Certainly, I was on that.

Q And when you got on that roadway did you not see these great storehouses here? A I did not pay any attention to them.

Q I ask you if you saw them? A No.

Q Did you see them? A Not at that time.

Q Did you see anything that night at that time excepting the burning cars? Did you see anything you can tell us about? A Well, I saw cars enough pulled out of there.

Q All right. Whereabouts did you see the hose cart of engine No. 8? A Why, within four or five hundred feet of the fire.

Q And you were about where that hose cart was, weren't you? A I was around that; yes.

Q You did not get nearer the fire than the hose cart, did you? A I did not get any nearer than within four or five hundred feet of it.

Q But before the first explosion you never went any nearer the fire than the hose cart was, did you? A No.

Q And you think that was within four or five hundred feet? A That is what I should judge.

Q You are not very sure of that? A No.

Q It may have been more than four or five hundred feet? A Yes.

Q And it could be eight hundred feet? A Yes.

Q And it could be two thousand feet? A Yes.

Q So you do not know? A I do not know exactly.

Q Not "exactly"; but you do not know within a very large range? A Only just in my own judgment.

Q What is your best judgment? A That I should judge I was four or five hundred feet away from the fire.

Q Now, the testimony is that the hose cart was right

opposite this pump house, and four or five hundred feet would land you between N and O. Now, do you mean to say that the fire was that near to you? A It was within five hundred feet of me.

Q Yes; do you say that? A That is what I should judge; yes.

Q Isn't your judgment very loose there? You really do not know, Chief; isn't that the truth? A Well, I ain't positive.

Q No. Where were you when you first heard these shells going off? A Coming down the roadway.

Q Driving in? A Yes.

Q You had an automobile? A Yes, sir.

Q And when did you first see the shells going off—see the things up in the air? A When I was standing in the roadway.

Q You were there with Hogan? A Yes, sir.

Q About 24 men were there before the first explosion—24 firemen? A Oh, no; they were after the explosion; the other apparatuses came with that amount of men.

Q How many firemen were there there before the first explosion? A Before the first explosion?

Mr. Garrison. Read the witness the question.

(Question repeated.)

A I do not think there were over eight of us.

Q There were eight in your party; there were six in the truck and your driver and yourself, that is eight. Now, were you all alone down there; anybody else there? A Yes, 8 engine tender.

Q Hogan's crew? A Yes; five or six men.

Q And you had six and a driver and yourself? A Yes, sir.

Q That is eight and six—fourteen; so that there were fourteen there, at least, weren't there? A Yes, sir.

Q Now, wasn't 16 tender there before the explosion—just the tender and not the engine? A I cannot recall whether she was.

Q And wasn't 10's tender there before the explosion? A I cannot recall that either.

Q How many Jersey City policemen did you see down there before the first explosion? A I did not notice any policemen until after the explosion.

Q You did not see any policemen until after the explosion? A I did not pay any attention to them.

Q Wasn't Klosterman standing right alongside of you at the time of the first explosion? A At the first?

Q You heard the question. A After I went up the road—

Mr. Garrison. Read the question.

(Question repeated.)

A I cannot recall that.

Q How many cars seemed to be on fire when you first got down there? A I should judge about five or six.

Q And others caught fire, didn't they? A I believe they did.

Q Well, you know they did? A Yes, sir.

Q And these shells kept going off? A Kept going up in the air.

Q They went other places than up in the air? A I believe so.

Q And those that went up came down? A I believe so.

Q And they hit a lot of things and made a lot of noise? A I believe so.

Q You know so? A I know they did not hit me.

Q And it was like a battle? A It certainly was.

Q Yes. Any man that went down where those shells were going off did so at the risk of his life? A You said it.

Q Yes, I have said it. Everybody says it, too. You said you telephoned to headquarters? A Yes.

Q And you said Chief Boyle got there? A He came; yes, sir.

Q Did he come before or after the explosions—both explosions? A He came, I believe, after the first explosion.

Q Between the first and second? A I think so.

Q Then there were not any fire engines there when you got there, were there? A He had already sent them on their way.

Mr. Garrison. I move that that be stricken out.

The Court. It will be stricken out.

Q There were not any fire engines there when Chief Boyle got there, if Chief Boyle got there when you said he did, between the two explosions; isn't that correct? A No.

Q That is not correct? A No engines.

Q There were no engines. Were you in charge of the fire—or in charge of the firemen that were there before Chief Boyle got there? A Yes, sir.

Q Was Chief Boyle the chief of the whole fire department at that time? A Yes, sir.

Q You were chief of a battalion? A Yes, sir.

Q How many engines were in your battalion? A Three engines—three engine companies and three trucks.

Q And three engine companies means three engines? A Yes, sir.

Q These trucks have chemical tanks on them, don't they? A They only have extinguishers—fire extinguishers.

Q Isn't that a chemical tank? A If you want to call it—

Q I do not want to call it anything. What do you call it? A Extinguishers on a truck.

Q What contains the stuff that puts the fire out? A A floo.

Mr. Garrison. What did he say?

The Stenographer. "A floo," meaning, I presume, a fluid.

Q What is around the fluid?

The Court. He said a flue. I suppose he means a pipe of some sort.

Q What do they put the chemicals in? A The thing that fights a fire.

The Court. He asks what those chemicals are in.

Q What are the chemicals in? A In the extinguisher.

Q What is it; a box? A No; it is a brass extinguisher.

Q What do you call it? A It is a fire extinguisher with a bottle in it.

Q What is it, a boiler? A It is round, just like this.

Q It is not that shape; it is like a tank, isn't it? A Not what they carry on a truck. On an engine it is different.

Q How much in quantity will this container hold? A Well, I should judge about ten or fifteen gallons on a truck.

Q Ten or fifteen gallons on each truck? A On each extinguisher.

Q Yes. Isn't it nearer sixty than ten? A They don't carry.

Q Isn't it nearer sixty gallons than ten? A Not on a fire truck, no.

Q I am asking you that very question? A On hose wagons it is.

Q Now, what were these, fire trucks or hose wagons? A We carried—

Q What were those things that went down up on No. 8, No. 10 and No. 16? A Oh, them was tanks.

Q Exactly. That is what I have been talking about all the time. A I thought you said the trucks.

Q I thought you and I were talking about what was down there. Now, how big is the tank on these hose wagons? A Well, I should judge they carry about sixty gallons, sixty to eighty gallons.

Q On each one? A Yes, sir.

Q And how do you get that stuff out of the tank onto a fire? A Why, they turn on a valve.

Q And it goes through a hose, doesn't it? A Yes, sir.

Q How much hose is there on those hose carts of the kind of hose that you attach to this chemical stuff? A I should judge 150 feet.

Q Well, wouldn't you judge it was 200 feet? A Well, it might be 200.

Q Yes. A But I don't think they run 200 feet.

Q Now, you say that after a while somebody got a pump working and they got water out of a hydrant; is that right? A Yes, sir.

Q Your pump was working all the time, wasn't it? A It wasn't working when we went there first.

Q How do you know? A Because we could get no water out of it.

Q I didn't ask you that. How do you know the pump wasn't working? You don't really know whether the pump was working or not? A Well—

Q Oh, answer my question. You don't know whether the pump was working or not, do you? A No, I do not.

Q No. When was it that you say you did get water out of the hydrant? Was it before the fire engines got there or not? A Afterwards.

Q It was after the fire engines got there. Well, did you use the pressure that was in the pipe to furnish the water or did you hook up the engine? A We put an engine to suction in the river.

Q Yes. When the fire engines got there you sucked water out of the bay. You didn't have any fire engine attached to any of the hose that you had attached to the hydrant? A No, sir.

Q You had some of your hose attached to a fire boat, a New York fire boat, didn't you? A I believe they did.

Q Yes, and that was before the Jersey City fire engines got there? A Well, I don't know.

Q You don't know? A No; we had our hose there before that time; they didn't come there until afterwards.

Q Where did you have your hose before they came there? A Why, on the wagon in the roadway.

Q Oh, I am not talking about when you had it upon wagons in the roadway. Wasn't the first water that you got, that you threw on that fire, gotten through a New York fire boat? A Well, I couldn't swear to that.

Q All right. But you did get water through a New York fire boat? A Oh, yes.

Q You got more water sucked up out of the bay by a Jersey City fire engine? A They got some water from the bay; yes, sir.

Q Yes, sucked up by a Jersey City fire engine? A Yes.

Q Is that right? A Yes.

Q Then you got some water out of the hydrants just by the pressure of the water that was in the pipes, in the hydrants, didn't you? A That is all.

Q What happened to you at the time of the first explosion? A Well, it carried me up the roadway.

Q Carried you up the roadway from where? A Alongside of the car tracks.

Q No, no. From where? A From where I was standing when the explosion occurred.

Q Where were you standing when the explosion took place? A Where was I?

Mr. Garrison. Read the witness the question.

Q (Repeated by the stenographer.) Where were you standing when the explosion took place? A About four or five hundred feet away from it.

Q Four or five hundred feet away from what? A From where the fire was.

Q Where was the fire?

Mr. Stallman. Oh, if the Court please, I object. I think that that line of examination is absurd, if I may be permitted to say so. This witness has testified half a dozen times that the fire was four or five hundred feet away from him and he was four or five hundred feet away from the fire. Now, if counsel pursues that thing it seems to me it is simply a waste of the Court's time and the jury's time, and the time of the rest of us.

The Court. I do not think that I quite see the point of your objection. If your objection is that he has asked the same question a number of times I will sustain it, because I think that is the same question that has been asked and answered a number of times, and always apparently ineffectually, the witness saying he does not know how far the fire was away; but he thinks it is four or five hundred feet.

Mr. Garrison. Does your Honor rule that I may not ask where the fire was?

The Court. No.

Mr. Garrison. That is the same question I asked.

The Court. I rule that you may not repeat a question after it has been asked and answered several times.

Mr. Garrison. I would like to have your Honor hear the question before you overrule it.

The Court. Well, read it.

Q (Repeated by the stenographer.) Where was the fire?

The Court. I have ruled that that is a question that has been asked and answered several times by this witness, and the repetition is altogether unnecessary. You may have your objection entered on the record.

John Gately, cross.

Q Now, you were blown in which direction? A Towards the west.

Q And when you picked yourself up—I suppose it blew you down, didn't it? A Yes, sir.

Q When you picked yourself up did you keep on going towards the west? A I certainly did.

Q And how far did you go before you stopped? A Well, I should judge six or eight hundred feet.

Q And where were you when you stopped? A Alongside of the patrol wagon.

Q And what was the patrol wagon alongside of? Where were you, in other words, in the yard? A In the roadway, in the yard.

Q All right. Whereabouts? A In the driveway.

Q Yes. Whereabouts? Near what? A Well, about six or eight hundred feet away from where I was before the explosion.

Q But the trouble is you do not tell us where you were. I do not want to impose upon the Court's good nature, but won't you tell us where you were? A Well, I was in the driveway.

Q Well, that driveway is a mile long. Now, where were you in the driveway? What part of the driveway were you in from the gate out to the North Pier? Where were you? A I was coming towards Jersey City.

Q I know you were coming towards Jersey City. Don't tell me in the driveway. Tell me what part of the driveway. Were you out to the gate? A Oh, no.

Q Then where were you? A I told you about six or eight hundred feet from where I was at the beginning.

Q But you don't tell me where you were at the beginning. A I cannot locate the place where I was.

Q Well, when you picked yourself up, how far were you from the fire? A Well, I should judge about twelve or fourteen or fifteen hundred feet from the fire.

Q Well, did you stay there at that place? A I stayed there until I got my bearing and then I went back to the fire.

Q How near to the fire did you get when you went back? A Well, from where I left.

Q (Repeated by the stenographer.) How near to the fire did you get when you went back? A Within 500 feet.

Q Went back to the same old place? A Same old place.

Q Were you there when the second explosion took place? A No; I was up the roadway when the second explosion took place.

Q I see. And the second explosion you were 800 feet from where you started? A Yes, sir.

Q And then you were there when the second explosion took place, and then you came back to the place that was 500 feet from the fire? A Exactly.

(Witness excused.)

LOUIS TREGGER, sworn.

Direct examination by Mr. Stallman.

Q Mr. Tregger, you are a Jersey City fireman? A Yes.

Q Were you a fireman at the time of the Black Tom explosion? A Yes, sir.

Q Did you go down there that night? A Yes, sir.

Q With whom? A Went down with captain of the 16 engine; 16 engine's tender.

Q What time did you get there? A Well, I should judge, around about 1:20, somewhere in that neighborhood; I could not just exactly say.

Q And where did you go? How far did you go? A Down to the last driveway, just below the last driveway; got between the storage buildings.

Q You mean the last cross driveway? A In between the buildings, in between the block of stores; just this side of the block of stores.

Q Can you tell us whether that was between Stores F and G, or between Stores M and N? A That last block; between the last block—

Q Now, you can tell me when I get to it. A No—right there; just below there; right on the driveway.

Mr. Garrison. Between N and M.

Q I have my finger on the driveway. A Well, right in there, just before you come to the—

Q Right about opposite Store N? A Yes, about in there.

Q When you got there what did you see? A Seen fire.

Q What was burning? A Looked to me to be cars.

Q And about how far away were you? A Down the end of the driveway off from the storehouses, the last storehouses.

Q Near the last storehouses? A Off the last storehouses.

Q About how far off would you say? A I couldn't say; maybe about 100 feet; 200 feet; I don't know, somewhere around there.

Q Between one hundred and two hundred feet. And as you stood in the driveway looking down towards this fire, was the fire more on one hand than on the other? A Well, it looked to me to be both sides; right around the left of the driveway.

Q On both sides of the driveway? A More so to the left.

Q How many cars were burning that you could see? A I couldn't say what number there was.

Q Then what did you do? A I didn't do anything outside of stand by the team of horses. I was driver of the tender.

Q And were you there at the time of the explosion? A Yes.

Q What did you hear or see at the time of the explosion? A Didn't see anything, only I heard the explosion.

Q Well, did the explosion result in anything that you could see? A No; not as I know, outside of the burning.

Q Well, did it have any effect on you? A I was started.

Q Did it have any effect upon you? A Well, yes. It kind of stunned me for the time being; the concussion of the explosion kind of stunned me, stunned me for the time being.

Q How about your horses? A My horses run away with me.

Q Did you notice whether anything happened to the buildings around there? A Well, it looked to me the last block of storage buildings was blown off.

Q Blown off of what? A Well, the building was partly down.

Q What is that? A The building—the building—the corner of the building.

The Court. Was blown off, he said.

The Witness. Was blown off.

Q You didn't see the explosion, though, as I understand it? A I don't know as anybody can see an explosion. No, I didn't see it. I felt it.

Q Were you facing the direction from which the explosion came? A I was facing, yes; I was facing.

Mr. Garrison. He did not say what he was facing.

Q Facing what? A Out towards the bay, on the roadway.

Q And all you heard was a noise; is that right? A I heard the explosion; yes, sir.

Q Did you see anything in the way of a flare or flash or anything of that kind? A Not at the first explosion.

Q Did you see any of the firemen doing anything to put the fire out? A I believe there was one company there; I believe it was 8 engine had a line attached to a hydrant, and there was water coming out of the line.

Q How long after you got there was that? A Only a short time.

Q How much water did you see coming out of there? A Well, I seen about eight or ten feet.

Q Did you see them working at any other hydrants? A Well, the company I was in at that time, why, we stretched in from a hydrant.

Q Just what do you mean by stretching in from a hydrant? A Playing a hose from the hydrant—take the hose and make—attach it to the hydrant; in fact, they don't attach their hose to the hydrant; they have a rope that you throw around the hydrant, and as the tender goes along the hose goes off the tender. We call it stretching in, or lining in.

Q Where did the tender go from that hydrant? A Right down to where that storage house was.

Q And where was that hydrant that you started from? A Well, I cannot give the exact location. I think it was on the right-hand side going down. Of course, I cannot see at all that when I am driving down.

Q How much hose did you lay out? A Couldn't say.

Q Could you tell us whether it was ten feet or one hundred feet, or anything of that kind. A Oh, it was more than that.

Q More than how much? A Well, I should judge in the neighborhood of about seven or eight hundred feet.

Q Seven or eight hundred feet. And was it all stretched out in one line? A All in one line.

Q And do you know how near to the fire you got with that hose? A I didn't take notice to what they were doing with the hose then, because I got down by my team; there were other men on the wagon. We were busy with the hose.

Q Could you tell whether there was water in that hose or not? A No, sir; I understand if there was—

Mr. Garrison. I object.

The Court. I will sustain the objection.

Q I don't want what you understand. I mean did you ascertain whether there was water in the hose? A I didn't see water in that line, no, sir; not at that time.

Q Did you see anybody there outside of the Jersey City firemen do anything towards putting out the fire? A Not that I can remember.

Mr. Stallman. Cross examine.

Cross examination by Mr. Garrison.

Q How many men went down with your tender? A I believe there was five on the tender went down.

Q And who was there when you got there in the way of Jersey City apparatus and Jersey City firemen? I don't mean their names. I just mean the— A The companies.

Q —companies. A Well, the chief's rig.

Q Chief Gately's rig? A Chief Gately's rig; 5 truck; 10 engine and 8 engine—tender. I don't mean the pumping engine.

Q But the tender of No. 8 and the tender of No. 10, and the truck No. 5; and your tender was the tender of engine 16? A Yes, sir.

Q And there weren't any fire engines there at all? A Not pumping engines.

Q There weren't any fire engines there at all, were there? A Not pumping engines.

Q What kind were there that were not pumping? A Tenders and a hook and ladder truck.

Q And you call those engines? A They are all fire engines.

Q All right. When we talk about fire engines with you we will call them pumping engines. A Yes, sir, steamer or gasoline pumping; we have two kinds of them.

Q All right. We will call them pumping engines. Now, when did you first see a Jersey City pumping engine down there? A About an hour after the—well, I don't know. I think it was about an hour after the first explosion.

Q About an hour after the first explosion? A Yes.

Q And the first explosion was about 2 o'clock in the morning? A Well, I couldn't exactly say what time it was.

Q Well, you tell us what time it was. A I don't know, because I couldn't say.

Q Well, you got down there about 1:20? A About 1:20.

Q And how long after you got there was it before the first explosion? A I couldn't say.

Q Well, can't you give us some idea at all? It was not right away, was it? A No, sir.

Q Quite a long time? A Well, I don't know; it may have been about twenty minutes or half an hour.

Q Or three-quarters of an hour or an hour? A I don't think it was as long as that.

Q Don't you know that the first explosion was between 2:08 and 2:10? A No, sir.

Q You don't know that? A No, sir.

Q You know when the second explosion was? A No, sir.

Q How long did you stay there? A I stayed there until about 10 or 11 o'clock the next day, Sunday morning.

Q Ten or 11 o'clock Sunday morning? A Around that time.

Q Yes. Did you see them get the water from the New York fire boat? A When we first—

Q Did you see them? Did you see them? A I seen later on.

Q I didn't ask you when, sir. I didn't say a word about time. I just asked you whether you saw them get water through the New York fire boat. Did you see that thing with your eyes? A I see them getting water.

Q From the New York fire— A But not when we first went off.

Mr. Garrison. I ask to have that stricken out.

The Court. Strike it out.

Q Just answer my question. You didn't get any water with the Jersey City pumping engine? A I seen them getting water with the Jersey City pumping engine.

Q Yes. A Yes.

Q You saw them getting water out of hydrants without any pumping whatever, just from the pressure that was in the pipes, didn't you? A That is the fresh-water pipe in the city main, one of their hydrants, not right away.

Q Well, you saw them later get water out of the other hydrants without any pumping—I mean just from the pressure that was in the pipe? A That was later on.

Q You saw it, didn't you? A Yes, later on, in the morning.

Q That is all I am talking about. You saw it, you saw it yourself? A Yes. I can explain what time I seen those things.

Q I didn't ask you what time yet. I will ask you that all in good time. Now, when you first got there the only water that you saw coming out of any hose was out of a hose attached to a fresh-water hydrant? A Yes, sir.

Q That is a Jersey City hydrant? A Yes, sir.

Q And at that time there was no pumping engine there at all, was there? A No, sir.

Q You say now there wasn't any pumping engine came up to that fire after you got there? A I assume about that. I couldn't exactly say.

Q How much hose did you have in your tender? A Two thousand feet.

Q Two thousand? A Or a thousand feet.

Q A thousand feet. And then you had a tank of chemicals, didn't you? A Yes, sir.

Q How much hose attached to the tank and chemical? A Well, some varies, but I guess—

Q No, but your tender? A Our tender? Well, I should say about a hundred and ninety feet.

Q A hundred and ninety feet. Now, when this explosion took place you had your back to the yard, didn't you? A I was standing right in front of the horses, yes.

Q I didn't ask you anything about the horses. I asked you if you didn't have your back to the yard. A Well, partly. I was on the side position.

Q When you were asked this question by Mr. Stallman in the Jersey City Plate Glass Company case, "Did you see any explosion at all?" your answer was, "My back was turned." Is that true; your back was turned? A I don't recall saying that.

Q Whether you recall it, isn't it true that your back was turned? A I couldn't say. I don't remember.

Q You don't remember which way you were? Was all the hose that was on your tender unraveled at the time of the first explosion? A No, sir.

Q Unraveled off the tender? A No, sir.

Q There was still some on the tender? A Yes.

Q Then, of course, there wasn't any water coming through the hose? A They detach—before they put water through a hose they detach the hose from the balance that is on the wagon, and put the nozzle on.

Q There was some still on the wagon? A Yes.

Q Some off the wagon? A Yes.

Q Where did they break it? A Oh, I couldn't say that, because I was on the seat.

Q How much of the hose, of your thousand feet, did they take off your wagon? Don't you know that? A I should judge about between seven and eight hundred feet.

Q What were the lengths? A Fifty-foot length.

Q Did they have a nozzle on the end of the hose that was not attached to the fire plug? A I couldn't say.

Q You really were paying attention to your team? A Yes.

Q You were not paying attention to what these other men were doing? A No, sir.

Louis Tregger, re-direct.

Q Your horses were pretty nervous with all these shells going off? A Yes, sir.

Q They were a handful—I mean the horses were? A Yes, sir.

Q The nearest you ever got to the fire, then, was when you were down about Storehouse N; is that correct? A That is, the first part of the evening; yes.

Q I mean before the explosions? A Yes, sir.

Q When your horses ran away they ran towards Jersey City? A Yes; they swung around.

Q How far were they before they stopped? A Oh, they were down before the last block of storage, or the first coming in.

Q Down around C D and E? A Around about A, isn't it?

Q Around A? A Around in there somewheres.

Q Is that where you were at the time of the first explosion? A No, no; that is where I was after the first explosion.

Q Your horses did not run away until the first explosion? A Didn't run away until the first explosion.

Q You say now the last block of stores, the corner was blown off. By the last block of stores I suppose you refer to the most easterly block, don't you? A Yes.

Q When you said the corner was blown off you mean the corner of R, or the corner of Q? A Right there, where your finger is. Looked to be that one there.

Q The corner of Q was blown off? A Yes.

Q That is the result of the first explosion? A Yes, sir.

Q That is all.

Re-direct examination by Mr. Stallman.

Q Just a minute. What time was it you got the water from the New York fire boat, if you remember? A The company I am attached to, we didn't have any line hooked up to New York—water line.

Q Some company down there got water that was being pumped by the New York fire boat out of the bay; is that right? A I assume so.

Q You don't know that? A No. I wasn't attached to any company—the company I was in did not attach their line to the New York fire boat line.

Q How long after you got there did you really get any real stream of water?

Mr. Garrison. He hasn't said he ever got any stream of water.

Q Your company? A The company? Well, about, I should judge, about three-quarters of an hour or an hour, in that neighborhood.

Q That is all.

Mr. Garrison. That is all.

BEN HANSON, sworn.

Direct examination by Mr. Stallman.

Q Mr. Hanson, what is your business? A I am a boatman.

Q Boatman? A Scowman.

Q Were you down to Black Tom at the time of the fire down there? A Yes, sir.

Q What boat were you on? A No. 20-Moran.

Q Moran, No. 20. Where was the Moran 20 that night? A Alongside of dock.

Q What dock? A The North Pier in Black Tom.

Q Which side of the North Pier? A On the south side.

Q The south side. And how far from the end of the North Pier were you? A Oh, about—about—not quite the scow length.

Q Not quite the scow length. What was the first you knew about the fire that night? A That was about three-quarter or 1 o'clock at night.

Ben Hanson, direct.

Mr. Garrison. Did you say three-quarters or 1 o'clock?

A Three-quarters past 12.

Q Were you asleep at the time? A No.

Q Did you see the fire? A Yes.

Q Where was it? A I took it when I saw it first—the old man from 59 that was alongside of me said, "Captain," he says, "there is a fire here." "Oh, no," I said, "that is only from the watchman's up there; they are burning from the mosquitoes." "No," he says, "that is fire." And then I turned out.

Q What did you see? A I saw the fire was coming up.

Q Where was it? A It was on the car.

Q Which direction from your boat? A About westerly.

Q How far westerly? A Oh, from the boat—about three or four hundred feet nearly.

Mr. Garrison. How much?

The Witness. Three or four hundred feet.

Q Do you know where the storehouses are down there at Black Tom? A The storehouses?

Q Yes. A Yes, sir.

Q Now, can you tell us where this fire was with reference to the storehouses? A That was inbreast of the storehouses—just inbreast of the storehouses—not quite the middle, but on the track inbreast of them.

Q In line, I guess he means.

By the Court.

Q What do you mean by "inbreast," Captain? What do you mean by "inbreast of"? A That is when it is close the houses, close to the track, that will be inbreast.

Q When it is across the track? A Yes; when they put across, right on the track and right to the house, then we say the car is inbreast of the house.

Ben Hanson, direct.

Q All right.

By Mr. Stallman.

Q Was the fire between you and the storehouses, or the other side of the storehouses? A No; it was not; it was right up from the boat—from my boat right westerly up on the track there, on the track and the north side of the house.

Q On the road side of the house?

Mr. Garrison. No, the north side.

A North side.

Q Come down here, Captain; maybe you can show me on the map. Here is the end of the storehouse? A Yes.

Q Where it is marked R? A R.

Q Here is the North Pier? A Yes.

Q There is the North Pier? You were laying here on the south side of the North Pier; is that right? A Yes.

Q Where was the fire, as near as you can tell? A It was up here.

Mr. Garrison. Opposite Zeke's house?

Mr. Stallman. Wait a minute. I am examining this witness, and I will try this case, and you try yours. You told me that a minute ago.

A Where is the watchman's shanty?

Q Zeke's, the nigger's? A No, the watchman's shanty?

Q The witness asks me where is the watchman's shanty. That is the colored man's house? A I was up here.

Mr. Smith. Mark it.

Mr. Garrison. Use it from the car.

Q Was it right in front of the colored man's house? A No, no; I couldn't say, exactly tell you if it was in

the front, because it was dark, but I could see it was up here from the watchman's shanty, was here

Q The watchman's shanty is near the bulkhead, isn't it? A No, it was a little bit—about there—and I see the fire just like this here.

Q The witness is drawing a line that runs down through car P. L. 536124. That is on the fifth track. All right, Captain, you may just take the stand. (Witness resumes seat.) At that time were there any shells coming out of the car? A No.

Q How long did you watch that fire before the shells came? A I ran—so soon as I saw the fire I ran off my boat and then ashore and then up on the watchman's shanty, and there is where I heard the fire, where I started from, and there was no shots and no sound, and not a soul could be seen.

Q How big was the fire when you saw it? A It was about three feet above the car then.

Q Could you tell how wide the fire was, how much was burning? A I couldn't tell, sir.

Q Now, at that time were there any cars on fire on the North Pier? A No, sir.

Q Well, after you ran up to the watchman's shanty, then what happened? A I went down on the dock for to see if anything could be saved, and I had a lot of stores on the boat, myself, too.

Q Do you know what time it was? A That was about little after one o'clock, about 1 o'clock.

Q How many cars were burning when you saw this fire? A One car.

Q Did you watch the fire very long? A No, sir.

Q After you saw this car on fire and ran back to your boat, did you see the fire after that? A No, I didn't look at the fire at all.

Q Where did you go after you ran back to your boat? A Out on the end of the dock and then on the pier, and then I saw three hands standing there on the boat ready

for to let go, and then they say, "Come on," and I said, "No, wait a minute."

Q Well, did you go away from there? A No, I just turned around, and then I get a sight of Lehigh Valley tug, and he comes right up to the bow of the scow.

Q Well, did the tug take you away? A Yes.

Q You didn't see any more of the fire after you left the watchman's shanty, then? A No.

Q Did you see any watchman there that night? A None.

Q Who was this man you were talking to that called your attention to the fire? A That was the captain of No. 59.

Q What is his name? A Well, I couldn't tell you sir; I didn't ask him.

Cross examination by Mr. Garrison.

Q Whose barge was the 59, Captain? A That is what I can't tell you.

Q Well, was she an Ackerman barge, or a Moran barge, or a Johnson barge? A I think it must be Johnson barge there.

Q Yes; and was she on the south side of the North Pier, too? A Yes.

Q Were you nearer the end of the pier, or was the 59 nearest the end of the pier? A It was laying alongside of No. 20, outside of her.

Q No. 20 was tied right up to the pier? A Yes.

Q And the 59 laid outside of it? A Yes.

Q Did any other boats lie between the 59 and the 20 and the bulkhead? A The schooner was lying inside.

Q The schooner in here? A Yes, the schooner behind No. 20.

Q The schooner was in here behind No. 20? A Yes.

Q Was she lying alongside of the dock, too? A Yes, sir.

Q Was she lying along the side of the dock? A Yes.

Ben Hanson, cross.

Q Was she the "Elsie"? A What?

Q Was she a boat called "The Elsie"? A No.

Q You mean you don't know, or that was not her name? A No, I don't know the name of her.

Q Now, there was some barges on the north side of the North Pier, weren't there? A Yes, sir.

Q Which one of those barges that laid nearest to the bulkhead? A 64.

Q Moran-64? A Yes, sir.

Q Then in front of her laid what? A Then comes—

Q The Frank, wasn't it? A Yes.

Q The Frank laid next, and then the Johnson-17 laid outside of her, didn't she? A That was the No. 17.

Q No. 17, and the Johnson-11 laid alongside of the Frank, outside of the Frank? A Yes.

Q So that we have Johnson-17, Frank—that was a Johnson boat, too, wasn't it? A Yes.

Q Johnson-11 and Moran-64. A Yes.

Q You were completely loaded—your boat? A Complete loaded.

Q And when had you completed your loading of your boat?

Mr. Stallman. I object to this; this is not cross examination.

A On Thursday.

Mr. Stallman. The only thing I examined this witness on was where the fire was and what he saw of it—not interested in this man's ladings on his boat.

The Court. What is the object of it?

Mr. Garrison. Idle curiosity, I assume.

The Court. If that is the real object I will sustain the objection.

Q You say that the captain of the 59 first spoke to you about this fire? A Yes.

Q You don't know his name? A No, sir.

Ben Hanson, cross.

Q Ever seen him before? A No, sir.

Q You said something about it being three-quarters past 12. That is just a guess, isn't it? A Yes.

Q It may have been 1 o'clock? A Yes.

Q Had you been off your boat that evening? A Yes.

Q Been away from the dock entirely—been away from Black Tom entirely? A No.

Q Been around Black Tom all the evening? A Yes.

Q Now, Mr. Stallman asked you if you saw any watchman. You saw some watchmen down there that evening? A Yes.

Q You mean you didn't see them right at the moment of the fire? A Yes.

Q You knew where these four watchmen were right up by the bulkhead, didn't you? A There was four watchmen by the day time.

Q And four at night, too—four at night, too, weren't there? A Yes, a while.

Q There were Lehigh Valley watchmen there, too, were there? A Yes, sir.

Q How soon after you saw the fire was it you heard these shells begin to go off? A There wasn't shells going off before it went off the whole business just like lightning.

Q There weren't any shells going off before the great, big explosion at all; is that right? A That is right.

Q That is what you say? A Yes.

Q Now, you said that you saw this car afire; it was up three feet above the top of the car, you said? A Yes, sir.

Q Was that when you were up on top of the watchmen's shanty that you saw that? A Yes.

Q And the watchmen's shanty was a few feet back here from the edge of the bulkhead, wasn't it? A Yes, sir.

Q Was it nearer Zeke's house or nearer the bulkhead? A No; nearer the dock.

Q Nearest the bulkhead? A Nearest the pier.

Q You got up on top of this? A Yes.

Q And did you look over towards the storehouses? A Yes, sir.

Q Was the fire nearer the storehouses or nearer to you? A No—

Q Do you understand the question? When you were up on top of the watchman's shanty here, you were looking at the fire? A Yes.

Q Now, was the fire nearer to you or to the storehouses? A Nearer to the storehouses.

Q Nearer to the storehouses than it was to you? A Yes.

Q Now, then, you told Mr. Stallman that it was in here; you do not think where I have my pencil is nearer that storehouse than where you were, do you? A I do not seem to understand that part so very well.

Q Go back to the witness stand. A It seems to me that it was just abreast of the house.

Q The storehouse? A Yes.

Q Now, as a matter of fact, Captain, wasn't it right out in front of Zeke's house? You know where Zeke, the colored man, lived? A Yes.

Q Wasn't it right out in front of Zeke's house? A No, it wasn't so far off.

Q It wasn't so far off from Zeke's house? A No.

Q Pretty near in front of it? A Yes.

Q A little off to the right; if you stood at Zeke's house it would be a little off to the right? A Yes; that is it.

Q One car was on fire there? A Yes.

Q Could you see the whole side of the car that was toward you? A No.

Q Could you see the top of it? A Yes; I saw the top of the car and I saw the flames coming up.

Q Right up through the top of the car? A Yes.

Q The fire was inside of the car? A Yes.

Mr. Stallman. I object to that.

Mr. Garrison. He can say it on cross examination.

Mr. Stallman. I do not think he can put words in the witness' mouth unless it has been testified to on direct

The Court. I will permit it.

(Question and answer repeated.)

Q When you saw this fire coming up out of the top of the car, nothing was going on, no shells were going off? A No.

Q It was just one car that was afire? A Yes.

Q And it was quite a long ways from there down to the beginning of the North Pier? A Yes.

Q Why did you run down to your boat to see if anything could be saved; what made you think your boat was in any danger? A (No answer.)

(Question repeated.)

Q Do you understand my question? A I was looking for a tug.

Q Do you understand my question? A Yes, sir.

Q You said that after you got up on the watchman's shanty— A Yes.

Q —and saw this car afire, with about three feet of flame coming from the top of the car— A Yes.

Q —you ran down to your boat to see if anything could be saved? A Yes.

Q That is what you said? A Yes.

Q What were you afraid of? The fire was way off from your boat then? A Well, it was all ammunition all around me.

Q But there was not any ammunition going off, you say? A Not at that time, but I know as soon as the heat gets on it it will go.

Q You knew that? A Yes, I was quite sure of that.

Q There was ammunition all around there? A Yes.

Q Your boat had ammunition on it? A Yes.

Ben Hanson, cross.

Q So you knew that was a very dangerous place, didn't you? A I was quite sure it was.

Q You knew that was a very dangerous place, didn't you? A Yes.

The Court. He has answered; he said he was quite sure it was.

Mr. Garrison. I wanted to be sure he answered it.

Q Now, you did get a tow; the Lehigh Valley sent a tug in there to pull you out, didn't they? A Yes.

Mr. Garrison. That is all.

By the Court.

Q Captain, did you hear the explosion, or an explosion? Did you hear an explosion? A Did I hear an explosion? I heard the—

Q What did you hear? Tell us. A It went up in one second.

Q All right; now, what we want to find out is, where were you? A I was on the boat.

Q And where was the boat? A Six feet from the dock.

Q And how long had you cast off from the dock before you heard the explosion? A About ten minutes—ten or a quarter; that is all.

Q Up to that time had you heard any shooting at all? A No.

Q You had not? A No.

By Mr. Garrison.

Q Did you hear any shooting after the big explosion? A No.

Q You never heard any explosion down there at all? A No.

Q You never heard any shooting at all? A No.

Q You just heard the big explosion? A Yes.

Q You heard that? A Yes.

Q Are you deaf? A Not much.

Q Not much deaf? A No; I am not so very much deaf, but you can understand that I am not up to your language as I am up to my own.

Q I am not bothering you about your language, Captain. I think you are doing very well. But we want to find out what happened. Now, you did not hear any shells going off at all, did you, at any time? A No.

Q All you heard was the big explosion? A Yes.

Q And did you hear the second big explosion? A I was close to it.

Q You were close to the explosion? A Yes.

Q You heard that? A Yes.

Re-direct examination by Mr. Stallman.

Q Now, Captain, when you saw this fire did you see any fireworks? A No.

Q Did you see any shells going up in the air? A No.

Q And exploding like skyrockets? A No.

Q When you saw this car burning was there anything shooting up in the air? A No, sir.

Mr. Garrison. He is leading outrageously.

The Court. I agree with you, but I do not rule except upon objections.

Q At any time after you first saw the fire did you see any shells or ammunition going up in the air? A No.

Re-cross examination by Mr. Garrison.

Q Captain, as far as you know, there was only one fire down there in that yard that night? A Yes.

Mr. Garrison. That is all.

ANDREW BAKER, recalled.

Direct examination by Mr. Stallman.

Q Mr. Baker, what is your business? A Lighter captain.

Q Were you down at Black Tom at the time of the explosion and fire in July, 1916? A Yes, sir.

Q What boat did you have that time? A Frank.

Q Where was your boat lying? A It was laying on the north side of the North Pier, about the middle of the dock.

Q You mean about the middle of the North Pier? A Yes, sir; on the north side.

Q And did you know of a fire there that night? A Yes.

Q What was the first you knew of it? A That the captain of Johnson-17 came in the cabin door and told me there was a fire up in the yard and I had better get out.

Q Do you know what time that was? A I did not look at the time that night, no.

Q Then, did you go and see? A Yes, right away.

Q Where was the fire? A It was up, it seemed to me, to be on the track leading up from the north side of the North Pier, just up somewhere around Zeke's shanty, a little bit up further.

Q Up a little way from Zeke's shanty? A Yes.

Q What was burning? A That I did not know, but it was a small flame; it seems to me to be in a car.

Q You could see the smoke and flame, but you could not see what was burning; is that what you mean? A Yes.

Q How big was the fire? A I should say it must have been about eight or ten feet long and about eight or ten feet high.

Q Was there any fire on the North Pier at that time? A No, not except the lights on the different boats.

Q But was there any car on fire on the North Pier? A No.

Q Did you watch that fire? A Yes; that is to say, I walked up the dock and I looked at it from the other side.

Q From the other side of what? A Of whatever track that car was on; I was over by the float bridge, and that was on the other side.

Q You walked down to the float bridge; that is on the bulkhead end, isn't it? A Yes.

Q And could you see the fire from the float bridge? A Yes; I could see it. Not as well as I could see it from the north side.

Q How long did you stay around there? A I was around the boat just shortly before the second explosion; I do not really know how long it was.

Q Were you there at the time of the first explosion? A Yes, sir.

Q Where were you? A I stood on the off-shore side, the north side of my boat, looking at the fire.

Q And where did this explosion come from? A It appears to me that that came from just about where the fire started, or near to it.

Q And at the time of that explosion, was there any fire on the North Pier? A None.

Q What was the result of the explosion? A (No answer.)

Q Did the explosion do anything to you? A Yes.

Q What? A I got kicked up in the air from one side of the boat to the other.

Q Well, you finally landed down on your boat again, didn't you? A Yes, just on the other side.

Q On the other side of your boat? A Yes.

Q Were you hurt? A No.

Q Did you stay there under the second explosion? A No; I went right in my cabin and stayed right under a beam in the top of the cabin there, where I knew there

was a beam—mostly something coming down through the air.

Q Well, what was that? A Well, whatever it was; I don't know; it sounded to me to be dirt and hard pieces of something. It was dark.

Q You mean you felt something raining on the cabin roof? A Yes.

Q Was that shortly after the first explosion? A Yes, shortly after the first explosion.

Q Where were you at the time of the second explosion? A I was overboard in the water, about 150 feet away in the water from the boat.

Q After the first explosion did you swim away from there? A I were around the dock and the boats somewhere in between them two explosions.

Q How did you get into the water? A Jumped into it.

Q Did you hear the second explosion? A Yes, sir.

Q Could you tell us whether it was any different than the first explosion—whether there was any difference between the first explosion and the second explosion? A No, I could not say any different in it.

Q When you saw the fire did you see any shells exploding—the first time? A Yes—I did not see them; I heard them.

Q Well, did you see any shells going up in the air? A No.

Q But you could hear shots; is that what you mean? A Just small shots cracking off in succession.

Mr. Stallman. You may cross examine. I do not think of anything more I want to ask him.

Cross examination by Mr. Garrison.

Q You were the captain of the Frank? A Yes.

Q It was a Johnson lighter? A It was operated by Johnson Lighterage to my best knowledge.

Q And the Johnson-17 laid between you and the end of the pier on that night? A Yes.

Q The Johnson-11 laid outside of you? A Yes.

Q And the Moran-64 laid between you and the dock? A There was a Moran scow, but the number I have forgotten; I am sure of that. It might be a different number.

Q Yes. There was a Moran scow, but you do not knew the number? A No, sir.

Q The captain of the 17 first told you there was a fire? A Yes, sir.

Q And then you went up on the dock? A Yes.

Q Went off your boat? A No; we went over on the 11 and called two men out from 11 first.

Q But you went on the dock? A Yes.

Q Did you stand upon the dock alongside of your boat, or walk down toward the yard? A The two of us walked on the dock to the telephone, where we were going to get a tug.

Q But when you came up on the dock you could see the fire, couldn't you? A Yes, I could.

Q Just say yes or no; you could see the fire? A Yes.

Q Then you walked down toward the fire, didn't you? A Yes, sir.

Q And you were going to get a telephone? A Yes.

Q But the house was locked, or something? A Yes.

Q Now, when you walked down there you said that the car seemed to be on the track leading out to the North Pier; is that what you mean? A Yes.

Q It may have been, of course, one or two tracks further in? A Yes.

Q It was about opposite Zeke's shanty? A Yes.

Q And it was one car as far as you could see? A Yes.

Q And how high was the flame above the top of the car? A I could not see the car at that distance.

Q You could just see the flame? A Just see the size of the flame; yes.

Andrew Baker, cross.

Q How high did the flame seem to be above the cars that were between you and the car that was burning? A The size of the flame, I should say, was about eight feet long and and ten feet high, I think.

Q Was the ten feet above the top of the cars? That is what I am trying to get at. A I could not see the bottom of the cars. I could not tell whether it was in the bottom or on the top, really.

Q But when you saw the fire, it seemed to be going ten feet in the air; you saw ten feet of flame? A The height of it, all told.

Q I mean you could see the whole ten feet? A Yes.

Q Then you walked down to the float bridges? A Yes.

Q Did you walk down to the float bridge that is nearest to the South Pier or to the float bridge that is nearest to the North Pier? A I think just between the two of them.

Q And then you looked over towards the fire again? A Yes, sir.

Q But you couldn't see it so well there? A No, sir.

Q There were more cars in between you, weren't there? A Yes, sir.

Q Then you stood around your boat, you say, until shortly before the second explosion? A Yes, sir.

Q Did your boat get cast loose from the pier before the first explosion? A Yes; yes, sir; just shortly before.

Q And the Johnson 17 got loose from the pier before the first explosion? A Yes, sir.

Q And the Johnson 17 herself blew about for a while, didn't she? A I don't know what became of her; I never saw her since.

Q Oh, you never saw her after that night? A No.

Q You saw her on fire, didn't you, that night? A No, I didn't see it.

Q Didn't you? A No.

Q When you were in the water, did you see her on fire? When you were in the water didn't you see her on fire? A Yes, sir; I saw 17 on fire.

Q Yes; you did see 17 on fire, didn't you? A Yes; I did.

Q Now, you stayed on your boat during the first explosion? A Yes, sir.

Q Were you down in your cabin? A No, sir; I was on the outside corner.

Q What? A I was standing on the outside corner looking up at the fire, corner on my boat, outside corner leading most northward.

Q If you faced towards the Statue of Liberty were you on the left-hand side of your boat or on the right-hand side of your boat? A Then I was on the right-hand side of the boat.

Q When you faced toward the Statue of Liberty you were standing on the right-hand side of your boat? A No.

Q On the left-hand side of your boat? A Yes.

Q Yes. Then you were nearer the shore, weren't you? A Nearest this way; yes.

Q Well, let us get that straight. Now, the time of the first explosion the Frank had gotten away from this place here, hadn't she, to near the end of the pier? A Little bit; yes.

Q And you were standing on the shore side; north side of your boat? A Yes, sir.

Q At the time of the first explosion? A Yes, sir.

Q And you were blown from the north side of your boat to the south side of your boat? A Yes, sir.

Q You were blown in this direction, weren't you? A Yes, sir.

Q I thought you said you were down in the cabin and things were raining down on top of the cabin. When was that? A When I found myself on the—where I was blown to, I picked up my dog and walked in the cabin and ran where there was a strong beam.

Q Your dog was with you? A Yes, sir.

Q Did he "yump" overboard, too? A No.

Q Now, Captain, after this first explosion, you went down in your cabin? A Yes, sir.

Q And then you heard things falling on top of your boat? A Yes, sir.

Q You came up and was your boat afire? A No, sir.

Q And then you jumped overboard? A It was quite some time afterward.

Q But you did jump over? A Yes, sir.

Q And swam ashore? A Yes, sir.

Q And it was while you were in the water swimming ashore that the second explosion went off? A Yes, sir.

Q And they were both about the same kind of explosions, weren't they? A Yes, sir; it seems to me.

Mr. Garrison. That is all.

Mr. Stallman. That is all.

(Witness excused.)

CHRIS CASTERSON, sworn.

Direct examination by Mr. Stallman.

Q Captain Casterson, were you down at Black Tom at the time of the fire? A Yes, sir.

Q What boat did you have? A No. 11.

Q Johnson 11? A Yes, sir; No. 11.

Q Where were you tied up? A Well, I was tied up on the north side of the North Pier.

Q Whereabouts? A Just about one boat length from the end.

Q From the easterly end? A Yes, from the east—from the outside end, yes; from the out end.

Q What was the first that you knew about this fire? A The captain of Johnson 17 came and woke me up about I—should think it was about 1 o'clock at night—and told me there was fire on the dock.

Q And did you get up? A I got up right away and saw the fire.

Chris Casterson, direct.

Q Where was it burning? A It was right up about the car track, about 800 feet up from the boat, I should guess; it was about 800 feet.

Q At that time was there any fire on the North Pier? A No, sir.

Q Any cars burning anywheres near the North Pier? A Along about that.

Q And that was about 800 feet up? A Yes.

Q How big a fire was it when you first saw it? A Oh, I should think about six or eight hundred feet in circumference.

Q And about how high were the flames? A Oh, blew up six or eight feet.

Q And at that time were there any shells going off that you know of? A Yes, sir; they started to go then.

Q They started to go then? A Yes, sir.

Q Did you stay there until the explosion happened? A Yes, sir.

Q Where did that explosion come from? A I cannot tell.

Q Well, was it anywheres near you? A Well, it was just—yes, it looked to me to be right up at the dock there by the pier.

Q How near to this fire? A Just in line with the fire; it was just in line with the fire; it seemed to me—I stayed on my boat.

Q Well, what direction was this explosion from your boat? A Just in the direction of the car track, right up to the car track.

Q Well, what direction was the fire from you? A Right at the car track, right the same way.

Q Well, you mean—you know the direction. Was it north or west or east? A Oh, sure.

Q What direction was it? A West, I should think it is; them piers is running east and west.

Q You mean the fire was west? A West from me; yes.

Q West from you. And what direction was the explosion from you? A West.

Q Well, can you give us an idea, Captain, about how far away from your boat this explosion happened?

Mr. Garrison. He said he did not know where it was. How can he tell anything about it?

A I don't know; I cannot tell.

Q Well, can you tell us how near the fire this explosion came from?

Mr. Garrison. I object to that, if your Honor please.

The Court.—I will permit the question. He can answer it yes or no; whether he can tell.

A No; I cannot tell anything about that.

Mr. Garrison. Your Honor applied a rule before.

The Court. If you want the reason I applied the rule before, it was that I rather gathered that the iteration was becoming altogether too frequent, and the object of it too pointed in your case. In this case that does not exist.

Q What was the effect of the first explosion, Captain? A It blowed me right overboard, off the boat.

Q Well, did you climb back on your boat? A No; I swam over to another boat.

Q What boat was that? A I think that was one of the Moran boats.

Q Was that also on the north side of the North Pier? A That was just on the end.

Q On the end of the North Pier? A Yes; they were all drifting then. All the lines parted in the explosion.

Q You mean all the lines of these scows? A Yes; they got loose in the explosion and drifted around.

Q Where were you at the time of the second explosion? A Then I was on board the Lehigh Valley boat Slatington.

Q And where was she at the time of the explosion?

Chris Casterson, cross.

Mr. Garrison. Which explosion?

Mr. Stallman. Second explosion.

A She was around there trying to pick us up, take the boats out.

Q Were you in the water at the time of the second explosion? A No; I was just picked up. I was on board the Slatington.

Q Do you know when the second explosion happened? A No; I don't know anything about it.

Q Now, do you know what time it was after the second —after the first explosion happened? A I should imagine something around two o'clock; but I had no time on me, so I could not say.

Mr. Stallman. Cross examine.

Cross examination by Mr. Garrison.

Q You were the captain of Johnson No. 11? A Johnson No. 11, sir.

Q You laid outside of the Frank, didn't you? A Yes, sir.

Q And the 17 laid between the Frank and the end of the dock? A Just behind me; yes.

Q Just in front of you, don't you mean? A I was aside of her; I was side of the Frank.

Q You were side of the Frank? A I was alongside of the Frank.

Q And the 17 was right in front of the Frank going out to the end of the North Pier? A Yes, sir.

Q And the Moran was right back of the Frank going shoreward? A Going inshore.

Mr. Collins. Moran 64.

Q You were asleep, were you, when the captain of the 17 came and awakened you? A Yes, sir.

Q What was the name of the captain of the Johnson 17? A I am not sure.

Q Well, give us your best memory? A I think Captain "Baker" knows better than I do.

Q Tell us the best you can remember? A I don't know his name at all.

Q You don't know his name. Had your boat got cast loose before the first explosion? A Yes, sir; I slapped up to another pier for to try to save her.

Q And the boats on that side had gotten loose—at least the Frank and the Johnson 17 had been cast loose before the first explosion, hadn't they? A No; I don't know.

Q You don't know? A No.

Q You know the Frank had been, don't you? A No, sir; I don't know.

Q Well, you know the 11 had been; you know that you cast her loose after you were blown away from the Frank by the first explosion? A Yes, sir. I "walked" her down toward the end of the pier.

Q You had gotten your boat down to the end of the pier? A Yes, sir.

Q You were trying to get away? A Yes, sir.

Q When the captain of the 17 came and spoke to you you were asleep in your cabin, and your boat was then tied up alongside of the Frank? A Yes.

Q Did you stay on your boat all the time or did you go ashore? A No; I was not on the dock, sir.

Q You were not on the dock at all? A No, sir.

Q And where were you on your boat when you first saw this fire? A I was standing right forward.

Q Right on the forward part of the boat? A On the forward part of the boat; yes.

Q And your boat was pointed north? A Yes.

Q And your boat was pointed north? A Pointed north.

Q And you were standing on the north end of your boat? A Yes.

Q And you think the fire was about how far from where you stood? A About 800 feet, I should think.

Chris Casterson, cross.

Q And did it seem to be down about opposite Zeke's shanty? A Yes, just past the shanty like.

Q Yes, "just past the shanty like"; and you could see it was a car? A Yes; I could see it was a car.

Q One car? A Yes, sir.

Q And the flame coming out of the top of that? A Yes, sir.

Q And the shells going off? A Yes, sir.

Q And the shells going off? A Yes, sir; the shells going off right along.

Q Now, you stayed on your boat, as I understand it, until after the first explosion? A Yes.

Q And at that time was your boat lying at the—across the north end of the North Pier? A She was just hanging on one line towards the end of the pier.

Q And that was right here at this east end of the North Pier? A Yes, sir.

Q Her one line ashore? A Yes, sir; one line ashore.

Q She swung around this way? A Yes, sir.

Q Where was the 17 then? A She was just on the corner, just right there—

Q Just up here? A Yes, sir.

Q North of the North Pier. Now, which explosion was it that blew you overboard? A The first explosion.

Q And where were you on your boat at the time of the second explosion; before you were blown forward? A I was standing on the forward end of the boat.

Q Well, you see, now, I do not know which way your bow was pointing. When you got swung around on the east end of the North Pier, which way was your bow pointing? A I could hardly remember that.

Q You don't remember which way your bow was pointing? A She was hanging on one line and she could swing all around; though I could not remember exactly.

Q You do not remember which way she happened to be swinging? A No.

Q Now, which way were you blown? A I was blown right off from the pier like.

Q North or south? A North.

Q You were blown from the south to the north or from the north to the south? A Rather from the west to the east.

Q You were blown from the west to the east? A Yes, sir.

Q You mean you were blown this way? A Yes, sir.

Q Were you blown north of that side of the pier or this side of the pier? A No; I was blown right out.

Q This way? A Yes, sir.

Q Right straight out? A Right straight out.

Q And then you got aboard the Slatington? A Yes.

Q And you were aboard the Slatington and some distance away when the second explosion took place? A Yes, sir.

(Witness excused.)

FRANK A. CAMPBELL, sworn.

Direct examination by Mr. Stallman.

Q Mr. Campbell, you are a member of the fire department? A Yes, sir.

Q Of Jersey City? A Yes, sir.

Q Were you a member of the fire department at the time of the explosion at Black Tom? A Yes, sir.

Q Were you down there that night? A Yes, sir.

Q Do you know, Mr. Campbell, of your own knowledge, anything about the water supply down there that night? A Well, as far as I know about it, why, they tried to get water and couldn't.

Mr. Garrison. No, he means of your own knowledge.

The Witness. Sir?

Mr. Garrison. Of your own knowledge he is asking you.

The Witness. Of my own knowledge, yes, sir. The pumps were tried, or the hydrants, I mean. I saw them myself.

Q Well, now, just tell us what you saw, Mr. Campbell? A Well, I seen the No. 8 engine lining from the hydrant, right at the crossing.

Q Right where? A Right at the crossing, at the pump house; they couldn't get any water.

Q What did they do? A What did they do?

Q Yes. A Why, they hooked up to the hydrant, stretched in towards the fire; the hydrant so far as I could see was tried then and they couldn't get any water.

Q What else was done, so far as you could see anything? A Well, they were told to pick up then. There is no use of standing there when they couldn't do anything. So far as I could see they put the hose back on the wagon and pulled right beside the crossing again.

Q I see. Did you stay there until the explosion occurred? A Yes, sir; I was there both explosions.

Q Did you see both explosions? A Well, I seen it and heard it.

Q When you got there what was burning? A Well, as far as I could see from where I was, why, it looked to me to be freight cars.

Q And where were you standing when you made that observation? A Right at the crossing, at the pump house road, as I should call it.

Q Well, you know where the roadway runs down into Black Tom? A Yes, sir.

Q Were you anywheres near that roadway? A Right on the roadway; yes, sir.

Q Right on the roadway? A Yes, sir.

Q And where were those burned cars? A Right directly in front of the roadway, east; that is towards the water end, river end.

Q And could you tell whether there was more than one car or more than one string of cars on fire? A I could not say that, either.

Q Do you know how far away the fire was? A About 400 feet from the crossing where I was.

Q That is your judgment? A Yes, sir.

Q What did you see of the first explosion? How did it strike you from what you could see? A Why, a quick flare-up and a loud report and then we were covered—I was, at least, with gravel and every little piece of thing fell down on top of me and I was knocked down on the ground.

Q Where did that flare-up come from? A Directly in front of—of me.

Q Where with reference to the place where the car was burning? A Why, about 40 to 50 feet beyond the first store house, I should judge.

Q What was this 40 or 50 feet beyond the first store house? A What was it?

Q Yes. What was it you saw? A On the car tracks, railway tracks.

Q Well, what was it you saw 40 to 50 feet beyond the store house? A Why, a flare-up, a fire.

Q Oh! And where was that with reference to where the cars were burning? A Where was it with reference to where the cars was burning?

Q Yes. How near from the place where you saw this flare-up to the place where you saw the cars on fire? A Why, practically identical spot.

Q The identical spot? A Pretty much, yes.

Q Then you say you stayed there until the second explosion? A Yes, we were there the first and second explosion.

Q Was there any difference in the intensity of the two explosions? A Yes, sir, quite a difference. The first one was the largest; the second was about half as strong.

Q About half as strong. Where were you at the time of the second explosion? A Where were I?

Q Yes. A I had just got off my tender. I had gone down and got my team between the first and second explosion.

Q Were you anywheres near that pump house? A Near the pump house? I stood beside the roadway, yes.

Mr. Garrison. Is that the second explosion?

A Yes.

By Mr. Stallman.

Q Did you observe where the second explosion came from? A I could not say that. I had had enough of the first.

Mr. Garrison. Sort of lost your taste for them?

Mr. Stallman. Wait a minute.

Q Were you there when Chief Gately got there? A Yes.

Q Or did you come after he did? A I was before him.

Q You were there before him? A Yes.

Q Where was your station? A Halladay street, Lafayette.

Q Which company? A 10 Engine Company.

Q When did 10 engine get there, the engine itself? A It was not the engine, just the tender. You asked me did the engine get there. I told you 10 Engine Company.

Q Did 10 engine come there later? A Yes, later.

Q Do you remember when? A Well, pretty near an hour after the second explosion, I should judge.

Q Do you remember whether there was water there at that time? A Not as I recollect.

Cross examination by Mr. Garrison.

Q What was your position in July of 1916 with the Jersey City Fire Department, Mr. Campbell? A Hose man and extra driver.

Q And attached to what? A 10 Engine Company.

Q How many other men besides yourself were attached to 10 Engine Company that morning, or that night? A That went there, you mean, with the company?

Q Yes. A Five men all told.

Q Including the driver? A Four and myself.

Q The driver and four men? A Driver and four men, yes.

Q And when you got there what Jersey City fire apparatus did you already find there? A 8 engine—or 8 engine tender.

Q You mean the tender of 8 engine? A Yes.

Q And before the first explosion did the tender of 16 engine get there? A Yes. They were all there before the explosion.

Q So that before the explosion there was your tender and number 8 tender and number 16 tender and number 5 truck? A Yes, sir.

Q And Chief Gately? A Yes.

Q And Lieutenant Hogan?

Mr. Collins. Battalion chief.

A Battalion Chief Gately?

Mr. Garrison. Oh, no, Hogan is the captain.

Mr. Collins. I got it mixed. You said lieutenant.

Mr. Garrison. He was a lieutenant at that time.

Q How many men were attached to the truck, truck five? A I couldn't say. I don't know how many was there when the truck came in.

Q Now you say that you saw a line of hose stretched by number 8 engine tender from a hydrant; is that right? A Yes, sir.

Q Was that attached to a high pressure hydrant or fresh water hydrant? A High pressure hydrant.

Q Did they get any water? A No, sir.

Q Now, you actually saw the hose physically attached to the high pressure hydrant, did you? Yes or no? A Well, no.

Q No; that is what I thought. A Not exactly, no.

Q You didn't see any hose attached to the high pressure hydrant, did you? A No, I didn't. It was lined in from the hose—

Q You were mistaken when you told Mr. Stallman you saw number 8 engine run a line of hose in from the high pressure hydrant? A No, I ain't mistaken. I didn't say it was hooked up, did I?

Q Yes, you said it was hooked up? A I didn't. I said they were lined in.

The Court. Are you quite sure about that?

Mr. Garrison. Yes. You said it was hooked up and they couldn't get any water.

The Court. Better get the stenographer.

(The stenographer repeated the testimony as follows: "Well, now, just tell us what you saw, Mr. Campbell? A Well, I seen the number eight engine lining from the hydrant right at the crossing. Q Right where? A Right at the crossing at the pump house; they couldn't get any water. Q What did they do? A What did they do? Q Yes. A Why, they hooked up to the hydrant, stretched in toward the fire—")

The Court. All right. That is all we want.

Q You said on your direct examination that number 8 had a line stretched in and hooked up to a hydrant, didn't you? A Yes, sir.

Q And they couldn't get any water? A Yes.

Q You are mistaken in that? A I meant they lined in from the hydrant.

Q Now, you were mistaken in stating that they were hooked up? You are mistaken in saying that number 8 tender had a line of hose stretched in from a hydrant, and that the water did not go through that hose? A Yes.

Q You are mistaken in that? A I am mistaken in that, yes.

Q That is all. As a matter of fact, they did not have any hose hooked up to that high pressure hydrant? A No; they tried the hydrant, but they didn't line in from it.

Q You were mistaken? A Yes.

Q You were standing, as I understand it, on the roadway right practically opposite the pump house, weren't you? A Yes.

Q You say that you thought the fire was about four hundred feet eastward of you? A Yes, sir.

Q Now it was down below the storehouse, wasn't it, this N storehouse? A Yes, below that.

Q If that was more than eight hundred feet, then you were mistaken about the four hundred feet? If from opposite the pump house down below Storehouse R is more than four hundred feet and nearer eight hundred feet, then you are mistaken in your four hundred feet estimate? A What?

Q Just answer? A I judge four hundred feet from the first row of storehouses. That is from the river end.

Q Just give me that answer. You mean you thought the fire was four hundred feet below the storehouses? A No, sir; from the crossing where the pump house was, that was the first row of storehouses, wasn't it, from the river end?

Q I don't know what you mean. There is the first row of storehouses from the end of the pier? A Yes; that is what I mean.

Frank A. Campbell, cross.

Q Here is the second row. You were between the first and the second row? A Yes. Is this the river end you are on now?

Q This is the pier, this is the yard you come down from Jersey City? A Yes.

Q You stopped here opposite the pump house?

Mr. Stallman. The witness asked you if that was the river end.

Q You came down from Jersey City? A Yes.

Q You got here opposite the pump house? A Is that pump house between the first and second?

Q Yes, between the first and second. A That is from the land end?

Q Yes. A I mean the first storehouse from the river end.

Q You got down here between M and N? A Yes, the first crossing.

Q You got between M and N? A Yes.

Q You thought the fire was about four hundred feet from there? A Yes, sir.

Q You said it was right down off the Storehouse R.

Mr. Stallman. I object, because the storehouse is not four hundred feet.

Mr. Garrison. Let the witness say so.

Mr. Stallman. I object to the counsel making statements that are erroneous in fact.

The Court. Well, the objection is overruled for the obvious reason that he has not made any statement that is false in fact. He is asking him whether that is what he means.

Q Was the fire just below Storehouse R? A In my judgment that is where I saw it, yes.

Q How far below Storehouse R did you say the fire was? A I should say about forty or fifty feet, that is as near as I can go, that is a guess.

Q I am not trying to pin you down to a few feet. Could you see the big tank? Did you see this great big tank here below Storehouse R, that is the water tank? A No, I did not.

Q But you saw the storehouse? A I saw the storehouse, yes.

Q Where were you at the time of the second explosion? A At the time of the second explosion? I had went down for my tender. I told you one of our drivers—

Q Where were you? A In the yard.

Q Where were you? Where, between M and N, or back between F and G, or where were you? A At the crossing behind the pump where we had to stand.

Q Yes. A lot of you firemen were lined up in this road right opposite the pump house? A I think that is what they call it, the pump house crossing.

Q Here is the pump house, here is the pump house and there is the crossing, crossing the railroad tracks, and there is the roadway? A Yes.

Q You were standing in the roadway? A No, not between the first and second explosions, but I was back further—well, on the roadway, yes, sir, but not on the crossing.

Q You were back from the crossing towards Jersey City? A Yes, sir.

Q How far back? A About one hundred feet back from the pump crossing.

Q Then you were at least, according to where you locate the fire, you were all the distance of the second block of stores, and all the distance of the third block of stores, and then fifty feet more? A Well, that was the first question you asked me, when we were standing at the crossing how far was I from the fire at that time.

Q I understand, without any relevance to anything else you have said, that you place the fire now about fifty feet beyond Store R; is that correct? A Forty or fifty feet, I said. That is a guess.

Q When the first explosion took place you were forty or fifty feet and all the block of storehouses from R to N, all the storehouses from N to G and back from the road further landward—further away from Storehouse F? A That was before the first explosion.

Q At the time of the first explosion? A At the time of the first explosion I was down beside the first storehouse.

Q Down here? A On that crossing there; yes, sir.

Q You were down here at the time of the first explosion? A Yes. Isn't that the pump crossing?

Q No; here is the pump crossing. The pump crossing is between the first and second line of stores, not between the second and third. Weren't you near Lieutenant Hogan and Chief Gately? A Yes, sir.

Q And Policeman Clostermann? A Yes.

Q You were all lined up along this road right across from the pump house, a little back of it? A A little back of it.

Q Now, where were you at the time of the second explosion? A The second explosion I had just got off the wheel of 10 engine tender.

Q That don't tell me at all where you were. A I had went down for my team between the first and second explosion as the driver who was driving 10 engine tender was taken to the hospital.

Q Now you are telling me a whole lot of other incidents. Where were you on the ground? A Just got off the wagon and held on to the line as the second explosion went off.

Q Where did you remain? A On the main roadway.

Q Whereabouts? A About a hundred feet from the crossing of the pump crossing.

Q Still further up towards Jersey City? A Still further up, yes.

Q Were you facing the North Pier, or were you facing Jersey City? A Facing towards Jersey City, the oil yard.

Q Then you had not any idea at all where the second explosion took place? A I don't know, sir.

Q Then when you said that you had had enough of the first, that was not the reason why you did not know where the second came from, but because you had your back turned. You were asked by Mr. Stallman where the second explosion came from and you said, "I don't know; I had enough of the first." The reason was not because you had had enough of the first, but because your back was turned; isn't that the fact? A My back was not turned.

Q You were facing towards Jersey City? A I was facing towards Jersey City with the tender, yes, not myself; I was standing beside the wheel.

Q Standing beside the wheel? A Yes.

Q Your tender was here? A No, sir; up further.

Q Here is your pump house crossing, or pump crossing; your tender was further up towards Jersey City? A Yes; about half ways.

Q Half way this block of stores? A Is that a block of stores there?

Q Yes. A Little above the stores; right there about.

Q About here? A Yes.

Q About opposite the word that is there, "Office"? A Yes.

Q Your horses were faced toward the way in? A Yes, sir.

Q And the back of your horses was towards the yard? A The back of the horses were toward the oil yard.

Q Which way were you standing? A I was standing this way.

Q With the yard out here or with the yard where the Judge is? A I pulled up as the—

Q With the yard where the Judge is? A Yes.

Q So your back was toward the yard? A I was sideways; I was not turned backwards, turned sideways.

Q With your face turned away from the yard, towards your horses? A Towards my wagon, yes.

Q Your face was towards your horses? A Not toward the horses, toward my wagon; I was standing sideways, this way.

Q You were looking north? A I was looking north, yes.

Q So you were not looking in any direction at all where you could have seen the explosion? A No, sir; I was not.

Q When did the Jersey City pumping engines get there? A Well, of course I couldn't exactly say.

Q Yes. When did you first see anybody get any water to put on this fire? A I couldn't say that, either.

Q Didn't you say on your direct examination it was about one hour after the second explosion? A We got water, I said—

Q Didn't you say on your direct examination it was about one hour after the second explosion? A About an hour after the second explosion.

Q Yes. That is the first time you saw any water thrown on this fire, isn't it? A Yes.

Q By anybody? A Yes.

Q And that water came from what source? A Why, it was from the New York fire tug.

Q And at that time the Jersey City fire engines had not got there yet, had they; their pumping engines? A Yes, they were there.

Q But they were not pumping any water? A I do not know; I cannot answer that question.

Q Did you ever see any Jersey City pumping engines pump any water down there at that fire? A No, sir.

Q How long did you stay after the second explosion? A I was there until six o'clock the next night.

Q All through Sunday? A Up to six Sunday night.

Q Up to that time you did not see any Jersey City pumping engines pump any water that was thrown on this fire? A In the afternoon I did. I was down on watch line all day.

Q You have just told me you did not. Do you want to now say that you did see a Jersey City pumping engine pump some water on that fire? A I thought you meant then, that time.

Mr. Garrison. Read my question.

(Question repeated.)

Q Do you want to say that? A I do; yes, sir.

Q When did you first see any Jersey City pumping engine pump any water on the fire? A Well, as far as the time, I could say about 6 o'clock. I was on watch line down below; when I passed up there.

Q Six in the morning or the evening? A Six in the morning.

Q And the first explosion was about what time? A I do not exactly know.

Q About 2 o'clock or a little after? A I cannot just say.

Q And the second explosion was about 2? A I cannot say exactly.

Q How do you fix 6 o'clock exactly? A Because I was on watch line and went down to get a bite to eat and I seen the engines pumping.

Q Now, I understand you to say, Mr. Campbell, that you saw the first explosion; is that right? A Yes.

Q Is that right? A Yes.

Q You did see the first explosion? A Well, only just a flare-up, as I said.

Q But you did see it? A I saw it, I said; yes.

Q Did you see the first explosion or didn't you see it? A Yes, I did.

Q Now, in the case of the New Jersey Fidelity & Plate Glass Insurance Company against the Lehigh Valley Railroad Company tried here in this court before Judge Speer and a jury, with Mr. Stallman on the other side, you were a witness, weren't you? A Yes.

Q And do you recall that in that examination—page 240—Mr. Stallman asked you this question: "Q Did you see the second explosion?" And you answered, "A No, sir, I did not. Q Did you see the first? A No, sir; I did not." Do you remember testifying to that? A I do not recall it.

Q Now, you say Chief Gately was there when you got there? A He got there after I got there.

Q He got there after you got there? A Yes.

Q These shells were going off, werent' they? A Yes. sir.

Q It was like a battle, wasn't it? A Pretty much; yes.

Q They hit the sides of those storage buildings and made a great noise? A A few of them did; yes, sir.

Q Yes; rang like a bell when they hit the sides of the storage houses? A As I recollect it.

Q Do you remember Chief Gately saying anything to you about the necessity of fire engines being there—pumping engines? A I do not recall it; it is so long ago.

Q Do you remember Gately saying to you, or saying in your presence, "We can't do anything here unless we get the engines and put them on suction"? A I do not recall that.

Q Don't you recall that you so testified in the case of the New Jersey Fidelity & Plate Glass Insurance Company against the Lehigh Valley Railroad Company? A No, sir; I do not recollect it.

Q I will read you the question and answer and want to ask you whether or not that question was put to you and this answer was not made by you—page 238, Mr. Stallman's question—"Q Down here? A Down as far as the crossing, while the Chief then telephoned for the

engine. He said, 'We can't do anything here unless we immediately get the engines and put them on suction.'" Now, do you remember making that answer? A I do not recall it.

Mr. Garrison. That is all.

Re-direct examination by Mr. Stallman.

Q Mr. Campbell, when you were telling about this hose line and hydrants, did they let out any hose before they tried the hydrant, or afterwards? A They generally, as a rule, have a rope around the—

Q Did they let the hose out before they tried the hydrant, or afterwards? A Line in from the pump—that is, stretch a rope around the hydrant and then pull toward the fire. The hose then keeps on falling off along the ground. That is lining in.

Q How far did they take the hose towards the fire? A I do not know exactly how far they took it off. I think it was eight or nine lengths they pulled off; I am not positively sure.

Q Well, did you see them do that? A Yes, I did. That was on 10 engine.

Q That is No. 10's tender? A No. 10 tender, too; yes.

Q And was it No. 10's crew that took this hose down toward the fire? A Not the first.

Q Well, who did, first? A 8 engine first.

Q What did 8 engine do? A Threw a rope around the hydrant; then the wagon kept on going down for I don't know how many feet; then they pulled off quite a lot of hose and put a nozzle onto it.

Q Where was this? A Right in the main runway.

Q Where did they put the nozzle? A On the end of the hose, the last length of hose; you know, they detach it.

Q Was that the end near to you or the end down where the wagon was? A The end down near the wagon, where the wagon was.

Q Then what did they do? A Then they find out if they can get water, and if they cannot get any water it is useless to go on. They could not get any water, so they did not go on.

Q When No. 8's tender laid this hose down toward the fire and they put the nozzle on, did you see that crew doing anything to the hydrant? A I saw a young fellow work the hydrant, but I did not see him get any water.

Q Was there a man named Connell there? A He was on 10 engine.

Q He was on 10 engine? A Yes.

Q How long after No. 8 ran the hose down toward the fire was it that 10's crew did anything of that kind? A After the second explosion 10 crew lined in.

Q Did you then see No. 10's crew trying to get water? A Yes.

Q What did they do with regard to the hose?

Mr. Garrison. I think it must be immaterial what they did after the second explosion.

Mr. Stallman. I think it is perfectly proper to show what the conditions were then.

Mr. Garrison. I will withdraw the objection to save time.

Q You say that No. 8 sent a line down there. What did No. 10's crew do with regard to getting a hose down there? A They lined in exactly the same as No. 8 engine. The only difference was they hooked right away; they put their connections right on the outlet of the hydrant.

Q Did you see them doing anything with the valves of the hydrant? A Yes, they tried the hydrant.

Q Do you know whether any water came out of the hydrant at that time? A No, sir.

Q What do you mean, that you do not know? A I did not see any.

Q Well, if there had water come out of that hydrant and gone into the hose, could you have seen it? A Yes, I could have seen it, yes.

Q How far did 10 engine send its hose down toward the fire? A About eight or nine lengths, I think it was, they took off.

Q And those are 50 foot lengths, are they? A 50 foot, yes.

Q Did you see them get any water at all while you were there anywhere around the pump house? A No, sir, not to my recollection I didn't.

Q Do you know a Corey three-way valve when you see it? A Yes.

Q Did you see anything like that down there? A Yes, that is what was down there.

Q Did you see any firemen try to open a Corey three-way valve? A Yes.

Q Do you know whether they got any water or not? A As far as I know I did not see them.

Q Did you see any water? A No, sir.

Q Now, one other thing. After you got there did you see any switching being done by switching engines? A Yes, sir, I did.

Q How soon after you got there? A They were working when we got down there.

Q They were working when you got down there? A Yes, one train—one engine.

Q Can you tell the jury whether or not that switch engine was working or passing between the fire and the point where you were? A It was, yes, sir.

Q Was it passing over a point where the hose would have to be laid if the hose were stretched down to the fire? A Yes, sir.

Mr. Garrison. I object to his leading the witness.

The Court. I will sustain the objection.

Frank A. Campbell, re-cross.

Q Well, if you had a hose stretched from the point where you were down to the fire, tell us whether or not it would be laid across this track where they were switching or drilling these freight cars? A Yes, it would have to be laid right across the tracks.

Mr. Garrison. That is subject to the same objection.

Q Did you see anybody else there making any effort to put out this fire except the Jersey City firemen?

Mr. Garrison. I object to that. I do not think he ought to characterize what the Jersey City firemen did as an effort.

Mr. Smith. Why not?

Mr. Garrison. I cannot see that they made an effort.

Mr. Smith. That is for the jury to say.

Mr. Garrison. Yes, that is for the jury to say.

Mr. Stallman. I will reframe the question.

Q Did you see anybody doing anything there except the Jersey City firemen that looked to you like an effort to put out the fire? A No, sir, I do not recall seeing anybody.

Re-cross examination by Mr. Garrison.

Q He asked you whether you had ever seen a Corey three-way hydrant, and you said that is what was down there. A Yes.

Q Were all the hydrants down there Corey three-way hydrants? A I could not exactly say that. What I saw was.

Q You saw city hydrants down there? A No, sir.

Q You did not see any city hydrants at all? A No, sir.

Q Nothing but the company's hydrants? A That is all I recollect seeing.

Q Why, don't you know that No. 8 engine's tender was hooked up to a city hydrant and got water out of it? A One of the engines—

Q Don't you know that fact I have just mentioned to you? A No, sir.

Q What hose did that little bit of water come out of that you saw? It is a fact, isn't it, that you did see some water coming out of some hose? A Yes, I recollect that.

Q Yes. Now, what hose was that? A I ain't positively sure whether it was 8 or 10, to tell you the truth.

Q But you did see some hose hooked up to a hydrant and some water coming out of the hose? A Yes.

Q Before the first explosion?

(No answer.)

(Question repeated.)

A Before the first explosion.

Q So that you were mistaken when you told Mr. Stallman that no water was obtained at all out of any of these hydrants before the first explosion? A I am mistaken, because it was either 8 or 10; I do not know that positive.

Q Don't you recall testifying here not long ago in the case of Bethlehem Steel Company against the Lehigh Valley Railroad Company? A Yes, sir.

Q You remember you were on the witness stand and you remember I examined you, don't you? A Yes, sir.

Q Do you remember my asking you and you giving this answer—page 611: "Q Didn't you see any city hydrant down there that night? A There was one there, yes; there was one there—fresh water hydrant. Q That is a city hydrant? A Yes." Don't you remember that? A I think I recollect the one you refer to now.

Q Yes; so that you were mistaken a minute ago when you said you did not know whether there were any city hydrants down there or not? A I did not say I did not know that there was a city hydrant.

Q You testified in the Bethlehem case there was a city hydrant? A Yes.

Q What has happened between three or four weeks ago and today that has changed your mind about it? A Why, nothing has changed my mind.

Q Now, was this hose that No. 10 company tender had hitched up to a high pressure hydrant or a fresh water hydrant? A Now, I ain't positive—I am pretty sure that was a three-way Corey hydrant.

Q Well, that does not help us; that does not tell us whether it was a high pressure or city— A High pressure?

Q High pressure. A Yes, sir.

Q You got some water, didn't you? A I ain't positive. I think I said we got some water; I ain't positive.

Q You got some water; then the Chief ordered you back—and then the Chief ordered you back, didn't he? A I think the Chief told us to pick up, or something like that.

Q And he said, "We would only burn if we stayed there"; isn't that what the Chief told you? A I don't recall that.

Q What? A I don't recall that.

Q Don't you recall testifying in the case of the New Jersey Fidelity & Plate Glass Insurance Company against the Lehigh Valley Railroad Company and in answer to a question on cross examination by me making this answer: "Q That had been pulled out to you? A They were pulled out, yes, and they tried this pump, and they got about the same quantity of water. So the Chief ordered us back, and he said we would only burn if we stayed there." Don't you remember making that answer? A I think I did.

Q Yes; and that was the truth, wasn't it? A Yes, sir.

Ebenezer W. Closterman, direct.

Mr. Garrison. That is all.

Mr. Stallman. That is all, Mr. Campbell.

(Witness excused.)

Trial adjourned to 10 o'clock A. M., Tuesday, June 24th, 1919.

THIRD DAY.

ROYAL INDEMNITY COMPANY (and eleven other plaintiffs)

vs.

LEHIGH VALLEY RAILROAD CO., *et als.*

Transcript of shorthand notes of testimony taken on the 24th day of June, 1919, before Judge Speer and a jury.

Trial resumed on Tuesday, June 24th, 1919, at 10 o'clock A. M.

EBENEZER W. CLOSTERMAN, sworn.

Direct examination by Mr. Stallman.

Q Lieutenant, you are a member of the Jersey City Police Department? A I am.

Q And were you a member of the police on the 30th of July, 1916? A I was.

Q Do you recall the Black Tom fire and explosion? A I do.

Q Did you go down there that morning? A I did.

Q And what time did you get there, if you know? A About 1:35 A. M.

Q That was Sunday morning? A Sunday morning; yes, sir.

Q Now, what the first you knew that there was any trouble down at Black Tom that morning? A About ten minutes after one I see a reflection off toward Brooklyn which looked like a fire, and I made an effort to find out where it was located. I asked several policemen there. They did not know. Then I went to a firebox and I did not hear any alarm going in, so I went to a police signal box and telephoned to the Fifth Precinct and was informed by Sergeant Sheehan that he was sending his reserves and wagon to a still alarm fire at Black Tom. I told him instead of a still alarm it looked to me like a very large fire, for him to have the wagon pick me up at Claremont and Ocean avenue, which they did.

Q Did you look at your watch about that time? A Well, no, I did not; not at that time. I had left an officer just prior to that; that is how I fixed the time; I left Patrolman Reilly at Claremont and Ocean avenue about 1 o'clock.

Q And you think you got down there about half-past one? A Well, no; it was 1:35. I looked at my watch just before the wagon got to me; that was between 30 and 35 then.

Q When you got down to Black Tom just where did you go? A The wagon stopped at the driveway leading into Pier 5.

Q The driveway leading to Pier 5? A That is, from the roadway into Pier 5. We got out there. I had six—seven men in the wagon. Of course, one was a chauffeur, and there were three from posts and three from reserve. We got out of the wagon and I placed my six men across the island, forming fire lines; that is, to keep any one from interfering with the firemen. After doing that I went down closer to the fire to see the extent of it and see if it was necessary for me to keep the three men that were there from post.

Q When you say you went closer to the fire, do you know how close you got? A I went probably a hundred feet below the driveway.

Q Beyond the end of the driveway? A No; what I call the driveway is leading from the roadway—the planking part leading from the roadway into Pier 5. The roadway is dirt, and the driveway is the one that leads from the roadway into Pier 5.

Q That is a branch roadway? A A plank roadway, yes; across the tracks; and I went about one hundred feet east of that towards the fire.

Q I see. A And my reason for that was to see if I had any occasion to keep the three men that were there from post. I see from the extent of the fire that it was going to be an all night fire.

Q What was burning? A About fifty freight cars were burning. They were on four or five tracks.

Q And where with reference to a straight line running east from where you were standing? A They were directly in front of me, east from where I was standing.

Q Can you tell us whether these fifty freight cars were all on one track or on several tracks? A They were on four or five tracks. There were four or five rows of cars burning.

Q Do you recall, Lieutenant, whether or not the bulk of this fire seemed to be more to the north or more to the south of the roadway? A Well, it looked to me—of course, the driveway does not run all the way down to where the fire was—it looked to me it would be right at the end of the driveway, and, of course, there is not, I think, over four or five or six tracks there; I do not know how many, but there is not much over that.

Q I see. How far were you away from the fire at that time? A I should judge—that is when we arrived there?

Q When you say you went down about 100 feet east of the driveway? A Yes.

Q I think you said that was about as far as you went? A Yes.

Q And then you saw these 50 cars burning. How far away was that from the place where the cars were burning? A Probably 500 feet. You see the cars were burning right off the end of the eastern warehouse—that is, the end of the warehouse that I could see was about in the center of the fire. Half of it was above and half of it below the eastern end.

Q At that time was there any explosion of munitions? A Well, shells were flying in the air—shells—in fact, it looked to me what I consider like a naval battle. Each car seemed to be shooting shells at all the others, and all the others, apparently, were shooting at them. That is the impression I got of it.

Q Now, did you stay right in that one place any length of time? A At that time, after placing my men I went to what we call the police shed, or watchman's shed; it is just in front of Pier 5 on the driveway.

Q Out on the driveway— A No; that is the roadway you are pointing to. The driveway leads into Pier 5.

Q One of these buildings? A The one nearest the bulkhead, right at the bulkhead—that is what we call the police shed, what we understand is the Lehigh Valley watchman's shanty.

Q That would be the little building at the southeast corner of Store F? A I don't know the Store F, but right where your finger was, that is it. There is a telephone there, and from there I telephoned to the Fifth Precinct, notifying Sergeant Sheehan I would keep the men there and for him to make provisions to cover their posts.

Q Then where did you go from there? A As I came out of that building I seen that bulkhead leading down in front of the warehouses.

Q This bulkhead along the lower end of that block of stores? A Yes.

Q The stores G to M inclusive? A I place it as connecting Pier 4, 5, 6 and 7. I don't know anything about the letters of the warehouses.

Q Which way did you go? A I went east to about 50 or 75 feet to the end of the warehouses, east.

Q Do you mean by that somewhere between Pier 6 and Pier 7? A That is within 50 or 60 feet of the eastern end of that block of warehouses there. My reason for doing it—

Q If the last warehouse is Store R and it is 60 feet wide, then do you mean that you got down to about the edge of that store? A In that neighborhood. See?

Q I see. About 60 feet from the end of Block N to R? A From 50 to 75 feet; yes, sir.

Q What did you observe there? A My intentions for doing that was I could see the glare of the fire and the shells that came over the warehouses of course did not land on the bulkhead on account of the warehouses; they cleared the bulkhead and landed on the boats and the piers. Seeing that, I went down with the intention of looking down around the end of the building to see what I could of the fire. When I got down to within 50 or 75 feet of the end of the warehouse, a shell bursted on the roof of Pier 6.

Q Over here? A Yes. And the shrapnel went flying everywhere. Of course, that showed me I would be foolish to walk down to the end and look around, as I would possibly regret it; so I stopped where I were and I could see the lower yard.

Q While you were over here on the bulkhead side of the easterly block of stores, did you notice anything of a schooner in the slip? A On my way back—of course, on my way down I was only interested in the fire—on my way back of course I looked the bulkhead over—the water side of it—and at the end of Pier 6 on the east side—

Q On the easterly side? A Yes; out at the end was a large schooner and on the west side was a large steam-

ship. Between the piers there were canal boats, lighters, barges and different other boats there, and not seeing anybody on the boats and realizing that possibly they were asleep, I see the necessity of placing a man there to take charge of them in getting off, so I called Patrolman Dougherty and placed him in charge of that bulkhead with instructions to stay at Pier 5 and allow no one to go down, only firemen, and to take care of getting the men off the boat.

Q What did you observe about that schooner that was lying in there? A Well, at that time, just that it was laying there. There was no fire on any of the boats or piers at that time. In walking out, as I say, I called Dougherty and placed him in charge, and going out further I told Kachler, who was placed with him at the time, where I had placed Dougherty so that Kachler would not go looking for him.

Q Did you see that schooner there afterwards? A Afterwards, when Dougherty was missing, of course we went in looking for him and we found him about 200 feet down the bulkhead from the driveway.

Q Now, just in which direction shall I mark that point; down this way? A No; that is Pier 6. It was about 200 feet from where your pointer is. Now, that is more than 200 feet that you are pointing to; it was between Pier 5 and 6.

Q Right here somewhere? A Right about there was where I found him.

Q You found Dougherty, then, in the rear of Store K? A Somewhere around there.

Q If that is the right store? A Yes; and while looking for him then I see this schooner burning and the wreck that was done there by the explosion.

Q How much of the schooner was on fire? A It was over the piers, I could see the rigging. That rigging was just a roaring furnace. Of course, it being tar, you know, you could hear it roar—it was just a furnace.

Q Now, when you were down on the bulkhead behind Store R about 75 feet from the end of this store, could you see the yard from there? A I could see the lower yard.

Q Could you see out on the yard where you had seen the cars burning? A No, sir; the cars were off to the front of the warehouses, I tell you, and I was to the back. I could just see the reflection from it.

Q Did you see any cars burning at all from the place where you stood behind those stores? A There was no fire anywhere in the lower yards, cars or anything else that I could see.

Q Now, do you remember the explosion there, Lieutenant? A Yes.

Q Where were you at the time the first explosion occurred? A I was standing about three or four hundred feet east—no, west of the fire.

Q Could you tell us with reference to any of the buildings on the map about where that would be—I call your attention to the last block of stores, which are Stores N to R inclusive, on the east of Pier 6; then a block of six stores on the west of Pier 6. Now, just about where was it that you were with reference to the store houses at the time of the explosion? A At the time of the explosion I was about 50, possibly 75 feet east of that driveway leading into Pier 5.

Q About the place I indicate? A About in there; yes, sir.

Q Were you near the store buildings or out on the roadway? A I was out on the roadway, the dirt roadway.

Q On the main roadway? A Yes, sir.

Q On the main roadway opposite Store H? A About there, about fifty or seventy-five feet east of the driveway, on the roadway.

Q I see. Now, at that point did you observe the fire? A I did.

Q Now, just what did you see of the explosion? A Well, I had been watching the fire up to that time, and just before the explosion the Lehigh Valley had backed in a train there with a brakeman on the top of the third or fourth car from the end of the train.

Q Just a minute, Lieutenant. Where was that train? A That train was to that right of the roadway; that is, between the roadway and the warehouses.

Q I see. Now, according to the map, there are four tracks, four parallel tracks between the roadway and the storehouses. Do you remember which one of those tracks this train was on? A At the driveway, it was the second track in. Of course, what track it was down below I could not say, down near the fire.

Q The second track south of the main roadway? A Yes, sir; that is up at the driveway leading into Pier 5; up there it was on the second track in.

Q Yes; and how does that train of cars go; was it eastbound or westbound? A Well, it had backed in to back down.

Q You mean backed eastward or westward? A East, against the fire.

Q It had backed down toward the fire? A Yes.

Q Then what did it do? A Well, it stopped there, and I was watching this brakeman on that train, on the top of the train, expecting to see him blown off of there with the flying shells, when my attention was called to the disturbance in the fire—that is, by seeing the disturbance in the fire my attention was taken from him back to the fire again.

Q Yes; and what did you see? A Well, as I say, there was a disturbance in the fire as if somebody was poking at it and stirring it up. Then there was a ball of fire left the fire; a large ball of fire of unusual brilliancy, and this went up on a column of smoke. This smoke seemed to push it up about 150 feet, when the ball left the smoke and went up about fifty feet further, and it opened up; it

did not burst to pieces, you know; it just slowly opened up, causing the—causing a very great light. It seemed to grasp a-hold of everything—well, even drew the life out of the air; I know I could not breathe. I could not move there for about ten seconds. Then I heard the report. This report seemed to loosen things up, because everything seemed to get life into it and move. I seen the warehouse crumble up and slide away from me.

Q Which warehouse? A That is, the warehouses down where the fire was; the two warehouses below the driveway. It seemed to start at the end of it and just seemed to creep up the warehouse; seemed to crumble and slide up toward me; that is, it come up the warehouses toward me, but the warehouses slid away from me toward the bulkhead.

Q How high were those warehouses and storehouses? A Five story.

Q Five stories? A Yes.

Q And how much of the building was swept off in the manner you have described? A The two upper stories; that is, all except the end wall; the end wall right by the driveway; that was left intact. It was standing without any support and was very dangerous.

Q I see. A Then the way—the shells and shrapnel, bricks and parts of cars and everything went flying in all directions. The dirt from the roadway begin to fill the air until it got so thick and black that you couldn't see; you couldn't see anything in front of you or alongside of you.

Q Now, you say there were parts of cars flying around. How big were those fragments? A Well, you could see corners of cars, you know; you could see that it was not shells; see?

Q I see. A And Fire Chief Gately, he went up there—I went up there where he stood—well, Patrolman Hanna was between him and I. I went right down, and I seen some of the men were thrown quite a distance from it.

Q Now, you say everything began to move. Did you move? A Not at that time. I seemed to be held fast. See? It seemed to hold me fast, and it was a little while after that that I moved. After I seen these others—that is, the warehouses slide away and Chief Gately went down, and the air filled, as I say, with cinders and dirt, then it become like fiery sparks, like burning wood, went shooting around the air. Then it was possible for me to turn. When I could turn I turned and ran; but, of course, I didn't get far. I seemed to be pushed along from behind. It seemed to be a weight bearing on me. I went a few feet and I went down; then I got up and went a few feet further and I went down again. This was repeated a number of times. The last time I went down somebody yelled, "Look out for the horses, look out for the apparatus." Looking up against the flare of the fire, I could see the horses from 16 engine come bearing up the road against me. They were almost on top of me. I didn't have time enough to get up, and I rolled to one side to get out of the way. I could not get out of the way, because I became clutched against the running board of fire truck, and if the horses hadn't stood where they were, right directly in front of me, the wheels no doubt would have damaged me in some way, ripped me. I could see that. Well, when I finally got out I discovered that Patrolman Dougherty was missing, and I took Patrolman Hanna back to look for him. That is the time I seen the damage that was done by the explosion.

Q Now, when you saw this ball of fire that you described as coming out from the column of smoke, where was that with reference to the burning cars? A That seemed to leave the center of the fire, just about the center of the fire.

Q I see. You have not told us whether, or you have not described to us the—

Mr. Stallman. I withdraw that.

Q You have not told us whether or not at the time of this explosion you felt any violent concussion of the atmosphere or not. You say the thing went very slowly and the buildings slid off. Is that all that there was? A Well, the action on me was, it seemed just to grab hold of me and hold me tight. I couldn't move. I couldn't even breathe. When I seemed—this report seemed to loosen me up, and when I could move I did move.

Q Well, the report; how would you describe that report? A Just a bang; that is all.

Q At the time of the bang; was that time or was it before that that you saw these particles flying around? A Oh, it was after that. That report seemed to loosen things up, and then those things commenced to fly.

Q I see. Well, how would you describe that bang? Was it like dropping something off a table, or was it louder than that? A Well, it was quite a loud bang, certainly. I couldn't compare it with something else that I know of. So when you ask me to describe it, I couldn't compare it with anything that I know of.

Q How did it differ from anything in your experience? A Very much louder.

Q Now, did you stay there after this explosion? I mean after you recovered, you stayed at Black Tom, did you? A Well, when I discovered my man Patrolman Dougherty was missing I went back into the ruins, took Patrolman Hanna and went back into the ruins to look for him, and I was in the ruins digging this man Steiser out when the second explosion occurred.

Q How long after the first explosion was the second explosion? A About twenty-two minutes.

Q Can you tell us how the second explosion compared with the first explosion in intensity or effect? A Well, I cannot tell you much about the second explosion. As I say, I was in that driveway up against the wall digging this man Steiser out with some other firemen when the second explosion went off. All I know is that it made

quite a noise, but it didn't even loosen a brick nor break a brick off from this standing wall.

Q What time was the first explosion as near as— A Eight minutes after two; eight minutes after two A. M.

Q Now, did you see anything of the Jersey City Fire Department down there? A Yes, sir.

Q Was there any apparatus there when you got there? A When I arrived there there was—there was what I call the hose wagon of 8 engine, 10 engine, 16 engine, 5 truck, and I see Chief Gately there.

Q Did you see any hose line stretched anywhere? A I placed my men and went down to look the bulkhead over and got back on the driveway; I placed the time, I will say a short time before the explosion—I see two lines of hose placed in where I passed Chief Gately and Patrolman Hamill; that is about 100 feet east of the driveway leading into Pier 5.

Q Could you tell us at that time whether there was any water in the hose? A Well, I see the fireman walk over at different times; it may have been different firemen that done it, and raise the end of the hose up, and the water go out of that probably ten or fifteen feet.

Q Did you see at that time, Lieutenant, whether there was any water being played upon the fire? A Only what I seen the firemen attempt to place on that hose.

Q And was there any one near the burning cars? A No, sir.

Q Did you see any one else there use any firefighting apparatus other than the Jersey City firemen? A No, sir.

Q Did you notice any other drilling of freight cars excepting the one that you have described where the brakeman was on top of the car? A Yes, there were two trains, one on each side of the roadway.

Q And the one on the north side of the roadway; did you observe how far east it went? A Only that it went back into the fire—back in towards the fire; there were probably five or six cars below where I stood on that train.

Q Will you come down to the map, Lieutenant, and show us approximately where that train was being switched? A (Witness leaves the stand and goes to the map.) This is about where I stood.

Mr. Stallman. Indicating a point in front of Store H.

A One train came down here and backed in it.

Q (Indicating the first track, south of the driveway.) And the fire somewhere in the vicinity of Store O. A And the other, as I say, was on the second track, and that backed in here. Whether it switched in or not, of course, I couldn't see from where I was.

Q All that you saw— A Up against the fire, and the brakeman was on the third or fourth car from the end of the train, and he was probably five cars from the fire.

Q I see. A (Witness resumes the witness stand.)

Q How long did you stay there at Black Tom? A About a quarter to nine I was relieved.

Q In the morning? A Yes, sir.

Q And up to the time you left did you notice whether any other building had been damaged excepting the easterly block of stores? A Yes, sir. You say the easterly block; both easterly blocks were damaged by the explosions. The upper stories of the both blocks; that is, below the driveway, everything on the two blocks of storehouses below the driveway excepting the wall, right at the driveway, was pushed off on to the bulkhead.

Q When you speak of the two easterly blocks, do you mean the block between Pier 5 and Pier 6 and the block between Pier 6 and Pier 7? A Yes, sir.

Q And did you notice whether anything happened to those covered piers? A Pier 5 and Pier 6?

Q Did you notice whether anything happened to those covered piers, Pier 5 and Pier 6? A When I found that Patrolman Dougherty was missing I took Patrolman Hamill and went back into the ruins to find him. We had

to climb over this train. Then it was I seen the damage done in the yard. The cars were all more or less shattered. The two upper stories of the lower warehouses—that is, the two blocks of warehouses—was pushed off. When we got in the driveway we found that that storehouse that was east—west of the driveway, the easterly end of that was drawn off on to the driveway and smashed those sheds that were there and filled that driveway with debris. It was in there under that debris that we found this man Steiser, and that is where we were digging him out when the second explosion went off. We had to climb over that stuff to get out to the bulkhead. When we got out to the bulkhead then I seen the damage that was done on the south shore. The bulkhead was covered with this debris of the lower warehouses. The sheds on Pier 5 and Pier 6 were crushed down; everything ripped out. (Witness emphasizing by clapping his hands.) They were on fire in some places. The boats in between them were covered with shell and other stuff from the explosion. You could see the black stuff lying on to it, and they were on fire in some places. I seen this steamship was on fire, and, as I say, I seen this schooner—that was the time I seen the schooner—the rigging was roaring into it.

Mr. Stallman. Cross examine.

Cross examination by Mr. Garrison.

Q Lieutenant, were you in charge of all the policemen that were down there that night? A Up to the arrival of my superiors.

Q When was that? A That was about four o'clock, I should judge.

Q And up until four o'clock, how many policemen did you have? A I had seven there besides myself.

Q How many Jersey City firemen did you see down there before the first explosion? A Well, that I couldn't say; because in their working clothes they all look alike

to me; but I seen a number of men around. I may have seen the same man half a dozen times.

Q Well, give us your best estimate. Give us the best estimate that you can of how many firemen you saw. Was it a dozen or two dozen or three dozen? A Oh, I seen over a dozen there.

Q About two dozen, wasn't it? A Well, I wouldn't say that, because, as I say, they might have repeated themselves.

Q Now, you say at one time you saw a reflection off Brooklyn? A Yes.

Q Where were you then at the time you saw that reflection? A On Jackson avenue near Orient.

Q And you realized it was a big fire? A Somewheres, yes, sir.

Q You came down in the patrol wagon, did you? A I went from Claremont avenue and Ocean to the fire—

Q You got down to Black Tom in a patrol wagon? A Yes, sir.

Q And where did you stop your wagon? A At the driveway leading into Pier 5.

Q You call the road that leads to the property the roadway? A That is the idea, and the dirt road—

Q Wait until I finish. Then there is something across these tracks, and this that goes into Pier 5 you call the driveway? A Driveway.

Q Driveway. So that is the main road, and this other off-shoot at right angles is the driveway? A Yes, sir.

Q Now, you stopped your wagon on the roadway opposite the driveway? A Yes, sir.

Q Did you stay there practically all the time that you were down there? A We did until the explosion.

Q Yes. And before you made—the first thing you did was to put your men across this roadway? A I placed them across the yard. One I sent out to what

they call the flats, out to the north of the tracks. Three I placed across the tracks, and two I placed along that driveway.

Q Along the driveway? A And Patrolman Dougherty and Kakler I placed in the driveway. Patrolman Weller and Hamill across the tracks, and Patrolman Weinholt I sent out to what they call the flats.

Q Yes. Now, at that time while you were placing these men, were you in a position where you could see the fire? A Yes, sir.

Q And where was the fire then with respect to a point in the roadway opposite the driveway? A The fire was east on the roadway, just off the north—just at the northeast end of the warehouses.

Q Which end? Which end of this block beginning N to R? A The northeast end of the warehouses.

Q Well, do you mean here? A No, over the warehouses—there.

Q You mean here? A Yes.

Q The fire was all here, eh? A No; I couldn't see that lower warehouse.

Q You couldn't see that? A No; that was in; I couldn't see that.

Q You could see this one? A Yes, sir.

Q It was off here then? A Off somewhere opposite Storehouse Q.

Q It was off here, then, off somewhere opposite Storehouse Q? A That was about the center of the fire; the fire was above it and below it.

Q I didn't ask you where the center of the fire was, Lieutenant. I asked you when you were standing here in the roadway opposite the driveway where the nearest point of the fire was? A Oh, the nearest point?

Q Yes, naturally. If we are asking you to place a fire we don't ask you to place the center of it. Where was the nearest point? Where was the nearest point from where you were, that was on fire? A The nearest

point to that was—I would judge about 100 to 150 feet east of that.

Q 100 to 150 feet east of Storehouse O? A Yes—no, of the end storehouse.

Q Of Q? A Yes.

Q 100 to 150 feet east? A Yes—no, west.

Q Oh, west. A That would be just about where your pointer is. Probably a little east of that, towards you; probably a little.

Q A little this way? A Yes.

Q Well, then, so the point would be between the storehouses lettered O and P? A Yes.

Q About in there? A Yes.

Q And that you say was the nearest point of the fire? A Yes, sir.

Q And you also said that you thought when you first got here you were about 500 feet from the fire? A About that, yes.

Q Now, did you mean 500 feet from where the fire was nearest to you, or did you mean 500 feet from what you call the center of the fire? A No, 500 feet from the nearest part to it.

Q Now, we have got the nearest part fixed as between O and P? A Yes, sir.

Q Now, where is what you call the center of the fire? A At the end of the—there.

Q About off in there? A Yes, sir.

Q About off in the neighborhood of Q? A Yes, sir.

Q Then the fire was from here to there and from there to here, my first point being some distance east of R? And it was about from that center that you say this ball of flame went up, somewhere about opposite—what? A The ball came up east of the warehouse, towards you.

Q Back of the fire entirely? A The fire kept growing, Counsellor. Now, when you are talking about where the center was, that was about the time that I arrived there. The wind carried the fire more towards the east.

The wind was from the shore. See? And when the fire spread over there east, further east, so that when I say the center of the fire I am talking about the way I look at it. I couldn't see how far below, but it was below the warehouses, but in the center of the fire from where I was looking at it.

Q Now, it was a fierce fire, wasn't it? A Very much so.

Q Big wall of flames? A Well, no. You couldn't see the flames so much until the smoke would separate. The smoke come about ten feet above the cars and the flame from the fire went up in this smoke and every little once in a while the wind would separate the smoke and then you could see that flame was probably fifteen or twenty feet high.

Q Well, now, Lieutenant, how was it possible for you, standing in the roadway, opposite the driveway, and looking at the fire at the nearest point to you, being between O and P—how is it possible for you to tell how deep that fire was? How could you possibly tell what was going on four or five hundred or three or four hundrew feet beyond the first mass of smoke and flame? A Because you could see the tops of the cars when I first got there. Afterwards you could only when the smoke would separte with the wind; then you could see there was quite a string of them.

Q You could see there was quite a string of them, but when you were standing or looking at a fire that you describe as a mass of flame and smoke, you cannot tell what is going on back of that flame and smoke; you do not pretend to know how big the fire was? A No.

Q When you say the center, it is just a mere figure of speech? A I spoke—

Q No, just answer my question. It is a mere figure of speech when you say the center; you couldn't tell that was the center of the fire? A That was the center of

the fire when I arrived there, and the smoke wasn't there then.

Q I am not asking you about the center of the fire when you arrived there. You said the ball of fire went up from the center of the fire? A Yes.

Q Now I am asking you whether that was a mere figure of speech? A No, sir, I—

Q Wait until I finish. You said no. That is an answer to my question. Now, at that time the fire had grown very big, hadn't it? A Yes, sir, certainly.

Q It had spread eastward, you say? A Yes, sir.

Q Could you possibly tell with the smoke and the flame, within 500 feet of you, what was going on beyond that smoke and flame? A No.

Q So when you said center of the fire it was a mere figure of speech? A No, sir, I was speaking of the center of the fire as I looked at it.

Mr. Garrison. I insist, your Honor, he has answered my question.

The Court. All right, if you are satisfied.

Mr. Garrison. I am satisfied. Whenever he says I am wrong I will stay wrong.

Q Now, when you sent Dougherty down where did you send him? A I took him.

Q When you took him where did you take him? A I took Dougherty from the driveway there at the tracks—no, at the end of the warehouse—just at the end—in further—right there. (Mr. Garrison indicating on the map while witness is testifying.) I placed him there with Patrolman Hamill. When I seen the necessity of him on the driveway I called him over and took him over and placed him in front of Pier 5 on the bulkhead. Right there.

Q In front of Pier 5? A Yes, sir.

Q At that time you saw the schooner. Which side did you say the schooner was on? A The schooner was on the east side of Pier 6.

Q Of Pier 6? A Yes.

Q This pier head? A Yes.

Q Not the pier that Dougherty was on? A No, sir.

Q It was on the east side of Pier 6? A Yes.

Q The steamer was on the west side of Pier 6? A Yes.

Q Sure of that? A Yes; and the time I seen that was not when we placed Dougherty, it was before I placed Dougherty.

Q I am not interested in that. A You started your question that way, Counsellor.

Q But when you went down here and walked down along this bulkhead you saw the schooner on the eastern side of Pier 6, and the steamship on the west side of Pier 6? A It was when I was walking back that I seen it, Counsellor.

Q Well, at some time that you were down there? A Yes.

Q All right. And you put him down there, you said, to take care of people coming off the boats? A Yes, sir.

Q What do you mean by taking care of people coming off the boats? A In between them piers there was a number of canal boats, lighters and such like, and I not seeing anybody on them naturally concluded that they were asleep in their cabins; realizing that these shells breaking on the boats would be apt to injure somebody I called him and placed him there to keep anybody from going down there and to take care of any that got off the boats, send them out to us if they was in good condition, or if they were not to bring them out to us. That is the orders I gave.

Q Yes; and you put him at Pier 5? A I put him on the bulkhead in front of Pier 5.

Q You put him on the bulkhead in front of Pier 5? A Yes.

Q After the first explosion you came down here again, didn't you? A Yes, sir.

Q And you saw the schooner and the steamer all on fire after the explosion, didn't you? A Yes.

Q Yes. The rigging of the steamer was a roaring hell, you said, after the first explosion? A That is the rigging of the schooner, yes.

Q After the first explosion? A Yes.

Q No doubt about that? A Yes.

Q Did you see any trains on the north side of the roadway backing in toward the fire? A Yes, sir.

Q Before the first explosion? A No, sir—yes—yes, on the north side. There was a train on each side.

Q This train on the south side and the train on the north side? A Yes.

Q There were not two trains on the south side, were there? A No, sir.

Q What track was the train on the north side? A Well, I couldn't say to that, Counsellor, because my back was partially turned toward that, but I saw that there was a train there backing in.

Q Yes. There were brakemen up on the top of cars of the train that was backing in? A There was one brakeman on each train.

Q On the back end of the train? A Well, he was about probably the second or third car from the end.

Q It was quite a string of cars, wasn't it, between him and the engine? A Oh, yes.

Q Yes; and that man was in that position the last thing that you saw before you saw this ball of fire go up in the air, wasn't he? A Yes.

Q You were just watching him when your attention was attracted by the explosion? A By the disturbance in the fire.

Q Of course you didn't see what became of him? A Well, I seen one brakeman later.

Q No, but at that time you didn't see what became of him? A No, at that time, no.

Q Remember his name? A Well, I afterwards found out they were both named Walsh, that they were brothers.

Q The Walsh boys? A Yes.

Q The Walsh brothers? A Yes.

Q Now, about how far at this time when you—before the first explosion—were watching this freight train backing in, how far were you east, if any, from a position in the roadway opposite the driveway? How far east were you? A About seventy-five feet, possibly a little less or a little more.

Q Yes; and you were all grouped together there, weren't you—Gately and Hamill, a lot of policemen and a lot of firemen? A No; there were three of us stood in the roadway.

Q Where were the rest of them? A They were stretched over on each side of us.

Q You mean across the premises? A Yes.

Q Across them? A Yes. There was some that was to the right of us and some of them that were down toward the left of us.

Q Yes, but across the property? A Yes.

Q Not running east and west, but running north and south? There wasn't anybody nearer to the fire than this little group before the— A There was some walking in and out, but I don't know who they were.

Q I don't mean temporarily walking in and out; I mean where this group were gathered, you and Gately were in the front rank? A Yes.

Q You had a lot of people to the right and left of you across the property to the north side? A Yes, this train separated us; I suppose only for that we would have been more together.

Q The spread was north and south, it was not east and west? A No, it was across the island.

Q It was while you were standing there watching this freight train and watching the fire and seeing this man on the next to the last car or on the next but one, that the explosion went off? A Yes.

Q Now you say that the buildings here, these two blocks of stores, as I understand you, crumpled up and slid away? A Yes.

Q That is the language you used; you said they crumpled up—wait until I finish—your language as I recall it is that they seemed to crumple up and slide away? A Yes, sir.

Q Now, then, you did not mean that, of course? You did not mean these whole, great big buildings crumpled up and slid away. You mean the upper stories, don't you? You mean the two upper stories? A That is what I said, if I recall the testimony.

Q All right. You said it, then you mean it? A Yes.

Q You mean it? A Yes.

Q You meant it? A Yes.

Q All right. We don't disagree on that. How far was the train that had the brakeman on it and was north of you—how far was that, the last car of that train, east of you, just before the explosion? You were about opposite Store H at the outside, I should say. Now how far was this—the last car of the train that was on the track north of you that the brakeman was standing on? A I should say about two hundred and fifty feet; two hundred feet, something like that.

Q He was two hundred and fifty or three hundred feet, did you say, east of you? A Well, from two hundred to two hundred and fifty feet.

Q Was the last car of that train in contact with the fire? Had he got down— A That I don't know, Counsellor. When I say that I cannot tell the east end of

the train. I am only telling you where the man was on the back of it. That is your question?

Q Yes. Now, I asked you whether the cars on that train were in contact with the fire? A No, I couldn't tell you that.

Q They had been drilling cars in and out for quite some time before the explosion? A No; that is the only time I seen them. I don't know what they had been doing.

Q Now, you say that where you and Gately and Hamill were standing there were two lines of hose stretched in and that it where we stood? A Yes.

Q That is when you stood here, about opposite Store H, isn't it; that is about when you stood here, about Storehouse H? A Yes.

Q And where were those two lines of hose hooked up to? A That I don't know.

Q Well, they were back of you, weren't they? A They ran back of us.

Q Couldn't run past you unless the hook-up was back of you? A No.

Q So they were hooked up somewheres in front of or to the west of the driveway opposite Pier 5? A Yes, sir.

Q You don't know how far back? A No, sir.

Q Were these pieces of hose lying on the ground? A Yes, sir.

Q No one was doing anything with them? A Not only when the firemen walked over and raised the end of it.

Q The fireman was about five hundred feet from you at that time? A About that.

Q This hose was a thousand feet long? A I couldn't tell you.

Q It was long enough to reach to the fire if anybody wanted to carry it? A That I don't know.

Q Don't you know that there was plenty of hose there to run from that plug to the fire when the fire was only five hundred feet from you? A How do I know?

Q You described with marvelous accuracy, almost like that of a novel, quite a vivid description—why can't you tell me about a simple little thing like the hose along the ground? How is it your attention seemed to run— A The fire hose lay on the ground.

Q Yes. A And run in past me probably a hundred to a hundred and twenty-five feet; how much it was behind me I don't know.

Q I am not a bit interested in what was behind you, but I am asking you whether or not if anybody had seen fit they could have picked up that hose and carried it down to where the fire was and had the ten or fifteen feet of water that was coming out of it cast on the fire? Isn't that a simple question? A I don't know how you are making your question—the reason, if you will—

Mr. Stallman. I object on the ground that it calls for reasoning and guesswork on the part of the witness.

The Court. I do not see that that is a matter of great relevance, whether it is a simple question. The question is, if he understands it.

Q Do you understand my question, Lieutenant? A Yes.

Q All right. Now, then, answer this. Did you see enough of the circumstances to know whether or not there was enough hose on those two hoses that passed you and Gately and Hamill that could have been carried down to the fire so that water could have been thrown on the nearest point of fire? Did you see enough to know that? A No; I did not.

Q You were not looking at that? A I wasn't looking behind me, Counsellor.

Q They couldn't go back of you. They wouldn't go west to squirt on a fire that was east? A No; if they had fifty feet of hose from a hydrant they can't stretch it a hundred and fifty feet to reach a hydrant or fire.

Q You were standing somewhere opposite H? A Yes.

Q The hose had to run past you? A Yes.

Q And I am asking you whether the hose that ran past you was enough in length to have been carried down so that the water would have reached the fire? A No, sir; there wasn't enough hose there.

Q There wasn't enough hose there? A No, sir.

Q Wasn't there lots of hose on the hose carts that was not taken off the hose carts? A That I don't know.

Q Didn't you see the hose carts there? A Yes, sir.

Q Didn't you look to see whether there was hose on them? A No, sir.

Q You didn't see any pumping engines there, did you, before the first explosion? A No, sir.

Q Do you know when they got there? A No, sir.

Q Did you see any there at all up to the time you left? A No, sir.

Q Did you see them get water from the New York fire boat? A No, sir.

Q Then there had not been any water put on the fire at all up to the time you left—that you saw—that you saw— A Well—

Q Yes, or no. A Now you are tying me up.

Q I am not trying to tie you up. I am trying to get the facts. Get that out of your head that I am trying to tie you up. A When Chief Monahan and my superior got there they sent me out to the gate, and like away from the fire, and what happened when they got there I can't tell you.

Q When had you left the fire? A About 4 o'clock.

Q Up to 4 o'clock you were where you could have seen things if you saw them? A Yes.

Q Did you see anybody up to 4 o'clock put on any water on this fire out of any hydrant? A No, sir.

Q Sure of that? A Yes.

Q Now, at the time of the second explosion you were down between—you were down between Storehouses F and G? A Yes, sir.

Q In the driveway? A Yes.

Q Digging the man Steiffy, you called him— A Steiffe.

Q Spell it for us? A I—

Q The nearest you can. A S-t-e-i-f-f-e. He was off Lehigh Valley barge No. 65. He was caught under a roof there and I had to give him help to get him out.

Q It was while working around him that the second explosion took place? A Yes, sir.

Q You have no idea where that came from? A No, sir.

Q You were so busy you didn't observe it? A No, sir. The same as I was when you speak of this water.

Q You don't know whether the ball of fire went up and the column of smoke? A No, sir. I am only describing what I saw.

Q I wish you had seen more. A I could explain a whole lot more about it, but it don't touch on the case and I am not doing it, there is the idea, and it is not a pleasant thing to do, I will tell you that.

Q How far did you go west after the first explosion before you recovered yourself? A I would judge about two hundred feet—probably three hundred feet.

Q Yes. Now, Lieutenant, are these statements of yours about distances anything more than simply guesses? A That is all, sir.

Q They are just guesses? A That is all.

Q So they don't mean anything particular? A They mean that is the way I understand it.

Q I know, but in the case of New Jersey Fidelity and Plate Glass Insurance Company against Lehigh Valley Railroad, when you were called on the witness stand—

I am going to read you a question and the answer—page 112—you remember testifying in that case? A Yes.

Q You were being examined by Mr. Stallman, and he said, "I see. How far, then, do you think you were from the fire? A I should judge I was at that time about two hundred feet." Now the nearest you ever say you got is four hundred feet, just one hundred per cent. more. You are giving me judgment. Does your judgment vary a hundred per cent. between these two trials? A At what time of the fire was that, Counsellor?

Q Well, at any time. Do you think you ever got within two hundred feet of that fire? A Yes.

Q Oh, you did? You haven't told us that before today, have you? You had not told us before today that you were within two hundred feet of the fire? A Well, I don't know as the question was asked how near I got to the fire.

Q This was when you first got there? A Yes.

Q Mr. Stallman says on page 111: "Q I see. What did you see was burning when you got there? A There were forty or fifty cars burning—nearer fifty. I should judge about fifty cars burning there, and they were on—as near as I can remember—four tracks. Q And just where were you standing to make this observation? A When I placed my men across the island there I walked down probably a hundred feet or more nearer the fire, and that is where I made my observations, and I done that to see the necessity of keeping the men I had there from post. Q Well, now, when you went this hundred feet or more nearer to the fire, do you mean nearer from the crossing you have mentioned? A Further down from where I was standing, yes. That is about there. (Mr. Stallman indicating on map.) Probably a little further back than that. Q Now, my pointer is about the middle of that block of storehouses? A Yes. Q Is that where you mean? A That is about where I was, yes. Q I see. How far, then, do you think you were from the fire?

A I should judge I was at that time about two hundred feet.'' A Yes, sir.

Q Now, you say you were four hundred feet? A Yes, sir.

Q Four hundred feet is one hundred per cent. more than two hundred feet? A Yes.

Q So one or the other was a mere guess? A They were both guesses, Counsellor.

Q Now, you told me you were giving your best judgment? A That is in both cases.

Q Your judgment varies at least a hundred per cent.? A That is two years ago.

Q And does distance alter with years? A Not distance, but your memory may. I am guessing at it now, the same as I was guessing at it.

Mr. Stallman. I ask that he be allowed to answer the question and not be interrupted by counsel.

(Question and answer repeated by stenographer.)

The Court. I do not see any interruption as far as the reproduction on the record. Go ahead.

Q Lieutenant, you remember being examined at the coroner's inquest, don't you? A Yes.

Q On page 21 of the coroner's inquest you were asked this question, and didn't you make this answer: "Q From the time you got there at 1:40 until you left did you see water being played on the fire? A Oh, yes; firemen were playing water on the fire.'' Do you remember that? A I don't recall making that answer.

Q Do you deny that you made it? A No, sir.

Q Then if you made it that was another question of your judgment? A No, sir.

Q Wasn't it? What was it, your imagination? A Well, I will tell you—

Q Answer the question. Was it imagination? A I don't recall making it.

Q All right. What do you say now, that you do or don't? A I don't recall making it.

Q Now, will you answer the question? What is the question?

(Question repeated by the stenographer: "Was it imagination?")

A I don't remember making it.

Q What is your present memory; that the firemen were playing water on the fire when you left there at 4 o'clock or that they were not? A I did not see them play any water; I seen them making an attempt to play water.

Q If you said at any time in any of these hearings, "Oh, yes, the firemen were playing water on the fire," you did not state what you remembered? A If I did state?

(Question repeated by stenographer.)

A I said as I remembered it at that time, if I did.

Q But you have lost the memory of that; you do not remember that? A No, sir; I do not remember making that answer.

Q Now, then, you do not know of your own knowledge whether the firemen could or could not get water from these hydrants, do you? A No, sir.

Q You do not know anything about that? A I do not know anything about the firemen's end of it at all.

Q I am not talking about the firemen's end of it; I am talking about whether you know of your own knowledge whether the firemen could or could not get water from the plugs? A I do not.

Q You do not know? A No, sir.

Q You knew that these cars contained explosives, didn't you? A No, sir, not until I seen the shells going from them.

Q You heard those shells going off long before you saw them; isn't that a fact? A Not before I saw them, but I heard them going off as I was going down.

Q Exactly; so you heard them long before you saw them? A You could see them in the air before you heard them.

Q Which did you do first, did you see them in the air up in Jersey City before you got down to Black Tom? A We seen them in the road to Black Tom.

Q Answer my questions. Where were you when you first saw any of these shells in the air? A On the way to Black Tom.

Q And could you hear them? A No, sir; not at that time.

Q So you saw them before you heard them? A Yes, sir.

Q And that was long before your arrival? A Not long, because it did not take very many seconds to go down there.

Q Well, they had been popping long before you got down there, didn't they? A I could not tell you.

Q On page 133 of the New Jersey Fidelity and Plate Glass Insurance Company against the Lehigh Valley Railroad Company when you were testifying in this court before this same Judge and a jury I asked you this question on cross examination—page 133: "Q That had been popping ever since you got there? A Long before I got there." A Yes.

Q Do you remember that question and answer?

Mr. Garrison. What is the answer?

(Answer repeated by stenographer as follows: "A Yes.")

Q So that they had been popping long before you got there? A It depends on how you call it. "Long" is before.

Q I do not care what you call it. You call it. You answered, "Long before I got there." A I was not

speaking in time; I was speaking in distance, Counsellor. We were quite a distance away when we seen it popping. That was long before in distance, not in time.

Q At any rate, before you got there you knew that these cars contained explosives, didn't you? A No, sir; we did not know what was in there. We could see them popping, but when we got there we realized they were shells.

Q Do you call shells explosives, or don't you? A Well, no; I would not call them explosives.

Q You think a shell goes off by not exploding? A Not that. I am talking about the explosion as an explosion.

Q I did not ask anything about an explosion as an explosion. I asked you if you did not consider shells, the kind that were going off down there and with which people were killed in battle, as explosive? A Precisely the same as a cap a kid would have on the street, if you want to consider it that way.

Q Didn't you know those cars contained explosives? A I knew they contained shells.

Q Didn't you know those cars contained explosives? A Considering shells as explosive.

Q Don't you consider a shell an explosive? Why are you fencing with me about that? A I told you I consider an explosion the explosion.

Q How do you think a shell goes off if it does not explode? What do you think makes it go off? A The heat made that go off, I guess.

Q What do you think the heat does? You do not think heat is a vital force that gets in back of something and forces it out? A The powder exploded it.

Q Then a shell is an explosive? A In a way.

Q Is there anything that can be more explosive than a shell? A Yes, in a way. That explosion—

Q That is all. You have told me a lot of things I am not interested in; I will not be interested in that.

EDWARD JOSEPH KANE, sworn.

Direct examination by Mr. Stallman.

Q Mr. Kane, what is your employment? A Sir?

Q What is your business? A Laborer in the Standard Oil.

Q Where were you working on the 30th of July, 1916? A I was night roundsman at Black Tom.

Q At that time how long had you been working at Black Tom? A Seven years.

Q Who were you working for? A Lehigh Valley Railroad.

Q What were your duties as a roundsman? A Well, see that all the men was placed in their respective places, go over and see no fire, everything was in proper condition, every place closed.

Q You were a sort of foreman over the night force there? A Yes, sir.

Q And who were the men under your charge? A There was Samuel Sloan, James Kelly, William Garrity and James Groat.

Q You had four men? A Yes, sir.

Q And where was James Groat stationed? A He was over in the oil yard.

Q And where is the oil yard with reference to the Black Tom yard? A At the extreme end of the yard, west end of the yard.

Q And in distance how far would that be from the Black Tom yard?

Mr. Garrison. It is in the Black Tom yard.

Mr. Stallman. I mean the Black Tom yard on Pier 7.

A About, I should judge, about half a mile or over.

Q That is towards the west? A Yes, sir.

Q Groat's station, then, was to the west of the grain elevator? A Yes, sir.

Q Do you know how far from the grain elevator? A No, sir; I do not.

Q Well, can't you express it in feet or in fractions of a mile? A I never measured it.

Q Do you know how long it would take to walk down there? A About five or ten minutes.

Q And what did Groat do down there in the oil yard? A He had to ring buttons.

Q He was a watchman down there, in other words? A Yes, a watchman.

Q And he stayed there all night, didnt' he? A Yes, sir.

Q Right around the oil yard? A Yes.

Q And where was Mr. Kelly stationed? A He was at the grain elevators.

Q I see on the map two elevators, one marked new elevator and the other main transfer elevator. At which one was Kelly stationed? A The transfer.

Q The grain transfer elevator? A Yes, sir.

Q And did he work there all night? A Yes, sir.

Q Around the neighborhood of that grain elevator? A He had to punch buttons on the west side of Pier 4.

Q Punch buttons on the west side of Pier 4? A Yes, sir.

Q Did Mr. Kelly have any other work to do? A Well, he took care of the boilers in the elevator.

Q When you say, taking care of the boilers in the elevators, do you mean keeping the fire up? A Yes, sir.

Q He kept a fire there all night, did he? A Yes, sir.

Q Was there machinery in the elevator? A Yes, sir, there was machinery in it.

Q And Mr. Sloan, where was he stationed? A He was in the pump house, opposite Pier 5.

Q That is the little building marked pump at the northeast corner of Store F? A Yes, sir.

Q And what were Mr. Sloan's duties at that point? A To take care of that pump.

Q Yes? A And to ring buttons on the east side of Pier 4.

Q Ring buttons on the easterly side of Pier 4? A Yes, sir.

Q That is the side behind Store F? A Yes, sir.

Q And he was supposed to work there, around there all night? A Yes, sir.

Q And Mr. Garrity, I think, was the fourth man? A Yes, sir.

Q And where was Garrity's station? A He had from Store G all east.

Q Store G what? A All east of Store G.

Q All east of Store G? A Yes.

Q And what did he do? A He punched buttons around the two blocks of stores.

Q That is, he punched buttons in the blocks G to M and M to R? A R, yes.

Q How about Pier 6? A He had to punch them on Pier 6, too.

Q And how often did he punch those buttons? A Every hour.

Q And do you know in those ten stores on the pier how many buttons he had to punch? A Five. I think it is five.

Q And he made a round of the buildings and the piers and went around and what you call punched the buttons? A Yes, sir.

Q That was a sort of time-clock arrangement? A Yes, sir.

Q Indicating that he had made his rounds? A Yes, sir.

Q Now, did you have any men in your charge, under you, who were watchmen down there in the yard where munition cars were? A No, sir; only Mr. Garrity.

Q And Mr. Garrity is the man who punched the buttons in the two blocks of stores in Pier 6? A Yes, sir.

Q And where was Mr. Garrity's headquarters or station? A Well, he had no particular station at all, only just be around Store R.

Q Did Mr. Garrity have any boilers to fire or anything of that kind? A He took care of a steam crane.

Q Steam what? A Steam crane.

Q Steam crane? A Yes.

Q Did they keep steam up all night? A Well, keep the fire in.

Q Kept the fire going all night? A Yes, sir.

Q And where was the steam crane? A Down around Store R there.

Q Down around Store R? A Yes, sir.

Q Whereabouts? A On the east—south side of Store R.

Q On the south side of Store R? A Yes.

Q Over at the bulkhead? A On the tracks.

Mr. Garrison. On tracks, he said.

Q Down along the tracks on Pier 7? A Yes, sir.

Q Just about where was that crane? A Well, at different places nights.

Q Oh, it was a crane on a freight car? A No; it was a regular traveling crane.

Q A traveling crane? A Yes.

Q And it would run up and down on these tracks alongside the bulkhead of Pier 7? A Yes, sir.

Q Down in there? A Yes, sir.

Q Then do I understand you that Mr. Garrity's tour of duty was down on the steam crane tracks and these ten storehouses on Pier 6? A Yes, sir.

Q Mr. Kelly and Mr. Sloan are here today, are they not? A Yes, sir.

Q And what do you know of Mr. Garrity? A I do not know; I have not seen him in quite a while.

Q Yes; do you know how old a man he is, or was the last time you knew him? A Well, I could not say that.

Q Well, was he a man about your age? A Oh, no, he was a real old man.

Q Now, Mr. Kane, did Mr. Groat have anything to do with watching munition cars down in the yard on Pier 7? A No, sir.

Q Did Mr. Kelly have anything to do of that kind? A No, sir.

Q Did Mr. Sloan have any work of that kind to do? A No, sir.

Q Was Mr. Garrity supposed to go down in the yard there in tracks 13, 14, 15 and 16? A Yes, sir.

Q How often? A He was supposed to go down there every hour.

Q Now, what was your tour of duty? A I had the whole place, all Black Tom.

Q That is, from the oil yard? A Yes, sir.

Q To where? A North Pier—South Pier.

Q Were you on duty that night? A Yes, sir.

Q Now, after 1:30 of the night of the 29th, just what were you doing? A Well, I was after coming up out of the yard from towards Pier 7. I was in the boiler room, I guess, about 7—half-past 11.

Q Where is this boiler room where you were, over here near Sloan's pump house? A Yes.

Q You were there about half-past 11? A Yes.

Q And where did you go from there? A I ate my supper then.

Q You had your supper? And that took you till when? A A few minutes to 12—around 12 o'clock.

Q Around 12 o'clock. And then what did you do? A I walked towards—stood talking to Mr. Sloan for a while, and then walked around towards Pier 6.

Q Do you mean you came down the bulkhead over this way? A Yes, sir.

Q Around the bulkhead behind Stores G to M over to Pier 6; and then where did you go? A I heard a man

holler "fire" and blowing a whistle and I ran back to see what it was.

Q And what time was that? A It was around 12:30.

Q Now, in the half an hour from the time that you finished your supper until you heard the alarm, what did you do during that half hour? A I was talking to Mr. Sloan.

Q Over at the pump house? A Yes, sir.

Q After you left Mr. Sloan how long did it take you to get from the pump house over here to Pier 6? A Oh, a few minutes.

Q So you were there with Mr. Sloan until about 12:25? A Something around there.

Q Yes. And after 12 o'clock did you see anything of Garrity? A Yes, I saw him after I ran in back.

Q What is that?

(Answer repeated.)

Q Now, you say that you heard an alarm of fire? A Yes, sir.

Q What kind of an alarm was that? A A man hollering and blowing a whistle.

Q And you were then, you say, on the bulkhead at Pier 6? A Around that neighborhood; yes, sir.

Q Around that neighborhood. And where did you go? A Went back to the boiler room.

Q Went back to the boiler room; that is the pump house, is it? A Yes, sir.

Q And what did you do there? A I met Mr. Sloan and two men, and they said there was a fire in Pier 7.

Q Then what did you do? A Got on the platform in front of Store G and looked down in that direction to see if I could—

Q You say a platform in front of Store G. Is that platform raised above the ground? A Yes, sir.

Q How high is it? A It is even with the freight car doors.

Q So that the platform is about on a level with the floor of a freight car? A Yes, sir.

Q That would be somewhere in the neighborhood of four feet high? A Yes, sir.

By the Court.

Q Who were these men who said there was a fire on Pier 7? A Well, they said they were Dougherty's men.

Q They said they were Dougherty's men? A Yes.

Q They both said that? A One of them. One talked and the other was so excited he was almost frightened to death.

The Court. Had you ever seen either of these men before.

A One of them; yes, sir.

The Court. Had you ever seen the other before?

The Witness. I didn't take notice to the other man.

The Court. Well, how do you know that he was a Dougherty man if you didn't take any notice of him.

The Witness. Well, the two of them were together.

The Court. And which one of them said he was a Dougherty man, the one you had never seen before or the other?

The Witness. The man I knew.

The Court. The man you knew stated he was a Dougherty man?

The Witness. Yes.

The Court. Well, how did he come to tell you that if you knew him?

The Witness. Well, Mr. Sloan asked him.

The Court. Oh, Sloan was with you?

The Witness. Yes, sir.

Edward Joseph Kane, direct.

The Court. But you had never seen the other man before?

The Witness. I could not say.

By Mr. Stallman.

Q Then, Mr. Kane, you got up on this loading platform, or whatever it is in front of Store G. What did you see? A Over the tops of the cars I saw a small—very small blaze.

Q In what direction? A Well, as far down the yard as I could see.

Q Well, here? A Yes, sir.

Q In an easterly direction? A Southeast—northeast.

Q Northeast? A Yes, sir.

Q Well, now, just tell me when I get my pointer at about the angle where you saw the fire. A A little more down.

Q A little more down? A About that way.

Q You saw the fire off in that direction? A Yes, sir.

Q I see. And you were standing then about the place where the head of my pointer is? A Yes, sir.

Q In front of Store G?

Mr. Stallman. And the direction, the end of the pointer, for the purpose of the record, is at car O. M. A. 32452.

Q Now, you said it was a very small blaze. About how big was this blaze? A Well, about five or six inches high.

Q About five or six inches high? A Yes, sir.

Q And how big around was it? A Very small.

Q Well, you do not mean as small as a five-cent piece, do you? A No, sir.

Q Well, about how big was it around? A About five or six inches.

Q About five or six inches— A Wide.

Q —wide and five or six inches high? A Yes.

Edward Joseph Kane, direct.

Q From what you could see how did it appear to you to be burning? A I couldn't say from where I was standing. I only saw that over the tops of the cars.

Mr. Garrison. I did not hear that.

A (Repeated by the stenographer.) I couldn't say from where I was standing. I only saw that over the tops of the cars.

Q Well, can you tell us whether or not there were any freight cars around this place where you saw the flame? A Yes, sir; there were freight cars in that neighborhood.

The Court. How long after you heard the cry of fire and blowing of the whistle was it that you actually saw the train?

The Witness. Well, as soon as he told me I ran out on the platform right away.

The Court. Well, how long did it take you to do that?

The Witness. Only a minute or two.

By Mr. Stallman.

Q Now, you saw this small blaze off in that direction What did you do? Just stand there and watch it? A No, sir; I run back and telephoned for tug boats and locomotives.

Q Why did you do that? A Well, to get the cars—get the cars out of the way and—

Q Well, at that time did you know that the fire was in the yard? A Well, yes, sir—well, I couldn't say it was in the yard; it was down in that neighborhood.

Q Yes. And was there any reason for your anxiety to get the cars out of there? A Yes, sir.

Q What was it? A I knew there was explosives down there.

Q Did you know at the time that the yard was being used for handling explosives? A Yes.

Q Or for handling cars loaded with explosives? A Yes, sir.

Q How many cars of explosives was there that you knew of? A That night I guess there was about twenty.

Q What was that? A About twenty or twenty-five, so far as I can remember.

Q As far as you can remember. Now, have you been down at night between those strings of cars containing explosives? A Yes, sir.

Q How did you get there? A Come down on the east side—on the south side of the storehouse, down to Pier 7, south side.

Q South side. Go down the bulkhead? A Yes, sir.

Q Where did you go? Where did you go? A Followed that track right around the whole yard.

Q Down the lower end of Pier 7? A Yes, sir.

Q Then did you go out into the bulkhead? A Yes, sir.

Q Then where did you go? A Right over north.

Q How far did you go? A Right to the end, down there.

Q Well, now, did you go to the sea wall track? A Yes, sir.

Q And then where did you go? A Right back to the boiler room, pump house.

Q You went down the sea wall to Pier 5 A Right—I come right over in the road, come up the sea wall to the roadway.

Q Come up the sea wall— A To—

Q —to the end of this roadway? A Yes, sir; and crossed over to the tracks.

Q Crossed over to these three tracks? A Yes, sir.

Q And down the roadway to the driveway, and out of the driveway to the boiler room; is that it? A Yes, sir.

Q And that is the way you made the circle around that yard? A Yes, sir.

Q And what time was it that you left this point up here at the head of the North Pier? A I don't know; I didn't—

Q Well, can't you give us some idea whether it was 10 o'clock or half-past, or more? A Oh, it was after 11, because—

Q After 11? A Yes, sir.

Q Then after you got down here did you go down to where Groat was and see what he was doing? A No, sir.

Q Well, now, you say that after you saw this small blaze you did some telephoning. How long after that was it before you noticed the fire again? A Well, about three-quarters of an hour.

Q Three-quarters of an hour. Well, what did you do in the meantime? A Well, telephoning.

Q You were telephoning all that time? A Well, answering telephones.

Q And where was this telephone that you were using? A Right in the time-clock office, time-clock office.

Q Is the time-clock office a little building at the southeasterly corner of Store F? A Yes, sir.

Q Well, did you do anything yourself towards putting the fire out? A No, sir.

Q Did you have any fire extinguishers, any of these tanks containing chemicals, or anything of that kind? A Yes, sir.

Q Did you use—where were they, in the first place? A It was opposite Pier 5 on the bulkhead.

Q Opposite Pier 5 on the bulkhead? A Yes, sir.

Q Right about the head of the pier? A Yes, sir.

Q Well, now, how big a tank was that? A Well, it was quite a large one.

Q Could you carry it? A No, sir; it was on two wheels.

Q Well, did you have any portable fire extinguishers there, something that you could carry around? A No, sir.

Q Did you give any instructions to any of your other men there to do anything towards putting the fire out? A Well, they were supposed to stretch a hose and put the fire out.

Q Did you see them do that? A No, sir.

Q Now, what time was it, about, when you again observed the fire? A About a quarter after 1.

Q A quarter after one? A Something around that.

Q Do you know whether the fire apparatus had arrived at that time or not? A Yes, sir.

Q How long before that was it before the hose wagons got there? A I couldn't say.

Q You didn't notice when they got there; is that what you mean? A I didn't notice, no, sir; notice the time.

Q Well, after you got through telephoning those three-quarters of an hour then where did you go? A I went out on the roadway.

Q Out on the roadway? A Yes, sir.

Q That is the main roadway? A Yes, sir.

Q And then what did you see? A I saw the fire department coming.

Q Saw the fire department coming? A Yes—well, there was one of them there.

Q One what? A There was a hose carriage there.

Q One hose carriage. Did you see any firemen? A There was firemen; yes, sir.

Q How many? A I couldn't say.

Q Well, was there two or three or ten? A Well, I met one.

Q You saw one fireman? A That was the captain; yes.

Q Do you know who he was? Was he one of the men who was here yesterday? A I think that was Hogan.

Q You think you saw Captain Hogan there. And this other apparatus— A Yes.

Q At that time. Well, did you notice the fire? A Yes, sir.

Q What did you see? A I saw it getting very large.

Q What was burning? A Well, it looked to me at that time it was a car; it looked to me as if it was a box car.

Q Looked like it was a box car? A Yes, sir.

Q And how big was the fire? A Well, it looked to be about, looked to be about the size of a box car.

Q About the size of a box car. A box car burning all over the whole area of it? A Well, sides—up on the top of it, on the top of it.

Q On the top of it? A Yes, sir.

Q About how far away was it from where you were, or did you make any estimate of the distance? A Oh, I guess about two or three thousand feet.

Q It was not in Brooklyn, was it? A No, sir.

Q Well, did you stand there and watch that car burning? A No, sir. I met Mr. Leyden.

Q Mr. Leyden was one of the Lehigh Valley police officers, wasn't he? A He was the chief; yes, sir.

Q He was one of your superiors? A Yes, sir.

Q I see. How long did you continue to watch that car burning? A About five minutes.

Q About five minutes. And then what happened? A I went down—down quite a ways with Mr. Leyden.

Q When you went down quite a ways—you mean you went towards the fire? A Yes.

Q How far did you go? A Went down as far as Store M.

Q Store M? A Yes.

Q And that would be just about to the west of Pier 6, isn't it? A Yes, sir.

Q Then what did you see? A I didn't take notice of the fire then. He told me to run back and tell the locomotive to come down to the sea wall track.

Q Yes. A And I done so.

Q And you did that, I suppose? A Yes, sir.

Q Where did you go to give those instructions? A I went right back to Store F. There was three locomotives standing there and I told them to have two of them go down on the sea wall track.

Q Yes. Then what happened? A Well, they went back to the oil yard and switched over and went down on the sea wall track, and I went down the yard to Mr. Leyden.

Q And when you got back to Mr. Leyden— A He just—got at the yard again—

Q Just a minute. When you got back to Mr. Leyden, how much later was that from the time that you met him? How long did it take you to go down and give those instructions and get back? A Well, from when I left him until I found the conductor, it must have been about ten or fifteen minutes.

Q And then it would take you some minutes to get back to where Mr. Leyden was? A Yes, sir.

Q So how long would it be altogether? How long was it altogether? A About twenty minutes.

Q About twenty minutes. And was Mr. Leyden still there, at Store M, at that time? A Oh, he was walking around that way.

Q Then how was the fire? A It was spreading.

Q Spreading. Had the shells begun to go off yet? A Yes.

Q And how many cars were on fire at that time? A I didn't take notice.

Q Well, more than one? A Oh, yes, sir.

Q Five or six? A I couldn't say.

The Court. When did the shells first commence to go off?

A Well, just as the fire department was coming down, why, I heard the shells coming.

The Court. That was the first you heard them?

The Witness. While I was telephoning; yes, sir.

The Court. That was the first time?

The Witness. Yes, sir.

The Court. And that was how long after you had been notified by the cry and whistle of the fact that a fire was there?

The Witness. About ten or fifteen minutes.

The Court. Ten or fifteen minutes.

By Mr. Stallman.

Q Now, do you recall a minute ago, Mr. Kane, saying that you were about three-quarters of an hour telephoning? A Yes, sir.

Q That was right, wasn't it? A Something like that.

Q And that when you finished telephoning you went out and you saw the fire engines come? A Yes.

Mr. Garrison. Not the fire engines.

Mr. Stallman. Fire apparatus. I beg your pardon.

Q You saw the fire apparatus coming? A Yes, sir.

Q How long before the fire apparatus got there had you heard the shells popping? A I was telephoning.

Q I say how long before the fire apparatus got there was it that you heard the shells popping? A Oh, a short while; about ten or fifteen minutes.

Q You heard the shells start to pop then, about five or ten minutes before the fire apparatus got there? A Yes, sir.

Mr. Garrison. I suggest that you do not lead your witness all the time, Mr. Stallman.

Q Now, after you rejoined Mr. Leyden—you say that the fire was spreading—then what did you do or what did you see? A Why, he sent me up the yard

again, told me to go up the yard and keep the crowd back if anybody was coming down.

Q Then you went away from the immediate vicinity of the fire? A I went up as far as the roadway leading to Pier 6 or Pier 5.

Q Yes. A I stood there.

Q And did you stay there until the explosion? A I was there when the explosion occurred; yes, sir.

Q And were you down behind Store G when the explosion occurred? A I was over towards the sea wall track.

Q About in front of what store? A Well, about Store G—Store G.

Q About Store G, and were you watching the fire at that time? A I was talking to the fire chief, the Lehigh Valley chief, Mr. Julian.

Q Mr. Julian? A Yes.

Q Did you see the explosion? A No, sir; my side was towards it.

Q Your side was towards it? A Yes, sir.

Q What effect did it have upon you? A Well, like as if somebody hit me in the face with a handful of cinders, and it took me in the air; that is all I know.

Q Did you fall down? A I was carried away; I don't know.

Q You were carried away? A Yes, sir.

Q How far were you carried? A Well, when I come to I was about 200 feet from where I was standing.

Q Well, you ran that distance, didn't you? A No, sir; I found myself in the weeds.

Q What did you have there in the way of fire apparatus under your charge? A Hose carriages, chemical engine.

Q And how many hose carriages and chemical engines? A Well, about six or seven hose carriages.

Mr. Garrison. Six or seven hose carriages?

The Witness. Yes, sir.

Q And were they all alike? A Yes, sir.

Q And what did they consist of? A Regular fire hose.

Q How big? A Well, regular regulation fire hose.

Q And what kind of engine? A There was a chemical engine there.

Q A tank of chemicals? A Yes.

Q A tank of fire extinguishing materials? A Yes, sir.

Q And did you use a hose in connection with those chemical apparatus? A There was a hose attached to that.

Q Yes. And where were those hose carts located, starting down here towards the elevator? Any down there? A Yes, sir; there was one down there.

Q Where? A There was one there at Store 3; there was two.

Q Store 3? A Yes, sir.

Q There were two of them there? A Yes.

Q All right. And where were some more? A There were two on the side of Store F.

Q Two on the side of Store F, out here somewhere? A Behind the Time Clock office there.

Q Oh, yes, I see. And where else? A Two—there were two on the side of Store M.

Q Two on the side of Store M. Those were chemical tanks? A No, sir; these were hose carts.

Mr. Garrison. Hose carts.

Q Little two-wheel carts, were they? A Yes, sir.

Q How much hose on those carts? A About 300 feet.

Q 300 feet. Let us see. You said seven altogether, didn't you? A Yes, sir; I guess I did say seven.

Q Was there another one here at the head of Pier 6? A I think there was, yes.

Q Yes. And where were the chemical tanks that you told about? A There was one at the elevator and one at Pier 5—opposite Pier 5—bulkhead.

Q Which elevator, the grain transfer elevator or the new elevator? A The grain transfer elevator.

Q Chemical tank there? A Yes.

Q And where was the other one, Pier 5, did you say? A Yes, Pier 5.

Q Now, on the night of this fire was any of that hose on those hose carts used to put the fire out, or in an effort to put it out? A I don't know.

Q If the fire occurred there at night while you were on duty there as roundsman, whose duty was it to see that the fire hose was coupled up or some means taken to put out the fire? A Well, when the alarm would be sent in, why the men on the grain boat would respond to the call.

Q But I mean who would be in charge of directing the men what to do? A I would.

Q You would be the man in charge? A Yes.

Q And did you when you saw this fire down in the yard or heard the alarm of fire given, did you direct anybody to go and get the hose out and couple it up? A No, sir.

Q Did you see anybody get out any of this hose on these hose carts? A Not at that time.

Q Well, at any time later than that? A Yes, sir; later in the morning I did.

Q About what time? A About 4 or 5 o'clock.

Q From the time you first heard the alarm of fire and saw this blaze that you speak of up to the time when you saw the Jersey City fire apparatus coming down the street, was anything done toward putting out that fire? A No, sir.

Q Mr. Kane, were there any fire hydrants or any hose or other apparatus, capable of being used for fire-fighting

located in the yard to the east of the water tank? A No, sir.

Q Now, when you told us about making that circle around the yard on Pier 7 you did not at that time walk down between any of those strings of cars, did you? A Well, no—no, sir.

Q As you walked around the yard did you see anybody? A No, sir.

Q Did you ever see any persons coming there at night about that time during the latter part of the month of July?

Mr. Garrison. I object to what he saw at some other time than this night. It cannot be relevant. What happened on this night?

The Court. Well, I think it might tend to show what precautions had been taken by the company to prevent unauthorized persons from frequenting the yard, what effort had been made by them to guard the yard. I think it is rather a dangerous question, myself. If you desire to ask it, Mr. Stallman, I will let you, and the other side may have the objection entered. The real question in issue is what was done this night, and not other nights.

Mr. Garrison. I do not have to take an exception.

Mr. Collins. You have to object to the ruling.

The Court. You have to object to the ruling, but exceptions are abolished.

Mr. Collins. Bills of exception are abolished, but you have to object to the question.

Mr. Garrison. I thought the objection was always noted.

The Court. The objection is always noted, but the safe way to do is to object to the ruling.

Mr. Collins. Judge Trenchard said that the best thing was to call it an exception.

The Court. He called it that. What he did in that case you have reference to—the party had said, "I take an exception," and Judge Trenchard has said that was as good a way as any to indicate that he desired to have something in the nature of an exception noted.

Mr. Collins. I was speaking about that it should be noted after the ruling.

The Court. Oh, yes. There is nothing in the decisions yet that I am aware of—there is nothing in the ruling that I know of that indicates you are obliged, after you actually take an exception, to say that it should be noted, because by the very course of the proceeding it has been noted.

Mr. Garrison. I thought it was like an equity proceeding.

The Court. My own notion is that the objection noted in the ordinary way, when it is taken, is sufficient, but, nevertheless, for the purposes of this trial, I am perfectly willing to indicate that when you do take an objection that it is noted, and we will state that right now.

Mr. Garrison. As though we took an exception to your Honor's ruling?

The Court. Yes, and that is what I want to have done, because I rule with my eyes open, and if I rule wrong it ought to be reviewed, and why should I have any hesitation?

Mr. Garrison. What is the situation now?

Mr. Stallman. I will withdraw it.

The Court. He withdrew that and asked another question, which was an implied withdrawal.

Q Mr. Kane, during your rounds around Black Tom had you ever seen any boats tied up around there? A Yes.

Mr. Garrison. I object. I cannot see it is relevant or material to any question we are trying.

The Court. What is the question?

(Question repeated by stenographer.)

The Court. I think that is absolutely relevant, because it would tend to show in the first place how many auxiliaries might be called upon from time to time, because the witness has already said—

Mr. Garrison. He is not asked about the Lehigh Valley boats. This witness has said the people he was to summon for assistance or who would come when the fire whistle blew were Lehigh Valley boats. Now he is asking about boats in general, and they might go back twenty-seven years and tell about boats.

The Court. What is the real point, Mr. Stallman? I would like to know. I can readily see some logical relevancy to it, but whether it is legally relevant or not is a very, very grave question, and if there is relevancy it is a slim relevancy. If you can indicate to me any ground upon which you would like to have it admitted, I would like to hear it.

Mr. Stallman. I will withdraw the question and I will ask this one.

Q On or about the night of the 29th day of July, Mr. Kane, did you see any boatmen going through Black Tom yard or on the Black Tom driveway? A I saw them coming down as far as the grain elevator—men belonging on the grain elevator boats.

Q What is that? A Men belonging to the grain boats.

Q Were there any other boats tied up anywheres near Black Tom east of where the grain boats were?

Mr. Garrison. I object to it. I do not think we are interested in what was tied up near Black Tom.

Mr. Stallman. Now, if the Court please—

Mr. Garrison. The Court has not heard this.

Mr. Stallman. There is no use arguing.

(Question repeated by stenographer.)

Mr. Garrison. He just asked him whether he saw any men come down through the yard on the 29th, and he said he saw them come down as far as the grain elevator, and go on the grain boats, and then he asked whether other boats were tied up near Black Tom. Surely we are not responsible, and ought not to have testimony go to this jury, about near Black Tom. If he saw them at Black Tom—

Mr. Stallman. Well, at Black Tom.

(Question repeated by stenographer as amended, as follows: "Were there any other boats tied up at Black Tom to the east of where the grain boats were?")

A Yes, sir.

Q Just where did you see any such boats? A Well, there are boats tied on the east and west side of Pier 4; some on—there was a schooner and the steamship on Pier 6.

Q Yes; anything else? A I couldn't say whether there was one lighter on Pier 5 or not. I disremember that.

Q How about Pier 7? A Well, there was one down there.

Q Just where was it? A Right opposite Store R.

Q Opposite Store R? A Yes.

Q Do you mean behind Store R? A Yes.

Q How about the South Pier? A Well, I couldn't say nothing about the South Pier.

Q How about the float bridges? A Well, there was lighters down around Pier 7 loading with that ammunition.

Q How about the North Pier? A Well, that is where the ammunition boats were.

Q How many of them? A I couldn't say. I never counted them.

Q Well, one or two or three? A No; it was three or four down there.

Q Three or four ammunition lighters in there? A Yes.

Q How about the north side of the North Pier? A Well, that is where I say, on the North Pier, both sides.

Q Both sides of the North Pier, yes. Do you know whether there were any persons aboard any of these boats and lighters that you have spoken of? A I never went near them.

Q You never went near them? A No, sir.

Q Well, during the evening while you were on duty there did you see anybody around those boats at all?

Mr. Garrison. You mean that night?

Q Yes. A No, sir.

Q You went on duty at what time? A Five o'clock.

Q Five o'clock on the 30th of July—that was daylight, wasn't it? A Yes.

Mr. Collins. No, the 29th of July.

Q The 29th of July, it was daylight at that time? A Yes.

Q Got dark about when? A Around 7 or 8 o'clock.

Q Yes; and from the time you went on around 5:30 until half-past 7 or 8 o'clock had you walked around the yard or Pier 7 at all, around where those boats were? A I took in the storehouse—Pier 4 first—I had to close that pier after the men got out.

Q What time was that? A After half-past 5.

Q Yes. While it was still daylight that evening, did you walk around Pier 7 and around to the South Pier and the North Pier? A Yes, sir.

Q And you saw those boats in there then, I suppose? A Yes, sir.

Q And you don't know whether there was anybody aboard any of those boats or not? A Never paid any attention to them.

Q Paid no attention.

By the Court.

Q Did you at any time on that night go in amongst those cars where the munitions were—the night of the 29th? A Well, I couldn't say. I disremember whether I went in there that night or not.

Q You don't know whether you did or not then? A Not that night. I generally—

Q Well, did you direct any of your men to go in amongst those cars? A Yes, Mr. Garrity was supposed to go there.

Q You say he was supposed—what did that supposition arise from? Had you ordered him to do it? A Yes.

Q You told him to do what? A To go between those cars, see there was no seals broken.

Q Did you give him any other instructions as to what he was to do with respect to the cars when he went through them? A No, sir.

Q Just to see that no seals were broken? A See that no seals were broken and see that the car was in good condition.

Q You told him to do that that night? A Well, that was—I told him that every night.

Q You mean you told him once to do it every night or you told him every night to do it that night? A I told him once to do it.

Q You told him once to do it? A Yes.

Q And what time did he make the tour to see whether the seals were unbroken or whether the car was all right? A Well, the first thing when he would come on he would go down and see his boiler was all right and ring his

buttons and then take a trip around through the whole yard.

Q When would he come on? A Come on at 5 o'clock.

Q You wanted him to do that in day light so he could see the condition of the seals? A Yes.

Q But after 5 o'clock or after he had made that tour— A Yes.

Q You did not have any instructions for him, did you, to go amongst the cars? A Yes.

Q Later? A Yes.

Q What was that instruction? A To do the same thing every time you got a chance—three or four times during the night.

Q To go through amongst the cars three or four times during the night to see whether the seals were broken or intact and whether the cars were all right? A Yes.

Q And did he do that? A Well, he would report to me that they were all right.

Q Well, what did he report to you on the night of the 29th? A Everything was O—all right.

Q How many times? A The last he reported to me was around 10 o'clock.

Q That is at night? A Yes, sir.

Q And he did not report to you after that? A Well, I did not meet him. I saw him up in the crane, but I did not go near him.

Q Did you have a place for the reports to be made at? A No; only when I would come around and I would be on my rounds, why, I would meet him.

Q And you would ask him how everything was? A Yes.

Q And he would say all right? A Yes, sir.

Q What did he say this night? What did you say to him about the cars? A I says, "How is things?" And he says, "Everything is all right."

Q You did not know what he meant by that, did you? A Well, no, sir.

Q And you don't know then as a matter of fact whether he had gone in amongst the cars and inspected the seals and observed the condition of the cars or not, do you? A Not at that time; no, sir.

Q You don't know that. All right. But you did not have any tab on him except what he said to you, that everything was all right? A Yes.

Q Did any other man besides Garrity have any orders from you to go amongst those cars? A No, sir.

Q Nobody else? A No, sir.

Q Did you have any supervision over the Dougherty men that you picked up? A No, sir.

Q None whatever? A No, sir.

Q You did not watch them to see what they were doing or whether they were doing anything or not? A No, sir.

Q Now, these two men that you say were together when the alarm of fire was given—you said one of them was frightened to death? A Yes, sir.

Q Is that the man you knew or the man you did not know? A Well, he was the man that I did not speak to, the other man—

Q No, no; you said that you knew one man to be a Dougherty man and the other man you did not? A The man I spoke to.

Q The man you spoke to you knew as a Dougherty man? A Yes, sir.

Q The other man you did not know? A No, I did not recognize him at the time.

Q You did not recognize him at any other time, did you? A No, sir.

Q So you don't know who he was? A No, sir.

Q Do you? A No, sir.

Q Now was he the man who was frightened to death, the Dougherty man? A He was the man who was frightened to death.

Q That is the man you did not know? A Yes.

Edward Joseph Kane, direct.

Q All right.

By Mr. Stallman.

Q What is the name of the man you knew? A I can't recall his name now.

Q Well, would you remember it if you heard it? A I think I would; yes, sir.

Q Was it Burns? A I think Burns is the name.

Q Mr. Kane, when you told Mr. Garrity to go down and see if the seals were all right, did those instructions pertain to any particular tracks? A Only to the ammunition cars.

Q And do you know what tracks the ammunition cars were on? A Well, you could tell them because there was a sign on them.

Q Told them because there was a sign on them? A Yes.

Q Did your instructions include any of the cars on the float bridge tracks? A Yes, sir.

Q Why? A Because that is where all the ammunition cars used to come in on, on that track.

Mr. Garrison. What is that? I did not hear it. (Answer repeated.)

A Them tracks.

Mr. Garrison. He drops his voice. I cannot hear him.

Q Do you know the numbers of the tracks in that yard? A I did at that time, but I disremember them now.

Q Did you go down there that night and see how many cars of munitions there were? A Yes, sir.

Q Did you count them? A Yes, sir.

Q And how did you count them? A Well, I counted the ones that was on the third track from the sea wall.

Q That was the first track from the sea wall that had cars on it? A Yes, sir.

Q Yes; and you counted those on that track? A Yes, sir.

Q And that is all that you counted? A Yes, sir.

Q And in that way you counted about 20 or 25 tracks?

Mr. Garrison. Tracks?

Q 20 or 25 cars? A Something like that.

Q Now, when you told Garrity to go down and look at the seals, did you tell him what tracks to go on? A No, sir.

Q Did Mr. Garrity have any instructions with reference to trespassers if they should be found?

Mr. Garrison. I object.

The Court. Why?

Mr. Garrison. I think it is entirely speculative as to what instruction he might have had about things that do not appear to be relevant in this case. There is not the slightest evidence in this case of any trespassers.

The Court. I will overrule the objection. You may have an objection noted.

(Question repeated.)

Q Do you understand the question? A Yes, sir.

Q Can you answer it? A Yes, sir. He had—

Mr. Collins. A little louder.

A Yes, sir; he had instructions to see that nobody was to be around the yard, no fishermen or nobody to be around the yard, only men that belonged on boats, to put them on the boats.

Q What do you mean by putting the men on the boats who belonged there? A Well, see that they got on their boats.

Q Well, where else would they go? A So they would not be walking around the yard.

Q Had you ever seen them walking around the yard?

Mr. Garrison. I object. That certainly must be immaterial and irrelevant to this case, whether this man ever saw boatmen walk around the yard.

The Court. I think I will overrule that question.

Q Well, what was the occasion, Mr. Kane, of giving such instructions to Mr. Garrity?

Mr. Garrison. I object. I do not see that we have to go into people's mental attitudes as to why they gave instructions.

Mr. Stallman. That calls for the facts.

Mr. Garrison. Why he gave the instructions, it seems to me, is immaterial. We ought not to be bound by what was on this man's mind.

The Court. I think I will permit the question to be asked. I admitted the other question upon the theory that the Interstate Commerce Commission's regulations required, if I recall them now, that unauthorized persons should be kept away from cars of this kind.

Mr. Garrison. No, it does not.

The Court. Well, it appears on the placard, anyway.

Mr. Garrison. That is not my point.

The Court. And I think, therefore, that I will permit this witness to be asked whether he did that and carried out the instructions on the placard and carried out the regulations that had been given to him by the head of the company or what it might be, in other words, to show what precautions were taken.

Mr. Garrison. In the first place, in respect to the Interstate Commerce regulations, what they say is that unauthorized persons must not be permitted to have access to the explosives. That is a different proposition from having access to the outside of the cars. The idea is that they should not be admitted to the interior of the car.

The Court. I think you and I would disagree utterly and hopelessly on that proposition, because I think access to a car containing explosives is access to the explosives, and the object of the regulation was to prevent unauthorized persons from getting near to the explosives so that they might do an act that might cause damage or destruction.

Mr. Garrison. I do not want to argue that, but it is perfectly apparent to everybody that these cars come from thousands of miles away and come through crowded cities where thousands of people are within two feet of the cars. We cannot be required to keep all those people away. But I do not want to go into that part. My point is we cannot be bound by what went on in this man's mind as to why he gave instructions. He says I gave him instructions. What went on in Mr. Kane's mind seems to be utterly immaterial.

The Court. Well, I think I will admit it, and I think my decision to admit it is rather confirmed than disturbed by the reasons you offer. So I will permit it, and you may have an objection noted.

(Objection noted by defendant.)

(Question repeated.)

A Well, to keep them off the piers—to keep them from stealing or setting fire to any place around there, smoking or anything like that.

Q To keep who off the piers? A Those boatmen.

Q What boatmen? A Men that belongs on the boat. You asked me why did they give such instructions to keep the men on the boats.

Q Well, did you ever see about that time boatmen stealing anything?

Mr. Garrison. I object to that.

The Court. I will sustain the objection to that.

Q Why was it you gave those instructions to your watchmen to keep these boatmen on the boats and prevent them from stealing anything?

Mr. Garrison. I object.

The Court. I will sustain the objection.

By Mr. Garrison.

Q What time was it, Mr. Kane, that you made this round before you went to the pump house on the night of the fire? A Well, I could not exactly say what time I went down there, but I was back about half-past 11.

Q You were back at the pump house about half-past 11? A Yes.

Q You came around Pier 7, didn't you? A Yes sir.

Q And went up along the bulkhead? A Yes, sir.

Q And passed the South Pier, the two float bridges and the North Pier? A Yes, sir.

Q And then west. Did you go outside the sea wall track or on the sea wall track? A Along the sea wall track.

Q You walked on the sea wall track down to the place where the roadway begins? A Yes.

Q Then you came across and got on the roadway? A Yes.

Q And walked right on down to the pump house? A Yes.

Q Did you stop during that walk I have just described? A Yes, sir.

Q Where did you stop? A I stopped around Pier 7 there.

Q No; but I mean after you got up here to the sea wall track and were starting back to the pump house. A I stopped and looked over around Zeke's house.

Q Where was the Dougherty shanty where the Dougherty men were? A Why, a couple of hundred feet from the North Pier.

Q Was it about half-way between Zeke's house and the pier, or was it nearer the pier? A About half way.

Q About half way. You came down right in front of the Dougherty house and Zeke's house on the sea wall track? A I passed by the Dougherty place.

Q Yes; well, you had to pass by Zeke's place, too? A I came up a little further up then Zeke's house and stood there looking over.

Q Go on. A Stood there—

Q How long a time were you from the time you left the sea wall track at the North Pier until you got back to the pump house? A I don't know; I had no watch; I didn't—

Q Oh, well, we do not want minutes; but were you a long time or a short time? A A short time.

Q And you got back to the pump house about half-past 11? A Yes.

Q Then some time between 11 and half-past you were along the sea wall track? A Yes.

Q You did not see any evidence of fire there then, did you? A No, sir.

Q This was Saturday night, wasn't it? A Yes, sir, I guess it was.

Q Well, don't you know it was Saturday night? A Yes.

Q And did they keep a fire over Sunday in Garrity's crane? A A banked fire.

Q Well, he did not have to attend to that, did he, Saturday night? A No, sir.

Q Now, when you got back to the pump house Sloan was in the pump house, wasn't he? A Yes, sir.

Q Pump going? A Sir?

(Question repeated.)

A No, sir.

Q Wasn't there any fire there? A Yes.

Q Why wasn't the pump going? A It wasn't run except in case of fire.

Q Oh, the fire was up, however, under the boiler? A Yes, sir.

Q Steam up? A About 80 pounds pressure.

Q Eight pounds pressure—

The Court. Eighty.

Q Eighty pounds pressure would mean how much pressure in the pipes, do you know how much pressure it would mean in the pipes? A I could not say.

Q How much pressure would he get up in case of fire? A About 120.

Q 120. Now, you were in there talking to Sloan? A Yes, sir.

Q Got there about half-past 11? A Yes, sir.

Q When did you leave there to the best of your recollection? A It was after 12.

Q Did anything occur that caused you to note the time? A Yes, sir.

Q What was it? A Eight bells on the steamship. Those signify 12 o'clock.

Q What steamship was that? A That Brazilian ship.

Q Where was she lying? A She laid on Pier 6.

Q She was not on the pier. Which side of the pier was she? A On the west side of Pier 6.

Q She was on this side? A Yes, sir.

Q On the west side of Pier 6? A Yes.

Q What was on the east side of Pier 6? A The schooner.

Q You heard 12 bells from this ship? A Eight bells.

Q That means midnight? A Yes, sir.

Q Where were you when you heard the eight bells? A In the boiler room talking to Mr. Sloan.

Q How long did you stay after you heard the eight bells? A Quite a while.

Q And then you went out and walked down towards Pier 6? A Yes, sir.

Q Where were you when you first heard somebody holler out fire? A Near Pier 6.

Q What kind of a whistle was it you heard? A Regular police whistle.

Q A regular police whistle. And did that seem to come from the same direction that call of fire came from? A Yes, sir.

Q Then you immediately ran over to the room where the telephone was? A Yes, sir.

Q The pump room? A Yes, sir.

Q When you got there whom did you see? A I saw Mr. Sloan and Mr. Garrity.

Q They were both there? A And these Dougherty men.

Q And the Dougherty men? A Yes, sir.

Q Was anything said about fire alarm? A Only the Dougherty men said—

Mr. Stallman. I do not think we ought to have hearsay testimony.

The Court. It has already appeared in the testimony that the Dougherty men did say there was a fire.

Mr. Garrison. I am talking about ringing in a fire alarm. I am going to ask him whether or not anybody said anything about ringing in a fire alarm.

The Court. I will permit that. I think that is a verbal act that is a part of the *res gestae* of the whole transaction of looking after the fire, and I do not think there is very much doubt about it being a proper piece of testimony as being a part of the whole transaction of which the words form a part.

(Question and interrupted answer repeated.)

Q Just answer yes or no, please. Did anybody say anything about ringing in a fire alarm. Just say yes or no? A Yes.

Q Who said it? A Dougherty man.

Q What did he say? A He said that they had sent in an alarm.

Q That they had sent in an alarm? A Yes.

Q Did you ask them where they had sent it from? A No, sir.

Q What did you do after you heard this whistle and heard this cry of "fire" and had this talk with the Dougherty men; did you immediately go out and look at the fire? A Yes.

Q You went on the platform in front of G? A Yes, sir.

Q And looked down the piers? A Yes, sir.

Q And this fire was coming over the top of the freight cars? A Yes.

Q And was about six inches above the top of the freight cars? A Yes.

Q Could you see how far down it went? A No, sir.

Q You could only see over the top of the car? A Yes.

Q A point of flame coming up about six or seven inches over the top of the car? A Yes.

Q And about six or seven inches wide? A Yes, sir.

Q Was this down where the munition cars were? A Yes, down in that direction.

Q Then what did you do? A I run over to the telephone.

Q Which room did you go in to do your telephoning? A I went in the time clock office.

Q Time clock office? A Yes.

Q And whom did you telephone to? A Called up Lehigh Valley dispatcher.

Q What for? A For fire tugs, and locomotives.

Q What were the locomotives to do? A Pull the cars away.

Q Pull the cars away from danger? A Yes.

Q All right. What else did you do? A I called up the New York fire tugs.

Q Yes; what else? A Called up the Standard Oil tugs.

Q Standard Oil what? A Fire tugs.

Q Fire tugs. What else? A Called up Mr. Dyckman.

Q Who is he? A He was the agent.

Q The freight agent? A Yes.

Q In charge of this property? A Yes.

Q In charge of this depot here? A Yes.

Q Who else? A That is all.

Q And did you get those people promptly? A Well, I did not get Mr. Dyckman.

Q You did not get him at all? A No, sir.

Q Did you try more than once? A Yes, sir.

Q How often did you try it? A Twice.

Q Did you get the other promptly? A Yes, sir.

Q And how long were you in the time clerk's office, all told, telephoning to these four or five people? A About three-quarters of an hour.

Q What were you doing that whole three-quarters of an hour, if you were calling for five people, four of whom you got promptly, and the other of whom you tried to get twice? A After I called them up somebody in the terminal was ringing up and asking me different questions about it.

Q Well, while you were in there did you see a Jersey City fire apparatus arriving, any of it? A Just as I come out on the road there was a fire apparatus, just coming in.

Q Wasn't there one already there? A Well, you might as well say it was there. He was right near the road.

Q Was there one that was already there and stopped? A Well—

Q Wasn't there one that was already there and stopped? Not any question of coming in at all. Wasn't there when you got out on the road after telephoning—wasn't there one Jersey City apparatus already standing still on the ground? A Yes, sir.

Q Yes. So what you were watching was the second one coming? A Yes, sir.

Q When you got out had the freight engines gotten there, the locomotive engines? A Yes, sir.

Q They had already gotten there? A Yes, sir.

Q Leyden had gotten there? A Yes, sir.

Q Leyden was the chief of police? A Yes, sir.

Q Anything happen to Leyden that night? A Yes, sir.

Q What happened to him? A He was killed.

Q Killed down near where the fire was? A Yes, sir.

Q Did you see the Jersey City firemen putting any water on this fire before the first explosion? A No, sir.

Q How near did you see any Jersey City firemen go to the fire before the first explosion? A Crossing at Pier 5.

Q Right out here in the roadway opposite Pier 5? A Yes.

Q Opposite the pump house. Well, at the time of the first explosion you had been down in the yard here with Leyden, hadn't you? A Yes, sir.

Q Did you get below Store R? A No, sir.

Q How far down in the yard did you go, opposite what store? A Between M and N.

Q Between M and N; is that right? A Yes, sir.

Q And where were you at the time of the first explosion? A I was up on the sea—around the sea wall track opposite Pier 5.

Q Opposite Pier 5? A Yes, sir.

Q Up here? A Yes, sir.

Q Where were you at the time of the second explosion? A I was up opposite Pier 4.

Q Yes. Whom are you employed by now? A Sir?

Q Whom are you employed by now? A Standard Oil.

Q Are you a watchman? A No, sir.

Q Now, on the night of the fire—

Mr. Garrison. Strike that out, please.

Q You said that in case of fire the grain boat captains of the Lehigh Valley grain boats were available to help put out the fire? A Yes, sir.

Q Where did those grain boats lie? A Around the grain elevator.

Q Shown on the map there as the transfer elevator? A Yes, sir.

Q And about how many of them were there there that night? A Well, I—

Mr. Stallman. I object unless it appears he knows or made some investigation to find out.

Q To your knowledge how many Lehigh Valley grain boats with captains on them were there there that night? A Well, I should judge about 15 or 20.

Q How many did you see? A I could not say how many I saw.

Q Did Sloan blow his whistle that night? A Yes, sir.

Q Fire whistle? A Yes, sir.

Q Now, you said Mr. Sloan sent you up to keep the crowd back? A Yes, sir.

Q What were you going to do to keep the crowd back? A Well, keep those spectators from running down.

Q What were you going to do to keep them from running back? A Tell them not to come down there.

Mr. Garrison. I could not hear that.

A (Repeated by the stenographer.) Tell them not to come down there.

Q Tell them not to go down there? A Yes.

Q Where was this crowd? A Well, there was a lot—

Q Where was it, I say? A Opposite Pier 5.

Q A lot of these grain boat captains? A Yes.

Mr. Stallman. I object to that.

Mr. Garrison. That is a perfectly proper question. I can ask him if they were grain boat captains, or if they were Catholic priests, if I want.

The Court. I think that is a perfectly proper question.

Q Were there a lot of these grain boat captains? A Yes.

Q Were there policemen there? A Yes.

Q I mean Jersey City policemen? A Yes, sir.

Q And firemen? A Yes, sir.

Q How long had these watchmen that you had down there been employed there, to your knowledge? A The watchmen—they been there before I been working there.

Q And you were there seven years at that time? A Yes, sir.

Q Now, when did they stop working? At what time in the afternoon or evening or night did they stop working there at that time? A The laborers? Half-past 5.

Q And what time did they stop drilling cars in and out of there? A Around half-past 5.

Q It was a dead yard, was it, after half-past 5? A Yes, sir.

Q No locomotives in there? A No, sir.

Q No railroad activities? A No, sir.

Q All stationary? A Yes, sir.

Q Put until the next morning? A Yes, sir.

Q It was a hump of land, a finger of land, running right out with water all around it, wasn't it? A Yes, sir.

Q How much hose was there on these various hose carts that you have mentioned? A Around 300 feet.

Q On each hose cart? A On each hose cart.

Q And there were seven? A Yes, sir.

Q Three times seven are twenty-one—2,100 feet of hose? A Yes, sir.

Q Were there some fire plugs down here around this big water tank? A Yes, sir.

Q What kind of water tank was that, how many gallons? A I couldn't say.

Q Was it a big tank? A Yes, sir; very big.

Q About how big was it? A Very large.

Q And at the foot of that tank were some fire hydrants? A Yes, sir.

Q So that with 2,100 feet of hose and a fire plug there you could reach 2,100 feet out here, couldn't you? A Yes, sir.

Q There were city fire hydrants, too, down there, weren't there? A Fresh water; yes, sir.

Q This other high pressure system was the salt water system? A Salt water system.

Q Water pumped out of the bay? A Yes, sir.

Q The other was the city system, the ordinary city fire system? A Yes, sir.

Q Like you have the plugs in the city? A Yes, sir.

Q Have you ever assisted in putting out a fire down at Pier 7? A No, sir—yes, sir.

Q How far down on Pier 7 towards the water was this fire that you helped to put out? A At the extreme end.

Q Extreme end of the bulkhead, do you mean? A No, the channel end here, the south end—south.

Q Here, do you mean? A Yes, sir.

Q Extreme end? A Yes, sir.

Q And where did you get your water from? A Well, there was—we had a couple of buckets and we were pulling the water up with buckets and a Standard Oil tug came in and put it out.

Q You didn't get the water from the yard? A No, sir.

Q Was your hose a hose that reached down there? A Yes, sir.

Q You had some fire extinguishers in this structure under the big tank, didn't you? A Fire extinguishers?

Mr. Garrison. Read the witness the question.

Q (Repeated by the stenographer.) You had some fire extinguishers in this structure under the big tank, didn't you? A No, sir.

Q Those things you turn upside down and squirt? A No, sir.

Q You had some of those in the storehouses? A Well, the storehouses were all locked.

Q I didn't ask you anything about being locked or open or white or black. You had some in the storehouses? A Yes, sir.

Q Now, weren't some in Sloan's pump house, too? A No.

Q Sure of that? A Pretty sure.

Q Pretty sure. Not absolutely sure? A Not absolutely.

Mr. Garrison. That is all.

Edward Joseph Kane, cross.

By Mr. Stallman.

Q But you did not go into the storehouse or into Sloan's pump house and get any extinguisher when you discovered the fire, did you? A No.

Mr. Garrison. I want to ask one other question. You may want to cross examine on it.

By Mr. Garrison.

Q Did you ever aid in putting out a fire down at Black Tom where you did use hose? A Yes, sir.

Q Where was that fire? A Over on the beach—south or the north side of the island.

Q Now, what do you mean, south or north? A North side.

Q What did you attach your hose to then? A Fire plugs.

Q What fire plugs? A Fire plugs on the roadway.

Q I know, but which one? They are strung over the whole roadway, aren't they? A Well, salt water, high pressure.

Q Mr. Kane, I mean which one? Why, there must be two dozen there. They run the whole length of the roadway. Now, whereabouts were the plugs that you attached to your fire hose? A Right opposite Store F.

Q Right opposite Store F? A Yes.

Q Then your fire was over here some place? A Yes.

Q Further west or further down that way? A Further west.

Q About how much further west? A About where your finger is.

Q About where my finger is. That was over in some grass? A That was over in some grass; yes, sir.

Q Alongside of the property? A Yes, sir.

Q It was not on the property? A No, sir.

Mr. Garrison. That is all.

Edward Joseph Kane, re-direct.

By Mr. Stallman.

Q Mr. Kane, how long had Mr. Sloan and Mr. Kelly and Mr. Garrity worked there at Black Tom? A They were working there when I went there.

Q And you have been there seven years? A Yes, sir.

Q How long before this fire was it that the ammunition began to come in there? A I couldn't say.

Q Well, can you tell within a month or a year? A Oh, about five or six months anyhow.

Q And from the time the ammunition began to come in there did you have any more men under you than you had before that? A No, sir.

The Court. Did you have any more apparatus?

The Witness. No, sir.

The Court. Did you say the grain boat captains had orders to assist in putting out the fires?

The Witness. Yes, sir.

The Court. And what was the signalling to them that a fire was there and that they were required to lend their assistance?

The Witness. The whistle in the boiler room would blow.

The Court. Well, had the whistle in the boiler room blown this night?

The Witness. Yes, sir.

The Court. I understood you to say that you were in charge of the fire fighting operations there that night?

The Witness. Yes, sir.

The Court. And Leyden ordered you to go up the road and keep, you said, the spectators back.

Mr. Garrison. Crowd, first he said.

The Witness. The outside captains, on the outside boats.

The Court. Well, didn't you answer Judge Garrison's question by saying that you were to keep the grain boat captains back?

The Witness. Well, there was outside grain boat captains there, too.

Q Well, were there any of your grain boat captains in this crowd that you were to keep back? A No, sir.

The Court. There were not. Well, were there many of your grain boat captains down where you and Leyden were?

The Witness. No, sir, not that I seen.

The Court. Well, where were they?

The Witness. They were on the dock side.

The Court. Well, did they come when the whistle blew to call them—did they come to help put the fire out?

The Witness. Well, I saw two of them.

The Court. Where?

The Witness. They were up at the boiler room.

The Court. At the boiler room?

The Witness. Yes, sir.

The Court. There were fifteen boats there, you said?

The Witness. Yes, sir.

The Court. Fifteen grain boats of your company?

The Witness. Yes, sir.

The Court. And two grain boat captains reported?

The Witness. That is what I saw.

The Court. That is what you saw?

The Witness. Yes, sir.

The Court. And they were ordered to report at the boiler room, weren't they?

The Witness. Yes, sir.

The Court. And you were there?

The Witness. Well, no, not at the boiler room; I wasn't there all the time.

The Court. But when you were there—

The Witness. Yes, sir—

The Court. —two men reported?

The Witness. I saw two; yes, sir.

The Court. And how long were you there?

The Witness. Oh, I didn't stay there; I only just came there and went away again.

By Mr. Stallman.

Q What did these two grain boat men do? A They wanted to know where was the rest.

Q They wanted to know where the rest of the boatmen were? A Yes.

Q Well, what did they do? A They run down along the dock side of the storehouses.

Q Over where the schooner and steamboat were, around that time? A Yes, sir.

Q What did they do there? A I don't know.

The Court. Well, what did you order them to do? You were in charge of the fire fighting, you said.

The Witness. Well, they said they were going down to get the hose out.

The Court. Well, did you give them an order?

The Witness. No, sir.

The Court. You did not; and they simply said "We are going down to get a hose out?"

The Witness. Yes, sir.

The Court. And then what did you say?

The Witness. I let them go ahead.

The Court. You didn't tell them what to do with it when they got it out?

The Witness. No, sir.

The Court. Or where to attach it?

The Witness. No, sir.

The Court. Or what to attach it to?

The Witness. No, sir.

The Court. Or what to put it on?

The Witness. No, sir.

The Court. You just let them go?

The Witness. Yes, sir.

By Mr. Garrison.

Q Mr. Kane, you were asked about the shells blowing up. When did you first hear any shells going off down there that night? A While I was telephoning.

Q And how soon after you began telephoning did you hear the shells? A Very shortly.

Q Very shortly after you began telephoning? A Yes, sir.

Mr. Garrison. That is all.

Mr. Stallman. That is all.

(Witness excused.)

JAMES J. KELLY, sworn.

Direct examination by Mr. Stallman.

Q Mr. Kelly, what is your employment? A Stationary fireman.

Q Where? A Lehigh Valley Railroad.

Q Where? A Lehigh Valley Railroad.

Q Where do you work? A At Black Tom.

Q And how long have you been working there? A Since 19—1905.

Q Since 1905? A Yes, sir.

Q About fourteen years? A About fourteen years.

Q Were you working there at the time of the explosion? A Yes, sir.

Q A couple of years ago? A Yes, sir.

Q And how were you employed at that time? A Why, to take care of the boilers and the transfer elevator and punch buttons.

Q That is, you were more or less of a watchman? A Yes, sir.

Q Did your work take you any further east than Pier 4? A Took me only to the west of Pier 4.

Q West side of Pier 4? A Pier 4; yes, sir.

Q That was the easterly boundary of your beat? A Yes, sir.

Q Now, how many boilers did you have to look after? A Two.

Q Two boilers? A Yes, sir.

Q Big boilers, were they? A One was a 96 horse, and the other is 128.

Q Those boilers were to operate the— A The engine—

Q —the engine for the lifting machinery? A Yes, sir.

Q How many time clocks did you have to— A Three every hour.

Q —punch? Now, what was the first that you knew of the fire down there? A Why, after 12 o'clock I had a boiler to blow down; they were going to wash it Sunday morning; the plant was not going to run Sunday morning—the elevator—so I had to blow this boiler down to get it cold for the day man to wash it. So as I was blowing it down I heard the whistle blow, but I thought it was a tug boat getting some grain boats out of the basin, and I finished the job. It took me maybe ten minutes to finish the job. So I walked out of the door and I couldn't see a boat in the basin, and I said, "That sounds like the pump whistle," so I walked down

and Sloan told me there was a fire at the North Pier, "Go over to the crossing at the sea wall and look down and you can see it." So I went over and right at the sea wall I could see a fire, a small fire.

Q Now, do I understand, Mr. Kelly, that you were over on the far side, opposite Pier 6, on the far side of these tracks?

Mr. Garrison. Pier 5.

The Witness. Pier 5.

Q Pier 5? A Yes, sir. The sea wall; yes, sir.

Q About where I am pointing? A That is about it.

Q Now, on the outside of this last track—what is there, a platform over there? A No; that is all water then.

Q Just on the outside of the track? A Of the track.

Q Where were you standing on the track? A Right in between the tracks—between the tracks.

Q Between the two tracks? A Between the two tracks.

Q That would be between the sea wall tracks— A And the second.

Q —and what is called the middle float track? A Middle float; yes, sir.

Q I see. And you looked easterly and you saw the fire? A Yes, sir.

Q Now, just what did you see? A I saw a small fire. It didn't look over four or five feet high. It didn't look that—about four feet high in between the cars; to me it looked to be in between the cars.

Q Yes, and how wide? A Well, maybe two feet wide.

Q I see. And could you tell in between the cars on which tracks? A Looked to be in between the sea wall and the middle float.

Q About how far away from where you were? A Well, it seemed to be down as far as Zeke was, or further than that, the way it looked to me, the distance between the cars.

Q You say you were standing right on the ground? A On the ground; yes, sir.

Q Did the light, the flame that you saw illuminate the cars down where the fire was? A Yes, sir.

Q Could you tell whether the cars on each side of this fire were in a long string or just a few cars on each side? A Well, I couldn't tell you.

Q Couldn't tell that? A No.

Q Now, how long did you continue to watch that fire? A Oh, not long, a couple of minutes.

Q Then what did you do? A I went back to the elevator, to secure the boiler up there.

Q To do what? A To the elevator, to fix the elevator boiler up.

Q What do you mean? A The one that was burning then. One was out and the other one was alive.

Q You went back to attend to your fires? A Yes.

Q Then what did you do? A Then I came back to the pump room to where Sloan was.

Q Yes? A And in the meantime the fire companies was coming down with the hose wagons.

Q How long was it from the time you first went down to Sloan, the pump house, and saw this small fire until you got back there again? A Oh, it was a half hour.

Q Half an hour? A Yes, sir.

Q In the meantime did you do anything to put the fire out? A No, sir.

Q You did not. Did you go down to where the fire was? A No, sir.

Q Did you see anybody go down there to do anything towards putting the fire out? A Nobody went further than Pier 5.

Q Could you tell us whether the fire appeared to be burning on the ground or not? A Well, it seemed to be coming—it was higher off the ground, it seemed to me, but didn't seem to be just exactly on the ground, but like the bottom of a car had started.

Q Now, when you say it was about four feet off the ground—is that what you meant when you said it was about four feet high? A Four feet high from where the fire started—up.

Q Now, when you saw the fire—you left the sea wall and went away and came back. When did you see the fire again? A It was after 1 o'clock when I seen it the second time, when I came back.

Q How big was it at that time? A Oh, it was getting big then.

Q Well, how big? A Well, it seemed—there was two cars or more.

Q About two cars? A Wide.

Q Two cars wide? A Yes, sir.

Q Where did you see that from? A Pier 5—Pier 5 crossing.

Q Did that fire appear to be in the same place as where you saw the first fire? A Yes; maybe it was coming up this way a little further towards Pier 5.

Q Yes; and did you watch it until the shells began to explode? A Well, the shells was exploding when I came back from the elevator.

Q And that is the first you noticed the shells exploding? A Yes.

Mr. Garrison. I object. He hasn't said—

Q I will ask you that.

Mr. Garrison. I know, but I move to strike it out.

The Court. I will strike the question and answer out.

Q When was the first you saw the shells exploding? A When I came back from the elevator.

By the Court.

Q How long was that from the time you heard the whistle blow, about? A Well, that was a good half hour.

By Mr. Stallman.

Q Do you remember testifying here at another trial tried in the New Jersey Fidelity Company? A Yes.

Q Do you remember how you described the fire to me at that time, as to what you thought was burning?

Mr. Garrison. I object, if the Court please. I cannot see that this witness has shown the slightest hesitancy in answering any question asked him.

The Court. I do not see any. Do you want to contradict him? What is the object?

Mr. Stallman. Well, I merely want to have him describe probably in a little clearer way than now—than he has. He described it more clearly in the other trial.

The Court. Then I gather that your object is to lead him by stating to him what he said at some other time and asking him to O. K. it for you.

Mr. Stallman. No; I wasn't going to lead him at all. I was going to ask him if he remembered the description he gave at the other trial.

The Court. All right. Suppose he says he does, then what?

Mr. Stallman. Then I will ask him if he can describe a little more clearly than he has.

The Court. What difference does it make if he remembers the other trial. If he can describe it you can ask him. Whether he remembers the other trial makes little difference. I rather gather, how-

ever, that the next question would have been, but for this interruption, "Don't you remember saying at the other trial so and so and so?"

Mr. Stallman. I have been practicing long enough to know better than that.

The Court. I know, but—

Mr. Garrison. You were going to do it in a minute.

Q Did you stay around there, Mr. Kelly, until the explosion occurred? A Yes.

Q Where were you at that time? A Right at the crossing at Store 3.

Q Crossing at Store 3? A Yes.

Q That is down below? A Middle way between Store 3 and the elevator.

Q That is next to Pier 4? A Yes, sir.

Q Did you see the explosion? A Yes, sir.

Q How did it appear to you? A Well, it seemed it got all dark for a second, and then it all lit up and then was like a lot of dust flowed into me and hit me in the face.

Q Did you hear anything? A Oh, yes.

Q What? A Noise.

Q Where did this explosion come from? A Why, it came from the lower end of Pier 7—North Pier—lower end of the island.

Q Well, where with reference to where you saw the fire? A Well, it seemed to come right out of there.

Q Did you hear any explosion after that? A I heard it, but I wasn't there.

Q Where were you? A Took a walk.

Q What's that? A I took a walk.

Mr. Garrison. I took a walk, he says.

Q How far away were you at the time of the second explosion? A About a mile.

James J. Kelly, cross.

Q When did you start? A Right after the first. (Laughter.)

Q When you first saw the fire, the small fire that you are now referring to, did it have any particular shape—did it look like any particular object burning? A No, it seemed like to be the side of a car—burning up the side of a car—I wouldn't say it was, but it looked that way to me.

Q How long did you stay there on the sea wall watching it before you went back to your elevator? A Only a couple of minutes.

Q What's that? A A couple of minutes. Now, you mean the first time until I went back?

Q Yes. A Only a couple of minutes.

Q Is my recollection correct that when you first heard the whistle blow it was about ten minutes before you went down to see Sloan? A Yes, sir.

Cross examination by Mr. Garrison.

Q Mr. Kelly, these estimates that you have given of time, are mere guesses? A Yes.

Q You heard the whistle? A Yes.

Q Fire whistle? A Yes.

Q Did something or other with your fire? A Yes.

Q Then you went down to the pump house? A Yes.

Q Sloan told you there was a small fire? A Yes.

Q Went over on the sea wall track and saw this small fire? A Yes.

Q You stayed there a couple of minutes, you told Mr. Stallman? A Yes.

Q Went back to your fire and stayed up there a half an hour, you said? A Well, it was a half an hour until the second time I came down, from the first time to the second time. When I left the fire to go back to the elevator it was about fifteen minutes difference from that time until I came back again.

James J. Kelly, cross.

Q How long were you back at your fire, at your engine, your boiler? A About fifteen minutes.

Q Then the other fifteen was taken in coming and going to and fro? A Coming and going; yes, sir.

Q And all of these are mere estimates, aren't they? A That is all.

Q You haven't any idea—you may be wrong by ten minutes or fifteen minutes? A Yes.

Q Now, you told Mr. Stallman that this little fire that you saw illuminated the cars. What cars did it illuminate? A Well, I said it looked as if it was on to the cars.

Q What? A I said it looked as if it illuminated the cars.

Q That is what we mean when we say illumination. You mean something that strikes the eye as very light? A Yes.

Q What cars did it strike your eye as making light? A I couldn't say what cars they were.

Q I don't mean the names, but did it illuminate the cars on the sea wall track? A Yes, on the sea wall track.

Q Made it all very bright? A Yes.

Q Then it was a little bit of a fire, only four feet high and two feet wide? A It was coming—

Q Answer the question. It was a little fire, wasn't it, four feet high and two feet wide? A Yes.

Q Coming from the bottom of the car? A Yes, looked to me to be.

Q It illuminated some cars? A Only the car and the one next to it.

Q What? A Two sides.

Q It cast its reflection sideways, not in front of it? A No, not in front—sideways.

Q Why didn't you go down and put out this little bit of a fire—part of your duty to put fires out? A I went back first—

Q Answer the question. Why didn't you go down and put out this little fire? It was part of your duty to put a fire out? A Yes.

Q Why didn't you? A I knew what was down there.

Q What was down there? A Ammunition.

Q The reason you didn't go there was you didn't want to get killed? A Yes.

Q That is all.

Re-direct examination by Mr. Stallman.

Q One or two questions I forgot, Mr. Kelly. How long had you been employed there at the time of the fire? A How long?

Mr. Garrison. 1905.

Q 1905? A 1905 I went there, but—

Q I beg your pardon; that is a repetition. Now let me ask you this. Had you ever been down in that part of the yard near the North Pier? A Why, I have been down there, but not while that ammunition was there. Once in a while I might take a stroll all through the yard early in the evening.

Q But you had not done that while handling ammunition? A No, I wasn't up there; I might have at that, but I can't recollect whether I did or not.

Q That was just a walk for recreation? A That is all, yes.

Recess until 2 o'clock.

AFTERNOON SESSION.

SAMUEL J. SLOAN, sworn.

Direct examination by Mr. Stallman.

Q Where are you employed? A Standard Oil Company.

Q Where were you employed on the 30th day of July, 1916? A Lehigh Valley Railroad.

Q Where? A Black Tom.

Q In what capacity? A Engineer.

Q And where was your station? A The pump house at the crossing of Pier 5.

Q And what were your hours of duty? A From half-past 5 till half-past 6 in the morning—night work.

Q From half-past 5 in the evening?

Mr. Garrison. He said in the morning.

(Answer repeated.)

A Night work.

Q And what were your duties there? A My duties was to keep steam on in the boiler—tend the pump in case of fire and punch buttons.

Q What kind of a boiler was it that you attended to? A Stationary boiler, 125 horse power.

Q And where were the buttons that you punched for your time clock? A The buttons was on the east side of Pier 4, one on the bulkhead of Store A and the other on the extreme end of Pier 4.

Q Now, whereabouts on Pier 4 was it? A One right on that corner (indicating), and the other one on the bulkhead.

Q Where I am pointing, at the southeasterly corner of Pier 4? A Yes, that is one.

Q And another one about where I am pointing. A Yes, sir.

Q On the bulkhead at the east side of Pier 4? A Yes, sir.

Q Where else? A Then on the end of Pier 5, outside on the bulkhead.

Q Somewhere where my pointer is pointing? A In the center there, right there, there is a doorway there.

Q In on the end of Pier 5? A Yes.

Q Anywhere else? A That is all.

Q And you kept the fire going in the boiler? A Yes, sir.

Q At what is shown as the pump house on the map? A Yes, sir.

Q Did you have any duties to perform with reference to the yard at the end of Black Tom down by Pier 7? A None whatever.

Q How long had you been employed there at that time? A About between 21 and 22 years.

Q And how often did you go around and punch these buttons? A Every hour.

Q Now, what was the first you knew of a fire there on the 30th of July, 1916? A I heard some men hollering out on the road, and they ran over to me and told me the North Pier was afire.

Q They were out on the road when you first heard them? A On the main road on the crossing of Pier 5.

Q I see; and did they come over to where you were or did you go over to them? A I partly went over to meet them and they met me by the coal bin there right alongside the tracks.

Q And did you see any fire at that time? A When they ran over to me and told me the North Pier was afire I thought they were stalling me; I thought they were giving me a game. I said, "the hell you say there is a fire over there," and I run over to the crossing, on the extreme end of the track on the north side and I looks down there and I sees a small fire there, between the end of the cars. It looked to me the very end of the North Pier.

Q Yes? A And I says I must run back and turn in a fire alarm. He says, we have already turned in a fire alarm.

Q Do you know the names of those men? A Yes, sir.

Q What are their names? A One fellow's name is Burns and the other fellow's name is Gibson.

Q Which one of them spoke to you? A Both of them spoke, you know, they were all excited and they were speaking with their hats off and really excited.

Q Speaking with their hats off? A They had their hats off like they ran up the road all excited and out of breath, as it were.

Q How big was this fire? A Well, at the time I looked at the fire it was about the height of a barrel at the distance down between the tracks.

Q And how wide was it? A Well, just about a barrel in width.

Q I see; and you just took one glance at it and ran? A Took one glance and ran and blowed the whistle and got the pump under way, opened the suction valve and discharge valve and of course the line already had about 80-pound pressure on it—salt water line.

Q Yes, and then what did you do? A And the phone was ringing and I answered the phone.

Mr. Garrison. What is that?

(Answer repeated.)

A (Continuing.) The phone was ringing, and it was the National—the people that had supervision of the new sprinkling system.

Q When you saw the fire and ran back to your pump house, was the phone ringing when you got there? A The phone, right about the time I got back there. You could hear the phone right from the crossing; there is an auxiliary bell there and it rings very loud.

Q Which did you do first, fix your boilers or answer the phone? A I went to the boiler and opened the suction valve and then answered the phone.

Q Then what did you do? A I think it was the National District people that covers the supervision of that new sprinkling system—

Q What did you do? A I answered the phone and they told me there was a fire down there. I said yes.

Then they wanted to get Superintendent Davidson's telephone number, and I gave them Superintendent Davidson's telephone number, and in the meantime Kane hollers out to me, "Sam, try and get Mr. Dyckman," he says, and "let me know." So I rang up for Mr. Dyckman, called up central and got Mr. Dyckman right away and told him the situation, and he said, "I am on my way right down, Sam."

Q Then what did you do? A Well, I kept by my boiler waiting to see if anybody would take water and had the pump turning over and the release valve open to take the excessive pressure off of the pump, waiting for somebody to take water.

Q How long did you wait? A It was that way all the time. Nobody took water at all.

Q How long did you wait? A The whole time I was there.

Q How long was that? A Well, I was there until the morning. I answered the phone in between the acts, you see, when it called at the time clock's office, I would go out there an answer the phone and come right back to the pump room.

Q Now, did you go and look at the fire after your first sight of it? A No, I did not look at the fire until way in the morning.

Q Did you do anything toward getting water on the fire? A None whatever; I only done my duty, got pressure up on the line, and so forth.

Q And what happened to these two men that told you there was a fire? A Well, the minute they give me the signal, "Fire!" they beat it up the line as quick as their legs could take them.

Q In what direction? A Up towards Lafayette—Claremount way.

Q Westward towards Jersey City? A West, yes.

Q Did you stay there until the explosion occurred? A Yes, sir.

Q Where were you at that time? A I was after coming out of the time clock office and speaking to Superintendent Mulligan and I was on my way back from speaking to him when I see a glare in the sky and everything went ink black and I was rolled through the space there, and that is all I remember of the explosion.

Q At that time you were— A At the corner—

Q —down between F and G stores? A Yes, at the corner of the National Storage office there. There is an old frame building there.

Q Did you have any instructions as night watchman there to do anything in case of fire there? A Yes.

Q What were they? A There was instructions there what to do in case of fire—call up the different departments and get pressure up and fight the fire as best could.

Q Well, did you have any instructions about doing any work yourself in the way of fighting the fire? A No, I could not go and leave the boiler and pump and stuff there.

Q When you first heard this shouting out on the road, did you know what it was?

Mr. Garrison. I object, if your Honor please. It must be utterly immaterial whether when he first heard the shouting he knew what it was or not.

The Court. I do not see of what materiality that is. I think I must sustain the objection.

Q Well, the shouting that you heard, did it say anything about a fire? A The shouting by the two men—they run over to me and they told me the North Pier was afire.

Q What were they shouting? A Hollering, that's all—"fire, fire"—that way.

Q Did you understand that when first you heard it? A Sure I did. I understood what they were saying,

but I questioned their truthfulness about the fire until I seen it myself.

Q What was there about it that made you doubt that there was a fire?

Mr. Garrison. I object. We cannot certainly be bound by this gentleman's mental operations.

The Court. I will sustain the objection.

Q Did you have supper that night? A Yes, sir.

Q What time? A 12 o'clock.

Q And you had that, I suppose, in the pump house? A Either in the pump house or out—just sandwiches; you eat it walking or standing around in the vicinity of the pump house.

Q The flame that you saw, did it illuminate the cars around it? A No, it just looked like a small bonfire to me, as I described, the size of a barrel.

Q Did you know at that time that there were ammunition cars in the yard? A I knew there was ammunition of some kind going down there; what the contents were and that, I could not tell you.

Q Well, was it the fact that there were ammunition cars down there the reason that you did not go down to put it out? A Well, I was not going down there to get blown up, I tell you that.

Mr. Garrison. I did not hear that.

(Answer repeated.)

Q Well, now, can you tell us whether or not where you saw this fire there were cars on either side of it? A Yes, sir; it looked to me from where I stood on Pier 5 crossing there on the north side there was tracks and between those two tracks there was cars pretty well along that line.

Q How long, how much time did you spend in telephoning after these men told you there was a fire? A Well, I would not tie myself to the time, but different

times from the time the first fire alarm to the time of the explosion, I was phoning an answering phones all the time.

Q Had you been down there among those ammunition cars? A No, sir.

Q Well, now, do I understand you that you did not see this fire from the time that you first discovered the blaze until after the explosion? A Oh, yes, I seen it after; some time after that I looked down the road again and I seen the fire was getting larger.

Q How long was that after you had first noticed it? A I should say that was somewhere about 20 minutes or quarter-past 1; I would not tie myself to time; somewhere around there.

Q How long was that after you first discovered the fire? A I should say at about quarter to 1, the first discovery of the fire.

Q The second time you saw it was 30 or 35 minutes after that? A About, I should say, 25 minutes after that.

Q Did you hear the popping of any shells during that fire? A Yes.

Q When did you first hear that? A Well, say about 10 minutes or quarter past 1, small reports first, then a large report, then a small and then quite often you would hear them.

Q You heard that from about 1:10 to 1:15? A Somewhere thereabouts.

Q When you first saw this fire did you see what it was that was burning? A No, sir. I could not say at the distance.

Q And could you locate the place of the fire with reference to Zeke's shanty? A Well, as I said before, the location I could give that fire between me and the Statue of Liberty; it looked on the end of the North Pier.

Q As near as you could guess at the location? A Yes, sir.

Q Do you know, Mr. Sloan, whether there were any fire hydrants in the yard at the place where the big tank was? A I guess the nearest hydrant there is right along Store R on the roadside there—the structural tank.

Q You know the road does not run all the way down to Store R? A Well, the road terminates there at Pier 6 crossing, but then for about a hundred feet the road runs down to where it comes to those tracks where they curve around the south side of the yard.

Q Let us see if we can understand. Now, as I understand it, the road itself stopped about opposite Store O? A Yes, sir. Then for about 50 feet or so there is a roadway there, but it has never been occupied because there is no continuation there.

Q What I intended to ask you, or what I meant by my question is, whether or not there are any fire hydrants or anything of that kind in this part of the yard? A No, sir.

Q East of where that tank was? A Not that I know of.

Q Was it any part of your duty to get out what hose there may have been around there and couple it up to the hydrants? A Well, if the fire was anywhere nearby the pump room or thereabouts I would always give a hand.

Q And suppose it was not near there; suppose it was— A Well, I would have enough to attend the pump room and that stuff, you see.

The Court. Suppose the fire were out there near where what is called the crater is located, would you have anything to do with that?

The Witness. No, sir.

The Court. All right.

Samuel J. Sloan, direct.

By Mr. Stallman.

Q Well, what was this pump connected with that you were operating? A It was connected with the salt water or fresh water; ten-inch suction from the river and six-inch suction from the fresh water line.

Q And that was to supply hydrants in and around the storehouses? A Yes, sir; they applied a six-inch salt water line, and you could branch off into the Corey three-way hydrant line.

Q Now, that was two distinct sets of water pipes? A Yes, sir.

Q And were they the same or different from any of the lines known as the city line? A Oh, they are altogether different; larger mains.

Q I see. And you looked after that as the engineer for the Lehigh Valley Railroad? A Yes, sir.

Q Where did you get the fresh water? A From the Jersey City pressure, Jersey City line. There is a six or seven-inch line comes from Jersey City right down through the building, and the suction is branched over into the pump room. That is the same line that supplies the Jersey City hydrants, the hydrants marked 4-inch-C. That is Jersey City line.

Q Well, then the city hydrant and the Lehigh Valley Railroad hydrant were both connected with the same main? A No, sir; different mains. It has a connection with the Jersey City line where they put the fresh water hydrant; they call that the city line; and then the salt water line is a separate line altogether. That is a six-inch line, and then there is a Corey three-way there, hooked on to a ten and a twelve-inch line.

Q And where was that? A On the right side, the same as the other main.

Q Near what store? A All along the "store" of warehouses.

Samuel J. Sloan, cross.

Q Did you see anybody, Mr. Sloan, take any steps towards putting out the fire? A After I blew the whistle, some few minutes after that the boatmen responded. I know there were two men came in to me and said, "Sam, what can we do for you?" That was Crockett and Al Mason. I said, "I am all right here. Go ahead and see what you can do down the line." And they went down the line. That is as far as I know what they done.

Q Those are the only two boatmen you saw? A That is all I saw. Of course, there could be some more come down there; I was not watching who was coming down there. I had too much to do.

The Court. Was Kane in the pump house at the time these two boatmen came in, do you know?

A I am not sure, Judge, whether there was or no. I think he spoke to them outside.

Mr. Stallman. That is all.

Cross examination by Mr. Garrison.

Q This pump that you were tending was connected with the salt water system? A Salt and fresh water.

Q Now, answer my question. With the salt water system? A Yes, sir.

Q And also with the fresh water system? A Yes, sir.

Q And was utterly and entirely distinct from the city's fire plugs that were down there? A Decidedly so.

Q You had nothing whatever to do with them? A Nothing whatever.

Q Your pump didn't affect them one way or the other? A None whatever.

Q Did you have steam up that night? A Why, yes, sir.

Q How much did you have up before you discovered the fire? A Eighty pounds.

Q How much pressure would that put on the water hydrant or the pressure hydrant? A It could run up to 160 pounds of high pressure.

Q And do you happen to know how far that would work out of the end of the hose? A Yes, 130 feet.

Q 130 feet? A From the end of the nozzle.

Q Did you get up more steam after you saw the fire? A Yes, sir.

Q How much more? A I got it up to about 150 pounds on the boiler.

Q And how far would that squirt the water from the nozzle of the hose? A Well, if you run the pressure on the pump up to 200 pounds on the pump, I suppose you could throw a stream anywhere—

Q Oh, I mean the 150 pounds that you did have? A Well, you could throw a stream about 130 or 140 feet.

Q 130 or 140 feet. Now, were there any fire extinguishers around there where you were? A Yes, sir.

Q Where were they? A They were located—there was three hand grenades in the pump room, and one of those fire extinguishers that you reverse, turn them upside down to put them in use; they were in tier four, tier five, tier six, and the time clock office, and in the grain elevator engine room.

Q And those that you speak of in respect of the storehouses, were they where you could get at them without unlocking the storehouses? A Kane was the only one had access to the storehouses.

Q Now, where were others that anybody had access to? A Pier 6, Pier 5, Pier 4, the time clock office, and engine room, and the grain elevator in the pump room.

Q Now, those were little tanks that you just turn upside down and turn a cock and the fluid comes out? A Yes, sir.

Q One man can handle them? A Yes, sir; they are supposed to be for one man.

Q Now, you were a part of a committee to put out fires down there, weren't you? A As I understand my work.

Q And, therefore, if your lending a hand would do any good it was part of your duty to lend a hand to put the fire out? A That is in the vicinity of the pump room.

Q Now, who limited you to the vicinity of the pump room? A Well, I always got orders to stand by for phone messages and things like that, and have the boiler and pump under control.

Q Who told you that? A The superintendent there.

Q Who was that? A That was Mr. Baxter.

Q You mean the agent? A The agent.

Q Now, you said when you went out there on the north side of the property—did you get over as far as the sea wall track? A Yes, sir.

Q And you looked down towards the North Pier? A Yes, sir.

Q And you say that you thought the fire was on the extreme end of the North Pier? A It looked to me that.

Q Was it a dark night or light night? A Well, it was not very dark.

Q It was not very dark? A Ordinary summer night, you know.

Q Could you see plainly? A Kind of plainly, sure; you could see the fire, I know, between the cars at a distance, and it was rather a bright night. You could see around.

Q Were you so far over on the side of the property that none of those cars between you and the North Pier obstructed your vision? A Well—

Q Now, just answer. A None of those cars obstructed my vision.

Q None of those cars obstructed your vision? A No, sir.

Q And you saw right past them and down on the North Pier, and saw the fire around on the end of the North Pier? A It looked to me that, yes.

Q Could you tell how high off the ground the fire was? A Well, I couldn't tell how high it was. It looked to me like a barrel. It might be a foot off the ground; it might be up two feet.

Q It was off the ground though, wasn't it? A It looked to be off the ground.

Q Now, you said these two men that came down hollering fire, one's name was Fellowes and the other's was Gibson. Were they Dougherty detectives? A As I understand.

Q Did you see any Jersey City firemen hook on to any fire hydrants down there? A No, sir.

Q Did you have any talk with any of the Jersey City firemen about hooking on? A Yes. I asked—when they were around I asked them when they were going to take water.

Q What did they say? A They said "To Hell! We are not going down there."

Q They said what? A "To Hell! We are not going down there."

Q Did you see Kelly that night? A Yes, sir.

Q How soon after these two men hollered fire did you see Kelly? A I should think about fifteen minutes; about fifteen or twenty minutes; I could not exactly tie myself to time.

Q You said you knew there were ammunition cars in the yard? A I knew there were ammunition cars, yes.

Q Did you know what part of the yard they used to keep the ammunition cars? A As far as I understand on the extreme end—them two tracks adjacent to the North Pier.

Q By "them two tracks" you mean these two tracks up here? A I think they are called 16 and 17.

Q Well, that is 16 and this is 17? A Yes, sir.

Q These two tracks up here? A Yes, sir; they never allowed it up in the yard at all.

Q What part of North Pier? A Well, they may be on the North Pier for all I know.

Q Well, don't you know what they use the North Pier for? A I understand for shipping ammunition.

Q Well, then of course they couldn't ship it unless they brought the cars down? A No, sir.

Q So you knew they had ammunition cars out on the North Pier?

Mr. Stallman. I object to that because the witness testified on direct examination that he was not down there and he had not been there some time. Now, the witness is not allowed to give his guess on cross examination any more than he is on direct.

The Court. I will sustain the objection on the ground that his question is a pure argument.

Q When did you say you first heard the call of fire? What time was it? A The time that Gibson—I should say about a quarter to 1.

Q How do you fix that? A Well, I fix it as far as I can at the time—supper time.

Q I understand that, but what is there in your memory that fixes that time at a quarter to 1? A Well, just the time elapsed between dinner—supper, rather.

Q It is really a guess? A It is a guess pure and simple.

Q Did you see the locomotive engine come down there that night? A Yes, sir.

Q How soon did they get there after you first heard this call of fire? A The locomotive—two locomotives shifting engines and the fire department's—first equipment—both came down about the one time.

Q How long after that did the second fire apparatus get down there? A I couldn't tell you what time they got down there.

Q Did you see any steam pumping engines? I mean fire pumping engines prior to the second explosion, before the second explosion? A I didn't see no pumping engines there until the morning, daylight, come, after the explosion.

Q Did you see the Jersey City Fire Department make any attempt whatever to put the fire out? A None whatever. They stood around on the roadway there at Pier 5 crossing.

Q And at the time of the first explosion you were down here between F and G? A Yes, sir; right by the National Storage office there.

Q Just around this little office? A Yes, sir.

Q You had just come out of this little office? A Yes, sir.

The Court. Mr. Sloan, was the ammunition exploding when the fire department arrived?

The Witness. About that time they started; yes, sir.

The Court. They did.

The Witness. Yes.

The Court. All right.

(Witness excused.)

DR. CHARLES F. McKENNA, sworn.

Direct examination by Mr. Stallman.

Q Doctor, what is your profession? A That of a chemist and chemical engineer.

Q Have you had any special experience relating to explosives, ammunition and so forth? A Yes, sir, I have had special experience and made special study in explosives.

Q And what has been your study and experience in those commodities? A Well, following a general practice in which I have seen much of the effects of explosives. I was retained by New York City as an explosives expert to assist in modifying the laws governing the control of explosives and combustibles. I later was appointed a commissioner on the subject, a member of the municipal explosives commission, being the chemist member of that body. I was afterwards retained by the American Railway Association to be one of a committee of experts to revise—to compile regulations governing the control of explosives in transportation. I afterwards acted for manufacturers and users of explosives in a study of blasting explosives. I have examined and tested high explosives, including trinitrotoluol for foreign governments purchasing these materials during the late war.

Q Are you familiar with the material that is used in the manufacture of shells, the explosives material? A Yes, sir.

Q Do you know what trinitrocellulose is? A Yes, sir.

Q Do you know what is meant by combination fuses? A Yes, sir.

Q Are you familiar with the properties of monochlor benzol? A Yes, sir.

Q Do you recall the Black Tom explosion here in Jersey City on July 30, 1916? A Yes, sir.

Q And did you visit that place about that time? A Yes, sir.

Q When? A About—in the first days of the following week; about eight or ten days after.

Q And what did you observe when you went down there? A Oh, I observed a condition of great disorder of cargoes, of mixed materials and of a great many cases of ammunition open, broken, and a great many cases of—a great deal of smokeless powder lying loose about, near cars and on car floors; drums of some combustible

fluid, and showing signs of having been burst open; and cars or boxes and cases of trinitrotoluol with Russian marks on them, some of them burst.

Q Did you at that time observe anything of a large excavation or hole? A Yes, sir, I saw a very large crater which was partially filled with tide water—with water, and appeared to be about 300 feet long and half as wide, and smaller diameter; and I saw indications that it was eight or ten feet deep, although the exact depth could not be ascertained due to the water.

Q Now, I think you said, Doctor, that you were familiar with the properties of T N T? A Yes, sir.

Q What can you say as to the effect of heat—intense heat on trinitrotoluol? A The effect of heat on trinitrotoluol is to melt it. The intense heat—the effect of the intense heat is to decompose it.

Q You mean a greater heat than that heat which would melt it? A Yes, sir.

Q And when you speak of decomposition, just what do you mean? A I mean that it burns, decomposes into its elements; that can be rather quietly, or it may be explosively by detonation.

Mr. Stallman. Do you want to cross examine the doctor as to his qualifications?

(No audible reply from Mr. Garrison.)

Q Now, Doctor, assuming that over there at Black Tom on the 30th of July, 1916, between 12 o'clock A. M. or midnight and 2 o'clock on the morning of that day, there was certain carloads of explosives and ammunition on the track in that yard located generally as shown upon the map; that is to say, on the third track from the sea wall, or northerly side of this yard, a car of trinitrotoluol, then a carload of merchandise, and then on that same track extending in an easterly direction three cars containing wet nitrocellulose, and then on the same track further east four cars of benzol, and on the next track

and alongside of each car of trinitrotoluol and wet nitrocellulose and benzol—

Mr. Garrison. Alongside of some of them. If you are asking a hypothetical question you ought to put in what it is. It is not alongside of all of them.

Mr. Stallman. Yes, alongside of some of them. I will change that.

Q —were seven cars containing ammunition for cannon with fuses attached; then on the next track to the south eight cars of borate; and then on the next track to that and occupying slightly greater space four cars of ammunition for cannon, and then a car of benzol and then four more cars of ammunition for cannon, and then two cars of combination fuses; and then about in the neighborhood of 12:45 o'clock a fire should be discovered near or among some of those cars and that that fire continued for some time, not more than half an hour, until the cars containing shrapnel—or that the shrapnel contained in some of those cars began to explode and shoot up into the air and make sound as if shots were being fired; and that the fire continued until it involved —about 2 o'clock in the morning—upwards of forty freight cars; and then about eight minutes after 2 an explosion occurred of such intensity that it swept off the upper two floors of the two block of five-story warehouses located to the westward of where these ammunition cars were placed, and also created a hole in the ground of about 375 feet long and 220 feet wide, and running from 7 to 11 feet in depth, the hole in the crater extending from a point about the middle of the first car of trinitrotoluol over to the first car beyond the eighth car of T N T and extending in width about 50 or 60 feet north of those cars of T N T to a point 80 feet south of that track, and the force of the explosion also being such as to throw down men who were standing in the vicinity of the stores G to M inclusive, as shown on the map, a

distance of some 25 inches or possibly 600 or 700 feet from the string of those cars; and that the explosion was of such intensity also as to break a considerable quantity of plate glass throughout all sections of Jersey City—

Mr. Garrison. You are going to prove that.

Q —and the immediate neighborhood—can you from those facts give us an opinion as to the cause of the explosion which resulted in that damage? A Yes, sir.

Q Will you give us your opinion on that subject, Doctor? A I am of the opinion that in the circumstances given and as they occurred in sequence the disastrous explosion was a detonation of a very large mass of trinitrotoluol brought about by initial heating—initial ignition and later high heating and rapid flaming combustion, persisting so long that that and all the neighboring inflammable material was in combustion under the influence of the blasts of highly heated gases resulting, and that this produced the detonating blow which brought about the sudden decomposition of all the remaining mass that exploded.

Q Cross examine.

Cross examination by Mr. Garrison.

Q Have you ever been employed practically in dealing with high explosives—not experimentally as a chemist or a chemical engineer, but practically? A I don't understand your question then.

Q What word in that question don't you understand? A That I am employed not as a chemist.

Q I mean have you ever been practically employed in a factory or mill or powder factory or whatever you call it, practically, not merely experimenting as a chemist? A No, sir.

Q What is the composition of T N T? A It is a combination of the molecule of benzol—molecule of toluol with three nitric acid radicals.

Q Three nitric acid radicals? A Yes.

Q And toluol is what? A Toluol is a body that is composed of carbon, hydrogen, in such a combination with the one radical of methol that is combined with the benzol.

Q Well, is toluol a natural substance or a manufactured substance? A I think it is both.

Q Well, if it is a natural substance what is its everyday name? A Toluol.

Q What does it come from; does it grow in the earth or come off of a tree or what does it do? A It is obtained by distillation from coal tar.

Q Is toluol of itself explosive? A No, sir.

Q Now, how do you combine this non-explosive toluol with the three parts of nitrate—is that what you call it? A Yes—nitric acid.

Q With the three parts of nitric acid in order to become the explosive known as trinitrotoluol? A Yes.

Q Tri means three? A Yes.

Q Nitro means nitric? A Yes.

Q Toluol means toluol? A Yes.

Q Tell us how you combine the toluol with the three parts of nitric to become T N T? A We make a mixture of nitric and sulphuric acids of high strength and we treat the toluol with that acid under the proper precautions.

Q Is the sulphuric acid explosive? A No, sir.

Q Is nitric acid alone explosive? A No, sir.

Q So it is only the combination of sulphuric acid, nitric acid and toluol that makes it explosive? A Well, they are not combined—it is the treatment of toluol with the mixed acids which makes the explosive.

Q I beg your pardon. It is the combination of toluol with sulphuric acid and nitric acid? A No, sir, it is the combination of toluol with nitric acid which makes the explosive.

Q Unless you had sulphuric acid you could not make it? A It does not go into it.

Q I understood it was a combination, the use of those three things together that produces the result. Unless you use each of those three things you cannot get T N T; isn't that a fact? A Yes, I could get—

Q You know that is a fact? A No; I say I could get T N T without sulphuric acid.

Q How could you? A By treating it with highly—strong nitric acid.

Q Then the only effect— A The effect of the sulphuric is to practically assist us in removing the molecules of water which are formed as a result of the reaction.

Q But as a practical fact in the manufacture of T N T practically they always use sulphuric? A Yes.

Q So I am right in saying that it is done by sulphuric acid and nitric acid and toluol? A No, sir.

Q You said no, sir. Now you have shown I am wrong and you stop. Now you made a special study, you say, of explosives and ammunition? A Yes, sir.

Q In that I suppose you ascertained just the effect of loading shells with various kinds of explosives? A No, sir, I have not—

Q And the distance various kinds of explosives would project shells? A I have not made a special study of the projection of ammunition.

Q Have you made a special study of the projection of explosives? A I made a special study of the effect of explosives.

Q Well, the projection of them? A I don't know what you mean by that.

Q You used the word yourself? A I used it regarding the projectile.

Q Can't you project anything but a projectile? Couldn't you project a rock? Can't you project that book? A All right.

Q Have you made a special study of the projection of explosives and the fact they will project things? If I told you that I had a bomb of a hundred pounds of dynamite and I was going to project it in this room, couldn't you tell us the reasonably to be expected result? A Yes.

Q In projection—how far it would probably affect people, if used, north and south? A Yes.

Q You could. So you have made a special study of it? A Yes.

Q Now, you said you were employed by the City of New York to modify or codify, I did not catch the word, the laws in respect to explosives? A Yes.

Q What had that to do with? A What had that to do with?

Q What had these laws—what was the purpose of the laws? A It was to control the use, transportation and sale, the magazining, storage of these materials.

Q And you fixed limits and quantities, I suppose, within which people could store these explosives? A Yes.

Q That was all written down into some kind of ordinance, was it? A Yes.

Q What year was that? A About 1901 or 1902.

Q Does that still remain the law of the City of New York? A In basis and foundation it is the same.

Q Been changed? A Very much changed.

Q Had you any part in the change? A I have been consulted by the fire commissioner and members of the board at times.

Q Now, did you fix—I suppose I am proper in calling these limits that you fix the limits of safety. Can we call them that? A Well, I don't know what particular ones you refer to. There was a great deal of consideration of that subject.

Q I understood that what you did was to fix how near a magazine containing explosives of various named

kinds, and I suppose up to exterior limit of amount, could be to habitable dwellings. Isn't that what you did? A In effect it was.

Q Therefore outside of your limit you would call it the limit of safety, isn't that the proper way to phrase it? A I would like to have the circumstance stated in each case.

Q You cannot answer that question? A No, sir.

Q Now you say you did some work for the American Railway Association? A Yes.

Q What was the character of that work? A That was from the point of view solely of obtaining safety from the explosives by the carriers of them, and by those and for those living near the railway line.

Q In other words there again you attempted to mark out zones of safety? A Within limits such was the work.

Q Yes. Well, the whole purpose of enacting laws in respect of permitting people to store explosives is to say how near they can come to habitable dwellings, isn't it? A There is a great deal more than that in the subject.

Q How near they can come to places where they may hurt anybody? A There is a great deal—

Q That is one of the effects? A Yes.

Q What great deal more is there? A The conditions under which the manufacturer shall be allowed to let them exit from his establishment.

Q Are there any manufacturers in the City of New York of high explosives? A No, sir, but the American Railway Association—

Q Then you did not codify the laws of the City of New York in respect to this matter you mentioned? A No; I am talking about the American Railway Association.

Q All right. In respect to the American Railway Association? A Yes, we did.

Q All right. Did that attempt to control the conduct of the manufacturers of the munitions and explosives? A After it left their establishments, yes.

Q After it left? A Yes.

Q That is transportation? A Yes; just as it was leaving.

Q That is the transportation? A That is the condition under which they must prepare it for transportation.

Q The way they must pack it? A Yes, pack and stack—and store in the cars.

Q Did that precede the regulations of the Interstate Commerce Commission in respect to the same subject matter? A Yes; they were the parents of the regulation.

Q That work was the basis on which the Interstate Commerce Commission afterwards made the regulations under the act of Congress? A I was invited to be the chemist making them applicable throughout the country.

Q That does not answer the question.

(Question repeated by stenographer.)

Q Answer my question. A Yes.

Q Now, Doctor, what is the distinction, scientifically, between high explosives and other kinds of explosives? A Well, the distinction between high explosives and low explosives, is that the low explosive produces a slowly progressive effect which can be controlled in a channel such as a gun or a rock-seam or something similar, whereas high explosive is so constituted and treated that it can and is usually so brought about, being suddenly—with the utmost suddenness, decomposed entirely, *en masse.*

Q Have you got any other distinction, scientifically, between a high explosive and a low explosive? A Well, there can be other distinctions.

Q What is the one thing which to the mind of a scientist learned in this profession would be stated as

the distinctive difference between a high explosive and a low explosive? A The great smashing energy of the high explosive due to the sudden production of gases from it and its entire decomposition and the high temperature of these gases.

Q You place the difference entirely in the way it acts when it explodes? A Yes.

Q And not the way in which it is explodable? A Yes, sir.

Q Isn't it a fact that the one distinction to the mind of any learned scientist in that line is that a high explosive requires detonation and a low explosive does not? A No, sir; you can't detonate a low explosive.

Q Am I wrong? A No, you are wrong.

Q Then the distinction between the high explosive and the low explosive does not depend upon the fact that the high explosive requires detonation and the low one does not? A That is not a proper distinction.

Q It is a distinction, isn't it? A Yes.

Q Now, tell us the difference between detonation and the other method of producing explosions in respect of explosives. A The progressive decomposition of a low explosive does not produce so high a temperature and consequently the resultant gases do not expand as much, the energy consequently is less.

Q What has all that to do— A In the high explosives.

Mr. Stallman. I object.

Mr. Garrison. I am asking the distinction.

Mr. Stallman. The witness is better qualified to tell what he has conceived to be an answer.

Mr. Garrison. I am better qualified to know whether or not the answer is an answer to my question. I am asking this witness to tell me the distinction between detonation and other methods of

explosion. He is now talking about action after the explosion has taken place.

The Court. Just read the question.

(Question repeated by stenographer.)

A I misconceived you.

Q Yes, I thought you did. Now answer the question, Doctor. A The decomposition of a low explosive is brought about by friction, a high heat such as that of a spark, or even a low heat due to small flame. None of these usually produce a sudden decomposition of the entire quantity of this low explosive. Detonation, however, is a physical effect acting upon a high explosive to suddenly and absolutely instantaneously decompose the entire mass of solid substance into a mass of large volume of highly heated gases, and the essential feature requiring a detonation is what is called a wave action or a vibration of substance so rapid in its action as to produce instability of the molecules or small—minute—particles, the minutest you can conceive, of the substance, and that instability then is transferred from one particle to another, and that wave has consequently initiated this decomposition—and it is real sudden.

Q Then the real difference is between something that is like a blow and something that is like a slow fire? A Yes.

Q Black powder is a slow explosive? A Yes.

Q Smokeless powder is a slow explosive? A Yes.

Q And you light those and they burn slowly, each particle only having its effect when the fire reaches it? A Yes. Smokeless powder, however, can be detonated.

Q When you take, however, what is called high explosive, something or other gives that a blow and it all goes up at once? A Yes.

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

Q And that detonation is a small explosion starting the great explosion? A Yes.

Q Is wet nitro-cellulose explodable? A Yes, sir.

Q It is? A Yes.

Q How do you explode wet nitro-cellulose? A By producing a fire beneath it or alongside of it, there occurs a flame that will dry out the—

Q I did not ask you whether dry nitro-cellulose was explodable. I asked you if wet nitro-cellulose was explodable, and you said yes, it was, after it was dry. I am not talking about that. Is wet nitro-cellulose, when wet, explodable? A Yes.

Q It is? A Yes.

Q How do you explode wet nitro-cellulose while it is still wet? A By means of dry nitro-cellulose, dry gun-cotton. Nitro-cellulose is an improper term in the way in which you are using it. It is a class word.

Q I did not use it. This counsel used it. A It is a class word, and undoubtedly there is meant here military cotton or gun-cotton.

Q Is wet nitro-cellulose classified by the Interstate Commerce Commission, to your knowledge, as an explosive? A No, sir; it is classified as a non-explosive.

Q But you think that is wrong? A Yes, sir.

Q You think they ought to classify it as an explosive? A Yes, sir.

Q You disagree with other experts on that? A Yes.

Q Now, monochlorbenzol is an explosive? A No, sir.

Q Are combination fuses explosive? A No, sir—they are explosive in character; they are not explosives.

Q Will you explain the difference between something that is explosive in character and something that is not explosive? A Well, a match is explosive in character, but you do not call it an explosive.

Q Are they a match? A They are very similar, I might say.

Q Doesn't the combination fuse furnish the small explosion that detonates the T N T that is in the big shells? A Yes.

Q It produces an explosion? A Yes.

Q So it is an explosive? A No, it is a system containing explosives.

Q All right; a system containing explosives.

Mr. Collins. Cistern or system?

Mr. Garrison. "It is a system containing explosives," he says.

Q How much nitrotoluol were you assuming was in the eight cars that Mr. Stallman indicated in his hypothetical question to you? A I have believed there was about 15 tons.

Q In each car? A Yes.

Q He did not include it in his question? A No, sir.

Q And you got your information from some outside source? A From my belief in general practice and what I saw on the premises there.

Q Isn't that an outside source from his question? A Yes.

Q Now, you say you think there were about 15 tons in each car? A Yes, sir.

Q Is it your belief that the wet nitro-cellulose cars exploded on the night in question concerning which you were asked the hypothetical question? A Yes.

Q You think they did? A Yes.

Q You do not know, do you? A No, sir.

Q Is it part of your opinion, or is it included in your opinion, that this car down here between the wet nitro-cellulose cars and the high explosive cars exploded on the night in question? A That is a car of monochlorbenzol, isn't it?

Q Well, without knowing what was in it, do you think it would explode, or don't you know? A If it was not a high explosive I do not think it did.

Q Well, it was wire rods. Do you think that exploded? A No.

Q You do not? A No.

Q But you do think the wet nitro-cellulose exploded? A Yes.

Q What about the borate; do you think that exploded? A I think you mean borax.

Q Mr. Stallman called it borate. Do you know what he meant by borate? A Well, if it was borate of lime, I know it would not explode.

Q Supposing it was borax? A It would not explode.

Q Supposing it was borate? A Any form of borate normally occurring would not explode.

Q So your impression is that those cars there did not explode? A Yes, sir.

Q There were three cars of similar high explosive shown on the map out here on the North Pier. What is your impression as to them, what is your opinion as to them, whether they exploded or not? A If they were not burning they did not explode.

Q You mean to tell me that the normal way of exploding T N T is by burning? A No, sir.

Q No; so that answer really was not an answer to my question, was it? A Yes.

Q It was? A I thought so.

Q Isn't the normal way of exploding T N T by detonation? A Yes.

Q Yes. So that if those cars out there were detonated, if something shot into them and caused a small explosion, then a big explosion would take place there? A Possibly.

Q So it was not a question of fire at all, was it? A Yes, it was, I believe.

Q Now, you told Mr. Stallman that the effect of heat was to melt T N T; correct? A Yes.

Q Then to decompose it? A Yes.

Q That was more heat, I suppose, more intense heat than enough to melt it? A Yes.

Q Then you said it decomposed into its elements? A Yes.

Q Either quietly or explosively? A Yes.

Q What are the elements into which it decomposes? A Carbon decomposes to carbon dioxide, and hydrogen decomposes to water, and the nitric acid radical decomposes to hypnitrous acid.

Q And what is the toluol decomposed to? A I have said that is the composition of trinitrotoluol.

Q What does the toluol decompose into? A I have already given you the elements of the toluol; the carbon and the nitrogen.

Q All right. Now, hydrogen is water, isn't it? A No, sir; it is an element of water.

Q An element of water. Well, that does not explode, does it? A In combination with oxygen—

Q No; I say that does not explode, does it? A No.

Q When it is decomposed into hydrogen that does not explode? A By itself it does not.

Q Now, which one of these chemicals, when it is decomposed into its elements, decompose? A There can be no further decomposition. They are saturated bodies.

Q You have stated that the first effect of heat is to melt? A Yes.

Q I am talking about the effects of heat on T N T. Then, we said the next effect of more intense heat is to decompose it into its elements? A Yes.

Q Then you said it decomposed into its elements either quietly or explosively? A Yes.

Q Now, I want to know when this thing got back into its elements? That means where a thing starts, doesn't it? An element is the beginning of a thing? A Yes, sir.

Q Now, I want to know when it got back into its elements, which of these elements do you think went off explosively? A The explosion was all over.

Mr. Collins. What.

Mr. Garrison. He says the explosion was all over.

Q Now, which one of its elements exploded? A I say—you seem to misapprehend me, Mr. Garrison.

Mr. Stallman. Doctor, will you repeat your answer and speak a little louder? We cannot hear you over here.

A When trinitrotoluol decomposes, if it is by a slow decomposition it is practical burning, and the carbon of it unites with the oxygen of the air; the hydrogen of it also unites with the oxygen of the air, and the nitrogen also unites with the oxygen of the air, and they are all passed off as saturated bodies highly heated and in great volume, and consequently great pressure. Now, I do not understand how anything further is required of them as explosives.

Q I merely was taking your own statement. You said that heat melted T N T, which caused it to decompose, and it decomposed into its elements, either quietly or explosively. A It would be a combustion if it decomposed quietly.

Q What? A It would be what we call combustion.

Q Yes, combustion and not explosion?

By the Court.

Q Doctor, is what you mean decomposition? Apparently that is decomposition. A Yes; they are both decomposition. Combustion is decomposition.

Q I say explosion is decomposition? A Yes.

Q That is what we have been asking you about right along. A Well, but is he asking me about that after it has been produced?

Q How can there be any further decomposition— A There cannot be.

Q —when decomposition has already taken place by explosion? So how could he ask you about that—if he apprehends your meaning?

Dr. Charles F. McKenna, cross.

By Mr. Garrison.

Q When did you first have any professional knowledge of trinitrotoluol? A Eight or nine years ago.

Q Not before that? A No, sir.

Q How much experience have you had with T N T? A I've had a good deal in the last two or three years.

Q How much had you had before 1916? A Hardly any.

Q It was considered one of the very safest of the high explosives prior to 1916, wasn't it? A Yes, sir.

Q It was deemed before 1916 that T N T required detonation to explode? A It requires it now to explode.

Q It was conceived before July, 1916, that a large amount of T N T could not be exploded merely as the result of combustion? A Yes, sir.

Q Therefore it was conceived before that that you could burn T N T without exploding it? A Yes, sir.

Q And that it would not explode merely from fire? A Yes, sir.

Q And it is only since the knowledge gained from that time that people knew that fire would explode it? A Yes, it is only since that time that it has been used in very large quantities—masses.

Q You knew, for instance, that the British Government in their regulations permitted it to be carried just like sugar or lead, or anything else? A I believe so.

Q Yes; they did not consider it a dangerous thing at all? A (No answer.)

Q Doctor, when you went down to Black Tom some eight or ten days, I think you said, after the explosion— A Yes.

Q —how did you get down on the island, or on the peninsula? A I went down by way of Jersey City and was driven over to that yard by land.

Q Did you get down on the North Pier? A Yes.

Q Did you get on the north side of the North Pier? A Yes.

Q And you saw cars out there, didn't you? A Yes.

Q You saw they had been destroyed by an explosion? A Yes.

Q And the sides of the cars that showed the shattering effect were those that faced the north? A I have not a recollection of that. I have no recollection of the sides and of the orientation of those cars, and of the damaged sides of them.

Q Did you see a large shell embedded in a beam located in the South Pier? A No, sir.

Q Didn't you see the cars on the North Pier tilted from the north to the south? A I saw them tilted, but I have forgotten the direction.

Q Didn't you observe those cars on the North Pier were covered with mud and dirt on their north side? A No, sir.

Q You remember testifying in the Plate Glass case here before? A Yes.

Q And my examining you? A Yes, sir.

Q Do you remember in cross examination, page 302, this question was asked you and you made this answer: "Q Did you observe that these cars on all these piles out here were covered with mud and with dirt? A Yes. Q The side from the north?" and you answered, "Yes"? Don't you remember that? A No, sir; I do not remember.

Q You may have said it? A Yes.

Q You do not remember? A (No answer.)

Q Doctor, if there were three cars of T N T containing whatever amount you assumed these other cars contained that Mr. Stallman asked you about, located out on the North Pier, with empty cars before the first two and after the second one and after the third one, and all of those cars took fire, in your opinion would the three cars of T N T explode, or would they not ex-

plode? A They would be in very great danger of exploding.

Q Well, that would not mean anything. Of course, anything may be in danger; but your professional opinion whether three cars containing the amount of T N T you say these cars are assumed by you to contain, with empty cars before the first two and after the second and after the third, all get on fire—whether you believe the contents of those three T N T cars would explode or would not explode? I want your professional judgment. A If the three cars heavily laden with T N T were burning I so fully believe that they would explode that if I was nearby I would remove myself as quickly as possible. That is as near as I can come to saying that they would explode.

Q Of course, in July, 1916, you believed, in common with all men of your science and learning, that the effect of fire on T N T would be to burn it up, not explode it? A No. I believed it was dangerous.

Q You believed it was dangerous, but you did not believe it would explode from fire? A I believed it was dangerous from detonation.

Q That was the common opinion? A Yes.

Q Can you tell me, in your professional judgment, whether or not those three cars on the North Pier, filled with T N T, all of them on fire and the empty cars on fire, whether the T N T would explode or would not explode? A I cannot go further than to say that there would be very great danger of the T N T exploding—detonating.

Q Supposing that I told you that a detonator went off in one of the cars, would it be your judgment that the car in which the detonator went off would explode or would not explode? A I believe it would be in the gravest danger of exploding.

Q Let me ask you, why is it in answer to my question you talk about grave danger and why is it in answer to

Mr. Stallman's question you had no hesitancy in saying that they would explode? A On account of the conditions given to me.

Q What different conditions did he give you? A The great conflagration and the very great mass of material, the great number of car bodies burning around the cases of T N T.

Q But each car was just as separate when there were eight together as when there were three together. What difference does that make? A No; I think there was a pre-heating there of the entire tonnage.

Q You think that? A Yes.

Q But you have no more reason for thinking that where the cars were down by the crater than where they were on the North Pier? A Yes, I believe it was greater.

Q Your idea is that the mass down where the eight cars were had something to do with it? A Yes, sir.

Q Where do you draw the line in respect to this mass? A Why, the constant food for the flames.

Q Where do you draw the line of danger and safety, so far as explosions go, so far as the mass of T N T was concerned? Do you think 15 tons are safe, 40 tons are safe, 45 tons are dangerous, or what do you think? A I have no judgment on that. I tried to express it as to the gravity of the danger.

Q You mean the consequences that would come from the explosion or the likelihood of explosion? A The likelihood of explosion.

Q Now, what I want to know is, why won't three cars in the line of empty cars—empty cars would burn a great deal quicker than loaded cars? A Yes, but they didn't have boxes of T N T.

Q Empty cars would burn more rapidly than ordinary cars loaded with merchandise, wouldn't they? A I don't know; I could not say.

Q Empty cars would certainly burn, wouldn't they? A Yes, sir.

Q All right. Now, if the empty cars were on fire and the T N T cars were on fire, the three I am talking about— A Yes.

Q —now, is the reason you won't tell me that those cars would explode because there were only three times fifteen tons there? A Yes, sir; the likelihood is less than it was in the preceding case.

Q But how much less? Where is the point that you think the explodability is so likely? A The likelihood is greatest with the greatest mass of material burning and flaming, at a white heat, an intense heat.

Q What reason have you to assume there was more intense heat at one point than another? A On account of the explosives and the quantity applied, and the great circulation of air around the producing whirlwind.

Q My gracious! Wasn't there just as much circulation down on the water as there was in the yard? A I refer to the blast of air that would surround the cars that were burning.

The Court. Mr. McKenna, have you yourself ever seen T N T explode by a mere concussion or combustion?

The Witness. No, sir.

The Court. Never have.

The Witness. No, sir. I have seen similar cases of it, however, in a large way the results of it.

The Court. I do not mean the result, but I mean the actual fact of detonation.

The Witness. No, sir.

The Court. Have you ever seen that brought about by mere combustion?

The Witness. No; I can read you the authority.

The Court. No.

Mr. Garrison. He did not ask you that. He asked you if you have seen it.

The Witness. No, sir.

Q You never saw T N T do anything but burn? A Explode.

Q Haven't you seen it burn? Haven't you seen them take a piece of it here and put it on the desk and burn it? A Yes, sir; I have done that myself.

Q Sure. Every chemist who was ever around a powder house has seen it. Just as safe as burning matches. Now let us get some idea, professionally, as to whether the mass of T N T is likely to produce explosion or whether it is not. We have got these cars out on the North Pier with three times fifteen tons; that is 45 tons. Now, you are not willing to commit yourself that that would go off. Do you think 50 tons would go off, would explode, under fire? A I think any mass of it large enough and surrounded by flaming material like wood, highly heated, and in the midst of a whirlwind of gases, burning at the highest temperatures, would explode.

Q You say large enough; now, I want to know what you mean by large enough. What is large enough? That is the very thing I am asking you. You said in amount large enough; any amount that is large enough. Now, what is large enough? A The conditions can be such that a few pounds would be large enough.

Q Then the amount out on the North Pier that you won't commit yourself to—it was not on account of the small quantity, was it? A It was on account of the break in the—

Q It was not on account of the small quantity? A It was on account of the conditions—

Q It was not on account of the small quantity that you refuse to commit yourself? A No, no.

Q It is something else than the quantity? Something else than the quantity? A It is on the entire conditions given as compared with the other statement.

Q As a matter of fact, it is your judgment, on such knowledge as you have gained since 1916, plus what you knew before that, that one carload of T N T if subjected to enough flame would explode? A It is possible; yes, sir.

Q That is your judgment? A Yes, sir.

Q And practically all that you scientific men know about T N T you have learned since 1916? A Oh, no.

Q Practically all that you know? A I don't think so.

Q What? A I don't think so.

The Court. Well, Mr. McKenna, why do you say one car load of T N T if surrounded by enough flame would only possibly explode? Why wouldn't it absolutely explode if enough flame will explode T N T?

The Witness. Because the conditions might be such as not to produce what we call the detonating wave. That is produced by special means. But in the case of a conflagration of this kind it is my opinion that the blasts of air, and a sudden generation of gases or temperatures obtained when there is a large mass involved, are such as to produce that detonating wave, that detonating blow.

The Court. Well, sometimes I gather from what you say that mere ignition will not necessarily explode T N T.

The Witness. Yes, I agree with that.

The Court. You do agree with that?

The Witness. Yes, sir.

The Court. And it does not make any difference to what extent the ignition goes or to what degree the heat is produced?

The Witness. Oh, it does make a change.

The Court. I mean, it does not make any difference in the proposition that mere ignition, no matter

how high the degree of heat, will not necessarily explode?

The Witness. The heat is the producer of the detonating wave, and it is the detonating wave or blow that sets off the explosive.

By Mr. Garrison.

Q What the Court has been asking you and what I have been asking you is this—that T N T may burn up without exploding? A Yes.

Q And you think the fire may get intense enough to produce a detonating effect just as though it was an explosion? A Yes, sir.

Q An explosion before the big explosion? A Yes, sir.

Q That is what you have been saying? A Yes.

The Witness. Do I satisfy your Honor?

The Court. Yes. I gather you say unless there is a detonating wave, no matter how high the degree of heat, no matter what the quantity of the T N T, no matter how great the fire, there would be no explosion?

The Witness. Yes, sir.

The Court. That is what you mean?

The Witness. Yes, sir.

Q Is T N T a fiercely burning substance? A If oxygen is applied to it it is.

Q Why do you have to add that previous qualification? A Because the oxygen in the molecules is not sufficient to burn all of the carbon and hydrogen, the oxygen and nitric acid molecules.

Q Under ordinary conditions is T N T a moderate or a fiercely burning substance? A It is a rapidly burning substance.

Q Does it burn fiercely? A Yes, sir.

Q Do you know about the recent incident at the Hercules Powder Company? A No, sir.

Q Don't know anything about that? A No, sir.

Q You don't follow those things? A Yes, I followed the Black Tom explosion.

Q Well, did you follow this one up at Hercules Powder Company, where 400 tons of T N T were involved? A No, sir.

Mr. Collins. What is the name? Kenville.

The Witness. I have heard of cases of T N T burning.

Q Did you go up to see? A No.

Q That is the most recent one. A I have not investigated that place.

Q What is it? A I have not investigated that place.

Q Do you know anything accurately about the amount of pounds there were in each car here, of T N T, both those out on the North Pier and those in the yard? A No, sir.

Q Dr. McKenna, assuming that there were freight cars on the North Pier and that after the night of the fire these cars were found tilted from the north to the south, with mud splashed on their north sides, would that condition be, in your scientific judgment, the result of explosion taking place at the site of the so-called crater?

Mr. Collins. Which crater are you talking about now? There are two craters.

Mr. Garrison. I have shown the crater on the map; I have followed it around with my finger. There is no other crater in evidence yet.

A Yes, sir.

Q You think that the explosion you say took place at the site of the so-called crater would shatter the north sides of cars located on the North Pier and splash mud on the north sides of those cars and tilt them from the north to the south? A I think it could.

Q So that you think the effect of an explosion here would be to produce a striking effect from the north on those cars? A I think that could happen at the moment of the explosion.

Q It could not happen the moment before, could it? A No.

Q Well, why do you say at the moment of the explosion? A On account of the peculiar effects which follow explosions.

Q Isn't it a fact that an explosion exerts the same amount of force in every direction? Isn't that one of the very first mathematical foundations of your whole science? A No, sir.

Q It is not? A No, sir.

Q Isn't it in every text book that the effect of an explosion—I mean the dynamic effect—is the same in every direction? A Well—

Q Yes or no. A At the initiation of the explosion it may be.

Q Yes, at the initiation of the explosion it may be—not only it may be, but it must be? A Yes.

Q And yet you think that the moment of this explosion the effect here would be to describe an arc, a circle? A I think the effect would be to scoop out mud and throw it in that direction, and the blast there could tilt the cars in the direction you indicated.

Q What is going to scoop out mud? A The suction following concussion.

Q What? A The suction following concussion.

Q You think the suction created by the explosion here would suck mud out of the bay from north of the North Pier? A No, sir.

Q What! How is it going to get on these cars if it does not suck it from north of the North Pier? A Suck it out of the crater.

Q Suck it out of the crater? A Yes, sir.

Q And put it around here, and put it on the north side of those cars? A Yes, sir.

Q Well, that is an effect that I do not think the profession of baseball players perform with a curved ball. A I think it is conceivable.

Q What? A I think it is conceivable.

Q You think it is conceivable? A Yes.

Q And you think that same effect would be to shatter the north walls of these cars? A It might be.

Q It might be? A Yes.

Q Do you think it is likely? A Well, I would want to see the conditions surrounding those cars to judge of that.

Q Why do you have to see conditions? You didn't see conditions when Mr. Stallman asked you hypothetical questions. I asked you a perfectly plain question. I asked you to assume these cars are shattered on the north wall, these cars on the North Pier, shattered with mud on the north walls, and tilted from the north to the south, and I ask you whether or not you believe, in your scientific judgment, that an explosion over here at this crater could produce that north to south effect on those cars? A Well, I do think so.

Q You do think so? A Yes, sir.

Q Now, Doctor, you remember being examined by me in this Plate Glass case I spoke about before, and I asked you this question: "The explosive force which was generated at the point of the crater (shown on this map) would operate in that direction upon a car situated where I have my finger, on the second car on the North Pier? A That is the direction it would operate by an air wave in the direction you speak of, easterly"? Do you remember saying that? A It is very probable that I said it; yes, sir.

Q Well, it is a fact, isn't it? The effect of a force generated here would be to operate eastwardly, wouldn't

it? It would not be to operate north, would it—from the north to the south? A Well, it might be.

Q Well, which do you mean? Does it operate east or north? A Both. You could have such an effect as the mud thrown on the other side of the cars.

Q Well, would it have enough effect to throw the cars from the north to the south? A It is possible.

Q What? A It is possible.

Q Do you think it is likely? A Not very likely.

Q No. Now, what basis of possibility is there for that kind of thing, Doctor? A On account of the derangement of the currents of air after the return wave—after the explosive wave has gone out and the return wave starts in there is a great deal of tearing and all effects shown are those of great involvement of the air currents. I have seen steel rails twisted into the letter Z.

Q Yes. Exactly. But you have seen steel rails twisted into the letter C that were in the path of the explosion. You have seen steel rails torn by the ex— A I mention steel rails to show the vagaries of the wave that follows.

The Court. He did not say the letter C. He said the letter Z.

Mr. Garrison. Well, the letter Z. Either one will do.

The Court. To show there were forces that were operating in entirely different directions.

Q Now, those steel rails that you saw were rails that were in the path of the explosion? A It was not there I saw them.

Q Well, there were some there that were that way, weren't there? A I don't remember the steel rail condition.

Q If you saw a rail on that pier in the easterly direction from the explosion, was it twisted in a letter Z or

any other letter? A No—I mean to say that the currents of air set up would be baffling and in opposite directions in considerable probability, and that the mud thrown out from that crater—

Q You want to commit yourself as a scientist that an explosion at the point of this crater would with any likelihood whatever shatter the north side of cars standing on the North Pier? A Yes, sir.

Mr. Garrison. That is all.

By Mr. Stallman.

Q Doctor, in your opinion—

The Court. Are you a doctor, Mr. McKenna?

The Witness. Doctor of philosophy.

The Court. Oh, doctor of philosophy. I was wondering what they were calling you a doctor for.

Q Doctor, in your opinion, is there any difference in the likelihood of an explosion and in the effect of an explosion where there are one or two cars of T N T or where there are eight cars in one string?

Mr. Garrison. I want to object to that question because he puts together two things that are utterly disconnected—one is the likelihood of an explosion, the other is the effect; I think they ought to be separated, as to likelihood first, and then as to the effect afterwards.

Mr. Stallman. Just scratch out the word "likelihood" there and I will take up the effect first.

The Witness. Yes, sir; there would be a difference in the effect. There should be a difference in the effect.

Q And what would the difference be? A The proofs and marks of energies expended, the energy in the case of eight cars would be very great, would be in excess of the energy exhibited by the contents of the two cars.

Dr. Charles F. McKenna, further direct.

Q I would like to ask you, Doctor, what your opinion as to the probable effect of shells, ammunition for cannon contained in cars, the seven cars on the first track next to those cars containing the T N T which I show you on the map, and eight other cars on the second track from that, containing shells, exploding in such a way that some of them landed over on the Pier No. 6, if those shells in exploding would land on or would light on the cars of T N T or into the midst of the T N T material in those cars on the third track.

Mr. Garrison. Probable effect of the shell if it landed in the T N T?

Mr. Stallman. Yes.

Q Doctor—

The Court. What is the use of—we all know what you mean anyhow. Ask him whether a shell shot from a car on the next track went into the car of T N T, what it would do. That is all you want to know. What is the use of all the trimmings and the ornamentation?

A Under those conditions I believe it would explode the T N T.

Q Did you have anything to do, Doctor, with the getting up of any of these placards that appear on the cars that are prescribed by the Interstate Commerce Commission regulations?

Mr. Garrison. I object. I cannot see how that is relevant or material; certainly it is not re-direct examination.

Mr. Stallman. You asked him about it on cross-examination.

The Court. I will sustain the objection. He asked him nothing at all about it on the cross examination.

Mr. Stallman. Why, the testimony, as I remember the testimony that Mr. Garrison got from the doctor, is that his work for the American Railroad Association resulted in the promulgation of these rules?

The Court. No, nothing of the kind. He said they were the parent rules from which the I. C. C. made their rules, and he went on to say that he was invited to participate in the making of the rules, and that was ruled out, so there is nothing on that line in the case.

Mr. Stallman. All right. That is all.

A (To the Court.) I might say that I was invited to follow up the control of the business by the railways.

Further cross examination by Mr. Garrison.

Q You said on your direct examination that the energy generated by eight cars of T N T would be greater, I am not sure whether you used an adjective or an adverb, but you said greater at least, than the energy generated by the explosion of two cars. That is a fair statement of what you said? A Yes, I think so.

Q Isn't it a fact that in explosives, when you get to a certain—when you get a certain mass of explosives and it has a certain ascertained effect, that you can increase that mass very greatly, and very little effect—increase the effect; isn't that a fact? A I don't believe it for a moment.

Q You don't believe it for a moment? A No, sir.

Q You think, then, that you can keep on increasingly adding to the effect? A Yes.

Q By increasing the amount of your explosives? A Yes.

Q So that you believe it would be possible to explode enough stuff in the United States of Ameirca to shake a building in Europe? A That is an absurd supposition.

Q Why is it absurd? A I deny it.

Q If it is the mere matter of an explosion of a mass, why is there any limit? You have denied my first proposition. Why isn't my second an absolutely proper inference? A Because it is based on an absurdity, an absurd premise.

Q I don't use the absurdity. It seems to me you produced it. I asked you this: Isn't it a fact that when you get a certain amount, a certain mass of explosives, and you know the effect of them, you find that will affect a building a mile away, but would not have any effect beyond a mile—that you can double—I don't know the scientific quantities, but you can add a very great deal in amount to the mass and have a very little additional effect beyond the mile? Isn't that a fact? A That may be a fact, but that is not the measure of energy.

Q That is not what I was talking about. What do you mean by the energy? A The total power or force involved, and that increases entirely arithmetically the quantity—its manifestation at a distance.

Q That energy extends itself by going out; it does not stay self-contained in the thing? A No, sir.

Q It goes out? A Yes.

Q And it reaches a limit? A Yes.

Q What I want to know is, whether or not that limit is only a very little increased when you very greatly increase the mass? A Well, you are wrong. It is very greatly increased with the very great increase in the mass.

Q Isn't it a fact that you reach a point where you can greatly increase the mass and have very little appreciable extent in the limit of the expenditure of the force? A No, sir; the energy has got to be there and has got to expand itself somehow.

Q If that is not true, why isn't my question also true that you could produce enough energy by an explosion in the United States of America to be felt in Europe?

A Because you have to sit down and calculate—it is an absurd proposition.

Q Never mind the absurdity of it; isn't it scientific? A You must in logic observe the absurdity.

Q Where is the limit—if you object to three thousand miles, where is the limit? A I am not engaged in making calculations. I am not making any statement about the limit.

Q Do you know anything about it? A Based on knowledge—

Q Do you know anything about the subject? A Well, I don't know anything about the volume of air to be moved between this and Europe.

Q Do you know anything about the subject of whether or not there are not certain rules, just as settled as any other rules of any science, by which you can determine almost accurately the limits beyond which the addition of a greater mass of explosives will have very little or no effect? A I do not believe a statement of that can be—

Q Say no if I am wrong. A You are wrong. The force is multiplied by the energy. The energy is there and cannot be destroyed.

Q Then according to you, to reach any point that you choose to have as your objective, all you have to do is to get a great enough mass of material, at any distance away from that, and you will reach that point with your energy? A If I understnd that correctly in that statement it is so. You can calculate the energy on a result—

Q Then the reason you called my illustration absurd is because it happens to be three thousand miles away? A And a very large universe of air—

Mr. Stallman. The Vice-Chancellor is interrupting the witness.

Q Go ahead. If you have not answered, go on and answer.

(Question and answer repeated by stenographer.)

A —is to be calculated on.

Q That is all you wanted to add? A Yes.

Q Haven't you been calculating on that, on every one of these questions I have been asking you? A I have not been calculating on the height of the atmosphere and the weight of it between here and Europe.

Q You have not? A No, sir.

Q How can you say, as you did a while ago, that I was substantially correct in the understanding that in your judgment it was a mere matter of how great a mass you got together to reach any objective, never mind how far off it was? A A plain statement of what we are talking about, Mr. Garrison, is that energy cannot be destroyed—that is multipliable to the effect, and the multiplier is the corresponding unit or corresponding figure.

Q Let me ask you a question: If you cast a stone in water it produces energy, doesn't it, which rocks off into waves? A Manifests energy. You produce energy.

Q All right. You manifest energy? A That is, of the explosion itself, yes.

Q Isn't there a limit where, never mind how big a mass of stuff you throw into the ocean, at some point the waves will stop, the waves manifested from that casting of the thing into the water? A Well, I think you are going back again to the absurdity—can't discuss it.

Q Never mind. Answer it. A I can't discuss it.

Q To absurd for you to discuss? A Yes.

Q All right. We will try to get something that is not too absurd for you to discuss. You know, don't you, that scientific men in your own line of explosives, this explosive line of business, have actually made up tables showing the effect of masses of explosives and zones of safety? A Yes, but will you permit me to point out—

Q No, I won't permit you to point out anything. A Yes.

Q Yes, you say? A Yes.

Q Don't they assume to tell you that a certain mass of material exploded will have a certain effect and the limit of the effect, how many miles off it will affect things? A Yes.

Q Do not those tables show that you can enormously increase the mass and very little increase the effect? A Yes.

Q That is all I have been talking about. That is a fact, isn't it? A Yes.

Q I mean that is a scientific fact? A The fact that such a statement is a scientific fact, but I say the conclusion is not a scientific fact.

Q It is a scientific fact that you can determine that a greater addition to a mass of explosives will have a very little appreciable effect beyond the limit of the lesser mass? A No, sir; it is not. I do not agree.

Q Then you disagree? A I disagree.

Q It is possible you are absurd and not I. A It may be possible.

Q Isn't it possible that your conclusion is absurd and not mine? A It does not seem so to me.

Q And people like the Duponts do not agree with you? A No, sir.

Q They are probably the greatest experts— A But they will agree with me that the increasing energy of the quantity of explosives sent out does produce the consequent increase of energy in fact. The effect is not found, however, in structural damage. That is all that table means—structural damage.

Q And the Duponts, either themselves or their employees, are probably the greatest experts in explosives in the United States of America today, aren't they? A Yes.

Q Well, they are good enough for me. That is all.

Dr. Charles F. McKenna, re-direct.

Re-direct examination by Mr. Stallman.

Q One question I wanted to ask you, Doctor—I think I forgot it—the witnesses have described that the cars containing the shells began to explode and go up in the air. What was the cause of these shells inside of box cars shooting up in the air when the cars got on fire? A The burning of the propelling charge. In many cases the propelling charge was there. The propelling charge burned and gave some particular force to the projectile.

Q What is the usual agency in that propelling charge? A Oh, it is usually set off by a detonator.

Mr. Garrison. What is the stuff?

The Witness. Smokeless powder.

Q Smokeless powder projects the shell itself? A Yes, it projects—no, the powder in the gun projects the shell itself—yes, that is right, the smokeless powder in the brass case throws out the projectiles on the gun, and the one is thrown out through the breach and the smokeless powder is the powder which does the projecting. In case of being boxed, however, they have no gun to go out of, and if the propelling powder went off it gave the projectile some short trajectory.

Q It was because this shell was not confined in a rifle, but merely piled up in the box car with the smokeless powder—

Mr. Garrison. The shells were not piled up in a box car. In cases, in wooden cases.

Q The shells packed in the box car.

Mr. Garrison. They were in boxes.

Q Packed in boxes in a box car, accounted for the various directions that they went off. A The various directions, yes.

Edward Kane, further cross.

Re-cross examination by Mr. Garrison.

Q And that smokeless powder was set off, as all low explosives are, by ignition, by flame? A Yes.

Q By combustion, as we call it? A Yes.

Q Just in the way a match goes off? A Yes.

Q That didn't require detonation? A Not under those conditions. In the gun it does.

Q Why, couldn't you set it off in a gun by flame? A No, it is set off by the fulminate.

Q Before anybody heard tell of caps the only way they ever set a gun off was with flint, a spark or a flame? A Yes, sir, but it was not a brass case.

Q There isn't anything about a brass case. I said the powder was set off by flame, and you said something about detonation. I say the powder can be set off by a flame? A Yes, it may.

Q Certainly.

Mr. Stallman. That is all, Doctor.

Mr. Stallman. I will call Lieutenant Allen.

Mr. Garrison. I want to ask Mr. Kane, if he is in court—I want to ask Mr. Kane one question before he goes away. Take the witness stand, Mr. Kane, please.

EDWARD KANE, recalled.

Further cross examination by Mr. Garrison.

Q Mr. Kane, after you saw this fire why didn't you go down and try to put it out? A I thought better to call help first.

Q Why, after you had called the help, didn't you go down and try to put it out? A Well, the shells was going and I didn't think it was a safe place for me.

Mr. Garrison. That is all.

Mr. Stallman. That is all.

Edward Kane, further cross.

By the Court.

Q When you started out after you first seen it, what were you going to do? After you first knew there was a fire and you started out for help, what were you going to do? A I was going to try and get men to go down with me.

Q You were going then, weren't you? A Yes, but when the shells started to go I wouldn't go down; no, sir.

Q So you first became frightened when the shells started to go? A Yes.

Q Very well.

Further cross examination by Mr. Garrison.

Q Wait a minute. Go back on the box. When you first saw this fire where was it with reference to the ammunition cars?

Mr. Stallman. I object to this witness being called for that examination, on the ground that we have gone over it very fully.

Mr. Garrison. Haven't gone over that subject.

The Court. The point of the objection is that we have been over it, and therefore it might save time. That won't bother me. We will spend the time and I overrule the objection.

(Question repeated by stenographer.)

A It was, as far as I could see, it was in that direction.

Q Do you mean it was in the vicinity of the cars? A As far as I could see, yes.

Q You believed it was near the cars? A Yes.

Q Had that any effect upon you as to whether you wanted to go down among the ammunition cars that were on fire?

Mr. Stallman. I object on the ground that it calls for pure speculation and his mental process.

The Court. If you look at the case of Norwell against the State, in 22nd Vroom, you will find that that is precisely what he has a right to ask him, because if his mental process is the subject of the inquiry he may ask the man what he thought at the time, to find out what it was.

Q Repeat the question.

(Question repeated by stenographer.)

A I did not want to go down if I could get out of it.

Q That is all.

Mr. Garrison. Shall we call another witness, your Honor?

The Court. If you have a witness whose testimony will be very short, we can call him.

Mr. Stallman. These witnesses will take about two minutes apiece.

The Court. Put one on for two minutes and we will adjourn at 4 o'clock.

HERBERT C. ALLEN, sworn.

Direct examination by Mr. Stallman.

Q Mr. Allen, you are a lieutenant of the police of Jersey City? A Yes.

Q Were you lieutenant of police on July 30th, 1916? A Yes.

Q Where were you about 2 o'clock on the morning of that day? A In the vicinity of the Summit tubes at Sipp avenue near Bergen.

Q Up here near the Public Service Station? A Yes.

The Court. Right around the corner here, he means.

Q Did you hear the explosion about that time? A About nine minutes after 2, according to my watch, I heard the explosion, yes.

Q Did that have any effect on you? A It did, yes.
Q What?

Mr. Garrison. I object. I cannot see that that is material, what effect it had on this gentleman up here, unless he is a plaintiff.

The Court. I suppose the object is to show the intensity and the extent to which the impulse of the explosion went.

Mr. Garrison. I suppose so, but he is not there. I do not see that we need to inquire into that.

The Court. If it knocked him down it would be clearly evidence in the case to show the effect.

Mr. Garrison. On a person that is not suing us?

The Court. I don't care whether he is suing you or not. The question is how much impulse—

Mr. Garrison. I am willing to admit, if he will take these police officers' names together with the various localities, that they will testify that they felt the explosion at such and such an hour, and that it broke glass on their beat.

The Court. That is all right, and I do not see any reason why that should not be done.

Mr. Garrison. If you will produce tomorrow morning a list of the names of these policemen, where their beats were, where they say they were when they felt the explosion, and the time they said they felt it, I do not care to cross examine them, but I will admit it as if they swore to that.

Mr. Stallman. We want a resume of what glass they saw broken.

Mr. Garrison. Yes.

Mr. Stallman. That will be all.

The Court. All right. We did do something in two minutes, and we will adjourn until 10 o'clock tomorrow morning.

Adjourned to June 25th, 1919, 10 A. M.

FOURTH DAY.

WEDNESDAY, JUNE 25, 1919.

TRIAL RESUMED.

ROYAL INDEMNITY COMPANY (and nine other plaintiffs)

vs.

THE LEHIGH VALLEY RAILROAD COMPANY.

Transcript of shorthand notes of testimony taken on the 25th day of June, 1919, before Judge Speer and a jury.

Mr. Henn. As to the damages sustained by St. Paul's Church, it has been stipulated by counsel that the church may produce their evidence as to the damages any time before the case closes.

Mr. Garrison. We are perfectly willing that they put it in some time and we do not care when they do it.

Mr. Stallman. It is stipulated between counsel on the other side and myself that we may put in evidence the testimony of—

Mr. Garrison. No; the statement.

Mr. Stallman. I will put it that way—the statement of Mr. Garrity, who was referred to yesterday, that when he testified in this other case, which was in December, I think, of 1917—we started that trial on December 18, 1917—he testified that his age was 69 years.

Mr. Garrison. Mr. Stallman informs me that through illness or some other reason he cannot summon Mr. Garrity—or subpoena him—and I am willing to stipulate that at that time he said he was 69.

Mr. Stallman. It is also agreed, I think, that it should appear on the record that the roadway, so-called, on the map, was not a street, but a private road of the Lehigh Valley or whoever owned the property.

Mr. Garrison. It was not a public highway; it was a private way.

The Court. You do not mean that exactly.

Mr. Garrison. I mean that whoever owned the land owned the land on both sides, and it was never dedicated to the public—whatever you choose to call it.

The Court. There are certain attributes attached to what we call a private way which would not be applicable in this case. It is the Lehigh Valley's roadway?

Mr. Garrison. I do not think the Lehigh Valley own the property; they lease it.

The Court. Well, whoever owned it.

Mr. Garrison. I am willing to stipulate that the witnesses whose names appear on two sheets of paper that Mr. Stallman has handed me would, if called to the witness stand here, testify as their statements appear on the two sheets of paper. They are all Jersey City policemen. The names are Lieutenant H. C. Allen, Frank Niehaus, John Lashford, Joseph Roan, J. J. Langdon, J. H. Robertson and George A. Duffy.

Mr. Stallman. I ask that it be marked as an exhibit.

Mr. Garrison. Why not hand it to the stenographer and have it exhibited in the minutes?

Mr. Stallman. The jury will not know what is in the statement.

Mr. Garrison. Read it to them.

The Court. All right.

Abstract of testimony of police officers.

(Mr. Stallman read the following abstract of testimony of police officers re Black Tom explosion to the jury:)

"Lieutenant H. C. Allen. At Sipp avenue and Wilkes street, 2:08 A. M. met an officer; half minute later noticed fire; in about ten seconds the report blew us in the street with the windows; windows pretty much blown out in the entire precinct; I covered seventeen blocks, and four out of every five windows were smashed; heard second explosion about twenty minutes later; it had practically no effect; the first one appeared eight or ten times as strong as the second one; the second one didn't affect us in any way.

Frank Niehaus. On post at Central avenue and Leonard street, near West Hoboken, several miles from Black Tom; heard explosion around 2:08 o'clock. I had nine blocks, nearly all of the windows were broken; the second explosion was twenty minutes to a half hour later; the second one was not as strong as the first; it didn't do any damage that I saw.

John Lashford. At Baldwin street and Newark avenue (Court House). The explosion was shortly after 2 o'clock. There was a second one about twenty minutes later. The effect of the first explosion was that most of the store windows to the other end of my post at Summit avenue blew out. I don't remember seeing any windows go out with the second explosion, or any damage getting done. It was all done with the first crash.

Joseph Roan. Standing on Newark avenue near Grove street. Explosion occurred between 2:05 and 2:10; all the store windows on my post were blown out; there was a second explosion twenty to twenty-five minutes later; nothing happened at the time of the second explosion.

J. J. Langdon. Standing at 150 Monticello avenue. Explosion occurred at 2:05; it busted all the windows; a second explosion occurred about twenty to twenty-five minutes later; it blew out one window.

J. H. Robertson. At Edge and Ocean avenues, two miles from Black Tom; explosion occurred about 2:10; I saw a lot of glass blow out, store fronts and windows of apartment houses; the second explosion was about twenty minutes later; I didn't see any damage done by the second explosion.

George A. Duffy. Standing at Grove and Morgan streets; the explosion occurred at 2:10; about three-quarters of the windows of the stores and flat houses on Grove street were blown out; I heard the second explosion about twenty-five or twenty-seven minutes afterwards; I didn't see anything happen on the second explosion; it was all done on the first."

Mr. Garrison. As I understand it, you want us to admit that the figures which appear on this sheet indicate the amount of wood that had been unloaded from the schooner Walcott prior to the 30th of July, 1916.

Mr. Stallman. Up to and including the evening of the 29th.

Mr. Garrison. Well, we will admit it, and we would like the chance to check it over before the case goes to the jury, and if we do not offer any correction before that time this may stand as a correct statement.

(Sheets marked P. 16 and P. 16-A respectively.)

"SCHOONER WALCOTT.

Weigher A. A. Fox.

			Gross.	Tare.	Net.
N. Y. C.	326437	40 logs	92580	39080	53500
C. R. R.	80565	29 "	68960	32780	36180
P. R. R. 8	282661	25 "	80160	39660	40500

Statement as to cargo of Walcott.

					Gross.	Tare.	Net.
	P. L.	863023	40	"	94160	48940	45220
	L. V.	25875	43	"	105820	40840	64990
	H. V.	20431	67	"	100360	38860	61500
	B. A.	24048	71	"	103500	41840	61660
	Weigher J. Eckhoff.						
10	B. & O	237901	50	"	101300	41800	59500
	P. R. R.	322992	38	"	86280	38800	47480
	L. V.	26050	56	"	98560	41660	55900
	P. R.	22757	32	"	65460	28060	37400
	B. & O	43045	37	"	80740	33360	47380
	L. V.	26914	45	"	107860	42640	65220
	P. R.	26724	33	"	82100	45720	36380
	L. V.	29066	59	"	93080	43000	50080
	C. & O	27291	50	"	89500	39740	49760
	M. C.	7121	40	"	84700	33300	51400
20	P. R. R.	336501	39	"	96240	48400	47840
	M. R. R.	9061	47	"	102740	43300	59440
	C. R. R.	80185	33	"	71280	34320	36960
	C. R. R.	81009	29	"	72140	32800	39340
	C. R. R.	81034	33	"	73480	33960	39520
	L. S. & M. S.	38455	47	"	89400	36940	52460
	C. H. D.	22102	41	"	99800	40420	59380
	P. R. R.	322174	45	"	93400	40040	53360
	P. R. R.	324304	40	"	97300	41300	56000
	N. Y. C.	319973	42	"	87260	36320	50940
30	B. & O.	150998	44	"	102740	44540	58200
	N. Y. C.	77332	40	"	89920	34500	55420
	P. R. R.	294197	46	"	88600	37400	51200
	N. Y. C.	322092	34	"	86080	34700	51380
	P. R. R.	305247	61	"	91420	38700	52720
	W. & L. E.	70515	40	"	109700	49600	60100
	N. Y. C.	348294	51	"	94300	45900	48400
	P. McK. Y.	90622	18	"	99600	47000	52600
	L. V.	26072	46	"	106200	43340	62860
	B. & O.	236140	48	"	112140	42000	70140
40	P. L. & E..	3927	46	"	90060	34120	55940

Statement as to cargo of Walcott.

			Gross.	Tare.	Net.
B. A.	23516	52 "	104540	41520	62020
L. V.	26851	55 "	95360	41800	53560
L. & N. E.	10020	23 "	79760	39420	40340
I. C.	124875	52 "	103480	39420	64060
L. & N. E.	10018	29 "	77700	39700	38000
C. C. O.	20161	54 "	101280	41600	59680
L. & N. E.	10091	34 "	77540	39240	38300
Ocean B. L.	3461 logs said to weigh			1,892,060 kilos	
Invoice	3292 logs gross weight,			1,892,080	
Net weight				1,888,580	

But 45 logs cut on lighters and 124 logs cut on board making a total for B/L 3461 logs.

1333 logs destroyed by fire.

2128 (38) logs receipted for by R. R.

Mr. Stallman. I think with that the plaintiffs represented by myself and Mr. Smith and Mr. Holmwood, being all of the plaintiffs except the one represented by Mr. Henn, will rest.

The Court. Do you rest also, Mr. Henn?

Mr. Henn. With the exception of the proof of damages.

The Court. Yes, subject to that. Very well.

PLAINTIFF RESTS.

Mr. Garrison. If your Honor please, we think that in fairness to ourselves and to the Court and the jury, the plaintiffs ought each of them to put in one of their typical policies—by which I mean a policy like all of the other policies which they say they paid on and under which they claim the right of subrogation. I do not care whether they do it right now, but I think as part of the plaintiffs' case—in other words, I would be in a position to move for a non-suit because they have not shown

any right to sue, and of course we do not raise the technical question, but I do think we are in a position technically to ask for a non-suit if they do not do that.

Mr. Stallman. I am perfectly willing to do it, excepting that the Vice-Chancellor had not made that suggestion to me before, and I thought under the stipulation that we had by putting in these affidavits—

Mr. Garrison. That is not the point. The point is this, without going into a long legal argument, the insurance companies can only sue, if at all, by the right of subrogation. Now, whether you have that right or not must appear by your policy.

Mr. Stallman. I do not admit that point at all. It was argued in the other case, and if necessary to argue it I will argue it; but I will accede to the Vice-Chancellor's suggestion that we put in the case—

Mr. Garrison. The typical policies. All I want in each company is one policy that you will say is like all the other policies on which you are suing in this action—all the companies. Mr. Smith?

Mr. Smith. Do you want a copy of the whole policy?

Mr. Garrison. I want you to put the policy in evidence and have some one testify or you state on your responsibility as counsel that that is a policy typical of all the policies the insured under which were injured and whom you say you paid.

INDEX.

PLEADINGS.

PAGE.

ROYAL INDEMNITY COMPANY.

Notice of Appeal 1
Grounds of Appeal 2-31
(I. Consolidation of Actions) 2
(II. Motion to Direct Verdict) 3
(III. Requests to Charge) 6
(IV. Exceptions to Charge) 15
(Additional ground of Appeal) 31
Complaint 32
Exhibit A 38
Answer 40
Reply 50
Postea and Judgment 52

NEW YORK PLATE GLASS INSURANCE COMPANY.

Notice of Appeal 53
Grounds of Appeal 53
Complaint 54
Exhibit A 60
Answer 78
Reply 88
Postea and Judgment 90

CHICAGO BONDING & INSURANCE COMPANY.

Notice of Appeal 91
Grounds of Appeal 91
Complaint 92
Exhibit A 98
Answer 100
Reply 110
Postea and Judgment 112

PAGE.

OCEAN ACCIDENT & GUARANTEE CORPORATION.
Notice of Appeal 113
Grounds of Appeal 113
Complaint 114
Schedule A 120
Answer 123
Reply 133
Postea and Judgment 135

LLOYDS PLATE GLASS INSURANCE COMPANY.
Notice of Appeal 136
Grounds of Appeal 137
Complaint 140
Exhibit A 147
Amendment of Complaint 162
Answer of Lehigh Valley Railroad Company..... 164
Answer of National Storage Company 168
Reply 169
Postea and Judgment 170

METROPOLITAN CASUALTY INSURANCE CO. OF NEW YORK.
Notice of Appeal 171
Grounds of Appeal 172
Complaint 175
Schedule A 180
Amendment of Complaint 194
Answer of Lehigh Valley Railroad Company..... 196
Answer of National Storage Company..... 199
Reply 200
Postea and Judgment 201

FIDELITY AND CASUALTY COMPANY.
Notice of Appeal 202
Grounds of Appeal 202
Complaint 203
Schedule A 207
Answer 214
Reply 222
Postea and Judgment 223

PAGE.

COMMERCIAL CASUALTY INSURANCE COMPANY.

Notice of Appeal 224
Grounds of Appeal 224
Complaint 225
Schedule A 232
Answer 239
Reply 249
Postea and Judgment 251

CHILDS COMPANY.

Notice of Appeal 252
Grounds of Appeal 252
Complaint 253
Schedule A 258
Amendment of Complaint 259
Answer 261
Reply 270
Postea and Judgment 271

TRUSTEES OF EVANGELICAL LUTHERAN, &C. CHURCH.

Notice of Appeal 272
Grounds of Appeal 273
Original Complaint 274
Amended Complaint 278
Answer of Lehigh Valley Railroad Company 285
Answer of National Storage Company 289
Postea and Judgment 291

ELEAZER E. CLARK, ET ALS.

Notice of Appeal 292
Grounds of Appeal 293
Complaint 300
Schedule A 314
Amendment of Complaint 317
Answer of Lehigh Valley Railroad Company..... 318
Answer of National Storage Company 325
Reply 327
Postea and Judgment 329

PAGE.

IRA W. ALLEN.

Notice of Appeal 332
Grounds of Appeal 333
Complaint 335
Answer of Lehigh Valley Railroad Company..... 347
Answer of National Storage Company..... 354
Reply 355
Postea and Judgment 357

TESTIMONY.

Motion to Consolidate Actions..... 359
Drawing of Jury 362
Objection to Consolidation of Actions 373
Offer of Documentary Evidence 375
Interrogatories and Answers 376

PLAINTIFFS' WITNESSES.

Deposition of Eleazer E. Clark, direct examination 390
cross " 402
re-direct " 408
re-cross " 409
Deposition of Ira W. Allen, direct examination 410
cross " 416
re-direct " 417
re-cross " 418
Deposition of Mark L. Jamieson, direct examination 419
cross " 427
re-direct " 440
re-cross " 441
Discussion Re Objections to Evidence..... 443
Joseph Binder, direct examination..... 447
cross " 449
Frederick Bouchard, direct examination..... 453
cross " 455

		Page.
John J. Hogan,	direct examination.....	467
	cross "	475
	re-direct "	490
	re-cross "	491
Andrew Baker,	direct examination....491,	536
	cross "	538
Mrs. Lottie Towne,	direct examination.....	491
	cross "	495
John Gately,	direct examination.....	497
	cross "	503
Louis Tregger,	direct examination.....	516
	cross "	520
	re-direct "	524
Ben Hanson,	direct examination.....	525
	cross "	529
	re-direct "	535
	re-cross "	535
Chris Casterson,	direct examination.....	542
	cross "	545
Frank A. Campbell,	direct examination.....	548
	cross "	552
	re-direct "	562
	re-cross "	565
Ebenezer W. Closterman,	direct examination.....	568
	cross "	581
Edward Joseph Kane,	direct examination.....	600
	cross "	630
	re-direct "	642
	(recalled) further cross "	706
James J. Kelly,	direct examination.....	645
	cross "	652
	re-direct "	654
Samuel J. Sloan,	direct examination.....	654
	cross "	664

		Page.
Dr. Charles F. McKenna,	direct examination.....	669
	cross "	673
	further direct "	698
	further cross "	700
	re-direct "	705
	re-cross "	706
Herbert C. Allen,	direct examination.....	708
Abstract of Testimony of Police Officers.....		712
Frederick Wiedeman,	direct examination.....	903
John H. Mahlenbrock,	direct examination.....	905

DEFENDANT'S WITNESSES.

Albert M. Dickman,	direct examination.....	717
	cross "	739
(recalled)	direct "	955
	cross "	956
	re-direct "	956
	re-cross "	956
Frank Deckenback,	direct examination.....	748
	cross "	753
Martin T. Henley,	direct examination.....	756
	cross "	765
Thomas Walsh (read in evidence),	direct examination.....	774
	cross "	784
John F. Walsh,	direct examination.....	789
Charles H. Voorhees,	direct examination.....	795
	cross "	796
Luke J. Eismann,	direct examination.....	798
	cross "	810
	re-cross "	815
Joseph Burns,	direct examination.....	816
	cross "	824
	re-direct "	838
Joseph F. Maxwell, (read in evidence),	direct examination.....	839
	cross "	842
	re-direct "	844

		Page.
Michael H. Mulligan,	direct examination.....	845
	cross "	849
Martin Egan		
(read in evidence),	direct examination.....	852
	cross "	855
John M. Julian,	direct examination	855, 876, 927
	cross "	867, 876, 927
	re-direct "	881
	re-cross "	884
Alexander Davidson,	direct examination.....	885
	cross "	892
	re-direct "	896
Walter S. Washington,	direct examination.....	898
	cross "	900
	re-cross "	903
Kenneth Owen		
(read in evidence),	direct examination.....	906
	cross "	909
Harry A. Campbell,	direct examination.....	910
	cross "	916
(recalled)	direct "	937
	cross "	941
	re-direct "	943
Charles P. Beisteile,	direct examination.....	920
	cross "	924
Charles A. Gamble		
(read in evidence),	direct examination.....	929
	cross "	931
	re-direct " 934,	936
	re-cross " 934,	936
Raymond Carinne		
(read in evidence)	direct examination.....	945
George A. Higgins,	direct examination.....	953
	cross "	954
	re-direct "	955

		Page.
Hudson Maxim,	direct examination	959
	cross "	986
	re-direct "	1000
	re-cross "	1001
Amendment to Complaint of St. Paul's Church		1012
Defendant's Motion for Direction of Verdict		1014
Motion Denied		1030
Court's Charge to Jury		1031
Plaintiffs' Exceptions to Charge		1054
Defendant's Exceptions to Charge		1056
Defendant's Requests to Charge		1069
(A) Interstate Commerce Duties		1069
(B) General Allegations of Negligence		1072
(C) Emergency Doctrine		1075
(D) Spontaneous Combustion		1076
(E) Jersey City Fire Department		1077
(F) Nuisance		1077
(G) Johnson Barge 17		1077
(H) Interest		1079
(I) Additional Requests—Clark Case		1079
(J) Additional Requests—Allen Case		1079
(K) Anticipated Consequences		1080

EXHIBITS.

PLAINTIFFS' EXHIBITS.

		Off'd.	P't'd.
P. 1	Large Map of Black Tom Yard	375 opp.	1080
P. 1A	Insurance Policies	1007	
	Royal Indemnity Co.		1081
	New York Plate Glass Ins. Co.		1085
	Chicago Bonding Co.		1089
	Ocean Accident Co.		1093
	Lloyds Plate Glass Ins. Co.		1098
	Metropolitan Casualty Co.		1103
	Fidelity and Casualty Co.		1107
	Commercial Casualty Co.		1112

		Off'd.	P't'd.
P. 2	Interstate Regulations for Transportation of explosives by Freight	376	1116
P. 3	List of Owners of Schooner Walcott	391	1161
P. 4	Charter Party of Schooner Walcott	406	1162
P. 5	List of Personal Effects of Capt. Jamieson	426	1164
P. 6	Affidavit—N. Y. Plate Glass Ins. Co.	443	1166
P. 7	" Lloyds Plate Glass Co....	443	1167
P. 8	" Metropolitan Casualty Co.	443	1169
P. 9	" Chicago Bonding Co.....	443	1171
P. 10	" Ocean Accident Co.....	443	1172
P. 11	" Royal Indemnity Co.....	443	1174
P. 12	" Childs Co.	443	1175
P. 13	" Fidelity & Casualty Co..	443	1177
P. 14	" Commercial Casualty Co..	443	1178

Note: There is apparently a mistake in the record which recites these affidavits are marked P. 6 to P. 15. They should be P. 6 to P. 14.

P. 16 P. 16A	Two Sheets from Statement of Amount of Cargo Unloaded from Schooner Walcott	713	1179
P. 23	Plate 1 Attached to Col. Dunn's Report 419-1030	opp.	1180

DEFENDANT'S EXHIBITS.

D. 1	Answer of Mr. Julian Re Fire-fighting Apparatus	876	1180
D. 2	U. S. Coast and Geodetic Survey.	906 opp.	1196
D. 3	Plan Showing Soundings in the Vicinity of North Pier	910 opp.	1196
D. 3	Unloaded Shrapnel Shell	928	
D. 4	Anchorage Regulations Dated June 15, 1911	916	1196

		Off'd.	P't'd.
D. 4A	Amendment to Regulations, dated May 18, 1914	916	1208
D. 5	Photograph—2 Underwood	938	1209
D. 6	Photograph—4 Underwood	938	1210
D. 7	Photograph—8 Underwood	939	1211
D. 8	Photograph—7 Underwood	940	1212
D. 9	Photograph—1 Underwood	944	1213
D. 10	Photograph—6 Barth	944	1214
D. 11	Photograph—9 Harrison	945	1215
D. 12	Photograph—7 Harrison	945	1216
D. 13	Photograph—3A Harrison	945	1217
D. 14	Photograph—12A Harrison	945	1218
D. 15	Photograph—3 Harrison	945	1219
D. 16	Photograph—12 Harrison	945	1220
D. 17	Photograph—6 Underwood	945	1221
D. 18	Photograph—19 Harrison	945	1222
D. 19	Photograph—2 Harrison	945	1223
D. 20	Photograph—10 Harrison	945	1224
D. 21	Two Charts Showing Minimum Distances for Storage of Explosives	1001 fol. p.	1224
D. 22	Record of Automatic Thermometer.	1012 fol. p.	1224
D. —	Maxim's Diagram of Safety Zones (not marked)	984 fol. p.	1224

ALBERT M. DICKMAN, sworn.

Direct examination by Mr. Hobart.

Q You are employed by the defendant railroad company, Mr. Dickman? A Yes, sir.

Q And have been for how long? A Thirteen years.

Q On the 29th and 30th of July, 1916, you were employed by that company? A Yes, sir.

Q What was your position on those dates? A Freight agent at the Jersey City National Docks.

Q How long had you held that position? A Seven months prior to the explosion.

Q And prior to that time where did you work for the company? A Freight agent at Oak Island Transfer and various other stations.

Q How far is that from the Black Tom Terminal? A About four miles.

Q That is west of it, is it not? A West.

Q In the direction of Newark? A Yes, sir.

Q What were your duties as freight agent on the 29th and 30th of July, 1916, and for seven months prior thereto? A Handle all freight arriving at Black Tom, including yards, the offices, and so forth.

Q When you say handle it, I do not suppose you mean you actually lifted the boxes and handled? A Supervised the handling of it.

Q Had supervision over the yard and freight yard? A And the piers; yes, sir.

Q Do you remember the date when you took charge of the freight at the Black Tom Terminal? A December 16, 1915.

Q And from that date down to the time of the fire and for some time thereafter, were you continuously in charge? A Yes, sir.

Q What was that terminal used for? A The handling and lightering of all freight arriving at the terminal for export and lighterage deliveries.

Q Was there any passenger traffic at the point? A No, sir.

Q Where was the passenger traffic of the railroad handled? A At Jersey City.

Q How far away from this terminal? A I should judge the passenger delivery to be about two to two and a half miles.

Q Now, at this terminal was there any place or point where freight was delivered direct to the consignees by means of wagons or trucks? A There was; yes, sir.

Q Where was that? A At our Communipaw avenue station.

Q And how far is that from the piers? A A mile.

Q Well, that was a separate terminal from what we have been calling Black Tom, was it? A It came under the jurisdiction of the Black Tom agency, but—

Q It was under your general jurisdiction as agent? A Yes, as agent.

Q But in fact it was a separate terminal? A No; it was a separate station—yes, separate terminal.

Q Now, the freight that came into Black Tom Terminal, how was that handled; in other words, what was done with it after it reached the yards or piers? A It was delivered to boats.

Q And how was that delivery made? A The cars were unloaded, and the contents loaded on to boats.

Q And at that time, that is, July 29 and 30, 1916, were there any places in that yard where carload lots were delivered, where cars themselves were placed on the lighters? A There were float bridges there, but they were not in use at that time.

Q Those are the bridges that are marked on the map under the name of float bridges? A Yes, sir.

Q How was the freight that came into that yard handled; that is to say, how did it get into the possession of the owners or the consignees? A On the arrival—do you mean the arrival notices on the arrival of the freight?

Q Well, what was the first step that was done by you or your subordinates, to advise owners or consignees of the fact that freight was there for them? A On the arrival of the car we would send them an arrival notice.

Q Was that in writing? A Yes, sir.

Q And where would the cars be placed? A On the various delivery tracks at the piers.

Q And who had charge of the unloading of the cars? A I had supervision over the unloading of the cars at these piers, with the exception of cars handled on the north side of the North Pier.

Q Now, was there any particular class of freight that was handled on the north side of the North Pier? A Yes, sir.

Q What class of freight was so handled? A Explosives and inflammables.

Q Does that include what we call in this case the T N T and the ammunition for cannon? A Yes.

Q And fuses and so on? A Yes.

Q Who had charge of the unloading of that class of freight at the North Pier? A The owners or the consignees.

Q Did you or any of your subordinates or any of the employees of the railroad company have anything to do with the actual handling of the contents of the cars containing such freight? A No, sir.

Q Reference has also been made to the roadway this morning and it appears on the map; what was that used for? A For teams to get down to and from the National Storage Company's plant; also for the—in event of fire or anything of that sort, for the engines to get down there.

Q Well, was the roadway used for the transfer of freight or the delivery of freight or was it limited to the warehouses? A Limited to the warehouses.

Q Now, will you describe generally the method of handling this particular class of freight which you have described as explosives and inflammables? A The cars would arrive and would be placed down on the lower section of the yard. As the consignees ordered them they would be drilled out and placed on the North Pier.

Q Was there any particular part of the yard where it was the custom prior to July 29 and 30 and on those dates to place cars containing such classes of freight—you call it the lower part of the yard—but can you tell us more specifically where that was? A What we call the bulkhead yard.

Q And were there any particular tracks in there which were used for the temporary placing of cars until you got ready to put them on the North Pier? A Yes, sir; the tracks from 13 up to 16.

Q And are those the tracks in the north part of yard? A Yes, sir.

Q Towards the upper part of the map where we see those colored marks, yellow and red and so on? A Yes, sir.

Q One of the tracks that is marked on the map is marked with the number 18. What was that used for? A Lead track on the north side of the North Pier.

Q How many tracks were there on the North Pier? A Two.

Q And which of those two was used for the purpose of placing cars in order to unload out on to the boats? A Track on the north side of the North Pier.

Q And what was the other one used for? A Also delivery of other kinds of freight, such as salt, grain, and other commodities.

Q And who had charge of the handling of that kind of freight? A The Lehigh Valley.

Q That is, your own men? A Yes, my own men.

Q Did the handling of that? A Yes.

Q Did your men have anything to do with the actual unloading of any of the cars containing inflammables or explosives that were placed on the northerly track on the North Pier? A No, sir.

Q Was this yard limited to any particular kind of freight? A No, sir.

Q What kind of materials would come into the yard and be handled in the way you have described? A Structural iron, grain, salt, borax.

Q Where was that freight delivered? A Some at Pier 7; other commodities would be delivered to the South Pier, Pier 4 and 5.

Q Now, what was your practice with regard to the handling and delivery of those inflammables and explosives? You have already told us, so you need not repeat, about the giving of the arrival notices. Now, assuming that the arrival notices have been sent, will you describe what next was done until you get to the point where the articles are finally delivered to the owners? A The consignees—that is regarding the explosives or T N T, the consignees would call us up on the phone and tell us what cars they wanted and then on the arrival of the barge the captain of the barge would have a written order for those cars described. They would be all placed on the North Pier. The ammunition for cannon and fuses we would supply the cars to the consignees as they arrived, in the order of their arrival. We tried to keep the pier filled up so they could take delivery at any time.

Q Did the railroad company have anything to do with the furnishing of the barges or any other boats by which these articles were taken from the cars on to the steamers? A No, sir.

Q How frequently was it your practice at or shortly before July 29th and 30th, 1916, to place cars on the North Pier for the purpose of deliveries to consignees? A Twice a day.

Q And was there any particular time of day when that was done? A Between the noon hour and the closing hour at night.

Q And you would place, I think you have already told us, such cars as the consignee might number? A Yes, sir.

Q Referring for a moment again to the arrival notice,

New Jersey State Library

did that have any time limit as to when the delivery of the cars or the contents should be accepted by the consignees? A Yes, sir.

Q Do you remember what that was? A Forty-eight hours after the notice of arrival had been mailed, forty-eight from the time of the notice of arrival was mailed.

Q From the time it was mailed? A Yes, sir.

Q And do you recall whether with regard to these cars that are indicated on this map that has been offered in evidence, and with which I judge you are somewhat familiar (I think you helped prepare it), do you recall whether notice of arrival had been sent as to those cars? I mean the ones containing inflammables or ammunition? A Yes, sir.

Q What was the practice with regard to placing cars on the several tracks you have mentioned on the northerly part of the yard? You have already described about placing cars on the North Pier; but when and how were cars placed on the several tracks in the northerly part of the yard? A Cars would arrive during the night and the shifting crew would go out and pick them up and haul them down and place them on those various tracks.

Q Well, would they arrive during the night; would they arrive in this yard or somewhere else? A No, sir; they would arrive in Claremont yard.

Q How far is that from Black Tom? A From this bulkhead yard?

Q Yes, sir. A A mile and a half.

Q And when the cars arrived at Claremont yard, will you state whether or not they came in over the main line to that point? A Yes, sir; came in over the main line to Claremont yard, with a regular road engine.

Q And from that point how were they handled? That is to say, by what kind of engine or by what kind of crews? A By the regulation road crew and engine.

Q Well, what crews or what engines moved the cars from Claremont avenue to these piers? A Our yard engine, yard crews.

Q Up to Claremont they were handled by the regular road crews? A Yes, sir.

Q And road engines. Is Claremont also under your jurisdiction as agent of the Black Tom? A Yes, sir.

Q And was it a part of the same general terminal? A Yes, sir.

Q Now, do you know who in fact had charge of the unloading of these explosives and inflammables? I mean what companies or what individuals? A Yes, sir. Johnson Lighterage Company handled the explosives and the Moran Towing Company handled the ammunition and fuses. The Healing Lighterage Company handled the benzol, and wet nitro-cellulose was also handled by either Healing or the Johnson Lighterage Company—Healing Company or Johnson Lighterage Company.

Q Do you recall the company known as the McCabe Company? A McCabe?

Q Well, did any of those companies have anything to do with the railroad company in any way? A No, sir.

Q Now, do you recall whether these cars which contained either infiammables or explosives—whether they usually had or always had any placard or other document on the outside which would indicate anything about the contents? A Yes, sir; they were all placarded.

Q And you have heard read the interrogatories in this case, and can you state whether or not some of them were marked with the so-called explosives placard and others with the so-called inflammable? A Yes, sir.

Q And they were upon what part of the car, do you remember? A Both sides and both ends.

Q Did this material when it was handled by your company come in carload lots? A Carload lots; yes, sir.

Q And were the cars locked or sealed in any way when they reached you? A Sealed.

Q Just how were they sealed? Will you describe that a little more particularly? A It is a seal that runs through the latch of the door, attached to the sill of the door, and is pressed and locked.

Q Of course, they were handled in the usual form of freight cars, I suppose; box cars? A Yes, sir.

Q With a door on each side? A On each side.

Q And seal on each side? A Seal on each side; yes, sir.

Q Were there any papers or any kind of documents that accompanied such cars other than these placards that were posted on the outside or nailed on the outside? A Yes, sir.

Q And what were the other papers? A What is known as a car card, in the custody of the conductor of the train.

Q And what did that indicate? A Car initial and number, contents, point of shipment, consignor, consignee, the date of shipment, weight of the contents.

Q Well, did that give a description of the contents or describe it generally as explosive or high explosive or ammunition? A Just—the ammunition for cannon would be so classed; the T N T was classed as high explosive.

Q Without specifically naming, or being named as T N T? A No, sir.

Q Well, were there other classes or kinds of high explosives besides T N T that were also given the same general description so far as the railroad documents were concerned, of high explosives? A The ammunition for cannon was called explosives; that is, it was stamped "explosives."

Q Reference has already been made in this case to the so-called I. C. C. regulations, this red book we had the other day. Was this the red book that was issued by the railroad company for the purpose of instructing its employees as to handling this class of freight? A Yes, sir.

Mr. Hobart. Referring to P. 2.

Q Was your office located at the terminal? A Yes.

Q Whereabouts? A On Pier 4.

Q Shore end? A The shore end; yes, sir.

Q It appears on the map, I think, under the name of office? A Yes, sir.

Q And what were your hours of duty? A Eight A. M. to 5:30 P. M.

Q Was there any work done in the yard in the way of moving cars or handling them in any way or in the way of unloading the cars either by the consignee or by any of the railroad employees after dark? A No, sir.

Q What was the usual hour when the railroad employees finished their work? A 5:30 P. M.

Q And after that was there any shifting or placing of cars in the yard? A No, sir.

Q Was there any handling of freight by the railroad employees after that hour? A No, sir.

Q And what was the usual time when the consignees or their representatives, these various towing companies —what time did they usually quit work? A Same time we did or a little earlier, 5 o'clock.

Q And do you remember whether on the occasion of this fire and explosion, that is, on the 29th of July, which was Saturday, you were on duty that day? A Yes, sir.

Q Up to what hour? A Five o'clock.

Q And after that where did you go? A I went home.

Q And where did you live at that time? A 22 Gautier avenue, Jersey City.

Q How far is that from the terminal? A Straight line, about three miles, three and a half miles.

Q Were you at home that evening around midnight? A Yes, sir.

Q What was the first that you heard of the fire? A Watchman Sloan called me up and told me the North Pier was afire.

Q Can you remember about what hour it was? A About 12:50.

Q In the morning? A Yes, sir; 12:50 A. M. on the 30th.

Q Did you give him any instructions as to what should be done or ask? A I asked him if he had notified the fire department, or whether they had been notified, and if the New York Fire Department had been notified, the New York fire boat; whether he had ordered the engines down there. He told me it had all been done. So I told him I would be right down.

Q Told him you would yourself be right down? A Yes.

Q Did you say anything to him about sending any word to the railroad—

Mr. Stallman. I object to counsel leading.

Mr. Hobart. I want to direct his attention to a specific matter.

Mr. Stallman. I do not suppose I can prevent you asking a question—

The Court. Go ahead and ask your question. I cannot rule on it until I have heard it.

Mr. Hobart. All right.

Q Did you say anything to him about the railroad tugs? A Yes, sir.

Q And what instructions did you give him with regard to that? A I asked him if he called up the tug dispatcher to get the tug boats down. He said that had been done.

Q How long a conversation did you have with him? That is, how long did it take? A Not more than five minutes.

Q Was this a direct wire, or was it over the regular wires of the telephone company? A Over the regular wires of the telephone company.

Q Well, after you had talked with Sloan what did you next do? A Called a taxicab, started to dress—I had just finished undressing—and by the time I was dressed the taxicab was there.

Q And did you then— A Went on the seat with the driver and told him to go down as quick as he could.

Q And did he? A He did.

Q How long did it take you to reach there? A I think we made it in—well, not more than twelve or fifteen minutes; probably a little less than that.

Q And whereabouts on the terminal or in the terminal did you go? A I stopped the taxi at Pier 4, discharged him and told him to go on back, and started walking down the roadway; met my roundsman, Kane; asked him if there was any tugboats down at the other—at the lower end. He said there was. So I went down to the extreme end of Pier 7 there and found two of our tugboats, told them to go around there and get those—save what property they could in the line of boats. We had a schooner down there.

Q Do you remember what tugboats they were? A Slatington and Geneva.

Q Did they cast off— A Yes, sir.

Q —and go out after tugboats? A Yes, sir.

Q Where did you go after that? A Walked up along Pier 7 to the south side of the last block of stores.

Q By the last block of stores you mean the block? A N to R.

Q N to R? A Into the driveway at the shore end of Pier 6, out on to the road again.

Q When you got out to the road, near what store were you? A Store N.

Q That is the store leading to the west of Pier 6— A N, on the east.

Q Oh, N on the east side. Then you were on the roadway near Pier N; is that it? A Yes, sir.

Q And did you see anybody there? A I met the Lehigh Valley fire marshal, Julian.

Q By the way, up to that time had any firemen arrived from the Jersey City Fire Department that you saw? A I had not seen them.

Q Now, after you met Julian where did you go? A Walked to the east, down as far as that 100,000-gallon tank where I met chief of the Lehigh Valley police.

Q Mr. Leyden? A Mr. Leyden. I stood holding a conversation with him for a few minutes.

Q Now, where were you when you first noticed the fire? A I noticed it as I came over the hill down the Claremont yard.

Q How far was that apparently from the location of the fire? A I judged about a mile and a quarter.

Q When you got down to your office at the dead end of Pier 4, did you see the fire from that point? A Yes, sir.

Q Where did it appear to be then? A Between the North Pier and the lower section of the bulkhead yard.

Q By the lower section which part did you mean? A The water side—water end, the easterly end, the extreme easterly end of the yard there.

Q Could you tell with any certainty the exact location of the fire at that time? A I could as far as the North Pier on that end was concerned.

Q Now, when you had got down to the point near this 100,000-gallon tank when you say you met Mr. Julian, was Julian with you also at that time? A All the time.

Q And do you remember about what hour that was? A That would be, I guess, about 2 o'clock.

Q Could you tell whether at that time any of the cars in the yard were on fire? A Oh, yes.

Q Could you tell about how many of them? A Only from—they appeared to be quite a few of them burning down there at the lower end of the yard. I made no effort to count them.

Q While you were going from Pier 4 down towards the tank did you observe any of the railroad employees who were taking out any of the cars? A Yes, sir.

Q What were they doing? A The train crews were backing in and pulling out cars, doubling up on other tracks and getting others.

Q Did you notice whether any of the cars that were in motion or being pulled out apparently, whether any of them were on fire? A No, sir.

Q You did not notice about that? A I did not notice any.

Q When you first got to the office was there any noise or disturbance of any kind? A Yes, sir.

Q What was it? A Shells were all going off quite rapidly.

Q Now you have said you got down to the tank around about 2 o'clock. What time did you get to your office? A I got to my office, I should judge, about 1:15.

Q And before you got to your office and while you were going to your office in the taxicab you had occasion to pass along the roadway, of course? A Yes.

Q Did you notice at that time whether there was any noise of shells? A I didn't hear them, but I could see them—shooting in the air.

Q What did you see? A The spouts of flame going in the air.

Q How far away were you when you first noticed that? A Coming right down the roadway as I turned in from Claremont yard.

Q After you got to your office you got closer, of course? A Yes; and after the taxicab stopped I heard them.

Q Were they still going off while you were proceeding along the piers and towards the tank with Mr. Julian? A Yes, sir.

Q Did they make very much noise? A Quite a good deal; yes, sir.

Q Did you remain around this tank where you were talking with Mr. Leyden and with Mr. Julian, or did you go somewhere else after that? A I left Mr. Leyden along with Julian and walked directly north over on what we call the sea wall track.

Q Did Julian go with you or did you go alone? A No, Julian was with me.

Q Anybody else with you? A Kane.

Q When you speak of the sea wall track was that the track that is so marked on the map? A Yes.

Q The track next to the water on the north side? A Next to the water.

Q How far along that track did you go? A I stopped at a point about opposite the gravity—that gravity tank, that one hundred thousand-gallon tank.

Q When you speak of opposite it you mean to the north? A To the north, yes.

Q Or on the outer track? A On the outside track.

Q In order to get to that sea wall track from the tank you had to pass over certain tracks, I suppose? A Yes, sir.

Q Did you have to go around any cars in order to get there? A I had to go around some cars, yes, sir; I had to walk around one car—one train that pulled up, and before she backed down I crossed through.

Q Well, that was one of the trains that the train crew was trying to take out, was it? A Yes, sir.

Q When you walked over to the sea wall track with Julian did you notice where Mr. Leyden went? A He started on a little bit further.

Q In which direction? A East.

Q He did not go out over to the north? A No, sir.

Q Did you ever see him again? A When we dug him out.

Q You mean when he was dead? A Yes, after he was dead.

Q That is the next day the body was found? A The following Tuesday.

Q Do you remember where his body was found? A Yes, sir.

Q Where was it? A Slightly northeast of the gravity tank, buried under a lot of cars, wheels, axles, and everything else.

Q When you got out to the sea wall track with Julian were there any other men around there that you noticed? A The trainmen.

Q How long did you remain at the yard? A Up until the time of the explosion.

Q Well, you were there after that, too, weren't you? A I was there until 2 o'clock the following afternoon.

Q Well, now, did you some time between the time you arrived and shortly after 1 o'clock in the morning and the time you left the following afternoon, did you observe a so-called crater or hole in the ground? A Yes, sir.

Q And I suppose you paid some particular attention to that? A I did.

Q Pretty big crater? A Quite a large one, yes.

Q About how big? A About three hundred and seventy-five feet long.

Q And did you observe particularly where it was located? A Yes, sir.

Q Why did you observe that? A Because I was standing so close to it.

Q How close were you? A Actual measurement 25 feet away from the edge of it.

Q Did you measure it? A Yes.

Mr. Collins. Which end of it?

Q When did you measure it? A The following Monday—or that is, I may be a day off on that; it may have been Monday or Tuesday, but it was either one of those two days.

Q Either Monday or Tuesday following this Sunday morning? A Yes.

Q Now you say you were twenty-five feet away from it by actual measurement. From which end or which side? A The westerly end.

Q Now, where were you standing at the time of the first explosion? A Slightly to the north—just a little bit east of Store R, on the sea wall track.

Q Well, that would be almost opposite the tank? A Yes, just about opposite that gravity tank.

Q When the first explosion occurred what happened to you? A I was thrown down.

Q Were you injured? A No; back slightly injured, but nothing serious.

Q Did anything strike you? A No, nothing struck me.

Q Were you knocked unconscious? A No, sir.

Q Did you get up afterwards? A Yes, sir.

Q Where did you go? A Due west, right up the tracks.

Mr. Smith. Fast.

A Well, no, I couldn't go fast; I couldn't see very well; I was slightly stunned at that.

Q I suppose you were more or less confused? A I was confused, badly so.

Q A little excited? A And a little excited—a great deal of excitement, yes.

Q Now, at the time of that explosion do you recall in which direction you were facing? A Directly east, I was facing at that time.

Q And were you anywhere near any object in the yard? A Yes, sir.

Q What was it? A Telegraph pole.

Q Did you see that pole the next day? A Yes, sir.

Q Is that one of the ways by which you fix the point where you were when the explosion occurred? A That and the pile of ties that was alongside of it.

Q Were they there the next day? A Yes.

Q Was the pole there the next day? A The pole was there the next day.

Q And you were there the next day? A And I was there the next day; yes, sir.

Q You were facing in an easterly direction? A Easterly direction, looking directly at Bedloe's Island at that particular time, because—

Q How close to the telegraph pole were you? A I was leaning against it with one arm, with one hand on it—talking to Julian.

Q Could you tell as you stood there from which direction this first explosion came? A Yes, sir.

Q Which direction did it come from? A Directly in front of me, that is, in a straight line in front of me; I don't mean right in front of me.

Q Was there any appearance in the sky, any indication of the explosion by which you could tell by the eye that it was an explosion? A Yes, there was a tremendous blast.

Q What did it look like? A Just a big blast furnace going up in the air.

Q Was it flame? A Flame, yes.

Q And how far away did that appear to be from you? A Down opposite the North Pier.

Q And when you speak of opposite the North Pier it reminds me that the North Pier is four or five hundred feet long. Could you tell whether it was opposite any particular part of the North Pier? A Just about the middle.

Mr. Collins. About what?

A About the middle.

Q Now, just before this first explosion was there anything in the way of an appearance of fire outside of this blast furnace, at the very moment of the explosion; I mean just before that or while you were standing there by the telegraph pole looking in that direction? A The entire North Pier appeared to be on fire.

Q Could you see from where you were any boats or barges? A No, sir.

Q Now, after this first explosion when you were confused for a moment did you go directly east at once or did you go somewhere else at first? A After the explosion?

Q You say you went due west? A Well, I found myself among the rocks at the water's edge, and I knew eventually where I was, and I crawled up that bank and then went west.

Q Do you know where Julian went? A I seen him shortly after that, but I don't know where he went at all; in fact, he was looking for me and I was looking for him.

Q Well, after you got up from the rocks and you started to go west, do you recall which track you walked along? A The sea wall; that is on the outside of the sea wall track.

Q Were there any cars on the track at that time? A Yes, sir; after I got up a little bit I put my hand out and felt a train and I guided myself out by that train.

Q And where did you finally get to as you proceeded west along the sea wall track alongside of this train? A Got up until I found an opening and went over to the roadway.

Q Now, you spoke of feeling your way alongside of the cars; why did you do that? A Everything was very dark at that time.

Q You were not blinded or stunned? A I don't think I was stunned or I don't think I was blinded; just simply —I know I was not unconscious, but I was very much excited, but I recollect this train and putting my hand on it and guiding myself out.

Q Was it dark? Did it appear to be dark? A Yes—yes, sir.

Q Immediately afterwards—immediately after the explosion? A Yes.

Q Where did you get to after you had walked alongside of this train of cars? A I got all the way up to what we call our oil yard.

Q How far was that? A It does not show on the map.

Q Some distance west of the grain elevator, isn't it? A About fifteen hundred feet west of the grain elevator. I needed water.

Q In order to get there you had to pass along the roadway, I suppose? A Yes, sir.

Q Well, did you meet any firemen on your way? A I did.

Q Where did you first observe them? A I never noticed them until after this explosion. I finally caught up to them up along this oil yard and up along the roadway, stretched all along there, up west of the grain elevators.

Q Had you seen any of the Jersey City firemen at any time before the first explosion? A No, sir.

Q Whereabouts in the yard were you on your way back to the oil yard, if you remember, when you first saw any of these city firemen? A It was along the roadway just about the grain elevators or a little west of it.

Q How long did it take you to get out to the oil yard? A About ten minutes, I guess.

Q Now, there was another explosion, was there not; a second one, a big explosion, as we call it? A Yes.

Q Did you get out to the oil yard before the second one came? A I was back again when the second one arrived.

Q You were back again? A Yes, sir; I came back, and I saw the place burning rapidly, and we had about a hundred and fifty or a hundred and sixty grain boats lying there alongside of the—west of the Pier 4 and foot of the grain elevator; each one of those grain boats had a family on it, and I was there getting those families off when the second explosion happened.

Q Why did you go out to the oil yard? A It was the only place I could think of where I could get some water.

I knew I couldn't get into Pier 4, because Pier 4 had been toppled over.

Q Did you want water to drink? A Yes, drink.

Q You thought you needed a little water, did you? A I did.

Q As soon as you had done that you came back again? A I came back again; my nerve had returned, I guess, by that time.

Q You got your nerve back? A Yes, sir.

Q Then you came back to the vicinity of Pier 4 where you had a lot of these grain boats? A Yes, sir.

Q What did you do then? A Well, I had some of these grain boat captains getting families off and putting them through a little roadway and telling them to get up on the hill; that is, the hill up here around Claremont yard.

Q Was that before the second explosion? A Yes, it was prior to the second explosion.

Q When the second explosion took place where were you? A Right there.

Q Still doing that work, getting them out? A Yes.

Q And they did get out? A They did get out; yes, sir.

Q Where were you when the second explosion took place? A Just east of the—or just west of what is known as Store 3 on that map, alongside of Pier 4.

Q Where I am indicating? A Yes, sir.

Q And were you on the bulkhead side of this Store 3? A Yes, sir.

Q In which direction were you facing at that time when the second explosion occurred? A I was facing south at that time, because I was talking to several grain boat men.

Q And I suppose you heard the second explosion? A Yes.

Q And did you see anything of it? A I saw flame go up in the air; that is, the reflection of the flame; I don't think I saw the flame.

Q During that interval were the shells popping off from the smaller explosions? A Yes, sir.

Mr. Stallman. I don't think counsel ought to lead that way.

Mr. Hobart. Well, I don't know as anybody questions it.

Q Was there any other noise between the first and second explosion? A Yes.

Q What was it? A Those shells were going off.

Q Were there many of them or few of them? A No, quite a number, like a rapid-fire gun.

Q Now, you say you saw the reflection from the second explosion; whereabouts did you see it or where did it appear to be? A Appeared to be from the same section as the first explosion.

Q Did that affect you any? A No, sir.

Q What did you do after the second explosion? A After we got these people out I walked over the roadway and came down and walked around down there.

Q Up to the time of the second explosion had you seen any of the Jersey City firemen doing anything? A No, sir.

Q After the second explosion did they do anything? A Yes.

Q What did they do then? A Played water on the fire.

Q When the Jersey City department finally got water on the fire did you observe how many streams they were playing? A Not by the Jersey City Fire Department; I got back on to Pier 4 there and I saw the New York fireboats playing on this end, on the south side, and I saw the Jersey City firemen around on the north side, but I did not notice how many streams were being played. We had our own tugboats in there playing streams.

Q The New York fireboats were drawing water from the bay? A Yes.

Q Were there any hose connected up with the hydrants? A I could not say, Mr. Hobart; I do not remember.

Q Was there any stream from any of the railroad tugs? A Yes, sir.

Q Did you notice whether at that time; that is, after the second explosion, while you were around Store 3, whether any of the storehouses—warehouses—fell toward the east? A Not until I came back after the second explosion. That is when I noticed that.

Q Then what did you observe? A I observed that they were down and were burning.

Q I would like to go back a moment now to the occasion of the first explosion when you were out by that telegraph pole. You say you saw some of the train crew around there? A Yes, sir.

Q. Do you remember where they were or who they were? A No; that is, I have since found out, but at that particular time I did not know who they were, only that I saw one man on a box car and another man giving a signal. They had spoken to me at different times.

Q How far were they from you? A One man was on a box car on top of me.

Q On a box car just above you? A Yes.

Q The other man was on the ground giving signals? A Yes.

Q How far was he from you? A Just across the track.

Q Well, a few feet? A Yes, ten feet.

Q Were they at that point when the first explosion took place? A Yes, sir.

Q Did you observe what happened to them, if anything? A No, sir.

Q I would like to ask you one other question I see I have omitted with regard to these explosives and the handling of them. For how long a time prior to July 29-30, 1916, had these classes of freight been handled in the way

you have described to us? A August, 1915, I believe, was the first month.

Q From August, 1915, down to this time, nearly a year? A Yes.

Mr. Hobart. Cross examine.

Cross examination by Mr. Stallman.

Q Mr. Dickman, as I understand it, you had charge of all the activities connected with the handling of freight in the Black Tom Terminal? A Handling of it?

Q Yes. A Not explosives. Do you mean the physical handling of the unloading from cars to boats when the cars arrived in the yard?

Q You were the only official of the Lehigh Valley Railroad Company located at Black Tom, were you not, in an executive way? A Yes, sir.

Q Your superior officers were located in Jersey City, were they not? A Yes.

Q Your immediate superiors, I mean? A Yes.

Q And was the method of bringing cars in the yard from the Claremont yard and placing them in the bulkhead yard and the details regarding the drilling of the cars to the float bridge tracks or the pier tracks all subject to your instructions? A Subject to my orders.

Q Your orders; yes. A Yes.

Q Who was it that decided where the cars should be placed when they came in from Claremont? A When they came in from Claremont?

Q Yes. A The cars were placed at the most available point for delivery.

Q Well, was that just left to the judgment of the yard conductor? A Well, it may have been at that.

Q Or the train conductor, or the yard man? A The yard master.

Q The yard master? A Yes.

Albert M. Dickman, cross.

Q And is that also true regarding the placing of explosives? A You do not mean on the pier—how do you mean, in the yard?

Q In the yard. A In the yard, yes.

Q The yardmaster then could place explosives any place in the yard where he thought it was a convenient place to put them? A Not any place in the yard. It was decided we would use that section there, use the North Pier to handle the explosives.

Q That is to make delivery? A To make deliveries.

Q Yes, but pending delivery or pending their being placed on the North Pier for delivery they were placed in what you call the bulkhead yard? A Yes, sir.

Q And it was up to the yardmaster, then, I understand, to instruct the train crews to put them wherever the yardmaster thought was the best place? A The cars had already been handled that way when I went down there. I never changed the situation because, as I looked it over, I thought it was a very good one.

Q Yes; well, that was the method that was carried on, that was the way the cars were handled? A That was the way the cars were handled, yes.

Q And that was done, of course, with your sanction? A Yes, sir.

Q And the orders for the placing of these cars for delivery came to your office, I suppose? A Yes.

Q And were handled by your subordinates? A Yes, sir.

Q Under your direction? A Yes.

Q Now, the force of night men that were there were there under your direction also? A Yes, sir.

Q And was their work supervised by you in any way? A Supervised by me so far as a nightly report was concerned. This man came and left a report for me each morning as to conditions during the night.

Q Now, Mr. Kelly testified yesterday that he was engaged in, I think, cleaning out a boiler preparatory

to its being repaired the next day or something done about it down at the grain transfer? A Yes.

Q Was that work in connection with your duties there as agent? A I had full charge of those grain elevators.

Q And Mr. Sloan had charge of some boiler there. Was that also under your jurisdiction? A Yes, sir.

Q Now, as I understand it, this roadway that comes down through Black Tom was not used for wagons, either bringing or taking freight away from the bulkhead yard? A No.

Q So that the road was not used in connection with the yard in any way, was it? A Not in connection with the yard; no, sir.

Q It was used in connection with the storage warehouses? A Storage warehouses; yes, sir.

Q And the storage warehouses were operated by the National Storage Company? A Yes, sir.

Q Were you also the agent of the National Storage Company? A No.

Q Now, do we understand that when loaded ammunition cars or cars containing explosives arrived at Claremount, which is some distance west of this Black Tom yard, they were brought into the bulkhead yard and there placed on certain tracks? A Yes, sir.

Q Now, you said that after the cars arrived at Jersey City, there was a limit of 48 hours stated in your arrival notices; is that right? A Not from the arrival of the car.

Q What is that? A Not from the arrival of the car; from the time the arrival notice was mailed; the 48-hour free period.

Q Free period; and that means for that a period of 48 hours after you mailed the arrival notice, if it was delivered by mail, that the consignees would not have to pay for leaving the car stay in the yard or on your docks? A That is it.

Q And that after that 48 hours they would have to pay demurrage on that car? A Yes.

Q Now, it was part of the Lehigh Valley's duty or work, was it not, to place these cars on the North Pier for unloading, that is the explosive cars? A Yes, sir.

Q So that you did not disclaim any responsibility for the care or custody of these cars until they were placed out on the North Pier somewhere?

Mr. Garrison. I object.

The Court. I will sustain the objection to that.

Q You testified on your direct examination that you did not have anything to do with the unloading of these cars? A No, sir.

Q But you did have something to do with them until they were placed out on the North Pier for unloading? A Something to do with them until they were placed down there?

Q Yes. A Our yard engine would place them down on the North Pier—our yard engines.

Q Your yard engines would place them down on the North Pier? A Yes.

Q That is your yard engines would drill into tracks 15, 16 or 17, wherever they may be, and drill out somewhere to a switch and then drill them out on the North Pier? A Yes, sir.

Q And that was only done after you received notice from the consignees to put them out there? A Yes.

Q Now, do I understand that all of these cars containing high explosives and shells and wet nitrocellulose were all delivered of the north track of the North Pier? A Yes, sir, all delivered from the north track of the North Pier.

Mr. Garrison. I do not want to make an objection, but I do not think Mr. Stallman meant whether all of these cars in the yard were actually delivered off the North Pier.

Mr. Stallman. Whether that was the custom.

Mr. Garrison. Don't you think you ought to make that clear?

The Witness. I meant it was the custom to deliver them.

Q Did you take any steps, Mr. Dickman, to ascertain whether the explosive cars coming into your yard did actually have on them the placards that you have mentioned? A Yes, sir.

Q You had some system for inspecting the cars to see if the placards were on? A Yes.

Q And when was that done? A On their arrival; that is when my yard force would come on in the morning the yard clerks would go out and inspect them; then as they were drilled on they were inspected again.

Q Did you make any effort to ascertain the exact nature of the contents of any of these cars labeled high explosives? A No, sir.

Q Now, on the night of this fire did you take any notice of what time it was when Sloan called you up? A No, only I was judging by the time that it took me to undress and get ready for bed, knowing that I had arrived in the house about 12:30 that evening—or that night.

Q And he talked with you about five minutes, you say? A That is what I judge.

Q Then what did you do? A Got dressed, called a taxi first, and by the time—well, I had not completed dressing when the taxi was at the door.

Q Where did you get the taxicab, Mr. Dickman? A Summit station here.

Q How far is that from your house? A Oh, I guess three-quarters of a mile, half a mile, not more than that.

Q And when you got down to Black Tom you say that you left your taxicab at Pier 4. Now, at any time

after that did you look at your watch to ascertain what time it was? A No, sir.

Q So that any statement you are giving us as to time is an estimate? A Estimated time.

Q Estimate. You don't actually know what time it was whenever you did these things to which you have testified, the exact time? A No, sir; not the exact minute.

Q Now, you say when you left the taxicab at Pier 4 in the roadway—how far east did you walk on the roadway? A Straight down the roadway until I met Kane first.

Q And did you meet Kane going west? A No; I met him standing just about opposite Pier 5 there, what they call the pump house.

Q Met him standing there. Then where did you go? A Then I walked down to Pier 7.

Q Well, how did you get there? A Right down the road over the tracks, around the gravity tank, down to what would be the southwest corner of Pier 7 there, where there was two tugboats.

Q You mean down to this corner where car 9327 is marked? A Whatever car number that is.

Q Well, that is the car number. And there were a couple of tugboats in there? A Yes, sir.

Q And did you walk between Store R and the gravity tank? A No; came around the gravity tank, on the outside of it there.

Q Yes. Now, where did you go from there, Mr. Dickman? A Up along Pier 7.

Q Do you mean east or north? A North.

Q North, yes. A And turned west along the bulkhead there.

Q Yes, behind the— A South side of the stores, the last block of stores there.

Q And then where? A In through Pier 6 and out into the roadway again—I mean into that driveway leading into Pier 6, out on the roadway.

Q Between the space between Stores M and N, down there, through the driveway, across those tracks, out in the driveway? A Yes, sir.

Mr. Garrison. Roadway. They make a distinction between the two.

Mr. Stallman. Roadway.

Q And when you got out there you met Julian? A Yes. That was the second time I met Julian that night. I had met him before I went down to Pier 7, too, and I met him on my way back.

Q And from there did you go down towards the gravity tank again? A Yes, sir.

Q Now, how long did it take you from the time that you got out of your taxicab, came around the tank, down to the corner of Pier 7, and back to the driveway or roadway opposite Pier 6? A I should judge about an hour, around an hour, fifty minutes; something like that.

Q During that time did you pay any special attention to the fire? A Only that I noticed it burning. I heard the shells going off, and so forth.

Q Did you pay any attention to the number of cars that were on fire? A No.

Q When was it, as to length of time after you got out of your taxicab, that you first saw any of the trainmen pulling cars out of the yard? A As I came down the roadway, after getting out of my taxicab, I believe one engine was just coming in.

Q And do you know what track that train was on? A It was on the south side of the roadway.

Q Did you see any drilling being done on the cars, on the tracks on the north side of the roadway? A Yes.

Q Did you see any drilling done on the *car* immediately north of the roadway, which is marked on the map eastbound float track? A Well, it was either that one or the middle float, either one.

Q Did you see any of the drilling being done on any of those tracks that connect with the float bridge—float bridges? A Yes, sir.

Q And where did you see any drilling being done in there? A I see trains going in, coupling up and pulling out cars, drilling over on to another track.

Q How soon was that after you got there in the taxicab? A That was after I came back from Pier 7.

Q About an hour later? A Oh, no, not an hour; not an hour later at that time.

Q I mean an hour after you arrived there? A No; that was after I came back into the roadway—well, I should judge about three-quarters of an hour or fifty minutes, something like that.

Q When you got there did you see any of the Lehigh Valley employees using any hose or other means of fighting this fire? A No, sir.

Q Now, while you were standing over on the sea wall track, about opposite the gravity tank, did you notice the crater while you were leaning up against the telegraph pole? A No, sir.

Q There wasn't any crater there, was there? A Not that I saw.

Q And when this explosion occurred you were stunned and got away from there as soon as you could? A I was stunned so far as getting a hard knock from going down; but I got up right away. I was never unconscious.

Q Your eyes were full of dirt, you say? A I don't know whether it was dirt or what it was; it was full of something.

Q And you crept out here one side and finally found yourself down among the rocks on the north side of the sea wall? A No; I went down among the rocks after the explosion.

Q The explosion threw you down or blew you down? A The explosion blew me down.

Q Blew you down? A And as I went up I went along this part, and went among the rocks, and then crawled back and went up the other way.

Q And the first you saw of that crater was some time the next day? A Well, 4 or 5 o'clock that morning I saw it.

Q Now, you say that just before this first explosion occurred you saw quite a blast of flame go up in the air? A Yes, sir.

Q And that appeared to be in the direction—in which direction from where you were standing? A What would be—what has been termed here as directly east.

Q Directly east? A Yes.

Q And you could not tell how far it was away from you in feet? A I could tell the location, but not feet.

Q That is, you mean you could tell the direction? A Yes.

Q The direction but not the distance? A Not the exact distance; no.

Q In other words, you could give the latitude but not the longitude? A Exactly.

Q At the time of the second explosion you were on the other side of Store 3. That explosion did not affect you in any way? A No.

Q Didn't seem to be anywhere near as forceful as the first one, did it? A No; it did not.

Q Was it your duty, Mr. Dickman, to employ these men who were performing the services, like Kelly, Kane, Garrity, and the rest of them? A Yes; it was my duty.

Q I understand that you had only been there about six months before this accident occurred? A Yes; seven months.

Q What is that? A Seven months.

Q Seven months. When you went there the Lehigh Valley were handling munitions in that yard? A Yes, sir.

Mr. Stallman. I guess that will be all.

Mr. Hobart. That is all.

(Witness excused.)

FRANK DECKENBACK, sworn.

Direct examination by Mr. Hobart.

Q Were you employed by the National Storage Company in July of 1916? A Yes, sir.

Q What was your position? A Looking after the sprinkler equipment, stand pipe, hose, fire pumps.

Q National Storage Company was the owner and operator of some of these warehouses that have been mentioned? A They were a company that were operating the warehouses at the time that I was working for them.

Q And this sprinkling equipment and apparatus that you have mentioned were in those warehouses, were they? A Yes, sir; warehouses and the piers.

Q What did you have to do, if anything, with the installation of the equipment? A The equipment was installed before I was employed by the National Storage.

Q Do you know of the location of these tanks that appear on the map, that 100,000-gallon tank and the other tank? A Yes, sir.

Q Were they in any way tied up to or forming a part of this system? A The gravity tank formed the primary supply for the sprinklers and hydrants. The 100,000 gallon tank was connected with a 12-inch main which supplied the three-way Corey hydrant.

Q This 12-inch main, where did that come from? Where did the water in it come from? A The 12-inch main was supplied by the city and by the hundred thousand gallon tank—100,000 gallon gravity tank.

Q So that the 12-inch main was connected up with the city water supply? A Yes, sir, by an 8-inch main coming through Claremont.

Q Were there any hydrants there that were city hydrants? A Yes, sir.

Q And others that had been put in by the company? A The three-way Corey hydrants were a part of the new installation; three-way Corey hydrants.

Q And the other hydrant was a city hydrant? The other hydrants were the city hydrants? There were other hydrants, I mean? A Six-inch water main, fresh water hydrant.

Q Were these tanks for this water supply that you have referred to connected up in any way with the city hydrants? A No; they were not.

Q Were they connected with what you call the Corey hydrant? A No, with the 6-inch main; they were connected with the 6-inch main supply of fresh water, city hydrant.

Q Did your company have anything to do with the city hydrant? A We used water from them; the water going out of those hydrants was metered, and the company used water at that time for the different purposes.

Q Well, I mean did you have anything to do with putting them in or inspecting them? A They were there when I came there. I believe the company made repairs to them if the repairs were needed.

Q But the Corey hydrants, as you call them, were put in after you came, and were a part of this additional protection? A Yes, sir.

Q Do you remember when this sprinkling system and the additional hydrants were put in? A Why, they were put in before my time; I believe in the year 1914, or about that time.

Q What was your special duty in the way of supervising or inspecting? A I did inspections daily; first thing in the morning I would start in going through the entire system, starting at the cork works. I had to maintain the pressure on the dry valves, and pump up if necessary, to keep them from dripping; see that the valves were all open, kept out water guns, pump up the water in the tank if any was necessary. In the winter

time, of course, I would have to see that the steam was kept up for those tanks, that the water wouldn't freeze; see that the gate valves were open. These gate valves I would also supervise, but I would make an inspection then, more to see that the valves were open, and those that should not be open were kept closed.

Q Now, referring to the date particularly of Saturday, July 29, 1916, were you on duty that day? A I was until about three o'clock.

Q What time did you start in in the morning? A I started at eight o'clock.

Q And from eight o'clock in the morning until a little after three o'clock in the afternoon, what, if anything, did you do in the way of inspection? A I made inspection the first thing in the morning, and saw that everything was all right, but made another inspection before I went off duty, as I had asked for permission to leave town—my son was up in New York State—to go and visit him; and so I made another inspection to be sure that nothing would happen; that is, that no valves would drip or anything of that sort, to give unnecessary alarm while I was away. I saw everything was all right and also pumped the gravity tank to the overflow pipe to be sure they would be full. If I found one that didn't need any water up, I pumped it just the same.

Q When did you make the second inspection? A Well, after dinner, as—before I went away. From that time on until about three o'clock. I left there about three or somewheres thereabout.

Q Now, you refer to pumping up the water in the tank. What was the occasion of that? A The water in the tank will evaporate. There might be a little leak or an underground pipe that might cause the tank to run down in four or five days. It will be constant, and the water can go down over ten inches—about ten inches, and then a low water signal would come in on the National District signal, which was attached to the tank.

Q Now, will you just explain to us briefly how that would operate? A In case the water got ten inches lower down to the point where this instrument was set, there was at the top of the tank an overflow pipe above that, and about ten inches below the overflow pipe of the tank there was an instrument that would register a low water signal through a transmitter to the National District's headquarters, giving the number, that in turn would notify the National Storage they had a low water signal from the gravity tank. They would make an inspection to see which one of them it was; that is, two of them were hooked together, one on Store P and the lower tank were hooked together on one instrument. Then they would call them up and ask them if they received the restoring signal, and they would say in most cases they had. When they got to that point they would get the restoring signal.

Q Where was the office where this signal would be recorded? A I think it is on the—Union Trust Building, corner of Montgomery street.

Q Jersey City? A Yes.

Q Connected up by wires, I suppose? A Yes.

Q So that whenever the water in the tank got below just a certain point that would be marked? A They would get a signal. If the hydrant was used in the yard and you did start the pump going the tank would not lower, because the check-valve would close and keep the water supply up.

Q What did you do in the way of observing on this Saturday as to whether or not the water in this big tank— A I was up on the tank, went up the ladder.

Q Climbed up and looked at it? A Yes climbed up all three tanks.

Q How did you find it? A Water getting a little low in the big tank, and I pumped up the tank until the water overflowed.

Q And then a report was made, as far as you know, of the water being low? A The National District man was

down there looking over the instruments, making inspection; he was there at the time I was pumping the tanks up, and I asked him there whether everything was all right, and he said he had no trouble of any kind at any place.

Q What time was he there? A He was there in the afternoon.

Q Before you went away? A Before I went away.

Q Well, did you examine anything else on that Saturday outside of the gravity tank itself and the hydrants? A Why, the usual inspection, of course, included all the hydrants, the standpipe, the sprinkler, dry valves and hose, and things of that sort, everything pertaining to the fire-fighting equipment.

Q Did you find anything out of order that day? A Nothing.

Q Now, you know Mr. Garrity? He was one of the watchmen you mentioned? A Yes, sir.

Q Did he have anything to do with this pump that is indicated down here near Store R, electric pump, at all? A He was the man that would operate the pump at night in case of fire.

Q Had you given him any instructions as to how to run it? A Yes.

Q Did he know how to run it? A He started the pump up while I was watching him, showing me that he did know how to run it.

Q When was that? A This was—about three weeks before the explosion.

Q Did you know Mr. Sloan? A Yes.

Q I think he was in one of the pump houses? A He was in the pump house aside of Store F.

Q Had you given him any instructions? A Mr. Sloan —knew how to operate these pumps. I was satisfied that he did.

Q Well— A Because I seen him run them.

Q You have seen him do it? A Yes.

Frank Deckenback, cross.

Q Did you give any of the watchmen instructions as to how to operate the valves of the hydrants? A Yes, sir.

Q When did you do that? A About the same time that I instructed Garrity about the pumps.

Q Did you give any instructions to any of the men that were on duty at night? A Yes. Those are the watchmen. There are about four or five of them. We started at about Store 3 and went over all the valves, showing what they were to do and how to operate them in case of broken pipe and how to stop water damage; also in case of fire that no valves would have to be attached to the fingers, because everything was automatic, and the three-way Corey hydrants, all you have to do is to attach the hose and open the hydrant and the water was there.

Q Did you do it at night? A In the early evening, as these watchmen came on.

Q How long before the fire was it? A About three weeks.

Q Were you on duty there every day? A Every day except Sunday.

Q On this particular Saturday it happened that you made two inspections? A I made the extra inspection to be absolutely sure that nothing would happen to the system to cause unnecessary trouble.

Q Of course, you did not know that anything was going to happen? A I didn't expect that anything was going to happen, but I wanted to feel sure—I would be safer in going away.

Q Then you did go away? A I did; I took the Albany boat at 6 o'clock.

Cross examination by Mr. Stallman.

Q Mr. Deckenback, you say you are employed by the National Storage Company? A Yes, sir.

Q What was your title? A Why, looking after sprinkler equipment.

Q Superintendent of water service? A Sir?

Q Are you superintendent of water service? A No, sir; more as an inspector, supervisor, to keep up the maintenance of the equipment.

Q Yes. Now, you said that the gravity tank there was a primary supply of the sprinkler system? A It was—the first supply.

Q Yes. When you speak of the sprinkler system, do you mean the system of automatic sprinklers throughout the storehouses? A The storehouses were supplied by the two tanks on the roof.

Q No; I am not asking you about the supply. I say when you mentioned the sprinkler system do you mean the sprinkler system scattered through the storehouses? A Through the warehouses and the piers—were all hooked on to the one pipe, the supply from the tanks.

Q In those buildings, say a fire did occur in one of those buildings, the sprinkler would automatically operate and water come down? A Water would come down and the alarm would be turned in.

Q All of these mains and hydrants were under your charge, were they? A I made the inspections of them to see that everything was all right.

Q Did you look after the maintenance of them? A In so far as I was able. The larger jobs we would get men from the Volger Sprinkler Company to take care of those.

Q That was all in connection with the fire protection in the yards, stores and piers? A Stores and the yard adjacent to the stores and the piers.

Q What did the National Storage Company have to do with the yard? A Why, if a car got afire out in the yard the stores would be in danger.

Q This work that you did about instructing nightmen about how to operate this sprinkler system and valves, who told you to notify these men about it? A Mr. Davidson, the superintendent of the National Storage.

Q Got those instructions from the National Storage officer? A I got them from him. I believe he also had some understanding with the agent of the Lehigh Valley.

Q We don't care about your understanding. Did the National Storage Company have any watchmen around there at night, to your knowledge? A I believe the watchmen employed there worked jointly for both companies, looked after the property for the both companies, because the keys were on the end of the stores, so that the man who was making the rounds, punching those keys, naturally, he would be protecting the stores as well as the piers.

Q Then, so far as your knowledge goes, the watchmen were store watchmen as well as railroad watchmen; is that the idea? A I believe they were.

Q Do you know anything about this fire hose and hose carriages? A We had hose and hose carriages down there, yes.

Q Was that a part of your equipment as well? A Yes, it was a part of the equipment used around the property.

Q Yes. You were not there on the night of this fire, were you? A No, sir.

Q And after you gave these instructions to these men about three weeks before the fire, did you ever see them operate any of this fire apparatus after that? A There was no occasion to operate it.

Q There wasn't any occasion to do it? A No.

Q Therefore, your answer is no, that you did not see them operating; is that right? A I did not see them operating; no.

Q That is all.

The Court. That is all.

Mr. Hobart. That is all.

MARTIN T. HENLEY, sworn.

Direct examination by Mr. Hobart.

Q You are employed as yardmaster of the railroad? A I am.

Q At what point? A Located at Jersey City at present.

Q Where were you located on the occasion of this fire and explosion in July, 1916? A At Washington street, Jersey City, Lehigh Valley yard.

Q Were you on duty on the night of July 29th? A I was.

Q You were the night man then? A I was night yardmaster.

Q How far is Washington street, where you were located, from Black Tom Terminal? A About two and a half or three miles by railroad.

Q What was the first that you knew of anything out of the ordinary at Black Tom that night? A Well, I was called up about 1 o'clock by our terminal dispatcher and notified there was a fire at Black Tom.

Q You mean called up by 'phone? A Called up by 'phone, yes.

Q Is that a railroad 'phone? A Railroad 'phone, yes.

Q When you got the notice what did you do? A Well, I took one engine with me and I stopped about a quarter of a mile and got another and 'phoned on up to Jersey avenue to have two more there.

Q How many did you get altogether? A I had three leaving and one about five minutes after. The other one was not quite ready.

Q You had four altogether? A Four all told.

Q Did you get on board of one of the engines yourself? A Yes, I was on the first one going down.

Q Do you remember which one that was? A 3428.

Q Did you take any crew along with you? A Yes—that was conductor Gaffney, and train crew, two men.

Q Were they working nights at that time? A They were working nights.

Q At the Washington street yard? A They were working on both Washington street yards, and I got them at Jersey avenue.

Q At any rate, they were not working at Black Tom yard? A No, sir; they were in Jersey City. Two engines were working in Jersey City, and I took them down there.

Q There wasn't anybody working at Black Tom? A No engines working at Black Tom; no.

Q How soon did you get to the Black Tom Terminal with your engine 3428 after you had received the message? A Well, about twenty-five or thirty minutes. We had to stop and get a tank of water on all engines. That consumed seven or eight minutes.

Q Did your engines all get there about the same time? A Yes, with the exception—three got there the same time; the fourth engine was about five minutes later, I judge.

Q Which track did you run on when you first arrived? A Well, I sent—one engine went down 2 or 3 bulkhead; that was 3428; 3426 went right on the sea wall, pulled a string of cars out of the sea wall, and 3143 went down to the floats at 12 bulkhead.

Q By 12 bulkhead you mean a track which appears on this map under the name of 12? A Yes, sir.

Q Well, as you were approaching the terminal and after you got there did you see anything of the fire? A Saw a fire when we were leaving Jersey avenue, Jersey City.

Q Did you notice anything in the way of noise or explosions or anything of that kind? A Well, the shells were popping when we were leaving Jersey City. I could hear them.

Q Could you hear them from that point? A We could hear them pretty plainly.

Q Could you tell what part of the terminal the fire was when you first saw it? A Not from the Jersey avenue, I could not.

Q When you got nearer where did it appear to be? A Then it located at the rear of those tracks—from, I judge, 13, 14, 15—over there.

Q When you speak of the rear of the tracks, what do you mean? A Towards the North Pier.

Q Did you know at that time where the ammunition cars were located? A Well, I knew they kept the ammunition from 14 to 16; I knew that was a classification for it.

Q Were there any cars on fire when you got there among those tracks, where those cars were? A Yes.

Q Was there any popping of shells? A Yes.

Q Could you tell how many cars seemed to be on fire among the ammunition cars? A No, I couldn't tell; I could only—

Q Was there more than one? A There was more than one. There was more than one track.

Q You mean there was a car burning? A On more than one track.

Q On more than one track? A Yes; you could see that, but how many I couldn't say.

Q Did you succeed in getting any of the cars out? A Well, we pulled 12, 13, 14, had hold of 15 when the explosion occurred.

Q You speak of pulling 12, 13 and 14? A We just pulled them over the switch and backed down, just double tracks.

Q You mean twelve cars? A No; track 12. We had a total of about twenty-three cars on the four tracks when we pulled.

Q How far did you pull them? A Well, only a few feet. The explosion occurred as we were starting with the 15.

Q That was when the first explosion occurred? A Yes.

Q One of the engines was fastened to some cars on track 15? A Yes.

Q Do you remember which engine that was? A 3143, Conductor Walsh, Thomas Walsh.

Q Were you on the engine? A No; I was on the ground, the rear of the train.

Q Did you remain on the engine at all or did you direct the work? A I directed the work from the ground.

Q Well, when one of the engines was tied up to some cars on track 15, did you observe whether any of those cars that were in that string were then burning? A No; we had cut away from the burning cars. There were cars afire on 13, 14 and 15; we cut those off as we pulled out. The cars that were afire we pulled out and shifted back.

Q Who cut them off? A Thomas Walsh cut out one track and I cut the other—I cut two tracks in fact.

Q After you had cut them were the cars that you cut loose, were they actually burning? A They were burning.

Q Of course you had to go right alongside of them to cut them? A Had to go between, you know, and raise the cutting lever.

Q By cutting I suppose you mean uncoupling? A Uncoupling, yes.

Q When these shells were going off did they make very much noise? A No; just a hissing sound; they did not seem to be travelling very fast.

Q Well, did anything travel from them outside of flame or fire? A No, no, I didn't see.

Q Anything hit you or come anywhere near you? A Well, one hit me, a brass top struck me in the groin here.

Q Did it hurt you any? A Well, it knocked me down, I dropped.

Q Were there many of them? A Oh, yes, there was—every second—like a bunch of firecrackers.

Q Well, did you stop work when you noticed those shells popping around? A No; no, we all kept working.

Q Kept right on? A Kept right on.

Q Did you see anything of Mr. Leyden? A Yes, I saw him, he was with me in fact most all of the time.

Q Where was he when you last saw him? A I saw him last just as we cut up to 15.

Q Where was he then? A Probably a half minute. Well, he was within 15 feet—10 feet of where I was—five feet, I imagine.

Q That is before the first explosion? A Yes; less than a minute before the first explosion.

Q You did not see him after that? A No, I did not see him after that.

Q Did you notice whether when these shells went off there was any part of the shell that would fly around? A No; only these—this brass top of the shell, is all I see—those that dropped in my vicinity.

Q Just the one? A No; I saw plenty of them drop around me, just a brass top, not the entire shell, just the brass top.

Q Only one hit you? A Yes; they probably weighed six or seven, eight or nine ounces, the weight of them.

Q How did you dodge those? A Well, they wasn't going so fast.

Q Did you dodge them? A Yes, you could dodge them. They were going just like a baseball pitcher would throw a ball.

Q Now, when this first explosion occurred, you have already said you had some cars fastened to your engine on track 15? A Yes.

Q Do you remember about how many cars there were? A About 23.

Q And whereabouts were you with reference to those cars? A Well, I was about 17 cars from the engine. I should imagine we probably had six, maybe it might have been five behind us.

Q That would be, of course, in the direction of the North Pier? A Yes.

Q Near the rear of the train? A Yes.

Q Which side of the train were you on, do you recall? A I was on the shore end side towards the stores.

Q That would be the south side? A The south side, yes.

Q Do you recall where you were with reference to this big water tank that has been called the hundred thousand-gallon gravity tank? A Yes, about 100 feet east of that.

Q 100 feet nearer the North Pier? A Nearer the North Pier.

Q And how close were you to track 15 at that time? A To track 15?

Q Yes. How close were you to track 15 at that time? A I was standing between 14 and 15.

Q Before the first explosion occurred; I mean immediately before; did you see anything in the way of flame or fire, anything extraordinary? A Well, the air became very dead, and there was a flare for just a fraction of a second; and then everything got as dark as pitch; you could not see anything. That is all I remember at that time.

Q Was there any noise? A There was an awful roar; it seemed to come from a distance.

Q Where did this appearance of flame or flare appear to be, in which direction? A Off towards the river.

Q Well, in which direction from you? A West—I should think—the left side of me—north.

Q To the north of you and towards the river? A Towards the river.

Q Are you able to form any judgment as to how far away it appeared to be from you? A No, not the least idea.

Q Well, are you able to form any judgment as to whether or not it was right alongside of you or whether

it was some appreciable distance off? A It was some distance away.

Q What happened to you? A Well, I was throwed against the side of a car.

Q Were you injured? A Well, shook up pretty well, that is all.

Q Were you knocked out? A For three or four minutes, I imagine.

Q What did you do then? A I started out; it was very dark; you could not see where you were going; everything was just as black as pitch.

Q Which direction did you go? A Well, I went in the direction of the elevator.

Q How did you know the direction? A I did not know.

Q Well, in other words you did not know at the time that you were going towards the elevator? A I did not know at the time which direction I was taking.

Q You just wanted to get out? A Get out, that is all.

Q When you started out did you have to climb out of a hole or a crater or anything of that kind? A No, I fell over parts of cars.

Q Where did you go to? A I went out until I came to the end of this string of cars before I knew where I was at. The engine was attached; that is how I got my direction; the engine was still attached to the cars.

Q Was the engine blown up? A No, the engine was not damaged at all. In fact, we used the engine.

Q What is that? A The engine pulled cars afterwards.

Q Did you afterwards see the part of the yard where this so-called crater was found? A Yes, I did, about two weeks after I saw it.

Q Have you any way of telling where you were at the time of the first explosion with reference to the edge

of the crater? A Well, I was about a hundred feet east of the crater, I would imagine, towards the North Pier.

Q 100 feet east? A Toward the North Pier.

Q East of what part of the crater? A Well, about 100 feet east of that tank.

Q Do you remember how big the crater was? A Why, no; it was a pretty big hole, though.

Q Well, it was two or three hundred feet long? I think that is admitted. A It was more than 100 feet long.

Q When you speak of being 100 feet east of it, all I want to do is to make sure whether you meant you were 100 feet east of the east end of it or 100 feet from some other part? A 100 feet east of the west end of it.

Q That would bring you pretty near to the middle of it, wouldn't it? If the crater was 200 feet long and you were 100 feet east of the west end of it? A That would bring me about in the center of it.

Q Were you in the center of the crater when that explosion occurred?

Mr. Stallman. I object to that because the witness does not know. The crater was not there.

The Court. He does not know; the crater was not there.

Q Well, were you anywhere near the center of what you afterwards located to be the position of the crater? A Yes; I imagine I was about there.

Mr. Garrison. Fix the time he was there.

The Witness. I can show you where I was on that map; I can locate myself on that map.

Q Were you at that place at the time of the first explosion? A Sir?

Q Are you referring now to the instant of the first explosion? A Yes; yes.

Q Now, after the first explosion you started to get away, and how far did you go? A Immediately after the first explosion I went up to this string of cars where our engine was.

Q You did not stay around there, did you? A Yes, I waited, looking for the men that was with me.

Q Did you find any of them? A I found Gaffney first and stationed him at the end of the cars and told him if anybody showed up to hold them right there so we could check up and locate ourselves; see?

Q You wanted to find out if any of the men were hurt? A I wanted to find out where they were. I was more interested then in that than anything else.

Q After you spoke to Gaffney did you find any one else? A Then I met Tommy Walsh.

Q Where was he? A He was coming up within 50 feet of that string of cars when I met him.

Q And what did you do after that? A Then I walked down. I could not find anybody; and they had his brother, John Walsh, and Conductor Voorhees was there.

Q Did you do anything else in the way of pulling cars out after the first explosion? A After we got them to the hospital then we pulled the string of cars off No. 9.

Q Did you go back anywhere near where you had been? A No, I just went to the head end of No. 9, and pulled a string of cars out and the rear car was all shattered very badly. I used that same engine with another engineer. Conductor Voorhees was on at that time.

Q Did you see anything of a crater or hole in the ground after that first explosion? A No; I never got down that far after the first explosion because you could not; the fire was very bad down there.

Q What kept you from going down? A The fire.

Q Where were you when the second explosion occurred? A I was up towards the new elevator.

Martin T. Henley, cross.

Q It is marked on the map new grain elevator? A The new grain elevator. Probably within a hundred feet of that.

Q Where did that seem to come from? A Well, that seemed to come from down those tracks.

Q Which tracks? A That we had been pulling. There was no flare to that second one that I saw; a very loud report; and it did not shake the ground I was standing on even.

Q You spoke of going to the hospital, or one of the men going to the hospital; did you go to the hospital? A No, I did not go to the hospital; I was only shook up.

Q Who was sent to the hospital? A Thomas Walsh, William Walsh, John Oakes and Harry Maguire.

Q They were some of your men? A Yes.

Mr. Hobart. Cross examine.

Cross examination by Mr. Stallman.

Q Mr. Henley, did you look at your watch when you got down to Black Tom? A I looked at the watch at the head end of the yard and it was 1:28 exactly.

Q What do you call the head end of the yard, the oil yard? A As we were approaching the yard near the oil yard, just south of the oil yard, on the west end of the sea wall.

Q That is about a mile from the bulkhead, isn't it? A No; less than half a mile from the bulkhead—these bulkhead tracks I speak of, that is the last I looked at my watch.

Q And when you got down there you say that the cars were on fire on tracks 13, 14 and 15, as near as you could tell? A Yes, as near as I could tell. The tracks are very close together; they are only 12-foot centers, and with the rear of the cars burning it is hard to distinguish just which tracks; but I know positively it was on two of the tracks anyway.

Q Are you, or were you familiar with the bulkhead yard before the time of this fire? A Yes.

Q You as yardmaster had been down there before? A I had been there before, yes.

Q Where these tracks are numbered, how far does the identity of number remain with the track, up to the block where it goes into the lead track? A Yes, I believe they are about the same. I have not been down there since that explosion, since the yard was remodeled, I have not looked it over since it has been finished.

Q My questions are all directed to the time of the fire, not what the yard is at the present time. Now, for instance, I notice on the map that track No. 12 is the extension of the ladder track and tracks 13 and 14 and 15 are all connected with the same lead. Now, what do you call that lead track from which 15, 14 and 13 run out and of which No. 12 is the extension; what do you call it? A I call it the bulkheads. It is known as the bulkhead tracks.

Q And does that designation refer to that part of it that is used as a ladder track? A The ladder track, no.

Q What do you call that track out of which 15, 14, 13 and 12 run? A What do I call it?

Q Yes. A Well, the sea wall is the lead to those tracks; the sea wall is the lead to those tracks.

Q I am not speaking of the sea wall, Mr. Henley, at all. The map shows that track 12 and track 13 and track 14 and track 15 all lead off the same lead track. A Yes, all off the same ladder.

Q All off the same ladder track? A Yes.

Q Do you call that a ladder track? A Yes.

Q And how do you identify which ladder track that is? A Well, you can identify it from going over to the North Pier, going over to 18, and around over the tracks from 18, 17, 16, 15.

Q Yes, you identify the tracks but I see there is another ladder out of which 18, 17 and 16 run. A Yes.

Q Now, how do you distinguish between those two ladders? A By becoming familiar with the yard. I could see approaching—I count from the North Pier over; tracks 18, 17, 16 and 15. We went in on 12, 12 block 13; I could see 12 sticking up.

Q Just a minute. Supposing I did not know anything about this map or this yard and you wanted to tell me you went down the second of those leads embracing 12 to 15, and not the first one. How would you designate it? A That would be known as the middle float yard.

Q That ladder track would be the middle float lead? A Yes, the middle float yard.

Q Now, what was the first track that you called when you got down there? A 12.

Q So you came down this middle float lead then, did you? A Yes.

Q And went down on track 12? A 12.

Q Do you know how many cars you hooked up? A We took about seven; it might have been eight.

Q Did you go clear out to the bulkhead to couple up those cars? A Yes, over the switch; we pulled those seven over the switch.

Q No; I mean when you ran your engine down in on 12 track did you go personally any further than the switch? A On 12?

Q Yes. A Yes, sir.

Q How far did you go? A About three car lengths.

Q Three car lengths? A Yes.

Q Was there any car near the switch? A Any car near the switch at 12?

Q Yes, on 12. A Yes, there was a car on the switch.

Q Was it following 13? A Following 13.

Q And was there another car near that—behind it? A There was another car coupled up to it.

Q Coupled up to it? A They were all coupled together.

Q You went down, then—how many cars down that string? A About two or three cars.

Q About three cars? A About two or three cars.

Q About two or three. That took you, then, about 70 or 75 east of the switch where 12 enters the lead? A Yes, sir.

Q Now, when you went down there with your engine did you see the fire? A I saw the fire on the rear end of the tracks.

Q Where was the fire from where you stood when you were coupling up these cars on No. 12 track? A It looked to me to be about on the rear of 13, 14 and 15.

Q It looked like they were on adjacent tracks east of where you stood? A Yes, east of where I stood.

Q As your engine backed into the yard and pulled out again you crossed them between the hundred thousand-gallon tank and the place where the fire was, didn't you? A Yes.

Q Did you know at that time whether there was any fire hose or any fire-fighting apparatus at any place to the northeast of the tracks that you— A No, sir; I did not.

Q —ran in there on? A No, sir; I had no idea what fighting apparatus was there at all.

Q Well, if there had been would you have known it?

Mr. Garrison. I object.

A No.

Mr. Stallman. I think that is proper, to ask this witness that.

Mr. Garrison. It is not cross examination. It i not cross examination. This witness was not asked anything about fire-fighting apparatus. We will concede there were no hydrants there, if that is what you want. You need not ask anything else. But this witness was not asked that, and it is not cross

examination. The map shows where all the fire hydrants were, Mr. Stallman. There is no use asking were there any anywhere else. It shows every one of them.

Q Do you know how long it took, Mr. Henley, for you to drill 12 and 13 and 14 tracks? A Well, from the time we started getting hold of them it was about twenty minutes, about twenty minutes, sir, from the time we started on 12 until we got 15 out.

Q That is until the explosion occurred? A Yes, about eighteen, I should imagine; eighteen or twenty minutes.

Q You had been working, then, as I understand it, about eighteen minutes until the time of the first explosion? A Well, we were working a little longer. You know, there were cars on the sea wall track that had to be removed before we could get down in there. You see?

Q I thought the first thing you said you did was to pull No. 12? A After we got off the sea wall. The 2426, I said, took the cars off the sea wall. I had to wait until she got off with those cars before I could bring the 3143 down into that yard. See?

Q Did all of your engines come down on the sea wall track? A No, no; the other engines went over on the other side. See?

Q Yes. Well, now, while this engine was drilling the sea wall track why couldn't you have gone in on 12 by way of the middle float track? A Well, I had to let her pull out. I had the other two engines going in that way. See? To pull over the other side of the yard. Some of them had to wait a little. We all couldn't move at once —not four engines.

Q Now, did you after you pulled No. 12 track head out towards the—in front of the stores and then drill back on No. 13, and then head out again and then back again into No. 14? A Yes, sir.

Q And then out again and back into 15? A Yes, sir.

Q You were leading right back and forth over that ladder track all the time? A Yes, sir.

Q And was the total amount of cars that you had in your train these 23? A 23 cars.

Q Or does 23 include the cars on track 15? A The 23 cars we had hold of with the engine, 23 cars all told when we got through pulling.

Q Including those on 15? A Including everything, yes.

Q Now, in uncoupling any of these cars from others—these cars were all equipped with United States safety appliances, weren't they? A Yes, sir.

Q And, therefore, you didn't have to go in between the cars— A No.

Q —to uncouple them, did you? A Just raise the lever at the side of the car.

Q You could stand alongside of the car and close to it and grab the uncoupling lever? A Yes, sir.

Q Now, when you say that you were seventeen cars from the engine at the time of the explosion, do you mean that you were seventeen cars east of your engine? A East of my engine; yes, towards the North Pier.

Q Towards the North Pier? A Yes, sir.

Q Now, do you know where your engine was at the time of the explosion? A Well, she was seventeen car lengths west of 15 there, the west end of 15.

Q I know you can probably figure it out, but do you know where she was? Can you tell me where she was, whether she was opposite Pier 5 or Store K or anything of that kind? A Well, you could locate it yourself by figuring it out.

Q No, I don't want to figure it. I want to know whether you know where she was? A No; I don't know unless I figure it.

Q Now, when you went down there did you know what was in any of these cars? A I knew those were

the explosives; I knew that was where the explosives were kept.

Q What is that? A I knew the explosives were kept in those cars down there; I didn't know just what explosives were in it.

Q You didn't know specifically what kind of explosives? A No, I did not.

Q Of course, you knew when you saw the shells shooting they were shells? A I knew they were shells, and knew from the location of the fire that is where we kept our high explosives, was down there.

Q Now, when you say the brass top hit you, do you mean the projectile end of a shell, the brass top end? A The timer, I think you would call it, has a combination on it something similar to the knob on a safe.

Q You mean the nose? A Yes, the brass nose.

Mr. Garrison. He means the very extreme end of the brass projectile, which has the timer on it, which comes off.

The Witness. Probably weighs six or seven ounces.

Q What was it, a three-inch shell? A Three-inch shell.

Q Now, at the time of the explosion where were you with reference to the switch or track No. 15? A I was right there.

Mr. Garrison. Won't you put your pointer on there so we can tell where that is.

Mr. Stallman. My pointer is pointing to the sea wall track, and the lead that comes down.

The Witness. I was right by the switch, probably a few feet east.

Mr. Stallman. There is the point. I am pointing now at a place where two tracks diverge, the one coming to the south leading into float bridge No. 2.

and the one continuing straight on being the lead to No. 15.

Mr. Garrison. Where is the switch?

Mr. Stallman. I have got my pointer now right on No. 15 switch, No. 15 track goes into that ladde track.

The Witness. I was probably fifteen or twenty feet east of that, towards the North Pier, on that side, out towards the switch.

Q Fifteen or twenty feet further east? A Yes, sir.

Q That would be— A Because I walked just a few feet after we coupled up on that track.

Q Then you were down about the point, about half-way between the switch and the frog? A Yes; I was about at the frog.

Q Now, you know, Mr. Henley, that on those frogs, the No. 8 frog—you got about sixty feet between the point of your switch and the frog? A About seventy-two feet, isn't it? I was about half-way between the—

Q Switch and the frog? A Yes, switch and the frog; about thirty-six feet; something like that.

Q About half-way between the switch and the frog on 15's lead? That is the point you were standing when the explosion occurred? A Yes, sir.

Q Now, you were conscious of a deafening roar, were you? A Yes, sir.

Q And some debris flying around through the air? A No, no debris, not before the explosion; just a flare-up for a fraction of a second.

Q The first conscious act that you performed was to go away from there, wasn't it? A Yes, sir.

Q And you didn't come back to that exact spot until two weeks afterwards? A About a little over two weeks; about in the neighborhood of two weeks.

Q And when you came back you found a hole there that was filled with water; is that right? A Yes, sir.

Q And was that—and from that you judged that you were somewhere around in that neighborhood at the time of the explosion? A Sure.

Q Now, as a matter of fact, Mr. Henley, were the tracks directly— A Torn up then?

Q —twisted and knocked around and one thing and another? A Sure were. There was hardly any location to them. Where the crater was, you mean?

Q Yes. A Yes.

Q And tracks Nos. 13, 14, 15 and 16 were all twisted, weren't they?

Mr. Garrison. You mean where the crater was.

A Yes.

Mr. Garrison. Where the crater was you could not see any track at all.

The Witness. The track wasn't there at all where the crater was.

Q What is that? A The track wasn't there at all where the crater was.

Q Well, on the edges of the crater when you went back a couple of weeks later were the tracks all twisted? A Well, they had them pretty well straightened up.

Q Mr. Henley, when you went down there on—

Mr. Stallman. I will withdraw that question.

Q Did you pull out any of the cars on track 16? A No, no; we did not.

Q Was there any particular reason why you started on 12 instead of 16? A Well, 12 stuck out and fouled the other tracks; see? Twelve fouled the other tracks, so we had to start in on 12. See? The track stuck out over 12.

Q Well, 12 was the ladder track, wasn't it? A Yes, but the cars stuck out on 12 and 13, so we pulled along—

Q You mean there were cars on that ladder track that followed the approach to 13 and 14 and so on? A Yes, sir; yes, sir.

Q And the—at the time you got there? A At the time I got there, yes.

Q Now, if I understand you correctly, you were near one of these blocks of stores at the time of the second explosion? A The time of the second explosion—no, I was near the elevator.

Q Oh, down near the elevator? A Near the elevator; probably about 100 feet east of the elevator.

Q And you didn't feel any concussion of the ground at the time of the second explosion? A No, not a bit; not a jar at all.

Mr. Stallman. That will be all.

(Witness excused.)

Mr. Hobart. By consent of counsel I will read now the testimony of Thomas Walsh as given in another case, the witness having since died, testimony of Thomas Walsh read from page 791 of a case entitled Frederick H. Howell and others against the Lehigh Valley Railroad.

"*Direct examination.*

Q You are employed by the Lehigh Valley, Mr. Walsh? A Yes, sir.

Q What is your position? A Freight conductor.

Q How long have you been a freight conductor? A About five years.

Q Were you working for the company on the night of this explosion? A Yes, sir.

Q Were you on night duty? A Yes, sir.

Q Where were you working on that evening before the fire? A Scale house, Washington street.

Q How far was that from the Black Tom terminal? A Oh, about a mile; a mile and a half.

Reading testimony of Thomas Walsh, direct.

Q What was the first you knew of any fire at the Black Tom? A I went up to Jersey avenue to get some water on the engine and the yardmaster told me to go over to the storage, there was a fire over there.

Q That is Mr. Henley, that has just testified? A Yes, sir.

Q What engine did you have? A I forget the number now; I think it is 3456.

Q Do you remember about what time Mr. Henley told you to go over to the Black Tom terminal? A About 1:30.

Q And who were in your crew? A John Walsh, brakeman; a brakeman named Oakes—Mr. Oakes—

Q And your engineer and fireman, who were they? A The fireman's name was Campbell, the engineer's name was McLaughlin; there was a switchtender sent over with us also, named McGuire.

Q Did Henley go with you, or on another engine? A I couldn't say for sure; there was three or four engines going over. He might have went over with me. I don't know, though.

Q Where were you when you first saw any sign of a fire? A Well, of course, when we got there to the storage, the way the tracks lay there, as soon as we pulled on there I seen the engines there. That is quite a way from the—where the fire seemed to be, so we backed down. I believe it was then I met Mr. Henley and he told me to go down and render whatever assistance I could in regards to getting cars out.

Q At that time when you first pulled into the Black Tom yard, where did the fire appear to be? A Well, as I worked my way down the fire did seem to be on the back end of the island, over towards the North Pier. The place was all lit up.

Q Now, can you recall what you did in the way of clearing the tracks and of pulling out the cars? A Yes, sir; we crossed over and backed down the middle float.

Q Middle float track, is that? A Yes, sir.

Q That is right next to the sea wall track? A That is between the sea wall and the eastbound float.

Q All right. A I thought it was clear, but when we got down there there was about ten cars on there, seemed to me about ten; might have been eight. So we coupled up to them, and we shoved on down further towards the fire, and when we got down there, of course, these shrapnel and bullets, well, in fact, everything was flying all around there and made it disagreeable, and you couldn't do much business.

Q What were these things that seemed to you to be flying around? A The big ones would whistle past, make a big noise like these propellers do. Of course, the little ones was just like rain hitting a tin roof. This brakeman was a brother of mine, and the position he was in, we could have coupled up by working on the ground, we could have made these couplings, for to get the cars out, but the shrapnel and shells was coming from the side where the show was on, so that made me get on the opposite side to where the engineer was on, so I asked this hind brakeman, which was—he was my own brother. of course—I asked him would he get up on top so we will get the signals, because I had to get on the other side for to protect myself from this small stuff, that I figured was flying around, and he got up—I didn't tell him to get up, but he got up himself, because I wouldn't get up there myself, and I felt afterwards that I shouldn't have asked him, but he got up anyway, and we started to couple up and get out whatever cars we could.

Q What track did you back into? A Well, I wasn't positive sure at the time, but it must have been in around 14. We backed in there first with these cars that we had hold of.

Q Which way was your engine headed? A Our engine was headed toward the main line of the Central.

Q Towards the shore? A No; our engine was headed towards the Jersey Central tracks, of course.

Q All right. A We was backing up, of course, to get the train; we had hold of about eight or ten cars that we coupled up to on the middle floats, backing down; we backed in on 14, and I guess we opened the knuckles and took a chance, because you couldn't go in there, and when we coupled up we pulled ahead and we had about six, and then we pulled out again and we backed in 15 with what we still had.

Q How far did you pull out? A Well, we had to pull about six or seven car lengths; we backed up, you understand.

Q So as to clear the switch for 15? A So we could back up again. We backed in on 15, I think it was, and we got about five or six, and the hind car was blazing.

Q Where were you while that was being done? A I was standing alongside of the switches leading into 15.

Q What were you doing, giving signals or coupling the cars, or what? A Well, I was giving signals to my brother and he was passing them to the head man, or I was watching—I was making out with the couplings or something like that, because you couldn't go down with the cars, so I was just standing there, there was nothing else to do, only taking the sights, as the man says.

Q Then you started backing into 15; is that it? A We went into 15 and made the coupling again—what I mean we opened the knuckle and took a chance—when you do a thing like that you are only taking a chance, and sometimes try to adjust the knuckle.

Q You mean sometimes they would not couple? A But in this case it did couple, so we pulled ahead. When we hit them we pulled ahead, and we made the coupling, and when we got the hind end out there was one car blazing, I don't know whether it was Mr. Dickman or Mr. Henley was there then or Mr. Leyden, but there was some one of them around there then, and I pro-

posed to him to kick it back; I didn't want to pull it out in the yard, because it was blazing.

Q That is, you mean the rear car? A Yes, sir; so we did; somebody cut it off, I don't know just who it was, and we kicked the car down the track again; and I know Mr. Leyden was there at the time. So then there was another track, I guess it must have been 16, looked pretty full, and I think Colonel Leyden, because I knew him pretty well, he said to me that don't look like a good track, why don't you hook on to them, and I said I think we will, so we coupled onto them, and we made a coupling again, and Mr. Henley was there, and we gave the engineer a sign to go ahead, and he had about all he could handle.

Q How many cars did you have at that time? A I don't know; must have had about thirty or thirty-five.

Q Whereabouts were you then with reference to the train? What part of the train were you? A I was standing—while this was going on I was standing around the switches, because you couldn't go no other place. My place was not on the head of the train, and where my place was was on the hind end, because I couldn't get there, because it was around the North Pier where the fire was. I guess the reason we couldn't pull the cars there was a brake on the hind end of the cars and nobody could go there to knock it off; we gave the engineer the signal to go ahead, and he couldn't pull it, and Sloan said he would go up and get another engine, and about that time the thing let go.

Q Where were you when it let go? A It must have been around switch 14 or 15, or somewhere in that vicinity.

Q On which side of the train were you? A I was on the side near the storehouses.

Q Do you think you could show us on the map where you stood? A Yes, sir.

Q Please do so. A This is No. 4? Yes, sir; I was in around here.

Q Indicating what switch—the switch on what track? A I was in around here, where the switches are.

Mr. Skinner. Indicating a point right opposite the track.

Mr. Hardin. That point leads on to the sea wall.

A I was on the transfer, so I was down in here, down here.

Q Name the track. A I came down on the float and I went in on 15 and 16.

Q You are indicating now— A Yes, now, down here. Came in here. Well, of course, there is where I must have been, I couldn't have been no other place.

Q Just name it; what is the name of the track you were on at the time of the explosion? A What is the name of the track?

Q 14, 15 or 16? A Yes; the point of the switch around 14, 15.

Mr. Hardin. Middle float track.

A That is right out here, because these switches we were using. Here is one. We made three or four doubles. I couldn't watch over here.

Mr. Garrison. Better indicate it.

Q Describe a little better, first by reference to the track and then by reference to the big tank? A Yes, I remember the tank being across here.

Q You could see the tank? A Yes.

Q Was that about opposite you, or what? A Well, I couldn't say; the big stone, the big pier, was across from me, Pier 7; of course, at that time I didn't notice it, but I came down this track, here is where I got the seven cars, on this float. There was a man named Voorhees pulled up the sea wall track with a number of cars

about the same time, went in on 14 and doubled out, and then on 15 and doubled out and then I gave the signal, and got hold, and I thought the engineer got it, and the explosion happened, so there was no other place to be only there, because that man was up on here and my brother was in that same place.

Q When you went in there, indicate on the map, will you, please, by describing it, by the track number or some other number so we will know just what you mean? A Well, if I took the middle float—does that indicate switches?

Q Yes.

Mr. Campbell. He indicates the lever.

A The handle. Well, if this is 14 or 15 there must be only a difference of a few feet in the switch going to 14 and the switch going to 15 and the switch going to 13, so I must have been, say, at 14 switch or 15 switch or 13 switch; it is only a matter of a few feet, I don't know just whether—I was on this side of the car—that is our cars, that was blocked here, because the stuff was coming that way and I couldn't work on that side; if I had to work in that stuff there would have been no reason to get on the lines and get the cars out, there would have been no necessity of that at all. We couldn't work on that side, therefore I had to come over here, and he had to get on the top, because the engine to be working—

Q When you said on that side you mean on the northerly side? You have indicated the top of the map. A This is New York side, isn't it? This is the water side. This is the pier side and this is the brick side. This is the side where we were working on, the left-hand side from the engine.

Q These shells or these shrapnel— A They were coming from here, so it seemed to me. You couldn't stand over there at all. When I got these cars on 15 it

screened me. The bullets were rattling like that (rattling the map). Just like rain on a tin roof.

Q Now, you have said you were on the switch, either 13, 14 or 15? A Or 15; I done whatever work I done there.

Q But you have not yet told us so we can get it on the record, just where you were. Take the tank here. Do you know where the tank was? Could you tell where you were with reference to that tank? A Well, I was in the vicinity of the tank. I seen the tank, but—

Q Well, take the cars on track 16. A 16? This is 15?

Q Yes. A Well, yes. Yes, I must have been right here.

Mr. Hardin. You remember this middle float track all the time.

A I understand. I came down on the float. See, if I came down the middle track I couldn't get on the middle float, so it positively proves I must have gone on that track, come down the middle.

By Mr. Garrison.

Q There are switches, and there are switches, and there are switches. A Yes, but that is a switch would not lead you on to 15. Well, I was at switch on 14, see, opposite the tank.

By Mr. Hobart.

Q Tell us as near as you can recall it. A Yes.

Mr. Garrison. Won't you please measure from the dotted line where he says he was?

Mr. Hardin. Two inches.

Mr. Garrison. Little over two inches on the map from the edge of the crater as shown by the dotted line.

Reading testimony of Thomas Walsh, direct.

Mr. Hardin. Two inches and two-tenths."

Mr. Hobart. Now, you read the cross-examination.

Mr. Stallman. I guess it is further re-direct, according to my copy of the record.

Mr. Hobart. There is some more—page 803.

Mr. Stallman. Yes.

(Mr. Hobart reads as follows:)

"*Direct examination* by Mr. Hobart, continued.

Q When the first explosion occurred what happened to you, Mr. Walsh? A When the first explosion—well, I was blew down, I guess, that's all I know about it—knocked down.

Q And how long was it before you got up again? A Well, I do not know; I believe—I was not unconscious, but I—I might have been unconscious—it was—but there was a conductor that picked me up afterwards some time, found me sitting there, I don't know how long—five minutes, or it might not have been a minute.

Q Do you remember what conductor that was? A Yes, sir; Voorhees.

Q And where did you go after that? A I don't know. They took me up to the ambulance, I believe.

Q You were taken home or taken to the hospital? A No; I went to the City Hospital.

Q Then you were not there when the second explosion occurred? A No, sir.

Q And, of course, you did not do anything further after that, after you were knocked down? A No, sir.

Q Except you were removed to the ambulance? A That was all I done; yes, sir.

Q Now, you referred to your brother as being on top of the car? A Yes.

Q You asked him to go on top of the car? A Yes. I asked him.

Q Did he go? A Yes.

Reading testimony of Thomas Walsh, direct.

Q Do you know where he was when the first explosion occurred? A Yes; I was backing that car at the time.

Q How far was he away from you? A He was directly on top of the car; I was underneath him.

Q You were on the ground alongside of the car on which he was standing? A Yes.

Q You stood on the ground and he was on the car? A Yes, sir; he was on the car.

Q When the explosion occurred did you observe what happened to your brother? A No, sir; not then; but when I woke up I was sitting down; something had hit me on the small of the back. When I got my senses a little bit together I tried to get up and I could not get up and I knew that something had happened, but I could not quite—I did not really know what happened after that had gone off. I remembered that my brother was there and I looked up and I—I looked up on the car and shouted to him to save me. I remember that very much; and then I thought—

Q Did you see your brother? A No, sir; there was nobody there. After the explosion everything seemed to go away; there was no one around there. Right a minute or two before that there was different people around there—Mr. Dickman and Mr. Henley and Mr. Leyden and—

Q Do you remember how you got to the ambulance; did anybody carry you there, or did you walk there? A No; after I got on my feet with the help of Voorhees, and I think there was the city fireman or somebody, or I believe Marty Henley was there helping me—I was only hurt across the back. I could walk after I was on my feet.

Q You walked to the ambulance? A Yes.

Q Do you remember how far you walked? A Yes; while I was sitting there, maybe I waited ten or fifteen minutes in the ambulance, and the ambulance was as

near as I can judge around the grain elevator; that is where the whole crowd was, everything was there.

Q On your way to the ambulance did you have any difficulty in walking; did you have to climb over anything or climb out of anything? A No, sir; we walked along the train that we had hold of.

Q Alongside of the same train which was still standing there? A I believe so, yes.

Q And after you got to the engine, then where did you go? A When we got to the engine, then, of course, we had to keep walking, I should judge, ten or fifteen car lengths before we came to the ambulances.

Q Did you walk along the roadway after that? A Along the track, the middle float, I suppose. The reason I say I might have been unconscious five minutes, when I got up there the ambulances was there."

Mr. Hobart. You want to read the cross examination?

Mr. Stallman. I will read it.

(Mr. Stallman reads as follows:)

"*Cross examination* by Mr. Skinner.

Q You are familiar with the Black Tom yard, of course, before this night; you had been working around there? A Yes, sir.

Q And you know where Zeke's shanty is, don't you, the shanty— A No, sir; I did not exactly know—I know just about where it was.

Q Do you remember the bunch of piles or stockade of piles there? A No, sir; I did not. I was not thoroughly acquainted with it. I just—in fact, I did not work there; I worked a mile or a mile and a half from there, but I have worked there at different times, but there was some of them moved three or four or five months previous to this.

Reading testimony of Thomas Walsh, cross.

Q In any of those times don't you remember seeing a shanty off on the north side of the sea wall on some piles? A No, sir; I did not; but I have seen it since the explosion.

Q Oh, you have seen it since? A Yes, sir.

Q You mean you have seen what is left of the piles? A Yes, sir.

Q And you spoke of the fire that you saw as being over towards the North Pier? A Yes, sir.

Q Did it seem to you to be in the neighborhood of that bunch of spiles? A I could not say to say truthfully. When I looked down there, of course, there was more or less excitement that night, and there was smoke and the blare of the blaze and this stuff flying around. To tell the truth, I did not bother much at all making an observance—an observation of anything.

Q So that you could not locate the fire with any exactness or certainty? A No, sir; only that it seemed to be in the back.

Q You spoke of kicking a car back down the track; that was more than one car, wasn't it? You said you kicked down a portion of what you already had hooked on? A No, sir; there was one car, I think.

Q And which track was that kicked on? A I think it was 14.

Q Was that right before the explosion? A Yes that was a few minutes before the explosion.

Q And was anybody on that car? A No, sir. We did not kick it exactly. I put it in the clear so that it would go to 15.

Q That means you sent it back under momentum and without anybody on it to control the car? A Yes, sir; but we had hold of that car and I would say twenty other cars so we could not go on at any speed. We just started back to make the coupling to get the car

in the clear. I do not know how far she rode, maybe car length or two.

Q You did not see how far it went? A Well, I watched the car stop.

Q You did watch it stop? A Yes; she stopped about two or three car lengths in the track.

Q And that was on track 14? A Yes.

Q And why did you kick it back on track 14? A Because if I had pushed it back nobody would have gone in there to cut the car back, uncouple to cut it back, we call it. I wouldn't go in and I wouldn't ask you to go in.

Q That is why you kicked it back instead of pushing it back? A Yes, sir—for safety.

Q Why did you send it back at all? A Because the car was on fire and I did not want to leave it with the cars that were not on fire.

Q This was a car that was on fire? A Yes; the end of it was burning.

Q And it was one of those you had gone in onto track 14 and hooked up to? A Yes.

Q How many cars altogether were there on track 14? A I couldn't—

Q Well, did you get them all? A I could not say that.

Q Did you get them all? A I could not say; we took what come.

Q You spoke something about knuckles, you took a chance that the knuckles worked; what was that? A Well, a coupling will couple itself, understand, if it is adjusted properly. There is oftimes, though, when the knuckles gets a little bit out of place and they don't work; someone has to be there to make them straight.

Q You mean you took a chance as to whether that would work? A Yes; it did work

Q And when the explosion took place I think you said that the rear end of your train was down near the North Pier where the fire was, and that you did not go down there where all the fire was; do you remember? A Previous to the explosion taking place I coupled up on 15.

Q Yes? A And we had a-hold of that—we had as many as we could pull anyway.

Q Well, at that time you could not go down to the extreme rear of your train? A No, sir.

Q Because it was too near to the fire; isn't that so? A Yes, and stuff flying around; we just backed in and coupled up to it.

Q How far away from the rear end of the train were you? A Right at the coupling; I had the switch; the cars just lay in the clear.

Q I mean how many cars were there back of you, east of you towards North Pier? A I couldn't say.

Q A good many? A I could not say; I do not know whether the track was full.

Q I mean on your train. Did you have six or eight or ten cars back of you towards the North Pier? A Towards North River—that is what I say; I cannot tell. If I had knew that we could have gone down and coupled up or counted the cars.

Q Was that where you were standing when the explosion happened? A No, sir; I was on the switches that would lead me onto 15. I dare say I was on 14 switch.

Q At the time the explosion happened were you at the rear end of the train or not? A No; no.

Q You were a good ways up on the train, weren't you? A At the time it happened I was in the vicinity with the exception of the difference of the switch that would lead onto 15. Of course I walked down the cars and I told the man helping me to walk ahead so we

could keep out of the shot. That would throw him in the same place, so I was still around the switches.

Q I am only asking you where you were with reference to the rear end of your train—how far from the rear end were you? A I do not know how far the rear end lay; I do not know the number of cars.

Q To the best of your judgment, at least, how many—six or eight? A I cannot say. I could only see a certain distance in the track.

Q Well, isn't it your recollection, however, without being able to tell the exact number of cars that were east of you at that point where you stood there was a considerable portion of your train, including— A The cars that I coupled up to?

Q Yes. A Do you mean the cars that I went in on 15 with?

Q The cars you went in with and the cars that you got there. I just want to know if you can tell me how many of those cars there were that laid to your east towards North Pier? A I cannot say."

The Court. We will adjourn at this point until 2 o'clock.

RECESS.

AFTERNOON SESSION.

(Mr. Stallman continues reading, as follows:)

"Q Can you say four with safety, or six or eighty? At least, how many? A I went in with my train off 14. I backed in on 15. I can count four or five, but whether there was more than that, whether it was fifteen—

Q You can say there were at least four or five, and might have been more? A There might have been

more; there might have been fifty if the track would hold that many.

Q At the time of the explosion was Henley standing near you? A I do not know just where Henley was at the time of the explosion, but he was there a minute before the explosion, because when we made the coupling it was him that suggested to get me a pusher, to get someone to help me out. I spoke to him and told him we could not pull them.

Q Did the explosion seem to you to come from the place where you had seen the fire? A Well, it came so quick that I never gave it a thought. The only thing I thought, I felt afterwards that I thought there was something going to happen; everything got still, a smothering stillness, and then the thing happened; I could not tell where it came from or what direction; in fact, I knew nothing about it."

JOHN F. WALSH, sworn.

Direct examination by Mr. Hobart.

Q You are the brother of Thomas Walsh, whose testimony was just read? A Yes, sir.

Q And at the time of this fire and explosion you were acting—you were employed by the railroad company as a brakeman? A Yes, sir.

Q Where were you working that night before the fire and explosion? A Scale house at the Jersey City yards.

Q How far is that from the Black Tom terminal? A About two miles.

Q Did you get orders from Mr. Henley to go over to Black Tom? A Yes, sir.

Q And did you go? A Yes, sir.

Q What crew were you in? A Why, my brother and myself and William Oakes.

Q Do you remember which track you went in on? A Yes, sir.

Q Which track was it? A First we went in on the sea wall and there was another engine on there and my brother told me to cut the engine off and go to the next track, that was the middle float.

Q The track which you call the middle float track? A Yes, sir.

Q Do you remember which track that is by number? A By number?

Q Yes. A No, sir; I do not know it by number: we call it the middle float.

Q Where did that track go? A Why, it leads down into—it leads down into the lower yard there, pretty near all those tracks; you can go down the middle float and get into nearly any track.

Q When you speak of the middle float do you mean the bridges? A Yes, but the track we were then on they call that the middle float; that is the name of the track.

Q All right. Were there some cars on that track? A Yes, sir.

Q About how many? A About eight or ten.

Q Did you get out of the engine? A Sir?

Q You went there on an engine? A Yes, sir.

Q Now, some time or another you got out of the engine, didn't you? A Yes, sir; I got off the engine when we got down there.

Q After you left the engine where did you go? A Why, I walked down and coupled up those cars on the middle float.

Q Which cars did you couple, all of them or only some of them? A Yes, sir; all of them that was on the track on the middle float.

Q How many did you couple altogether? A Well, I should judge it was about eight or ten cars.

Q And were they fastened up to the engine? A Yes

Q Do you remember on which side of this track you were as you went down to couple the cars? A Yes.

Q Which side? A I was between the middle float and the sea wall.

Q Would that make you on the northerly side of the middle float track? A Yes, sir.

Q That was next to the water? A Yes, sir.

Q Where was your brother at that time? A Why, he was about two or three car lengths down from me. He was down talking to Marty Henley at the time.

Q Was there any curve in that track? A Yes, sir.

Q Was there anything said by your brother as to getting up on top of the car? A Yes, he asked me would I get up on top.

Q What was the occasion or necessity of doing that? A I had to get on the top because the engineer—they was working on the opposite side; they was working between the middle float and the sea wall and if I did not get up on top of the cars the engineer could not see the signal. He was on the right-hand side of the cab and the engine was headed west.

Q The purpose was to pass the signals from your brother on to the engineer? A Yes, sir; to pass the signals so the engineer could see me, and I could see my brother.

Q Your brother was the conductor, wasn't he? A Yes, sir.

Q And you, of course, were under him, under his direction? A Yes.

Q Well, did he order you to go up on top? A He asked me if I would go up on top.

Q What did you do? A And I said yes.

Q At that time were there any shells popping off? A There was a lot of noise around there. I should judge they were shells: they looked to me like sky-rockets shooting up in the air.

Q Did you see any objects flying around like the brass ends of shells? A No, sir; I did not see them, but there was some dropping on the tin roof of the cars; I do not know what they were; they sounded like pebbles; and you could see them in the water, it looked like raining.

Q Then you got up on top of the train, did you, on one of the cars? And was the engine at that time attached to the train? A Yes.

Q And how far back from the engine was the car where you got up? A I was on the hind car. If we had hold of eight cars it must have been the eighth car; if we had hold of ten cars it must have been the tenth car.

Q On the very last car of all of the train? A Yes, at that time.

Q Now, where was your brother? A He was on the ground.

Q And on which side? A He was on the opposite side, on the south side.

Q And you were on top of the car? A Yes.

Q How far away from you was he as he stood on the ground? A Well, he was down a little further; he was talking to Marty Henley; what he was talking about I do not know; I stood there waiting to get a signal from him; see?

Q About how far away was he from you? A About four or five car lengths.

Q And in which direction, toward the North Pier or toward the oil yards? A No; he was on the right-hand side; that would make it—he was on the—more towards Pier 7, on the side towards Pier 7 instead of the North Pier.

Q But you said he was some four or five car lengths away from you. A Yes.

Q Well, in which direction, towards the North Pier or the other way? A Oh, toward the North Pier.

Q In other words, he was nearer the North Pier than you were; is that it? A Yes.

Q And when you got up on top of the rear car of that string of cars was the train then standing? A Yes.

Q Now, can you tell us where the last car was with reference to this big water tank? A No, sir; I could not.

Q You know where the water tank is? A Yes, sir.

Q I am wondering whether you can tell us whether you were east or west of that? A I was west of the water tank.

Q Well, how far west was it? A Well, about seven car lengths.

Q Now, were you at that point at the time when the first explosion occurred? A No, sir.

Q Where were you when the explosion took place? A I was on top of the cars.

Q Well, how far away were you then from this big tank? A Well, I was up further; I was opposite Pier 7 when the explosion went off.

Q You were further west? A Yes.

Q And your brother, where was he at that time? A He was on the ground; he was just after speaking to me.

Q Yes. And what happened? A Why, we had made a couple of shifts and got hold of some more cars and we backed in, I think it was, towards 15, and we could not pull the track we had hold of, and I stood on the top of the cars and I seen Mr. Leyden there and I was going to walk off on the west and knock off the brakes, and we could not pull the cars we had hold of. He looked at me and said, "Don't go back there any further, Johnny," he said. He said, "Marty Henley is going to get another engine and put it on there." I said, "All right." So I was talking with my brother and I started to walk ahead and I walked about half a car length and the explosion went off.

Q Then you were on top of one of the cars when the explosion happened? A Yes.

Q Well, did anything happen to you? A I got blowed off the car.

Q Were you injured? A Yes.

Q Where? A All here in the face.

Q What did you do after the explosion? A Well, I do not really know what I did for a while. I was on the ground when I came to my senses and I did not really know where I was for a while. So finally my senses came back and I got up and started to walk and I couldn't walk; I fell down. Then I got up again and started to grope my way along and I seen a fellow pass me; it was a fellow named Marty Julian. I hollered to him. I thought he was a fireman first. He came along and got hold of me and took me up the road.

Q You were afterwards taken to the hospital, I believe? A Yes, sir.

Q And you had been taken away then before the second explosion took place? A Yes, sir.

Q Now, when you first got to the yard and before you had done anything in the way of pulling out the cars or coupling or uncoupling the cars, did you see any fire? A Yes, sir.

Q Where did it appear to you to be when you first got to the yard? A Why, down towards the back of the yard.

Q What do you mean by back of the yard? A Why, down more towards the river, the water front.

Q Where did it appear to be with reference to the North Pier? A Why, the right-hand side; that would be the south side; the right-hand side; it would be facing the water front.

Q And how long were you there before the first explosion went off? A About three-quarters of an hour.

Q And during that time did the fire continue? A Yes, sir.

Q Did it seem to spread? A Well, it seemed to be coming up more this way.

Q And when you speak of coming toward this way do you mean coming toward the part of the yard where you were working? A Yes, sir.

Q And on what tracks did it seem to be burning as it spread in that direction? A Well, down towards 12, 13 and 14.

Q That is all.

(No cross examination.)

CHARLES H. VOORHEES, sworn.

Direct examination by Mr. Hobart.

Q You were one of the conductors, Mr. Voorhees? A Yes, sir.

Q And were you at the Black Tom terminal when the first explosion happened? A Yes, sir.

Q Where were you when this occurred? A I was 'way up in the neighborhood of the road crossing at the entrance to the Black Tom yard.

Q Can you tell us where that was with reference to these piers? You know where Pier 4 is and Piers 5 and 6? A Oh, I was further west than that.

Q Further west than Pier 4? A Yes, sir.

Q What did you do after the explosion? A Well, about the first thing that I did after the explosion, I walked down the roadway along the tracks to see if I could find anyone down around there.

Q And did you find any one? A I did.

Q Whom did you find? A The first one I met was John Welsh and the next one was his brother—no, the first one I met was Tommy Welsh and the next one was his brother Johnny.

Q You found Tommy Welsh first? A Yes.

Q Now where did you find him? A He was staggering along up the roadway, about at Pier 4, or probably a little bit west of that.

Q Now, where did you find the other Welsh—or Walsh? A A little further east sitting on a tie along the track.

Q Were you there when the second explosion occurred? A Yes, sir.

Q Where were you? What part of the yard? A Away up near the yardmaster's office.

Q Did you see anything that indicated any fire or flame when either explosion took place? A Well, yes, on the first—on the first one, yes; I should say I did; I saw the explosion, saw it going up in the air, the first one.

Q And where were you at that time? A Well, near that crossing or a little east of it.

Q Where did that flame or flare appear to be? A Well, as near as I can say, it looked to me to be coming from the North Pier, it seemed to me. Of course it is a pretty hard matter for a man to judge anything like that; but to the best of my belief it come right on the south side of the North Pier—where it seemed to me to come.

Q Did you notice anything about the second explosion? A No, not so much.

Q Didn't see any flame? There was a big noise? A There was a big noise, yes.

Mr. Hobart. That is all. Cross examine.

Cross examination by Mr. Stallman.

Q Where were you at the time of the second explosion, did you say, Mr. Voorhees? A About—near the yardmaster's office.

Q I don't know where the yardmaster's office is. A Well, on your map, you see where the wagon road crosses the tracks?

Q Is it down here near Pier 4 somewhere? A No, it is a little bit further west.

Q Down near the grain transfer elevator? A Yes, right near there.

Q You were down in that neighborhood at the time of the second explosion? A Yes; yes, sir; I cannot give you the exact spot.

Q And on the first explosion where were you? A Oh, near the same place, only a little further east on the first one than I was on the second.

Q You say you were nearer to Pier 4 at the time of the first explosion? A Yes, sir.

Q And where were you standing? In the roadway? A Yes, right in the roadway, right in the roadway.

Q And you were looking east and you saw the explosion arise from some point south in the direction of the North Pier? A Yes; it seemed to me to be very close to the North Pier.

Q Out in that direction, only south of it? A That is where it seemed to me; yes, sir.

Q Now, I think you said you found Tom Walsh near Pier 4. Where did you find this John Walsh sitting on a tie? A Just a little bit east of that.

Q Well, near Pier 4? A Yes, sir.

Q At the time of the second explosion did you feel anything? A Well, I cannot say much; it was pretty near an excitement for everybody, and I can't say just what we saw.

Q At the time of the first explosion did you feel anything? A Well, the first explosion? Well, I can give you—I can give you my feeling on it. I felt as though my feet was riveted to the ground and my head was about twenty feet up in the air, and when it let go it seemed to drive me right down in a heap again, but it didn't throw me down. Now, that is just the feeling went through me.

Mr. Stallman. I guess that is all, Mr. Voorhees.

Mr. Hobart. That is all.

(Witness excused.)

LUKE J. EISMANN, sworn.

Direct examination by Mr. Hobart.

Q You live in New Brunswick, Mr. Eismann? A Yes.

Q How long have you lived there? A In New Brunswick? A little over a year.

Q What is your occupation now? A I am working for the Get White Laundry.

Q That is located in the City of New Brunswick? A Yes, sir.

Q On the 29th day of July, 1916, for whom did you work? A Ackermann Lighterage Company.

Q Did you have charge of a boat for them? A Yes, sir.

Q What boat was it? A Paulina.

Q What kind of a boat was that? A Scow.

Q Did she have power of her own? A No power of its own.

Q Pulled around by a tug? A Yes, sir.

Q What was it used for? A For getting ammunition down to Gravesend Bay.

Q How far is Gravesend Bay from Black Tom Terminal? A About six miles; I don't know just the distance; but—

Q Well, is it several miles? A Yes.

Q And is that the place for the Government anchorage? A Yes.

Q For loading ammunition? A For loading ammunition.

Q That is not the only place, I presume, for that purpose in New York Harbor at that time? A For loading ammunition in the ships?

Q Yes. A Well, I believe so, in New York Harbor.

Q Well, at any rate, that was the place where your barge was stationed from time to time to load ammunition? A To unload, I should say.

Q Yes. Well, unload from your barge and load on the steamer? A From my barge to the steamer, yes; that is the only place I ever went for unloading on a ship.

Q So that is the only place you know of? A That is the only one I know of.

Q Or that you ever had anything to do with. All right. Now, was your barge, Paulina, at Black Tom in the afternoon or some time in July 29, 1916? A Yes, sir.

Q How did she get there? A Ackermann tug brought her there from Dock 19, Jersey Central Railroad.

Q Where did she come from? A Jersey Central Railroad, Dock 19.

Q Did you have any ammunition on board? A Yes.

Q What did you have? A Well, I think it was cordite and smokeless powder.

Q When you moved over to Black Tom from the Jersey Central was your barge completely loaded? A Yes, sir.

Q You were not going to get any more ammunition at the terminal, were you; Black Tom Terminal? A No, sir.

Q And after that you were going to go down to Gravesend to— A To the ship.

Q —to the ship? A Yes, sir.

Q On which side of Black Tom Terminal was your barge taken when it— A On the south side of the ammunition pier.

Q South of the pier we have called the North Pier? A Yes, sir.

Q Do you remember on which side of the North Pier it was—I think you told us already south side? A South side.

Q But I mean on which end; was it near the end or near the shore? A No, we were on the very last end.

Q How long did you stay there or what time did you leave your barge? A What time did I leave my barge?

Q Yes. A Around 5 o'clock in the afternoon.

Q Where did you go? A Over to Newark.

Q Did you have any particular business in Newark at that time? A To see a friend of mine.

Q What time did you leave Newark? A Twelve o'clock.

Q Midnight? A Midnight.

Mr. Collins. What train?

Q What train was it? A 12:01, I believe, she leaves at Jersey City—the Jersey Central, from Broad street, Newark.

Q From Broad street station, Newark? A Yes, sir.

Q At what station did you get off? A Communipaw.

Q How long a run is that? A About eighteen or twenty minutes.

Q So you got to Communipaw then about 12:18 or 20? A Somewhere in that neighborhood.

Q How far is that station from the Black Tom Terminal? A About a mile, little over a mile.

Q After you alighted from the train at the station where did you go next? A Walked down to the boat, down to Black Tom.

Q That is, to your own boat— A Yes, sir.

Q —Paulina. And in order to get to your boat did you have to walk along this roadway running in front of the storage warehouses? A Yes, sir.

Q How long did it take you to walk from the terminal out to, say, the North Pier where your boat was? A Well, about twenty-five minutes, I should judge.

Q Now, after you reached this roadway that runs along in front of the storage warehouses, did you follow right along the roadway, or did you follow along the railroad track? A No; right along the roadway all the way down.

Q Now, after a while the roadway runs to an end, I believe? A Yes, sir.

Q And when you got to the end of the roadway, which is apparently somewhere here near the end of the storage

warehouses, where did you go after that? A I crossed over and outside of the track altogether.

Q On which track? A That is the idea, right along down there.

Q You walked up here near where we are indicating? A Yes, sir.

Mr. Stallman. Opposite Store O there.

Mr. Hobart. Opposite Store O.

Q The track there on the map is marked sea wall track? A Yes.

Q I do not suppose you knew it by that name, did you? A No; I did not know any of the tracks by names or numbers.

Q But you do know and did know there was a track which ran alongside of the water? A Yes.

Q And thence on out to the North Pier? A Yes, sir.

Q Now, did you walk along that track, or did you go to the other side of that track? A Went the other side of that track.

Q That was the north side? A Yes.

Q Did you walk along there? A Yes, sir.

Q And how far did you walk before you stopped? A Down to the bulkhead.

Q By the bulkhead you mean the— A Right.

Q —shore end? A Shore end; yes.

Q Of what we have been calling the North Pier? A Yes, sir.

Q Did you walk along the outside of the track all the way down? A Yes, sir.

Q And on the same side all the way; on the north side? A Yes, sir.

Q When you got out to the bulkhead did you meet anybody? A Yes, sir; I met a man by the name of Mr. Burns.

Q Did you know him? A Yes.

Q Where had you seen him before? A Well, around the powder dock; never met him anywheres else.

Q Well, what did you mean by the powder dock? A Well, that is Black Tom.

Q Well, you mean the place where they unload the ammunition? A Unload the boats for cargo.

Q Now, as you walked through the yard going to the bulkhead did you see anybody else outside of Burns? A No, sir.

Q Do you know whether Burns was one of the Dougherty detective men? A Yes, sir.

Q Do you know whether he was—you say you do know—was he? A Well, he was supposed to be—that is as far as I know; that is what they call themselves.

Q Well, you have seen him around there? A Yes; I saw him there lots of times before that.

Q What was he doing when you had seen him around there before? A He was coming up off from the dock. He was down on the dock.

Q Had you ever seen other watchmen or other men around there at other times? A Yes, sir.

Q But on this occasion Burns was the only man you saw? A The only man I saw at that time.

Q Well, after you met Burns near the bulkhead, did you stop or did you keep right on going to the boat? A I stopped and talked a little while.

Q How long were you talking with him? A Well, probably five minutes.

Q And after you had been talking with him about five minutes, what did you do next? A He called my attention and said, "there is a fire," he said he would go up and see what it was.

Q Now, at the time he called your attention to that do you recall which way he was facing and which way you were facing? A I was facing out on the bay and he was facing up the street.

Q That is up this roadway? A Up the roadway.

Q Where you had just come from. Now, you referred to that as being at the bulkhead. Can you tell us a little more particularly, say, with reference to any building around there? Did you see a little shanty? A Yes; there was a little shanty there that the Dougherty men built themselves.

Q And that was somewhere near the bulkhead? A Yes; that was very close to it, a few feet away.

Q Was it anywhere near this shanty that you and Burns were standing when you were talking with him? A Well, I was about half way between the shanty and the bulkhead.

Q Well, now, when Burns made this remark, or whatever it was about the fire— A Yes, sir.

Q —what did you do? A Well, he says, "I will go up and see what it is," and I said, "I will go along." "Oh," he says, "maybe it isn't anything, but if it is I will call you." So—

Q When he spoke to you did you look to see if you could see a fire? A Yes, sir; yes.

Q Which way did you look? A I turned around then and looked, and then he went up to see about the fire and called—the other Dougherty men came around and started to go up by him, and he says, "Don't go over near that car," he says, "That is a car of ammunition. Keep away from it."

Q Who said that? A This man Burns.

Q Where were you when he said that? A We were on our way up.

Q Oh, you came along then without waiting for him to tell you? A Yes. At the first call we started up, as soon as he called.

Q Well, was he ahead of you? A Yes; he went up first to see it.

Q Was he walking or running or what? A Well, now, I cannot say whether he run or whether he walked; I am not sure.

Q Well, did you run or walk? A Afterwards I run when I heard it was a car of ammunition.

Q When you heard it was a car of ammunition, then you ran, did you? A Yes.

Q Well, up to that time you had been walking? A Well, we were walking pretty stiff.

Q And you spoke of some other Dougherty man that came out after that time from the shanty. Where did he go? A He was along.

Q With you or with Burns? A No, with me.

Mr. Garrison. His name?

Q Do you remember his name? A Scott.

Q Now, when you looked after Burns spoke of the fire, what did you see? A I saw a blaze over a car.

Q Over a car? A Yes, sir.

Q How big was the blaze when you first saw it? A I should judge about three foot.

Q Could you tell whether the flame was coming out of the car, from within the car or— A Well, it looked like it was coming right from the center of the car.

Q Was there any flame on the ground at that time? A I didn't see any.

Q What kind of a car was it where the fire seemed to be coming out of on top? A Box car.

Q Could you tell which car it was; that is, on which track it was? A Well, I don't know; I couldn't tell just exactly; but in that neighborhood.

Q Well, what is your best judgment about it? Could you show us on the map? Have you seen this map before? A I believe I have.

Q Will you show us on the map as near as you can remember? A Well, I can do that; I can give you the best I can.

Q Well, come down and look at the map and do the best you can for us. (Witness leaves witness stand and goes to the map.) Now, calling your attention to the so-

called sea wall track, which is the one next to the harbor, the North Pier is off to the extreme right. Just put your finger on it as near as you can, so we can make a note of it. Hold your finger still as nearly as you can. A (Witness points with his finger to a point on the map.)

Q Keep it now.

Mr. Hobart. In around between track 12 and 13, between tracks numbers 12 and 13 and near cars numbers L. V. 85282 and P. R. R. 84046.

Q Is that the nearest you can tell? Is it? A Yes; that is the nearest I can tell.

(Mr. Stallman marks on map with pencil.)

Q Did you notice whether this car had a placard on it? A A what?

Q Had a placard; a card of any kind? A No; I wasn't near the car; I didn't go near the car.

Q You don't know whether it had any notice or sign on it? A No, sir.

Q Are you sure it was a box car? A Yes, because I could tell from the flames, from the fire.

Q How close did you get to that car? A I went up the sea wall track, as you call it; that is the closest I got to it.

Q Could you see the car plainly from some point along the sea wall track? A Well, before I started to go up I could see the roof of it.

Q You mean before you— A Started to go up to help to put the fire out, as I thought I was going to do.

Q You mean the time you were walking along the track on your way up to the North Pier? A No, sir.

Q Or when you were coming back? A Yes, when I was going back.

Q Did you see the top of the car? A I saw the car.

Q Could you see enough of it to tell whether or not the door was open on the side? A No, sir; I could not tell.

Q You couldn't tell about it? A Couldn't tell anything about the door.

Q You didn't get any nearer to the car then at any time? A No, sir.

Q Now, on your way up to the North Pier and before you got to the bulkhead and saw Burns did you see any fire then? A No, sir.

Q Anywhere in the yard? A No, sir; didn't see anything of any fire.

Q What is that? A Didn't see any fire.

Q How far away would you judge that you were from this car when you first noticed the fire? A Well, I was on the bulkhead.

Q Of course, you don't know what the distance is? A No, sir.

Q We can measure it on the map. All right. Well, after you saw the fire was coming out of the car and walking back towards it, where did you go next? A Well, we went up—ran up the road. We stayed up the road.

Q How far up did you go? A Went up as far as the cork works.

Q How long did you stay there? A Well, probably a half an hour—three-quarters.

Q Now, as you were walking back, after Burns spoke to you about a fire, did you continue to look at the place where the fire seemed to be? A No, sir. We tried to get away from it.

Q Well, but before you got to it or got by it did you keep looking at it? A No; went right on up; never stopped at all to look at it. When he told me the car of ammunitions I thought the best thing to do to get out of the way of it.

Q But I mean when you were walking from some point out here near the bulkhead— A Yes.

Q Walking in a westerly direction, and before you got to the point where the fire was, did you continue to

look at it as you were walking in that direction? A No, sir.

Q Kept right on going? A Kept on going.

Q When you got about opposite the place where the fire was did you see it then? A No, I did not look then.

Q Why not? A I wanted to get away.

Q What did you do at the cork works? A We stood there.

Q Did you send any word to anybody about the fire? A Yes; I telephoned to Gus Ackerman and told him there was a fire at Black Tom.

Q Ackerman was the man who had charge of your company? A The owner, yes; and I told him that there was a fire at Black Tom, and if he could get some boat over to take the boats away, why, it would be better, and he said he did not have any tugboats, and that all the tugboats was laid up and all the men had gone home.

Q That was the man whose name you have as Gus Ackerman? A Gus Ackerman.

Q Where did you call him at, do you remember? A At his home.

Q Do you remember the number? A What is that?

Q Do you remember the number? A No, I don't remember the number.

Q Was it 2436 Hamilton? A I believe it was—it was Hamilton, I know.

Q Some place the Central of which was Hamilton? A Yes.

Q Do you remember what time it was?

Mr. Stallman. If the Court please, I do not—

A It was around 1 o'clock.

Mr. Stallman. One minute. I object to this line of cross examination now. I think I ought to have objected before, but what this gentleman did after he got down to the cork works an hour or two after

the fire about telling his employer in Brooklyn does not seem to have any relevancy to this case. I can see where it might have had in some of the other cases that have been tried where this man has been a witness, but I do not see where it has in this case.

The Court. Well, the whole matter was not over, was it? Were all the explosions over at that time?

Mr. Stallman. I don't know whether your Honor heard the examination or not.

The Court. I did not hear it, but I am asking you a question, whether all the explosions were over at that time.

Mr. Stallman. Well, it does not appear yet. I say it is immaterial to ask this man whether he called up somebody in Brooklyn that had a Hamilton exchange and all that sort of thing.

Mr. Collins. That was not the question.

The Court. Well, the materiality, Mr. Stallman, would depend very greatly, in my judgment, upon the question whether both explosions had occurred or not. If they had occurred I should think it would be somewhat irrelevant, and yet it might not be in one of these cases even then, because, as I understand your opening, some considerable time afterwards the injury, the personal injury for which you bring suit, occurred, and whether this man's activity with respect to that would not be a relevant circumstance would seem to me to be quite an important question to be considered, and I am not going, just out of hand, because it might save a minute or two, to rule out an examination of this kind, for I assume that the examining counsel has some legitimate object, and it may be that I cannot always see every object the counsel has at the very moment, and under the

circumstances I think I will admit it, and you may have an objection noted on the record.

(Question and answer repeated by stenographer.)

A Well, 1 or a little after 1 that I called Mr. Ackerman, Gus Ackerman.

Q It was before the first explosion? A Yes.

Q That is what I want to make sure about. Were you at the cork works when the first explosion occurred? A No, I was down the roadway.

Q You kept right on going, did you? A No—I stayed at the cork works and then I walked back about—I guess up there about three-quarters of an hour or so.

Q You came back toward the terminal? A Yes.

Q Where were you when the first explosion occurred? A Well, I can't really say where I was when the first explosion was, but I was down the roadway.

Q Somewhere on the roadway? A Yes.

Q And could you see anything before the sound of the explosion was heard? A No.

Q You did not observe any flare or flame? A No; I don't remember any.

Q Now, were you around there when the second explosion took place? A No; I was still further back from the cork works.

Q You had gone back again? A Yes.

Q Now, will you tell me a little more in detail just what route you followed, just which way you went when you were going over the bulkhead after talking with Burns and were walking back towards where the fire was and thence on out to the cork works? Now, you started around here by the bulkhead somewhere? A Yes; I went up what you call that north track there.

Q You mean the track nearest to the barge? A Yes, and I passed over and went up the roadway.

Q Well, did you walk along the track between the ties or did you walk outside the tracks, or which? A I don't

remember now whether I walked outside the track or in between it.

Q But at any rate it was near— A Anyway, that was on that first track.

Q Did you follow it all the way down to where the roadway begins? A Yes, sir.

Q Then you went to the roadway? A Yes.

Cross examination by Mr. Stallman.

Q While you stood out there near the bulkhead, Mr. Eismann, talking to Burns, was there anybody else around there that you saw? A I didn't see anybody.

Q You remember now what you were talking to Burns about? A No; I don't really remember what we were talking about; I think it was about the weather.

Q Now, when Burns called your attention to this fire you were still standing out near the bulkhead? A Yes, sir.

Q And it is a fact, isn't it, that there were a whole lot of freight cars between the place where you were standing and the place where this car— A Yes, sir.

Q —there that was on fire? A Yes.

Q And you were standing here about on a level with the tracks, weren't you, or on the track? A Well, there was a little incline there that runs up on a—for the grain on the south side. We had went up there afterwards. After we saw the fire we went up there to see if we could —what it was. I walked up—

Q You were standing over on the north side of the track 18 when he called your attention to the fire? A Yes, sir.

Q And then after he saw it you came over here on track 17? A Yes.

Q And walked up the trestle on track 17? A Only a little ways; I didn't go all the ways up.

Q I didn't say you went all the ways. You went probably forty or fifty feet? A No, no; probably—just to

get a little—so we could get our head above the cars, that is all.

Q Then track number 17 is on a trestle, isn't it? A Yes.

Q Higher than track 18? A Yes.

Q And you walked up that incline? A Not all the way; only just a few feet.

Q Then you got up about until you were on a level with the car roofs; is that right? A So we could just see over the roofs of the cars.

Q And then standing down here you could see this flame down to the point you have indicated? A Yes.

Q Of course, standing there, the only thing you could see was the car roofs? A That is all.

Q You could not tell what was going down between the cars anywheres, could you? A No, sir.

Q And this flame might have been on the ground and coming up in between the cars, for all you know? A I didn't—well, that could have been for all I know. I did not see any flame on the ground nor any fire.

Q You could not see the ground? A No, sir.

Q I say the flame might have been on the ground and was burning in between two rows of cars for all you could tell? A Well, it might have been. I did not see any fire on the ground.

Q All you saw was a flame coming up above the roof of the cars? A Yes.

Q You don't know where that came from? A No, sir.

Q Now, how long did you stay up there on the trestle looking at the fire? A Four or five minutes.

Q What caused you to leave your post of observation? A My post?

Q Yes. A You mean the boat?

Q No, the place you were standing, watching? A Mr. Burns went over there to see what it was; what kind of a fire—

Q Just a minute. Burns left you up on this trestle; is that right? A Yes.

Q And he went over? A Yes.

Q And then did he come back to where you were? A No; he called, and I was to go over to help him put out the fire—

Q Now, what did he say? A He called for us to come on; he said, "Come on."

Q Do you know where he was when he called? A No, sir; I don't know, because I was lost.

Q All you could hear was his voice? A I could hear his voice.

Q Then did you start to move? A Yes, right away.

Q And did you go until you met him? A Way up the roadway—afterwards he called and said, "Don't go near that car; it is a car of ammunition."

Q Now, did he say that after you met him the second time? Did he yell that while you were still down on track 17? A While we were going up.

Q You were standing, as I understand it, on the incline leading to the trestle on 17 when you heard Burns call; is that right? A Yes, sir.

Q And then did you immediately start west? A Yes, sir.

Q And did you go alone? A No, sir; there was three other Dougherty men.

Q Three other Dougherty men? A Yes.

Q Where did they come from? A I don't know whether they came out of the shanty or where they came from.

Q You didn't see them? A Not at first.

Q Before you heard Burns call? A Oh, yes, before then. They came around; in the meantime Mr. Burns was starting to go up to see where the fire was.

Q How long was it from the time that Burns left you until you heard him call? A A few minutes.

Q When he called did these three men come out of the shanty? A No; they had been outside before he called.

Q Did they come out of the shanty shortly after Burns went up to see what the trouble was? A I couldn't say for sure whether they came out of the shanty or not.

Q At any rate, the four of you started up the sea wall track? A Yes, sir.

Q Now, how far did you go before you saw Burns again? A Why, I think we was up around the second storehouse before we met him.

Mr. Garrison. You mean the second block of stores?

The Witness Yes.

Q You then came down track 18, the sea wall track, until you got opposite the first block of stores and crossed over to the roadway? A Yes.

Q And went in the roadway and got opposite the second block of stores and there you saw Burns again? A Up in that neighborhood, yes.

Q And Burns said to you, "Now, don't go near that car, it has got ammunition in it?" A He says, "It is a car of ammunition on fire."

Q I see; and going down there at the time you met Burns was yourself and three other men? A Yes, sir.

Q Now, when you heard Burns call you started and you did not see the fire after that for a considerable time, did you? A No, sir.

Q How long was it until you saw the fire again? A Well, probably three-quarters of an hour.

Q Where did you stop to look at it then? A I telephoned and started back.

Q And did you telephone at the oil yard? A No, in the grain elevator.

Q And were you at the grain elevator when you saw the fire the second time? A No, I was not.

Q Where were you? A I was on my way back, down the roadway again. I started down the roadway.

Q That is, did you stop to telephone on your way down to the oil yard? A I did not go to the oil yard.

Q Well, the oil yard is down near the opening, isn't it? A Yes.

Q Well, now, where were you when you turned around and looked at the fire again? A I was up to the cork works.

Q The cork works. All right. And that was about three-quarters of an hour after you had first seen the fire? A About three-quarters of an hour after I started back again.

Q And then what did you do? A Saw the fire.

Q Well, could you tell how it was burning or what was burning? A No, I could not.

Q You just saw the flames? A Saw the flames, that is all.

Q And the fire was bigger than it had been when you had first seen it? A Yes, sir.

Q Well, now, when you met Burns there in the driveway and he said to you "there is a carload of ammunition," what did all you fellows do; did you stay together? A Stayed together.

Q And did the four men and yourself all walk westwardly? A Yes, one of the Dougherty's men called up Dougherty; that was all.

Q Where? A At the grain elevator.

Q At the grain elevator? A Yes, sir.

Q And you are positive, then, that the four Dougherty men that you were with that evening— A Yes, sir.

Q —after they left the bulkhead ran all the way to the grain elevator without stopping? A No; we did not run all the way; we ran a part of the way.

Q Walked there and ran without stopping to talk to anybody? A Yes—that is, I don't know about this man Burns, but the other three men.

Luke J. Eismann, re-cross.

Q What happened to Burns? A He was alone from the time he came until we met him? Of course, he might have met somebody in that meantime; I don't know.

Q Did you or any of these other men make any effort to put the fire out? A No, sir.

Q Did you feel the first explosion? A I felt as if I was in the air.

Q What? A I felt as if it knocked me in the air.

Q And did you feel the second explosion? A Well, not like the first.

Mr. Stallman. That is all.

Mr. Garrison. I want to ask this witness one question. Mr. Hobart did not hear it.

By Mr. Garrison.

Q Where were you the first time that you heard Burns say "that is a car of ammunition; don't go near it"? A I was on my way up to meet him.

Q But where were you? A Going between the bulkhead and the fire.

Q Before you reached the place where the fire was? A Yes.

Mr. Garrison. That is all.

Re-cross examination by Mr. Stallman.

Q Just a minute. I thought you said after Burns called you ran down to where he was and you met him opposite the second block of stores? A Yes; I said he had called us; we could not go very near the fire; and told us there was a car of ammunition.

Q Oh, then you got your information that it was a car of ammunition when Burns was yelling? A Right shortly afterwards. At first he says, "come on," and when he hollered again; he said, "don't go near that car, it is a car of ammunition."

Q And where were you when you heard him yell that? A I was on my way to meet him to put the fire out, as I thought.

Q And did he tell you again when you met him down opposite Store O that there was a car of ammunition? A Yes, sir.

By Mr. Garrison.

Q When you came to Black Tom did an Ackerman tug bring your barge there? A Yes, sir.

Mr. Garrison. That is all.

JOSEPH BURNS, sworn.

Direct examination by Mr. Hobart.

Q Are you the Mr. Burns referred to by the last witness— A Yes, sir; I am.

Q —as being one of the Dougherty detectives? A Yes, sir.

Q And were you on duty as a guard or a watchman at the terminal known as the Black Tom terminal on the night of July 29 and 30, 1916? A Yes, sir.

Q And by whom were you employed? A The Dougherty Detective Agency.

Q And how long had you been in the employ of that agency? A I had been in the employ of that agency about six months.

Q And how long had you been assigned to duty at the Black Tom terminal? A Somewheres—I think I went to the Black Tom terminal along about June 15th.

Q Of 1916? A Yes.

Q And were you one of the night men? A Yes, sir.

Q And were there other men from the same agency on duty during the day? A There was three other men.

Q Were they on duty during the day or during the night? A During the night.

Q Three other men at night? A Yes, sir.

Q Do you know whether there were any day men on? A Yes.

Q How many men were on during the day from your agency? A Four.

Q Four during the day and four at night? A Yes.

Q Who were the other three men that were there at night? A At the time a man by the name of Scott, Gibson and Ryan.

Q And what time did you go on duty on the night of Saturday, the 29th day of July? A Six o'clock in the evening.

Q And your hours were from that time until when? A Six in the morning.

Q Now, had you and your other men built a shanty or a protection of some kind out near the bulkhead? A Yes, sir; we built a shanty there to protect ourselves from the rain.

Q And where was that with reference to the bulkhead? A Why, it was a few feet west of the bulkhead, probably 50 or 75 feet west of the bulkhead.

Q And was it towards the north or at the north of the track? A At the north side of the track, right on the bank.

Q You mean near the shore line? A Right on the shore line, right on the bank there, the edge of the shore.

Q Were these other three men you have named and yourself all on duty that night? A Yes.

Q Where were you about midnight? A I was out in front of the shanty, and I went inside of the shanty and looked at my watch and it was 12:10. Then I came out and walked up and down in front of the shanty for a few minutes.

Q When you were in the shanty and looked at your watch and found it was 12:10, then you came out? A Yes, sir.

Q Now, how long after that was it before you saw Mr. Eismann? A It could not have been over ten or fifteen minutes.

Q You did not look at your watch again, did you, to fix the time? A No, sir.

Q And where were the other three men? A They were inside the shanty.

Q Now, what part of the yard or pier did you and the other three men watch? A My understanding was we had to watch the pier.

Q That is, you mean the North Pier? A The North pier, yes, sir.

Q What did you do in the way of watching it; did you go out on it or stay in the shanty, or what? A No; there was always somebody on watch and somebody after 11:30 was inside, and then the others were on watch. Usually two inside and two out.

Q By two inside you mean two inside the shanty? A Yes.

Q And where were the other two supposed to be? A On the outside.

Q Were any of them supposed to be on the pier itself? A Yes; one was supposed to be on the pier itself and the other at the bulkhead along near in front of the shanty.

Q Now, on this particular occasion was any one of the four men out on the pier? A No, sir.

Q And you were the only one, then, that was outside of the shanty? A I was at this particular time.

Q That is what I mean, this particular hour, shortly after 12 o'clock? A Yes, sir.

Q And the other three were all inside? A Yes.

Q Now, you had known Mr. Eismann before, had you? A Yes, sir.

Q You had met him around there at different times, I suppose? A Met him around there going and coming from the lighter.

Q You knew him as the captain of some lighter that had been carrying ammunition? A Knew him as the captain of a lighter, yes.

Q Now, did you see him walking towards you that evening? A I saw a man coming out of this north track and I started to walk up to meet him and when I met this man, this party, it was Eismann.

Q Was there anyone else around there that night that you had seen outside of Mr. Eismann—and outside of your own men, of course? A No, sir; there was not.

Q How long did you talk with Mr. Eismann? A A few minutes.

Q And after talking with him a few minutes what did he do? A Well, I was talking with him a few minutes, and he started to go down the pier to his boat, and I heard a crackling noise and looked over to the southwest of where we were standing and noticed a small flame, the reflection of it, beginning south of one of the warehouses, and I drew his attention that this was a fire.

Q After that what did you do? A I called to the men on the inside and they came out. I told them that there was a fire over there and to notify the men to get away, the men that was on the lighters to get away.

Q Notify them to get away? A Yes, sir.

Q Why? A Well, in most of those cars there there was explosives.

Q You knew that they were explosives cars? A I knew that most of the cars there was explosives in them I did not know, of course, at the time that there were explosives in this car.

Q Well, did you and your men have any charge of those cars? A No, sir.

Q But you knew where they were placed and knew generally that they had some sort of explosive? A Yes, sir.

Q Well, which way did you go when you went toward the fire? A I walked up that north track until I came to Pier 6.

Q And by the north track do you mean the track that is furthest north right next to the water line? A Yes, sir; until I came to the end of those tracks that are in there, you see. There is a roadway that came down to there where those tracks branch off to come down in the yard, I crossed over there, and, of course, as we crossed over there, we could see fire in this car very plainly.

Q Well, as you walked along the track along the north side, did you continue to look at the fire? A I did after we passed the end of those cars where we could see it; we could not see just exactly where it was until after we passed the end of those cars. There were some cars between us and the track that the fire was on.

Q After you got past the end of the cars, then you could see the fire more plainly? A Yes, see it very plainly.

Q Now, where was it? A It was in a box car.

Q Was there any on the ground? A No, sir.

Q And when you speak of its being in a box car, have you any way of telling whether it was at one end or the other or in some other part? A The only thing you could see, you could see very plainly the fire coming out from around the edges of the door.

Q Which door? A The side door.

Q And on which side? A The north side of the car.

Q That is, the side nearer to you? A Yes.

Q Was the door open or shut? A The door was closed.

Q Did you go over anywhere near the car? A No, sir.

Q Could you, from where you were at any time, tell or see whether or not there was any kind of a placard or sign on this car? A Yes, sir; there was a placard on the end of the car. We could see it very plainly.

Joseph Burns, direct.

Q And do you remember what kind of a placard it was? A It was one of those square placards; of course, you could not read what was on it from the distance from where we was at, but it was the same size card that was used on those explosive cards.

Q You had seen it before on other cars? A Yes, sir; used on most cars with explosives.

Q Was there any other kind that you had seen besides the square kind? A Yes, sir; they used the diamond shape also on some of the cars.

Q And do you know which kind they used on which kind of explosives? A It looked to me like a square card—not square, but mostly—it looked about 12 by 14 inches, something like that.

Q Square corners, anyway? A Yes, square corners. It was not put in the diamond shape.

Q Did you at that time, or do you now, know which kind of explosives it was on which the square cards were put? And on which kind the diamond shape were put? A The diamond shape, as I understood it, were the high explosives, and the square card was for the shells and so on and so forth.

Q Well, are you quite sure that this was a square card? A I am very positive that it was, as near as I can recollect.

Q Could you tell from where you were whether there was any seal of any kind or lock on this car? A I could not tell from where I was whether there was any seal or lock on the door; the door was closed; I could see that very plain.

Q Was it closed tight? A It must have been closed tight; all we could see was just the flames coming out around the edges, all around the side door; it looked like the door was closed tight.

Q How close did you get to the car at any time? A The closest, I think, was probably a hundred feet; maybe a little more; a hundred or a hundred and fifty feet.

Q Well, did you continue looking at the fire, or what did you do? A I kept walking; after I got to Pier 6 I went in Pier 6—that was the nearest fire alarm—and I turned in a fire alarm.

Q Now, on which track was this car that you saw where the flames were coming out of the side door? A I could not say positively just which track it was, or how far south it was from what they call the north track, but I think it was four or five tracks south of that, as near as I can judge.

Q Can you tell us which car it was with reference to other cars on that track—first, let me put it this way: Were there other cars on this track where this burning car was? A It was the end car west.

Q The furthest car to the west? A Yes, the furthest car to the west of the string of cars.

Q That was the burning car that was furthest west? A Yes.

Q After you turned in the fire alarm what did you do? A I came out and looked at the car again and stopped for a few minutes. At that time the flames had spread, of course, and we heard some popping like a shell or something exploding.

Q About what time was it when you turned in the fire alarm? A We turned in the alarm, I should judge, about half-past 12, as near as I can judge.

Q Well, you didn't look at your watch? A No; I had no watch at all; I left the watch in the shanty.

Q Do you know whether that was a city fire alarm? A I couldn't say; I think it was a Jersey City fire alarm.

Q Well, what kind of an alarm was it? What did you have to do? A One of these with a glass in it. We broke the glass and pulled the lever.

Q What did you do after that? A We walked up the track as far as the grain elevator, telephoned to the police department and the fire department also, and the Lehigh Valley Railroad.

Joseph Burns, direct.

Q Now, you have referred to some popping of shells? A Yes.

Q How soon did they start? A Well, they started directly after I came out from turning in the alarm, before we left the entrance to the piers.

Q Did they make considerable noise? A Not a great deal; no, sir.

Q But you could hear them, could you? A Yes, see the flames.

Q Did they have any appearance on the sky? A You could see a flash out a little way, probably twenty-five or thirty feet.

Q Where did these shells come from, or the ones that you noticed, from the car that was burning? A From the car that was burning.

Q Did these shells all go in the same direction or go in different directions? A Different directions.

Q Did some go straight up and some way and another way? A Yes, sir.

Q How long did you remain in there after you turned in the fire alarm? A I remained there until 8 o'clock the next morning.

Q After you turned in the fire alarm did you do anything else than simply stand around there? A No, sir.

Q Well, did you speak to any of the railroad men? A I did. I spoke to Mr. Dickman when he came down, the men of the fire department.

Q And do you remember Mr. Sloan? A No, I didn't see—I don't remember him; not by name. I might—

Q He was in the pump room. A There was a watchman in where I turned in the alarm by the name of Garrity.

Q Well, was there any signal given by way of police whistles or anything of that kind that you heard? A No; I didn't hear any at all.

Q Did you hear any steam whistles? A No, sir.

Mr. Hobart. Cross examine.

Joseph Burns, cross.

Cross examination by Mr. Smith.

Q You are a Dougherty detective, you say? A Yes, sir.

Q Well, do you know whom you were working for down on the pier down there, the National Storage or the Lehigh Valley? Do you know? A No, sir; I don't know who was his employers.

Q Well, your instructions were simply to stay on the pier and look at the fire? A Watch the pier; yes, sir.

Q Just watch the pier? A Watch the pier and the cars.

Q And the cars on the pier? A Yes, sir.

Q You had nothing to do with anything off the pier, had you? A No, sir.

Q And there were four of you men? A Yes, sir.

Q And you were directing them in a little shanty there? A Yes.

Q You were supposed to have two in and two out? A Yes, sir.

Q In other words, two men watching the pier. Well, now, did you have a station? Did you have a post. A No; one man was supposed to stay at the head of the pier and the other one down on the piers.

Q On this occasion there were three men inside of the shanty and one man in front of the shanty? A Yes, sir.

Q And you were the man in front of the shanty? A Yes, sir.

Q The man who was supposed to be at the end of the pier wasn't there? A No, sir.

Q And the man who was supposed to be at the dock end of the pier wasn't there, was he? A I was there.

Q That was you? A Yes, sir.

Q And the others were around the shanty? A Yes.

Q In other words, you were all huddled around the shanty? A No, sir.

Q I suppose it was a dark night, was it? A Not very.

Q Moonlight? A No, sir; starlight night.

Q Just starlight? A Yes, sir.

Q So that you could see very well? A You could see an object quite a size up the track.

Q Well, had you been looking up towards the shore at any time prior to the time you saw the fire—first saw the fire? A Yes, sir.

Q Had not seen any fire before that? A No, sir.

Q You had not seen anybody around there before that? A No, sir.

Q The only person you saw was Eismann as he came down? A Yes, sir.

Q And then you stayed there talking to him? A Yes.

Q Well, now, you stood talking to Eismann about ten minutes, didn't you? A I think so; yes, sir.

Q Well, now, while you were standing with Eismann did you see the fire? A I saw the fire after we had been talking. I drew his attention to it after we had been talking about ten minutes.

Q Well, was he with you when you first saw it? A Yes, sir.

Q Standing with you? A Standing with me.

Q He had not started to go to his boat? A No, sir.

Q Sure of that? A Yes, sir.

Q Now, when you and he were standing there, you saw the fire? A Yes, sir.

Q Did you say to him, "I will go up and take a look and see what it is"? A No; I said "there is a fire over there. We will get these men out."

Q Did you say to Eismann, "I will go and see or take a look and see what it is"? Did you say that to Eismann? A I believe I did; yes, sir.

Q Then you did say that, didn't you? A Yes, sir.

Q And did he say to you, "I will go with you"? A No, sir; started the other way.

Q Did you say to him then, "No, you need not come. If I want you I will call you." A No, sir.

Q You did not? A No, sir.

Q Well, now, as soon as you said, "There is a fire; I will go and see what it is," then did you say to him, "Get the men off the boat"? A Yes, sir.

Q Right away? A Yes, sir.

Q Is that so? A Yes, sir.

Q Well, now, you told him to get the men off the boat. You didn't know the fire was then in the ammunition car, did you? A No, I did not.

Q You didn't know whether it was in a car of steel rails, for instance? A No, sir; I did not.

Q But you told him to get the men off the boat? A Yes, sir.

Q And then you walked up? A Yes, sir.

Q Now, you could see the fire was on the tracks, as you say, about three or four tracks in, couldn't you? A Yes, sir.

Q And yet you walked up along the sea wall? A Yes, sir.

Q Now, there were a lot of cars between you and the track that the fire was on, as you went along the sea wall, wasn't there? A Yes, sir.

Q So that you walked on the outside, really away from the fire, didn't you? A No, sir; I was walking towards the fire.

Q Towards the fire? A Yes, sir.

Q Well, couldn't you have gone right up along the line in between the string of cars where the car afire was? A Not without crawling under them.

Q What is that? A Not without crawling under them.

Q Not without crawling under them? A Yes, sir; or climbing over the top of them.

Q Your shanty was down here, wasn't it? A Yes, sir.

Q Right at the North Pier? A Up that way a little further.

Q How far? A About there where you have the pencil.

Q How far? A About where you have the pencil now.

Q Well, is that 50 or 25 feet, or what? A About 50 feet from the end of the pier.

Q About 50 feet from the end of the pier? A Yes, sir.

Q And the cars stopped right here, didn't they? A Yes.

Q You could have walked right around here? A I could have climbed down along that center track; yes, sir. I could have.

Q Instead of that you walked up this way? A Yes, sir; I did.

Q Along the wall? A Yes, sir.

Q Now, did you stop right opposite the fire? A No, sir; I did not. I kept going around the car.

Q Went right up here, up to the roadway? A I didn't go that far at all; I just passed the end of the cars there, where the switches switch off there.

Q Didn't you go up the roadway first? A No, sir.

Q In other words, you came up here? A I come right up, just passed the end of the cars, and walked those switches.

Q Right across those switches? A Yes, not square across, that way.

Q Cater-corner? A Yes.

Q That is it? A Yes, sir.

Q Then you could see down here? A Yes, sir.

Q And you say it was the first car burning? A Yes, sir.

Q Are you sure it was the first car that was burning? A Yes, sir.

Q Now, you remember testifying at the coroner's inquest, don't you? A Sir?

Q You remember testifying at the coroner's inquest, don't you? A Yes, sir.

Q Do you remember this question being asked you: "They were on the third track"—you were saying this—"I couldn't see which track it was; I didn't come down here to see it. I came up here (indicating), but it was the third car from the end. It was not the first car, but it was the third car"? A No, sir.

Q You don't remember that? A No, sir.

Q Well, if you did so testify in the coroner's inquest was that correct? A No, sir.

Q In other words, if you did testify so at the coroner's inquest, it was not correct, was it? A No, sir; it was not correct and I am positive I did not.

Q Do you know when the coroner's inquest was had? A No, sir.

Q Well, it was a long time ago, wasn't it? A Yes, sir.

Q How long ago? A It was shortly after the explosion.

Q Shortly after the explosion? A I don't know just how long.

Q And was your recollection at that time better than it is today? A Sir?

Q Was your recollection at that time— A No, sir; my memory has not changed.

Q —better than it is today? A I never said it was the third car. I said it was the first.

Q I didn't ask you that. I asked you was your recollection at that time, about a week after the fire, better than it is today—as to those things that took place at that time? A I don't think it has much—

Q You think you have a better recollection today, don't you? A No, sir.

Q Well, do you think you had a better recollection then? A I don't know as there is much difference.

Joseph Burns, cross.

Q No difference. You think it is just about the same? A Yes, sir.

Q Well, now, then, after you got up there, these tracks, and you saw it was the first car that was burning, did you see the sides of the car? A Sir?

Q Did you see the sides of the car? A Side of the car; yes, sir.

Q Both sides? A And the end; no sir; not both sides.

Q Only one side? A Yes, sir.

Q Which side did you see? A Towards the north side.

Q North side? A Yes, sir.

Q And you could then see flames, couldn't you? A Yes.

Q Were the flames coming out through the roof? A Coming out the side of the door, all around.

Q Coming out the side of the door all around? A And out of the top.

Q And out of the top? How about the bottom door? A No; nothing in the bottom that I could see.

Q Now, could you see from where you were that there were any flames coming out of the bottom of the door? A Well, I believe that I would know whether there was any at the bottom or not, if I looked at it.

Q You would know whether there was any coming out of the bottom of the door? A Yes, sir.

Q Do you know whether the fire was inside of the car or outside of the car? A The fire was inside of the car.

Q Do you know what part of the car it was on the inside? A No, sir.

Q Was it on the floor of the inside? A I couldn't say.

Q You don't know, do you? A No, sir.

Q Well, now, did you see any flames as they came out the side of the door going towards the north? A What do you mean, towards the north.

Q Well, that is the north, isn't it? A Saw them going up.

Q Well, they were all going up in the air? A Going up in the air, just drifting out of the side of the door.

Q Just drifting out of the side of the door? A Yes, sir; around the edges.

Q Is that right? Did you see any flame going through the roof? A No, sir; not at that time.

Q Just out of the door? A Not at that time.

Q I understand that, at that time. I am speaking of that time. They were all coming out of the door, weren't they? A Yes, sir.

Q In other words, they were coming out of the side of the car, not through the roof? A Exactly.

Q Well, now, were they to any great extent; did they leap across the track? A No, sir; not at that time they did not.

Q All you could see was to the effect that there were just flames coming out of the door; is that it? A Yes, sir.

Q Can you tell me how far from the sides of the car the flames extended? A Why, I wouldn't think they extended more than two or three feet at that time.

Q Not more than two or three feet; is that right? A Yes, sir.

Q Now, then, when you saw them, is that the time you called—or did you at that time call to Eismann not to go near the cars? A I did to the boys that was walking up the track; I told them not to go near the cars.

Q Did you see them walking up the tracks? A Yes, sir.

Q And afterwards, when you were up here you could see them coming up the track? A They were coming up the track.

Q Could you see them? A Yes, sir.

Q How many were there with him—with Eismann? A Three with Eismann.

Q Three with Eismann? A Yes, sir.

Q They were all talking over here at the sea wall track? A They were up further than that.

Q Up here? A Yes, sir.

Q Up past the fire? A At the end of the cars.

Q Then they were at these cars? A Yes, sir.

Q Is that right? A Yes, sir.

Q As a matter of fact they passed beyond the point where the fire was, didn't they? A No, sir—they were a little past where the fire was; yes, sir; but not past the end of the cars—no, about the end of the cars; along about in there. (Mr. Smith is indicating on the map as the witness is testifying.)

Q They had passed a point where the fire was? A Yes, sir.

Q They had gone all the way up here? A Yes, sir.

Q And then you called to them and said, "Don't go near those cars"? A Yes, sir.

Q "Ammunition," is that right? A Yes, sir.

Q Now, could you see from where you were up here the size of the placard that was on that car? A I couldn't see the exact size of it; no, sir.

Q Could you see the shape of it? A Yes, sir.

Q How far away from you was the fire? A About 100 to 150 feet.

Q About 100 to 150 feet? A Yes, sir.

Q Well, now, where was the placard? A On the end of the car.

Q On the end of the car? A Yes, sir.

Q That is the end of the car towards you? A Yes, sir; on the west end.

Q Is that it? A Yes, sir.

Q And what was it that allowed you to see it, the starlight or the light of the flames? A Why, the light of the flames helped notice the car, bright.

Q The light of the flames? A Yes, sir.

Q That is what helped you see the tags on the end of the car, back there in the night? A Yes, sir.

Q Is that right? A Yes, sir.

Q And there were also flames coming out of the roof? A No, sir.

Q Only on the sides, on the north? A Out of the side of the car.

Q Towards the north; is that right? A Yes, sir; correct.

Q And the placard was on the end of the car towards you? A On the end of the car.

Q Of course, you couldn't read it by the light of the flames, could you? A No, sir.

Q Or by the starlight? A Haven't got that good eyesight.

Q Well, when you saw that the flames were coming out of there, as you called to these men not to go down to the car, what did you do? A I went in and turned in the alarm, Pier 6.

Q Well, where did you go, up to the pump house? A No; I went in to Pier 6.

Q Well, you ought to know. Was it the pump house?

Mr. Garrison. He says he went into Pier 6.

The Witness. No pump house that I know of; it was Pier 6.

Q Pier 6.

Mr. Garrison. That is what he said; Pier 6. The pump house is not on Pier 6.

Q And will you tell me where that is? From Pier 6, where did you go from Pier 6? A Went right in near

the entrance of Pier 6, just inside of the door is the fire alarm.

Q In here? A No, down further.

Q Back here? A Yes, down in there, just inside of the door of the pier to the left was the fire alarm.

Mr. Garrison. Inside of the door to the left, he says, is a fire alarm.

Mr. Smith. I hear what he says; I am trying to find out where the alarm is on the map.

Mr. Garrison. You are not going inside of the door, you are on the bulk head.

Q Will you show me where the door is—

Mr. Garrison. Go down and show him where the door is.

(Witness leaves the witness stand and goes to the map.)

A Right here at the end of the pier was a fire alarm, right in the door.

Q That is where the door is? A The whole front of this pier is open.

Q The whole front of this pier is open? A Yes, sir; the cars go in there.

Q Inside of that is a fire alarm? A Inside of that is a fire alarm, in the corner—fire alarm.

Q Did you see anybody there at that place? A Yes.

Q Who was it? A Watchman by the name of Garrity.

Q Garrity. Did you speak to Garrity about turning in the alarm? A Yes.

Q What did he say to you? A Sir?

Q What did he say to you? A He didn't say anything. I walked right on in and turned it on.

Q Well, after you spoke to him what did he say to you? A He didn't say nothing.

Q Didn't he speak at all? A No; he did not.

Q Did you ask him how to turn it in? A No, sir.

Q You did not? A No, sir.

Q Did he say to you, "I don't know how to work it"? A I don't remember whether he said anything like that or not, now.

Q Well, you went in and broke the glass, you say? A Yes; I went in and broke the glass. I turned in the alarm.

Q How did you turn it on? A With a lever.

Q Lever that pulls down? A Yes, sir.

Q It was not a key? A No, sir.

Q Just a lever that pulls down? A Yes, sir.

Q What color was the box? A Red.

Q Red? A I think it was red.

Q Well, then, what did you do after you did that? A Walked out of there, stood and looked at the fire.

Q Well, was the fire spreading then? A Yes, sir.

Q Well, where did you go from there? A Went up to the—right opposite the grain elevator.

Q Right opposite the grain elevator? A Yes, sir.

Q Did you see Sloan there at all? A I don't remember.

Q Didn't go into the pump house at all, did you? A No, sir.

Q Was there anybody with you at the time? A Sir?

Mr. Garrison. With him? What time?

Q Was there anybody with you at the time?

Mr. Garrison. At what time?

Mr. Smith. The time I am just talking about.

Mr. Garrison. Well, I do not know what time you are talking about.

Mr. Smith. I asked if he went in the pump house. He said he did not go in the pump house.

Mr. Garrison. Now, you ask him was there anybody with him at the time he did not go into the pump house. That does not make any sense.

Mr. Smith. Well, put it that way; was there anybody with you at the time you didn't go into the pump house?

Mr. Garrison. I object to that.

The Court. Let me hear the question.

Q (Repeated by the stenographer.) Was there anybody with you at the time you didn't go into the pump house?

The Court. If it is only to please him and he now objects, I will overrule the objection.

Mr. Smith. I am perfectly willing to have it overruled.

Q At any time from the time you reached the front of those cars was there anybody with you until you got away up to the cork works? A When I came out from there I joined two of the men; I don't remember just which one it was; they were waiting outside of the pier and we walked up the roadway together.

Q What pier? A Pier 6.

Q In other words, when you came out of Pier 6, when you turned in the alarm you joined the two men? A Yes, sir.

Q Do you know who they were? A I don't just remember which one of the two men it was.

Q Were they Dougherty men? A Yes, sir.

Q You don't know their names? A I don't know just which two it was, whether it was—I think it was Gibson and Ryan.

Q Gibson and Ryan? A Yes, sir.

Q You walked, then, up towards the west, did you? A Walked further west, then; right up the roadway to the grain elevator.

Q Now, where did you go to? A Went to the grain elevator.

Q Did you stop on the way up? A No, sir.

Q So at no time did you or Gibson or Ryan, as far as you know, go into the pump house? A No, sir; not as far as I know.

Q Now, who was the other Dougherty man, the other Dougherty man that was there? We have three of you now—you, Ryan and Gibson and Scott; is that right?

Mr. Garrison. Well, that is four.

Q I say you, Ryan and Gibson, and there was one other man there, wasn't there? A Sir?

Q There was one other Dougherty man, wasn't there? A Scott.

Q By the name of Scott; is that right?

Mr. Garrison. He has mentioned him.

Q So you and Ryan and Gibson made three, and Scott is the fourth man. Do you know what became of Scott? A Sir?

Q Do you know what became of Scott? A I do not.

Q Did you see Scott at any time after you left the shanty? A Oh, yes; I saw Scott up at the—I saw Scott right opposite the grain elevator.

Q Did you see him at any time after you left the shanty until you saw him at the grain elevator? A No, sir.

Q Well, now, you say when you came out of the pier where you turned in the alarm. Is that when you say the shells began to pop? A Yes, sir.

Q And how soon after you came out of the pier did the shells begin to pop? A Well, I didn't hang around there very long. They started popping right now.

Q Was it one minute, two seconds or a month? A Two or three minutes maybe; maybe four or five.

Q Two or three minutes? A Maybe four or five.

Q And the shells began to go as you say in all directions? A Not so fast, not so many of them, but one now

and then would go, yes, enough to let a man know what was in the car.

Q What did you mean a little while ago when you said they went in different directions? A Mean they did.

Q Yes; some going north and some south and some up and some down; is that right? A I don't know whether any went down or not.

Q You didn't see any go down? A No.

Q You didn't see any of them go up? A Sideways, some of them.

Q Sideways. Now, where were you when the shells began to pop? A I was standing right out in front of Pier 6.

Q Then did you go down to the cork works then? A Sir?

Q Go up to the cork works—or the grain elevator? A No, I didn't go to the cork works, I went to the grain elevator.

Q It was after that you went to the grain elevator? A Yes.

Q Where were you when the first explosion came? A I was right opposite the grain elevator.

By the Court.

Q Where were you when the second one came? A In the same place. Just about the same place—I didn't—

By Mr. Smith.

Q Were you standing out in the roadway by the grain elevator when the first explosion came? A Yes.

Q Who was with you? A A man by the name of Ryan.

Q Ryan? A And Gibson.

Q Just you and he standing there? A Yes.

Mr. Garrison. There were three of them.

Q Did you say anybody else but Ryan?

Joseph Burns, re-direct.

The Court. He says Gibson.

A Ryan and Gibson were standing together, the three of us standing together.

Q In the roadway? A Yes.

Q Well, what happened to you when the first explosion came? A Nothing that I could see.

Q Just stand there? A Yes.

Q Did you hear the report? A Yes, I heard the report.

Q See anything fly? A Not at the time. There was a flash that lasted a lapse of a few seconds and then the detonation of the explosion—the concussion, rather.

Q See anything flying around? A Couldn't see anything flying at the time.

Q See anything happen to the warehouses? A In a few minutes afterwards you could see flames breaking out in different parts.

Q See any part of it tumble over? A No, sir; not then.

Q You did not see that? A I couldn't see it then. Everything was darkness after the flash for quite a while.

Q Everything was dark right after the flame? A Yes, sir.

Q How long after the first explosion did the second explosion come? A As near as I should judge about half an hour.

Q About a half an hour? A Yes, sir.

Q You still there at the grain elevator then? A Yes.

Q Was that as heavy as the first? A No, sir.

Re-direct examination by Mr. Garrison.

Q Which one of the various elevators, grain elevators, that are here, the one called grain transfer elevator, or the one called new grain elevator? A The concrete elevator, the new one.

Q That is the new grain elevator? A Yes.

Q That is all I want to ask.

Mr. Smith. That is all.

Mr. Hobart. By the indulgence of counsel, in order to save time in calling a witness from out of the State, I will read the testimony of a witness here named Joseph F. Maxwell, who gave testimony on a certain case of the Bethlehem Steel Company against Lehigh Valley Railroad Company.

Mr. Stallman. Which witness is this?

Mr. Collins. Page 849.

(Mr. Collins reads as follows:)

"JOSEPH F. MAXWELL, sworn.

Direct examination by Mr. Garrison.

Q What is your occupation, Mr. Maxwell—what is your residence first? A Alpine, New Jersey.

Q And what is your occupation? A General superintendent of American District Telegraph Company.

Q And were you such general superintendent on July 29th and 30th, 1916? A I was division superintendent at that time.

Q What division? A Eastern.

Q And of this division of which this— A Yes, sir.

Q Of which Jersey City is a part? A Yes, sir.

Q Now I hand you a round-up of tape. What is that I hand you? A That is a tape record of the signals we receive.

Q Signals the A. D. T. receive? A Yes.

Q There? A This is it.

Q Well, where? A This is the tape that I caused to be brought to Mr. Bird.

Q Well, whereabouts is the tape before any message is made on it? A That is on the instru-

ment in the Jersey City central office, which is at 75 Montgomery street, in the Union Trust Building.

Q And what sort of signals are registered on this tape? A Fire alarm signals and watchmen's signals and so forth.

Q And is this one you have in your hand the tape that related to such signals that would come from Black Tom? A Yes, sir.

Q And are there any such signals on that tape? A Yes, there is a signal—I looked this over a few minutes ago—

Q Yes. A There is a signal 12:45 there.

Q What does that mean? A That is a manual fire alarm signal that was pulled in at that time.

Q Now, wait a minute. Don't go so fast, please. Manual fire alarm signal? Now, please explain what a fire alarm signal is? A It is a box that is pulled manually.

Q And what does it do at the place where this piece of paper was? A It registers on the tape in that manner; it indicates—

Q In other words, it has the straight marks—straight dashes—one, two, three, four—five; and then quite an interval of lengths— A Space.

Q And then one, two, three, four—five; is that right? A Six.

Q Is it six? A Yes.

Q Sus, then a space and then five? A Yes. This—

Q Now, don't go too fast. That was done by what? Those six dashes then a space, then five? A This is done by the watchwork in the box.

Q That is automatic? A Yes.

Q The effect of pulling the box was to make six marks on this piece of paper and then a distance space, and then five marks? A Yes.

Q And then a little mark and an open space, and the last dot, dash, dot, dot, dash, dot, made all of them? A Yes, sir.

Q Made by dash—made all of these automatically? A Yes, sir.

Q And is that the Morse code? A Yes; that is the Morse character F; indicates fire in this case.

Q And what do these six dashes and one space and five dashes—what do they indicate? A That indicates the number of the box.

Q And that (indicating) indicates the number of the time? A The lead pencil mark which is put on there.

Q And what is the time? A 12:54 A. M.

Q Six minutes of 1 o'clock in the morning? A Yes.

Q And what indicates the day? A Well, it should be marked on there some place.

Q Well, this is only night tape; you will have to get the day tape, won't you? A No, that is 12 midnight.

Q That is 12 midnight? Well, what day was it, if you know? A I don't recall the date just now; it is so long ago.

Q Well, did you look it up at the time? A Yes, I did.

Q Well, do you remember what day it is? A The day of the week, do you mean?

Q I mean of the month—or either, if you want to, or both. A I know this was the time of the Black Tom explosion, and Sunday morning was the next morning, because I went down there.

Q I see."

Reading Testimony of Joseph F. Maxwell, cross.

Mr. Collins. Cross. Page 852, cross examination.

(Mr. Stallman read the following:)

"*Cross examination* by Mr. Skinner.

Q You said, Mr. Maxwell—let us get back to where this was—that the time was indicated—

Mr. Garrison. Where was that box, the registry of which is shown on that exhibit?

A This box, as I recall it, was on one of the piers.

Mr. Garrison. Where, what place, what locality?

The Witness. Down at the Lehigh Valley dock where the Black Tom explosion took place; that is as I recall the name. I was never over there but once, and that was the morning of the explosion.

By Mr. Skinner.

Q You said that this dot, dash, dot was the Morse character F, and that indicated fire? A Yes, sir.

Q Then of these others that were first called to your attention you said they indicated the location, did you not, of a box? A They indicate the box number.

Q Yes. Now, the first six, would you call that dot and five dashes or how do you describe it? A No, sir; I would call it six dashes. Here is a repetition of that right here.

Q Is that a Morse code character? A No, not necessarily, that is simply a make and break in an electric circuit.

Q And it is just then purely artificial that these six dashes have a meaning? I mean it is a meaning that you have given to it in your own signal system? A Oh, no; it is the same fire alarm prac-

ticed in all fire boxes—fire alarm boxes. First they are in groups, one group contains six, the next group contains five.

Q Do those two together mean one signal, or are they separate signals? A In this case it is one signal.

Q I see. A Because there is a wheel that the teeth are cut in—

Q I see. A —and the teeth make a break—make and break this as you arrange it, at whatever number you want. You have to have duplicate numbers.

Q And the two together are the signals that give the box numbers where the alarm is pulled? A These two there give the box six five, followed by the Morse character F, indicating fire.

Q Now, there is nothing there at all of dashes and dots to indicate the time, is there? A No, sir.

Q But 12:54 A. M. was written on by somebody, wasn't it? A Yes.

Q It was not put on it by any automatic operation of this system? A No, sir.

Q And do you know when it was written and who wrote it? A Yes, sir; I think it was written that night, because I got those records the next morning myself.

Q Well, do you mean that it was there the next day? A Yes, sir.

Q There really is nothing then, here, that tells the time? A We don't time the tape automatically. We time it manually in all our service.

Q There is somebody there to do it, at the time when the alarm comes in? A Yes.

Q Is that your course of doing it? A Yes, sir.

Q And then somebody in that regular course would write on this 12:54? A Yes.

Q From observation then made at the time when the alarm came in? A They would write that on

there just as soon as they would finish transmitting it to the fire department.

Q Oh, I see. And transmission to the department would be by telephone? A No, sir.

Q How would that be? A Transmitted automatically, and telephone it also; that is, we transmit it automatically on a machine for that purpose and then verify it by private telephone. Then we call up the people that we want to notify, that it will interest.

Mr. Skinner. That is all."

Mr. Collins read the following:

"*Re-direct examination* by Mr. Garrison.

Q What do you have in this station to tell time by? A A regular synchronized clock.

Q One of these official Western Union clocks? A Yes.

Q That is constantly kept straight— A Yes, sir.

Q —by electricity? A Yes, sir.

Mr. Garrison. I offer that tape in evidence.

Mr. Hardin. It is agreed the box from which that signal was given was on covered Pier 6, either the one on the right or on the left. There are two here.

Mr. Garrison. Two A. D. T. boxes or city boxes?

Mr. Hardin. A. D. T. boxes according to Mr. Boles. No objection.

(Marked D. 9 in evidence.)

Mr. Hardin. The box is on Pier 6."

Mr. Collins. I don't know whether we will keep that D. 9 now, Judge.

Mr. Boles. I was going to ask that that be stipulated.

Mr. Collins. Stipulated to do what?

Mr. Boles. That we agree that the tape show 12:54.

Mr. Collins. Yes. That is all. The tape shows 12:54 A. M.

MICHAEL N. MULLIGAN, sworn.

Direct examination by Mr. Hobart.

Q In July, 1916, you were working for the railroad company, Mr. Mulligan? A Yes.

Q In what capacity? A Superintendent of the New York Division.

Q You are still in the employ of the defendant? A Yes.

Q As superintendent? A Yes, sir.

Mr. Collins. Different divisions.

Q Same division or different division? A No, different division—New Jersey & Lehigh Division.

Q At the time you were superintendent of the New York Division what did that cover? A It covered all of the property owned or leased by the Lehigh Valley Railroad Company between Elizabeth, Jersey shores, New York and Brooklyn, including—

Q Did it include Black Tom? A Including Black Tom, yes.

Q How does the Black Tom Terminal compare with the other railroad terminals around New York Harbor with respect to the distance from the inhabited section of the city? A It is the furthest from the inhabitants of any terminal on the river front.

Q And are there several other terminals beside the Lehigh on the river front? A Yes; there is the Jersey Central, Pennsylvania, Erie Railroad, portion of the Lack-

awanna, and the Pennsylvania has a second terminal at Greenville.

Q Now, as superintendent you were familiar, I suppose, in a general way with the class of freight that was handled by the company, including various explosives? A General way; yes, sir.

Q For how long a time had explosives been carried on the line prior to July, 1916? A About one year prior to that.

Q Now, have you any knowledge that you can give us with regard to the men who have been called the Dougherty Detective Agency men? When did you first hear of them and what were their duties and what did they do? A Why several months prior to July I was notified by a Mr. Healey, who was chief clerk to our superintendent in charge of transportation in New York; he advised me that the Dougherty agency had taken over the watching and caring for the ammunition stored at Black Tom, and that there was four of such men in his office who he would send over to me to have made acquainted with our rounds and our fire alarms, pumps, and so forth. Later they came over, presented a card from this gentleman, stating that they were the men he referred to on telephone, and I called our chief of police, C. J. Leyden, and advised him to take those men around and show them where the ammunition was stored and to make them acquainted with the necessary alarms and pumps and hydrants and so forth in that vicinity.

Q Is Chief Leyden, the one that you have just mentioned, the man who was killed in the explosion? A Yes, sir; he lost his life in the explosion.

Q You were speaking of the cars that were stored at Black Tom. Were any of them actually stored there? A Why, they were placed there; a convenient place for these men to take care of awaiting disposition, awaiting orders from the shipping concern which was lightering this busi-

ness for the different concerns, such as Bethlehem Steel and Morgan—

Q Were any of the contents of those cars stored in the same sense we use of putting them in a warehouse, or anything of that sort? A Oh, no. What we call storing is when we assemble cars awaiting orders. They are stored on track.

Q Waiting for the consignee to take them? A Yes, sir.

Q And what tracks were generally used in the terminal for that purpose, of placing cars, and holding them until the consignee was ready for them? A Well, the tracks on the north side of the yard, which would be known as tracks 16, 15, 14, and 13, if necessary, if there was sufficient business to place them on that track. Now, they were the most northerly tracks; and track 18 was the lead to the pier on which the munition was loaded to boats.

Q These other tracks were the nearest to the lead track? A Yes; they were placed there so that that body of watchmen could take care of them all and at the same time have an eye on the docks to see that nobody came in by way of water or rail.

Q And that was also the nearest point to the North Pier where they were to be delivered; wasn't it? A Yes, it was the furthest distant away from where anybody lived.

Q Now, do you remember how long before July, 1916, these men reported to you and gave you these cards as indicating they were Dougherty men? A How long prior to that?

Q Yes. A I would say probably six or seven months.

Q Do you know anything about this shanty that has been referred to? A Yes, sir; I saw that shanty. It was put up on the north side of track 18.

Q And was that put up with your permission? A I granted the permission, yes, to have the men put up something to keep their luncheon and their wet weather

clothes and to warm themselves if the night was cold, or anything like that, and eat their luncheon in there if necessary.

Q And did you have occasion to be around that place from time to time? A Yes, I was around there frequently. In fact, I made it a point to get down there at least once a week to look over the ground, notwithstanding that I was in touch with the situation through my agent, the yardmaster down there, at all times and through my police department—anything unusual, such as loafing, or anything, they would make me acquainted with it.

Q And did you, when you had occasion to be in the yard, see whether or not these Dougherty men were in fact on duty? A Oh, yes; I observed that. Of course, I did not see the four of them at all times when I would usually approach the yard, and I would find the men that was guarding the west end, as we would term it, and the north.

Q You have spoken of four men who were there during the day. A Yes, sir.

Q And do you know how many there were there at night? A Yes, sir; there was four there at night.

Q Four different men, I suppose? A Four different men.

Q Was there any work done in that yard at night? A No, sir; there was no lighterage or no switching done there. That was one of our main reasons for not doing any switching in there, was to just keep everybody out of there and have it properly patrolled by those watchmen.

Q And did you have any watchmen or did the freight agent there have any watchmen who were employed by the railroad company? A Yes; the agent had a force of watchmen down there of a roundsman and five stationed men in our piers and taking in a portion of the outside territory which was not covered by those men.

Q And do you happen to know how long those men had worked for the company? A Why, some of them came over with us when we took the property of the National

Storage. They apparently had been working there for a number of years prior to that; we had no means of getting their exact record, but they were working for us for over ten years before this happened. In fact, there was one of them, an engineer, who had run an engine for the National Storage about twenty years.

Q They were all old employees then? A Old employees, and they were very reliable.

Mr. Hobart. That is all. Cross examine.

Cross examination by Mr. Smith.

Q When were you there at night? A Well, I could not just exactly give you a date; I was never there later than evening. I had been down there several times as late as eight o'clock.

Q You never went down to look at the Dougherty men, did you, at night? A No, sir; I did not.

Q As a matter of fact, you do not know what they were doing at night, do you? A Oh, yes, I do, through the reports of my men who I trusted to give me correct reports.

Q Then you got that from a report? A Yes; I got it from my men who were supposed to cover that point and report to me.

Q Who was that, Garrity and Kane and the rest of those watchmen that you say were there? A Yes, Kane; he would report all matters that were not going—

Q Did Kane render you a report every night that the Dougherty men were doing such and such at 10 o'clock, that the Dougherty men were doing such and such at 11 o'clock? A No; Kane made his rounds there and I told him to report to the chief of police every morning as to how he found things at each round, and everything that was not regular he would report to the chief of police.

Q Did he say anything in his reports about the Dougherty men? A No, sir; not that I know of.

Q Then all you know is that there was not anything in the reports about the Dougherty men; that is all you know? A Well, I would not say it that way. I do say that I know the Dougherty men must have been on their job or else Kane would have reported that they were not.

Q And that is what you mean? A That is what I say.

Q How long were the Dougherty men there that you know? A I would say six or seven months.

Q Did you ever see them do anything in the yard outside of the pier, the North Pier? A Oh, yes; they were out on the yard; yes.

Q In the yard? A Yes.

Q What did you see them do? A Why, I saw them patrolling around there and stopping people who were walking down there to identify themselves as to their right of going down on this pier.

Q About how far from the pier did you see them? A Oh, I would say 250 feet. In fact, I was stopped myself by one of them that distance.

Q When? A About thirty days prior to the explosion.

Q Who was it, do you know? A It was one of the watchmen that was down there daytimes.

Q You do not know what his name was? A No; I did not bother with that. I just simply showed him who I was, and he excused himself for stopping me and permitted me to go on.

Q He was a day man, was he? A Yes.

Q Did you ever see Mr. Burns down there? A No, I did not see Mr. Burns. He was with the party when they called in the office for admission to go down there.

Q Burns was? A Yes; I saw him at that time.

Q Was that the only time you ever saw him? A I saw him the day of the explosion again.

Q The day of the explosion? A Yes, the day following the explosion.

Q The day following; that was the only time you ever saw him? A That was the only time I ever saw Burns; yes.

Q Well, now, after the Dougherty men were there did you say anything to Mr. Kane about having to watch the tracks on which explosives were? A No; Mr. Kane would receive such instructions from Mr. Leyden, who was in charge of that branch of the business.

Q Did you give Mr. Kane any such instructions? A No; I did not, because he would receive them from this party I always did my business with, Mr. Leyden, whom was the head of that department.

Q Did you give Mr. Leyden any instructions that he was not to watch the tracks on which the explosives were after the Dougherty men came there? A The instructions that I gave to Mr. Leyden was that the Dougherty agency was to take over the watching and caring for explosives in that territory.

Q That is, all over the yard? A Yes, and he was to turn—not all over the yard; just in that particular territory.

Q What territory are you speaking of? A Those tracks I mentioned, known as tracks 16, 15, 14, and 13 if necessary, if they wanted.

Q I see. A Now, the business that was outside of that territory was covered by what we—

Q By the other men, not your men? A By the other men, yes, such as Claremont and so on, like that, was covered by traveling officers.

Q So that your instructions to Leyden, which instructions were to be given to Kane, were that the Dougherty men were to take care of tracks 15, 14 and 16, and 13 if necessary? A Not in that way. They were to take care of the explosives in that territory.

Q Well, let us say the explosives in that territory. A Yes.

Q Which territory included 16, 15, 14 and, possibly, 13? A Right.

Q Is that right? A Yes.

Q So that really you were under the impression that the Dougherty men were going to take care of that; is that right? A Yes; that included any cars that may have been on the North Pier.

Q And your men were relieved? A That was my belief, yes, from the conversation I had with that Mr. Healey.

Q So you delivered that to Leyden and he carried it to the other men? A Right.

Mr. Smith. I think that is all.

Mr. Collins. By consent, the testimony in the Bethlehem Steel Company case of Martin Egan is read—page 837.

(Mr. Collins reads testimony as follows:)

"MARTIN EGAN, sworn.

Direct examination by Mr. Garrison.

Q Where do you reside, Mr. Egan? A I live at 993 Park avenue, New York.

Q And what is your occupation? A I am a member of the staff of the banking house of J. P. Morgan & Company.

Q And it was that banking house that entered into contracts as the agents of the British Government with the Bethlehem Steel Company, which I now show you; is that not the fact—P. 2? A Yes; the firm entered into certain contracts with the Bethlehem Steel Company.

Q Well, that is one of them, isn't it? A Yes, sir; that is an original, apparently.

Q And P. 3 another original?

Mr. Hardin. You have the original exhibits there, haven't you?

Mr. Garrison. Yes, I have the originals.

A Yes.

Q And P. 4? A Let us see; that is the fuse contract, isn't it?

Q Yes; that is a fuse contract. The first is a shell. A Yes.

Q And this is another—this which I am about to show you is a percussion fuse contract, which is P. 4; that is another of the contracts? A Yes.

Q Now, then, acting as the agent of the British Government, did J. P. Morgan & Company do anything in respect of providing any protections with respect to the shipment of this ammunition, or munitions of war? A They did.

Q What did they do? In the first place, who did it? Did anybody do it acting for J. P. Morgan & Company? A My best recollection is that the arrangement was made by Mr. Davidson—Mr. H. P. Davidson, one of the partners.

Q What personal knowledge have you? A Discussion with Mr. Davidson.

Q Did you have any discussion with the people with whom you made the arrangement? A Mr. Davidson sent for me and told me to take charge of the details in respect of it.

Q Who did you see in connection with it? A Mr. George Dougherty.

Q And what is his business? A He is the head of a detective and military police agency.

Q What instructions did you give Mr. George Dougherty in respect of this matter?

Mr. Skinner. Verbally or in writing.

Q Were they verbal or in writing?

The Court. If they were in writing they were verbal.

Q How were they given? A By word of mouth.

Q Tell us what instructions you gave to Mr. George Dougherty? A I could not attempt—

Q Not word for word, but the substance of it. A The substance—he was directed to get in touch with the shipping agents of the British Government.

Q Who were they? A Messrs. Lunham & Moore —and to effect with them an arrangement whereby he would be advised of the arrival of ships from England that were to carry munitions for the British Government and of munitions destined for those vessels, and there was set up an automatic arrangement by which he was to meet and search and guard these ships and he was to supervise the loading of this ammunition.

Q You mean loading from the cars that brought it in? A My impression is he started at the docks, at the terminals.

Q At the railroad terminals? A Yes.

Q Was he instructed how much force he should use? A That depended automatically upon the number of ships and the number of ports that were in operation, in use.

Q And the number of cars, of course, bringing material in, I presume? A I assume that would have something to do with it; yes, sir.

Q But you did not attempt, as I understand it, to tell him how many men to use? A No; his instructions were to do the work adequately.

Q And I understand from what you say that that was done wherever these things were arriving?

Mr. Skinner. I object to that as leading.

Q Were your instructions in respect to any specific place where the materials were to reach tide-

water? A No, sir; the arrangement extended from Boston to somewhere in Texas.

Q There is no question that from Boston to Texas includes Jersey City, is there? A Oh, Jersey City was included; yes.

Q Mr. Hobart seemed to have some doubt about it.

Mr. Garrison. Cross examine.

Cross examination by Mr. Skinner.

Q Mr. Egan, when you say he was to cover from Boston to Texas, I take it you mean, do you not, he was to watch the munitions as they were being unloaded, wherever they might be, between Boston and Texas? A Yes, sir; automatically, wherever those ports were used.

Mr. Skinner. That is all."

JOHN M. JULIAN, sworn.

Direct examination by Mr. Hobart.

Q Mr. Julian, you are employed by the railroad company? A Yes, sir.

Q In what capacity? A Fire Marshal.

Q And you were so employed at the time of this fire and explosion? A Yes, sir.

Q What territory did you cover? A I covered the New York division.

Q And at this time what did you cover? A The entire system.

Q From Buffalo to New York? A New York City; yes, sir.

Q And what were your duties? A What are my duties?

Q What were your duties at that time? A To inspect and maintain the fire fighting paraphernalia.

Q Did you have in particular anything to do with the Black Tom Terminal and the appliances? A That was a part of my territory; yes, sir.

Q Where were you when you first heard of this fire in the early morning of July 30th? A I was at home.

Q And where was that? A 2129 Hudson Boulevard.

Q How far from the Black Tom Terminal? A About two and a half miles.

Q How did you get word about it? A By telephone.

Q And how did you go to the terminal? A I walked from my house to the Black Tom Terminal.

Q What time did you get there? A A little after 1 o'clock.

Q And where did you go after you arrived? A My first place of arrival—the first place I went to after arriving was at the boiler house, pumping station.

Q And where is that located? A Located on the east end of Store F.

Q And why did you go there? A To ascertain if the pumps were working, and what pressure was on the fire pump.

Q And what did you find out about them? A I found the pumps working, pressure maintained on the line.

Q What pressure was it, could you tell? A About 70 pounds.

Q Is that the usual pressure? A That is the usual pressure; 70 to 100 pounds is the usual working pressure.

Q Who was in charge? A A man by the name of Sloan.

Q How do you determine the pressure? A By looking at the gauge.

Q And did that show 70? A That showed 70 pounds at the time; yes, sir.

Q How long did you stay with Mr. Sloan? A Only a short while.

John M. Julian, direct.

Q Where did you go next? A Went out on the north side of the storehouses and met Mr. Kane and Mr. Dickman.

Q And whereabouts did you meet them? A Well—

Q Whereabouts did you meet them; that is to say, with reference to the storehouse? A About on the approach of Store G.

Q Did you remain with them for any length of time? A I remained with Mr. Kane for a few moments after Mr. Dickman left and went around and said he was going to notify some of the tugboats and captains.

Q Where did Kane go? A Kane—I discussed the matter with Kane in regard to the time and took some data, and then started down in front of the storehouses and met Mr. Dickman again between the two top blocks of storehouses.

Q Did he again go with you at that time, or did you leave Kane? A Kane went with me.

Q How far did he go with you? A All the way down to Store R.

Q Well, was Kane with you at the time of the explosion? A He was.

Q Did Mr. Dickman go along with you? A He did.

Q How did you get to Store R? That is to say, did you walk along the roadway or along the tracks? A We walked along the—Kane and I walked along the front of the middle block of stores and met Dickman and then crossed over to the roadway and went down the roadway.

Q At that time was there any noise of exploding shells? A Quite a few.

Q When you first got there shortly after 1 o'clock was there any noise of exploding shells there then? A Yes.

Q Could you see them as well as hear them? A You could.

Q Did you meet anyone else on the way down to Store R? A Around about the neighborhood of Store R we met Mr. Leyden, the chief of police.

Q Did he remain with you or did he go somewhere else? A He remained with us until a couple of minutes before the explosion.

Q Now, where did he go when he left you a couple of minutes before? A The last I saw of Mr. Leyden before the first explosion was when he swung on one of the cars, going across the switches by the gravity tank.

Q By that time the crew was engaged in taking out some cars? A At that time the train crew were engaged in removing cars.

Q Whereabouts in the yard were you when you first observed any flames or fire? A As I was coming over—I think they call it Caven Point avenue.

Q Where did the fire appear to be from that point? A It appeared to be up there in the neighborhood of the North Pier.

Q You could not exactly say from that distance? A No; I couldn't tell from that.

Q Well, when you got down opposite Store R, with Mr. Dickman, was there any fire among the cars at that time? A Well, it seemed to be among the cars at the extreme end of the yard, towards the North Pier.

Q Where were you with reference to the 100,000 gallon tank at the time of the first explosion? A About directly north of the 100,000 gallon tank on the sea wall side.

Q Was Mr. Dickman with you? A He was.

Q Was anybody else? A Kane.

Q What did you observe about the explosion? I do not mean merely what you heard. We all know it was a big noise; but I mean in the way of eyesight. A One intense black flash seemed to come directly in front of us. We were facing the North Pier.

Q Are you able to form any judgment at all as to how close it was to where you were standing? A It was some distance from where I was standing.

Q And in which direction was it? A Directly east.

Q Well, that is the same direction as the North Pier? A Same direction as the North Pier; yes, sir.

Q Did you observe the location of the so-called crater the next day or at any time thereafter? A I did, that following morning.

Q Can you tell us where you stood that time of the first explosion with reference to the place where you afterwards observed the crater? A Very close to the edge of the crater, the west edge. I didn't measure the distance.

Q How do you fix the location? A By a telegraph pole, which was the last one to stand up; an electric light pole, which was the last one to stand up. There was a pile of ties against that pole.

Q The other poles were knocked down? A The poles beyond that, east of that, were knocked down; yes, sir.

Q Did you observe anything about a pile of railroad ties? A A pile of railroad ties—there was a pile of railroad ties that I was leaning on at the time of the explosion; had my hand on, stood directly behind it.

Q Did you see them the next day? A I did.

Q Were they still there? A They were still there.

Q About how close were you to the nearest point or the edge of the crater; that is, where you afterwards found the crater to be? A Well, that I would not say; I didn't measure it; I should judge it would be about thirty feet; I should judge in that neighborhood.

Q Well, what happened to you after the first explosion? A I was knocked down behind a pile of ties. I turned away from it—from the intense heat of the blast, and laid there possibly half a minute or so.

Q Where did this heat seem to come from? A It seemed to come from beyond—from the east, from the neighborhood of the North Pier.

Q Were you knocked unconscious? A No, sir; I was not.

Q What did you do immediately after? A I got up and felt for a flashlight which I had in my pocket, and that was missing.

Q Was it quite dark immediately after the explosion? A Intensely dark.

Q Did you observe any other phenomena in connection with the explosion outside of the noise and the heat and the flare? A Well, no, nothing out of the ordinary that would accompany an explosion.

Q Did anything strike you? A No; there was a little dirt and dust in the air.

Q Immediately after the first explosion did you make any observation as to what had happened to the warehouses? A I looked over towards the warehouses and it appeared to me—it appeared that the upper stories seemed to have been collapsed, or it looked like a part of a ruined building.

Q Which warehouses did you observe? A That was the last block of stores.

Q Those that are called on the map here M to R? A M to R; yes, sir.

Q And which way did the walls appear to be, outward or— A Well, that I could not say. They seemed to me jagged, the upper story.

Q Well, had some of them fallen? A Some of them had fallen; the upper stories had fallen.

Q Well, did you observe whether they had fallen outward? A That I could not say, whether they had fallen outward or not, at that time.

Q Well, did you afterwards notice? A Afterwards we noticed; yes, sir.

Q Why did you notice it afterwards—what did you notice about it afterwards? A Noticed that the wall had fallen outward; most of the walls had fallen outward.

Q They had fallen outwards? A Yes, yes.

Q When did you notice that? A That was the following morning.

Q Well, how could you tell whether they had fallen out rather than in? A Why, you could see the way some parts of the wall had fallen over towards the track and covering part of the track.

Q And did you observe whether anything had happened to that gravity tank near Store R? A The gravity tank was down, blown down.

Q And the superstructure on which the tank was erected, did you notice what happened to that? A Some parts of the wall were over the top part of the superstructure.

Q And the tank itself, what happened to that, if you noticed? A The tank itself had collapsed.

Q Where did you go after the first explosion? A I started down towards Pier 4 and came across a brakeman by the name of Walsh, who was on top of a car with a lantern when I last saw him.

Q What did you do? A Took him by the arm and asked him if he was hurt badly, and he was in too dazed a condition to answer. When I took him by the arm I walked him down by the grain elevator where I knew there was a patrol wagon with policemen who could give him assistance.

Q How far away was he from you? That is to say, how far did you have to walk before you found him? A Why, I walked possibly—I might say 75 feet west; maybe not that far, maybe a little further.

Q And you helped him down? A I helped him down to a place by the grain transfer elevator near Pier 4.

Q Had you seen that man at any time before the explosion? A Yes, sir.

Q Where was he when you saw him? A On top of a box car with a lantern.

Q When you picked him up where was he? A He was on the ground, walking—

Q Had you seen any of the other brakemen around there? A Yes, sir; I saw another conductor and train-

man, but I don't know who they were. They were right in the vicinity of the switches at that point.

Q How far were they from you? A Oh, I don't know; it may have been thirty or forty feet away.

Q What is that? A They may have been thirty or forty feet away.

Q What were they doing, if you observed? A Controlling the movements of the cars.

Q Well, after you had taken Walsh down to the police officer—they sent him to the hospital, I suppose? A They sent him to the hospital.

Q What did you do after that? A I was in the neighborhood of the grain transfer elevator when we observed some firemen running over towards Pier 4, and they said, "Lets get this man out from under a roof," and I watched them a few moments, and shortly after that the second explosion took place.

Q Now, up to the time of the first explosion had you seen anything of any Jersey City firemen around there? A Just prior to the first explosion I saw one fireman.

Q And where was he? A He was on the sea wall side, possibly—he may have been 200 feet west from where I stood.

Q He was further away from the fire than you were? A Further away from the fire.

Q The only one? A The only one I saw.

Q What was he doing? A He had a nozzle in his hand and was ducking every little explosion that happened.

Q Well, the shells were going off? A The shells were going off, certainly.

Q Shooting, apparently? A Well, they were going up in the air; every one that would go he would duck.

Q I suppose you ducked, too, didn't you? A Well, we kept getting in as close as we could to it. They were going over our heads.

Q Well, when you proceeded in towards the land, immediately after the first explosion, did you see any firemen then? A I saw some of them down around the—I think it was the approach to Pier 4, in that vicinity.

Q And whereabouts were they with reference to the roadway? Give us an indication so we can mark it on the map. A They were in the roadway.

Q In the roadway? A Yes, sir.

Q About opposite Pier 4? A About opposite Pier 4. Well, there was some apparatus in there, stood between Pier 4 and the grain transfer elevator, fire apparatus, Jersey City Fire Department.

Q Now, where were you when the second explosion occurred? A Directly opposite the grain transfer elevator.

Q That is further west? A Further west; yes, sir.

Q Now, these firemen that you saw on your way down towards the grain transfer elevator, between the two explosions, did they have any hose out? A Not that I saw.

Q What were they doing? A Well, they all seemed to be in a state of chaos, or a state of panic, as far as I observed.

Q Well, were they putting any water on the fire? A I didn't see it.

Q Or trying to, apparently? A I didn't see it.

Q And after you got your man Walsh down to the grain transfer elevator and he was taken away, I understand, to the hospital— A I didn't wait to see—

Q —what did you then do? A I was at the grain transfer elevator at the time of the second explosion.

Q And where did that seem to come from? A That seemed to come from the vicinity of the yard proper, and more to the right of the first explosion as I stood facing it, seemed to take in a greater area.

Q Was there anything that you could see in connection with that explosion—anything that you could see as distinguished from hearing? A Well, it seemed to go up in the air, more of a sunburst, and took in a greater area than the first. The first seemed to be more—

Q Well, was there a flame or flare or any heat? A There was a certain amount of light, but more of smoke, clouds rolled one after the other, rolled directly up in the air.

Q Did that have any effect on you? A No, sir.

Q What was the next step that you took? A Went over to try and telephone, to telephone my superiors about the trouble, and I couldn't get any telephone connections.

Q Did you say anything to any of the firemen as you were proceeding along the roadway? A No, sir; not as I remember.

Q Did you hear them say anything? A Not at that time. The only one I heard say anything were the men who said, "Let's get this man out from under the roof," as they ran over towards Pier 4, in that vicinity.

Q Did you after that hear anything said by any of the men—I mean particularly with regard to the shells or the popping? A Not after that. Before the explosion I did.

Q Well, what was that? A That was the man I told you I saw down about 200 feet back from where I stood, and he was the man who made the remark, "To hell with this. If I want to get shot I'll go to Mexico."

Q Now, had you had occasion at any time prior to this occasion, to this fire, to examine the appliances or the apparatus? A Yes, sir.

Q When was that? A I was down there on a certain inspection, it was only possibly a week or so before that, on some barrels at the float bridges containing pails.

Q Now, were you there later in the morning when the firemen did get some water on the blaze? A Yes.

Q Where did they get the water from? A They were taking it from the Corey hydrants.

Q Were the Corey hydrants fastened up to the company's supply or to the city supply? A They were fastened up to both; you could use either.

Q Was there any apparatus there by which water could be drawn from the bay? A Yes, sir.

Q What was that? A Fire pumps. There was also a Siamese connection where fire boats could hook on to it or pump boat.

Q Of course the fire engines, I suppose, could also get— A Fire engines could, yes.

Q I mean, aside from the fire engines or any apparatus that the Jersey City department brought; was there any way by which the company could secure water by pumping from the bay? A There was fire pump— fire pump at the oil yards.

Q Which pump was that? A That was a 15,000-gallon pump.

Q Where was that located? A That was located at the oil yards. That is not on the map. That was after the explosions that pump was available.

Q What was this pump that was located down here near the 100,000-gallon tank near R? A That was an electric pump.

Q What was that for? A That was for pumping into the 12-inch line supplying the Corey hydrants. I want to correct myself. I said 15,000-gallon pump, and I meant 1,500-gallon pump, in the other statement.

Q Are you familiar with the appliances and apparatus provided by the company for fire protection as used at that time? A Yes, sir.

Q You have examined this map, have you not, the one that is on the board? A Yes, sir.

Q In fact, I believe you helped prepare it? A I did.

Q And so far as the location of the different appliances— A Yes.

Q Now, I would like to ask you about certain specific matters that appear on the map generally, but I would like to have you describe them a little more in detail, and I will ask you first if you will state—

Mr. Stallman. Can't you—if I may interrupt—can't you take that long, detailed description of those things and offer it in evidence instead of—

Mr. Hobart. It is connected with a lot of other things.

Mr. Stallman. The Vice-Chancellor suggested to me a minute ago that there were no hydrants in the yard, that everything was shown very clearly on the map, and it would not be necessary to take up the time to describe them in detail, and I thought probably you might save a little time if you, instead of reading that great, big, long, 20 or 30-page description into the record, we might stipulate that.

Mr. Hobart. It is not quite as long as that.

The Court. Well, this may be like the League of Nations, it may have so many threads connected with the main thing that you cannot leave them out without destroying it. I cannot accept it.

Mr. Hobart. I think the suggestion of his, however, is an excellent one, and especially at this hour of the day, and if Mr. Stallman is agreeable, I am perfectly willing to have it understood that we may consider in evidence the description of the appliances as prepared by this witness, which contains a detailed description of the pumps, the hydrants, and the location thereof, and the fire extinguishers, and various other appliances—not 20 or 30 pages, but several pages. Is that agreeable?

Mr. Stallman. How many pages is it?

John M. Julian, cross.

Mr. Hobart. Page 4 to 19, inclusive, of this memorandum.

(Mr. Stallman examines paper.)

Mr. Hobart. Cross examine.

The Court. Have you marked that in evidence?

Mr. Collins. Only identified it.

Mr. Hobart. We are going to agree.

Mr. Stallman. We will agree in a minute.

Cross examination by Mr. Stallman.

Q Mr. Julian, have you any idea what time it was that you got word of this fire? A Why, it was shortly after 12 o'clock. Now, just the exact time I could not say.

Q Well, 12:10 or 12:15? A It may have been 12:10, may have been 12:20, 12:15, 12:20, somewhere in that neighborhood.

Q Now, if the fire alarm was turned in at 12:54 would that change your testimony as to when you got word of it? A Not at all.

Q How did you get this message? A By telephone—watchman Kane telephoned me.

Q Kane got you on the telephone about 10 minutes past 12? A Somewhere in that neighborhood; shortly after 12 o'clock.

Q Well, 15 minutes after 12? A Well, it may have been 15 minutes after 12.

Q All right; and he told you there was a fire? A Told me there was a fire on the explosive dock.

Q Is that all the information that you got from him? A I asked him what he had done and who he had notified, and he said that he had notified everybody that he was supposed to notify, and I asked him if he notified the fire department and he said yes.

Q Said that he had turned in the alarm before he talk to you? A He said that he had notified the fire department, yes.

Q How long did it take you to dress? A Well, that I don't know; only too a very few minutes.

Q All right. You walked all the way to Black Tom? A Yes, sir.

Q From what number on the boulevard? A 2129.

Q And just where is that? A That is located between Claremount and Grant avenue.

Q Do the numbers run south? A The numbers run north.

Q North? A Yes.

Q Well, do you live north of the Court House or south of the Court House—north of Montgomery street or Newark avenue or south of it? A South.

Q You live south? A Yes.

Mr. Collins. He said Claremount avenue, between Claremount and Grant avenues.

Q You live two or three miles, you say, from Black Tom? A I should judge about two and a half miles.

Mr. Collins. Two or three miles from here.

Q It was after 1 o'clock when you got there? A It was after 1 o'clock when I got there, yes.

Q Where did you meet Kane? A I met Kane just outside of the pumping station, on the approach, on the second block of stores.

Q On the approach to Pier 5? A To Pier G, Store G; as you go up to the platform side of the store—to the north side of the brick stores.

Q Then you went down behind the first block of stores, didn't you? A Went down in front, down the face; it is the north side.

Q Did Kane go with you, around with you, around the roadway in front of those stores over to the big tank? A Kane was with me that time, yes.

Q You are sure of that? A Kane and Mr. Dickman.

Q Were you here in court the other day when Mr. Kane testified? A No, sir; I was not.

Q And wherever you went during that first half hour after getting there Kane was with you? A If my memory is right, Mr. Kane was with me, yes.

Q Yes. Now, what was burning when you got there, as far as you could see? A As far as I could see, the cars seemed to be burning down around the North Pier.

Q And where were you when you arrived at that conclusion? Were you down here in front of the last block of stores? A I could see the flame, when I could see it plainest, I had crossed over, it was the sea wall side, almost opposite the gravity tank.

Q On the sea wall side? A North of the gravity tank.

Q And from there you concluded that the fire was over here somewhere? A It was in the neighborhood of the North Pier, yes.

Q Whereabout in the neighborhood of the North Pier? A Oh, might have been right at the approach of the North Pier. You could not see clearly, because the fire—

Q May have been over toward the sea wall track somewhere? A The fire had gained considerable headway, and due to the smoke and haze created by the fire, you could not definitely locate the exact spot of the fire.

Q From where you stood it might have been just as well over here on track 12 or 13? A Well, if they did they had two or three tracks consumed by that time across.

Q I say, from what you say, when you first made the observation of this fire, it might just as well have been over here on track 12 or 13? A It may have been there, too.

Q Yes. Then why did you say it was probably on the North Pier? A I said in the neighborhood of the North Pier.

Q You are not any surer that it was any nearer the float bridge No. 2 than you were that it was on the North Pier? A Not at all. The fire was of considerable area then.

Q How was the wind blowing that night? A There wasn't much wind of any kind blowing.

Q Did you notice the wind at all? A I did not, no.

Q And you went with Dickman, I understand, down to the southwest corner of Pier 7? A No, sir, I did not.

Q Did Kane go down there? A That I don't know.

Q Now, when this explosion occurred, the first explosion, you did not stand around there to see whether there was any crater left after that explosion, did you? A No, I did not stand around there.

Q You went away from there, too, didn't you? A I turned from there—for an instant—and got my bearings and turned back, and a few feet back I picked up this brakeman Walsh and I walked back and picked him up.

Q You went away somewhere? A I went away and picked him up.

Q Where were you when you stopped? A When I stopped with the brakeman?

Q Yes. A Down around the grain transfer elevator between there and Pier 4 on the roadway.

Q Yes. That is about— A He was unable to walk alone and I had to assist him.

Q That is about 3,000 feet from where the crater was, isn't it? A No, that isn't 3,000 feet, I don't think.

Q Now, when this first explosion occurred, Kane was with you? A He was.

Q And you know what happened to him? A I do not.

Q How far away from you was he at the time of the explosion, just a foot or two? A Well, he may have been three feet, an arm's length, stood right behind—Mr. Dickman stood beside me and Mr. Kane stood a little back.

John M. Julian, cross.

Q Wherever Mr. Kane was at the time this explosion happened you were with him? A Yes, I was with him.

Q Did you at the time this explosion occurred make an observation immediately as to how many telegraph poles had fallen down? A Immediately?

Q Yes. A No, sir; I did the following morning.

Q And so you went there the following morning and you went to the last pole that was standing up and assumed that is where you had been early in the morning? A About that. I said that was the last pole standing—that was the last pole that stood up after the explosion.

Q That is the way you could tell where you were? A No, no. That was the only pole with a pile of railway ties by it and opposite the gravity tank—the position of the gravity tank.

Q How far away from the gravity tank were you standing, in feet? A Well, it may have been 50 feet north on the sea wall side—as far as I could go on the sea wall side.

Q Were you on the sea wall track? A North of the sea wall track.

Q You think that is about 50 feet from the tank? A Well, I should say 50, maybe 75.

Q It is at least 125? A It may be. I am saying an offhand guess from what I remember of the distance.

Q Are all of the distances you are giving us in the same relation as 50 is to 125? A I am giving you approximate distances that I was from that tank at that time. I did not measure that one up.

Q Isn't it true, Mr. Julian, that when this explosion occurred, the first explosion, you were out in front of Store G? A No, sir, not to my recollection.

Q Did I understand you to say that when that explosion occurred you could feel the heat of the blast? A I could, yes, sir; what appeared to me to be the heat of the blast.

Q You felt a wave of heat come towards you? A I felt a wave of heat after the intense flash.

Q And that explosion was so severe that it shook you violently, didn't it? A It shook me and I turned around with my face down that way and held my ears, behind the railroad ties.

Q The second explosion had no such effect? A I was a considerable distance away.

Q It had no such effect on you? A No; it shook the air and I felt the earth tremble under me, but I was quite a distance away at that time.

Q Now, when you went down there and saw that there was no water being played upon this fire, did you initiate anything towards having the water put on the fire? A You couldn't get down to it then.

Q How close to it did you get? A As far as the gravity tank.

Q What is that? A As far as opposite the gravity tank.

Q Why didn't you go further? A Well, there was too many shells and things going, and Mr. Leyden, the chief of police, would not let us go any further.

Q Is that the reason that you did not have any water thrown on the fire, because Colonel Leyden wouldn't let you? A The fire department of Jersey City were arriving at the time, and the few men we had there, I didn't know where they were.

Q Did you observe any of the firemen of the Jersey City fire department around the roadway on Pier 5 trying to open these Corey three-way hydrants? A I did not.

Q Was it light or dark around there? A It was quite light from the light of the fire.

Q The fire was close enough so it illuminated all the tracks and roadway and everything of that kind? A It illuminated considerable area, yes.

Q It was so close as to illuminate it to the extent that you could easily recognize a face or a uniform 200 feet away? A Yes, it was.

Q That was all from burning cars, freight cars on fire? A May have been the contents of the cars—may have made the intense light, not the car itself.

Q There were no buildings, any high buildings on fire at that time? A No, sir.

Q How long before the first explosion was it that you got there? A Might have been 35 minutes or so.

Q Did you see any trainmen going down there near where this fire was and pulling the cars? A Trainmen were starting, just came down with their train and started to pull out cars.

Q They were pulling out cars? A Yes.

Q Those trainmen went right down where these shells were being fired off? A So did I.

Q What's that? A So did I; I was down with the trainmen.

Q Did you have anybody take a hose down there and start up this 125-pound pressure pump and throw any water toward the fire? A You couldn't get near the fire—near enough to get water on it.

Q Yes. Did you observe that any of these trainmen got close enough to the fire to uncouple burning cars? A No, sir; that I did not.

Q Now, was it any part of your duty or within your jurisdiction at all to see that any fire apparatus was used there that night? A Yes, it is the part of any employee that discovers a fire to use fire apparatus.

Q But you, as a fire marshal, were peculiarly charged with no such duty? A No, sir; I was charged with the duty of maintaining the equipment at that time in the New Yorw division.

Q You had nothing to do with the operating of such equipment? A Testing and operating was taken care of by the local agents, at my supervision sometimes.

John M. Julian, cross.

Q Had you anything to do with the installation of any of this fire equipment or recommendation for installation of fire equipment? A Minor recommendations, yes.

Q What is that? A Minor recommendations, yes.

Q Was it part of your duty as fire marshal to recommend the placing of fire hydrants at any point if you thought it was necessary? A If it was absolutely necessary, yes.

Q Did it occur to you in your visits around Black Tom that it might be desirable to place fire hydrants in the yard? A That yard was too congested, and besides we followed the general practice of every other yard; they did not have fire apparatus throughout any railroad yards between the tracks.

Mr. Stallman. I ask that that be stricken out as not responsive.

The Court. I will strike it out. It is not responsive to anything that was asked him.

(Question repeated.)

A No, sir.

Q Can you tell us, Mr. Julian, whether or not the general fire fighting apparatus that may have been available anywhere on Black Tom could have been used at the same time that the crews were switching cars in and out of tracks 13, 14 and 15? A That could have been brought down the lower section, yes.

Q Do you mean by that that the hose would have to be brought down through this open space down to the bulkhead and then around the bulkhead and back up this way? A Well, there was sufficient hose to bring it that far, if necessary.

Q It was not possible to deliver any water on these flames while they were drilling across the lead tracks, was it? A If there were men enough to entrench the tracks, yes, we could have brought it under the tracks.

Q Did you see anybody at all, employees of the Lehigh Valley Railroad Company or the National Storage Company making any effort to put out the fire by direct means? A Not when I arrived there; no, sir, I did not observe it.

Q From your knowledge of what equipment was there on the ground, Mr. Julian, how long would it have taken to attach a hose to one of those high pressure three-way Corey hydrants and stretch it to a point within 100 or 200 feet from the gravity tank? A That would depend on the number of men available to handle the hose.

Q How many men would it take to handle four or five hundred feet of hose? A It would take at least five to six men to handle a hose carriage with that amount of hose and handle the hose properly.

Q It would take at least five or six men to do that? A To stretch it out that distance, yes.

The Court. At this point I think we are going to adjourn until tomorrow at 10 o'clock.

(Adjourned to Thursday, June 26th, 1919, at 10 o'clock A. M.)

FIFTH DAY.

Jersey City, June 26, 1919.

TRIAL RESUMED.

JOHN M. JULIAN, resumes.

Mr. Hobart. With the permission of the Court, we are interrupting the cross examination by an understanding with Mr. Stallman, so that we may get in evidence a matter that was left open yesterday on the direct.

The Court. All right.

Mr. Hobart. This is direct, continued.

By Mr. Hobart.

Q Mr. Julian, I show you a memorandum which is in the form of a question at the top of the page and an answer below it and several other pages following, and the question is this: "Q State with particularity what fire fighting paraphernalia and apparatus of the defendant was on said Black Tom or National docks prior to the fire and explosion on the night of July 29-30, 1916, and give the location thereof." Was that question presented to you some time ago in connection with other litigation arising out of this explosion? A It was.

Q And did you at my request make a careful study and examination of each particular plant or apparatus that was in use on the day in question? A I did.

Q And are these pages which I now show you immediately following this question the result of such study and examination on your part? A Yes.

Q And is the answer that appears on these pages a correct answer to that question which I have read to you? A It is to the best of my knowledge and records and maps of the company.

Mr. Hobart. Now, to save time, instead of reading this rather lengthy answer, by an understanding with counsel I will offer it as an exhibit.

(Paper marked Exhibit D. 1.)

Cross examination by Mr. Stallman resumed.

Q Mr. Julian, yesterday afternoon I asked you this question: "From your knowledge of what equipment was there on the ground, how long would it have taken to attach a hose to one of those high pressure three-way Corey hydrants and stretch it to a point within one or two hundred feet from the gravity tank"—and by that I meant eastward from the gravity tank—and you said in

reply to that, that that would depend on the number of men available to handle the hose. Then I asked you how many men it would take to handle four or five hundred feet of hose, and you said that it would take at least five or six men to handle the hose carriage with that amount of hose and handle the hose properly. A Yes.

Q Now, I would like to go back to the first question, that if you had five or six men to handle the hose carriage, and so forth, how long would it have taken to attach the hose to one of those hydrants and stretch it to the point which I indicate? A Stretch it about 200 feet?

Q Easterly of the gravity tank? A Well, to assemble those men and stretch that hose out and connect it, it would possibly take five or ten minutes, possibly ten minutes, the time the men collected there to get that hose out and down there.

Q And that would take five or six men? A Yes, sir.

Q And if you had a lesser number of men it would have taken longer? A Naturally, it would have taken longer; yes.

Q Now, I notice in your description of the fire apparatus and from some of the testimony that has been given, that there is a water line that has been referred to as the city line? A Yes.

Q What is your understanding of what that line is? A The city line is a fresh water line supplied by the Jersey City water supply.

Q And that is a six-inch pipe? A A six-inch pipe; yes, sir.

Q And how long has that been there, to your knowledge? A Well, to my knowledge, it has been there about 15½ years, as far as I know.

Q And does your knowledge extend over that length of time? A Yes.

Q And what was that water ordinarily used for? A Originally that was used as a fire supply and a water supply to the boilers, and so forth, at the plant.

Q They use a great deal of water down there for boilers and operation of machinery and that sort of thing? A Well, there was, I think, three boilers fed from that line—three or four boilers fed from that line.

Q And outside of supplying water to boilers, was water used there for any other purpose? A For one or two portable cranes at different times, but not regularly.

Q But that water was generally used in the operations of the National Storage Company, was it not? A I believe it was. To what extent I could not explain, though.

Q And did that pipe line belong to the National Storage Company? A I believe it did.

Q I believe part of your work was maintenance, was it not, of these pipe lines? A No; that is plumber's work.

Q Well, was it under your jurisdiction? A If we found anything during our inspection that needed attention we immediately reported that, and it was taken care of.

Q And in that way did you maintain that six-inch line? A In that respect it was maintained from our standpoint of inspection.

Q Now, during these years were you employed by the National Storage Company or by the Lehigh Valley Railroad Company? A By the Lehigh Valley Railroad Company.

Q Did you do the work for the National Storage Company as well? A. Well, we did not do work directly for the National Storage Company.

Q Now, this description of apparatus, and so forth, which you have identified as Exhibit P. 1, includes generally, does it not, the hydrants and pipe lines which are shown on the map by red lines? A By red and green lines, I think.

Q Yes, and by the green lines which run in some places parallel to the red lines? A Yes, sir.

Q And you have described in this paper the hydrants and pipes in and around all of the various buildings

known as the new grain elevator, grain transfer elevator and Store 3 and the various piers and storehouses, and so forth? A Yes, sir.

Q And this description also includes pipe and hydrants and tanks, and so forth, in various buildings which are not shown on this map, does it not? I speak now with reference to buildings referred to as warehouses AA and BB. A That is on the other side of the oil yard; yes, sir; that is on the other side of what they call the oil yard.

Q You mean west of the oil yard? A It is east of the oil yard—north of the oil yard, I should have said.

Q North of the oil yard? A Yes; north of the oil yard.

Q And approximately what distance from the new grain elevator? A I might say that is twelve or thirteen hundred feet.

Q Yes, and you have also in this description set out a system of sprinklers in the interior of the storehouses, have you not? A Yes, sir.

Q And as fire marshal of the Lehigh Valley Railroad Company, did you have anything to do with the sprinkler system inside of the National Storage warehouses? A We did not maintain them; no, sir; we inspected them; that was all; the maintenance was taken care of by a man for that purpose.

Q Were they under your jurisdiction in any way? A They were in respect to inspections.

Q You also worked, then, for the National Storage Company in that respect? A Well, jointly; yes, sir.

Q Now, is it your idea, Mr. Julian, that these pipe lines and hydrants in and around these stores and piers and elevators and various buildings that are not shown on the map were put there for the protection of this property against any fire that might occur in the bulkhead yard? A It was there for the protection of the property in general.

Q Specifically, did they have anything to do with fire fighting in the bulkhead yard? A No; there was a supply of hose sufficient to take care of the bulkhead yard or any fire that might occur in the vicinity.

Mr. Stallman (to the stenographer). Will you read the first question I asked him.

(Stenographer repeats question as follows:)

"Q Now, is it your idea, Mr. Julian, that these pipe lines and hydrants in and around these stores and piers and elevators and various buildings that are not shown on the map were put there for the protection of this property against any fire that might occur in the bulkhead yard?"

A I can say yes to that.

Q And will you tell the jury how these hydrants down here on these piers and inside of these storehouses would have any effect on fire in the bulkhead yard? A The hydrants?

Q Yes. A Stretch hose from the furthermost hydrant.

Q By the furthermost hydrant you mean the hydrant in the vicinity of Store R? A Yes.

Q All this fire fighting apparatus in the storehouse and on the pier and in the buildings that are not shown on the map had nothing to do with fighting a fire in the yard, did it? A No; that took care of individual buildings.

Q And this long description of fire fighting facilities is a description of the equipment that was located in and about and for the protection of the buildings where they were located; isn't that so? A That was for the entire plant; yes, sir.

Q Now, you say that according to your inspection at or about the time of this fire, all of this equipment was in good condition? A Yes, to the best of my knowledge.

John M. Julian, re-direct.

Q But when you got there and after you got there you did not see any of it in use? A Only the pump working, and the pressure on the line.

Q And you did not see any water being thrown on the fire as the result of the pump being worked? A No, sir; I did not.

Q Is it a fact, Mr. Julian, that there are quite a number of hydrants and so forth—hydrants mentioned in this description, which are also not shown on this map—that is, located in territory which is not shown on the map? A I believe there is some specified in there as warehouse AA and BB.

Mr. Stallman. I believe that is all.

Re-direct examination by Mr. Hobart.

Q You said in reply to Mr. Stallman a moment ago that these appliances were for the protection of the entire plant? A Yes.

Q What did you mean by that? A The entire plant, that is, comprising buildings and cars and everything in the vicinity of Black Tom.

Q How about the piers? A The piers also. That is included in the plant.

Q Including Pier 7? A Including everything in that vicinity.

Q Including the North Pier? A The North Pier.

Q You spoke also of some hydrants that were in this description which you prepared, Exhibit D. 1, of appliances that were not shown on the map. Are all of the hydrants that are in the territory which the map covers—are they all included in that description? A They are.

Q And are they also all shown on the map? A They are all shown on the map.

Q Then when you referred to hydrants that did not appear on this map, what were you referring to? A

That is a section of the plant known as warehouse AA and BB; there are a few hydrants—

Q That is a section or a territory that does not appear on that map? A That does not appear on that map.

Q A little further to the west or the north? A A little further to the northwest.

Q Now, I want to clear up one other matter in regard to Mr. Kane. You already have told us that Kane was with you part of the time? A Yes, sir.

Q And went down with you, I think you said, to Store R, or near to Store R. Did he remain alongside of you or did he leave you at any time? A Well, I spoke to Kane about two minutes before the explosion. Beyond that I could not—

Q Do you know where he went after you spoke to him? A I do not; I turned to Mr. Dickman and was facing the fire, and at that time he was two or three feet behind me.

Q Do you know where he was at the instant of the explosion? A That I could not say, whether he was still there or not.

Q Now, with regard to the time when you received word about the fire, I would like to have you tell us a little more specifically about how long it took you to dress and about how long it took you to get over to the terminal from your house?

Mr. Stallman. I object to that on the ground it was covered thoroughly on the direct and cross examination yesterday.

The Court. I think I will sustain that. Nothing has been asked about on cross examination so as to require any redirect, as I see it.

Mr. Hobart. May I suggest, then, that it was a detail that was omitted? I want him to fix specifically the time.

The Court. That does not mean anything, but I will let you ask this question.

(Question repeated.)

A Well, that may have covered a period of 40 or 45 minutes.

Q Now, calling your attention to a question which was asked you by Mr. Stallman yesterday as to whether it had or had not occurred to you that it might be desirable to have fire hydrants in the yard, you said that did not occur to you. Why did it not occur to you? A Well, there was no railroad yard at that time that I ever knew of of ever having hydrants throughout a railroad yard. A railroad yard and especially a dead yard was considered a pretty safe factor.

Q Were you familiar with other yards? A Yes.

Q As they were at that time? A As they were at that time.

The Court. Will you read what he said about the dead yard?

(Answer repeated.)

Q Just what did you mean by the use of the word factor? A Well, I mean that that portion of any yard that was a dead yard was considered pretty safe.

Q And you might say a word further as to what was meant by dead yard. A Dead yard, where there was no operation at night whatever, no engines of any kind.

Q When you speak of that yard what part of the territory that is shown on this map have you in mind specifically? A That is the bulkhead yard.

Q Beginning at about what point? A Well, you can take the whole thing, include all the way from the oil yard over the entire property.

Q Well, but there were hydrants along there at various points near the storehouses? A Out on the roadway; yes, sir.

John M. Julian, re-cross.

Q Well, when you speak of the yard do you have in mind the entire section or only another—only a certain part? A I mean the bulkhead yard.

Q That is what I want to get at. Just what do you mean by the bulkhead yard? A The yard that extended beyond Store R, from Store R to the float bridges, and North Pier and South Pier.

Q And is that the portion of this testimony that you had in mind in answering Mr. Stallman's question as to fire hydrants? A I did.

Mr. Stallman. I object to that. I think counsel is leading now. The witness ought to know what is in his own mind without counsel telling him.

The Court. If that is the only objection, that it is leading, I think I will let it stand.

Mr. Hobart. That is all.

Re-cross examination by Mr. Stallman.

Q Do you remember my asking you this question yesterday afternoon, Mr. Julian: (Q) "Wherever Mr. Kane was at the time this explosion happened, you were with him?" (A) "Yes, I was with him." You testified that way, didn't you? A I did.

Q And you meant to tell the truth at that time, didn't you? A Yes, sir.

Q Now, Mr. Julian, do you remember telling me yesterday that you got this word of the fire there about 12:10 A. M.? A I did, yes.

Q And that it was after 1 o'clock when you got down there? A Yes, sir.

Q So that it was more than an hour that elapsed, wasn't it, from the time you first knew of the fire until you got down to Black Tom? A I said I figured it about 12:10 at that time.

Q It was more than an hour from the time you got word of the fire until you got down there, wasn't it? A Yes, sir; according to that.

Alexander Davidson, direct.

Mr. Stallman. That is all.

Mr. Hobart. That is all.

(Witness excused.)

ALEXANDER DAVIDSON, sworn.

Direct examination by Mr. Hobart.

Q At the time of this fire and explosion were you employed by the National Storage Company? A Yes.

Q And what was your position? A Superintendent.

Mr. Garrison. Keep your voice up, Mr. Davidson, I cannot hear you.

A Superintendent.

Q Where were you on the night when it happened? A Home.

Q When did you first know about it? A 12:55.

Q In the morning? A 12:55.

Q How did you get word? A From the American District Telegraph over the telephone.

Q What did you do when you first received the message? A He told me it was none of my business, that particular fire. I said I would call up the watchman. The watchman answered me that he would let me know where it was. He gave me an answer about fifteen or twenty minutes afterwards and I came down.

Q Did you get some further order? A Yes, sir.

Q And what did you do when you got the further order about it? A Started out for the National Storage Company.

Q Do you remember what time it was that you left your house? A No; I do not. I was near Ocean avenue when the first explosion went off.

Q Was it before or after the first explosion that you left? A Before the first explosion.

Q Where were you when the first explosion happened? A On Fulton avenue near Ocean.

Q How far from the Black Tom Terminal? A As a straight line—probably a mile and a half—straight line; but more to walk that distance.

Q Did you see anything in the way of a flame or light before the sound of the explosion? A Yes, sir.

Q What did you see? A Three great big balls of fire, went high in the heavens.

Q Were did they appear to you to come from? A Off to the left; I could see the left of the street where I was standing.

Q Won't you speak a little louder? A Fulton avenue runs east and west. You see?

Q Yes. You knew of the location, of course, of the warehouses and piers? A Yes.

Q —in that vicinity? Where did these balls of fire appear to you to be with reference to the warehouses or piers? A They appeared to be to the left, where I stood.

Q About how far to the left? A I couldn't tell that; I just got a general line; I looked over the Eagle Oil Works, you know; that is the way I judge.

Q Well, did they appear to you to be from—

Mr. Stallman. Do not lead.

The Court. You mean do not start to lead.

Mr. Hobart. I will begin over again.

Mr. Stallman. There is no use objecting to a leading question after it is out.

Mr. Garrison. That is the trouble I found with you, Mr. Stallman.

Q You, of course, know where the bay is? A Yes.

Q Can you tell us where this flame of fire appeared to be with reference to the bay? A Well, I could not tell very well from the distance where I stood about that.

Q Could you give us any estimate as to where it was with reference to the North Pier? A No, I could not; too far away.

Q Will you describe this flame a little more particularly as to how it looked, whether it was dirty or clear or otherwise? A It was clear as the sun; everything was clear and bright; three big balls of fire, one big central light and then two side—alongside of it, smaller.

Q Was there any dirt in it, and could you see it? A Not a sign of it; it was as clear as—

Q Was there any noise? A Immediately after there was considerable noise.

Q Where were you when the second explosion occurred? A Outside the—in the Claremont yard outside the bridge that crosses over there.

Q And how far was that from the terminal? A From —I would say within—almost within the terminal, but a good distance away from the pier. You see?

Q Well, now, was there any appearance of any kind in connection with the second explosion in the way of flare or flame, or glare or anything else? A No; there was an awful lot of dirt thrown up in that explosion.

Q Well, did you see that before the explosion or at the time of the explosion? A I was so close to it, that the noise and the explosion were practically one. See?

Q Where did that appear to you to come from? A Well, coming straight down the line, you know; I couldn't tell the exact distance I was from it; but I knew it was down that line because I could see straight down the line, or nearly straight down the line.

Q When you say straight down the line, won't you explain further what you mean? A Yes; there is a curve there under the bridge and I walked to the right of a straight line to the North Pier—to the right. See? I could not—a straight line; I could not get a straight line if I was very close to it; had a good idea—

Q Was there any difference in the sound of the two big explosions? A Yes.

Q Can you describe— A The first explosion was sharp, quick, awful powerful, and the other was—Mum! A lift.

Q Were there any sounds in between the first and second explosions that you heard? A Oh, yes, lots of little shells going off.

Q At the time of the second explosion—you have already said there was some dirt—was there much or little apparently? A I don't hear you.

Q Was there much or little dirt with the second explosion? A Oh, seemed to be thousands of tons of it in the air.

Q What time did you go down to the warehouses? A Well, judging from—from the second explosion that I knew happened at 2:35, I was probably down there around 2:45; that is the only way I had of judging it.

Q Well, how do you fix the time of the second explosion? A I heard it so often that I know the time.

Q I mean you didn't look at your watch yourself, did you? A No.

Q And you got there about ten minutes after the second explosion; is that it? A Just about; yes.

Q Now, where did you go? A Down to Pier 5.

Q Did you go out on the pier or remain— A No.

Q —in the roadway or what? A In the roadway.

Q Did you at that time see any of the effects of the explosion with particular reference to the warehouses? A Yes.

Q What did you observe at that time? A The walls in some places were clean burst out from top to bottom.

Q Well, which way had the walls fallen? A Out towards the railroad track.

Q Did you observe which walls they were? A That impressed by memory, was there was raw sugar in there; I could see the raw sugar inside of the buildings.

Q You could see what? A I knew the buildings had contained raw sugar; that showed me the bags where the walls were torn away.

Q Well, were they the walls towards the roadway or the walls towards the side or back? A The walls towards the roadway.

Q How about the walls on the side? A Well, there was a part of that wall at Store F out; not all; a part of it; and that was towards the pump room.

Q Now, those were storehouses near the head of Pier 5, weren't they? A Yes.

Q Now, did you either at that time or some time shortly thereafter notice anything about the walls of any of the other warehouses? A Well, at that particular time I saw one of the walls—I wasn't sure which store it was—down below, Store O—there was a part of that torn out somewhere near the top, two or three stories.

Q Was that on the side near the roadway? A Yes.

Q Did you observe anything about the 100,000 gallon gravity tank? A Not then; I didn't see that far.

Q Well, did you afterwards see it? A Yes.

Q When? A Monday, I believe; yes, Monday.

Q You mean the Monday following this Sunday morning? A Yes.

Q And how was the tank when you saw it? A The tank was down; the tank was straight down, where it had been standing; the tank itself come straight down, and the structure was over on the wall of Store Q.

Q What do you mean by the structure? A The supports; the struts that keep the water in the tank up.

Q What was that made of? A Steel.

Q And which way had that fallen as you saw it? A It had not fallen at all; it had been lifted, and it was thrown clean over on the top of this wall; laid on top.

Q And which wall was that? A Wall of Store Q, east wall of Store Q.

Q Now, referring to the wall of Store Q, when did you see that? A On that day, Monday, I believe; Monday afternoon.

Q Now, which way had that wall fallen? A That is the wall I am speaking of, Store Q.

Q Well, had that fallen in or out? A Fallen out, east.

Q Then, when you speak of east, which direction do you mean? A Towards the Statue of Liberty.

Q What?

Mr. Garrison. Towards the Statue of Liberty.

Q Well, would that be in the direction of the North Pier? A Yes, in the direction of the North Pier.

Q How could you know or how could you tell that that wall had fallen outward? A Because it laid—after I looked at it there, it laid in that condition months; I could look at it leisurely every day if I wanted to.

Q Well, what was there about it by which you were able to tell it had fallen out rather than in? A Well, the wall I had to dig out afterwards of Store R, and I had to go through that three feet of masonry, and I knew it very well; it had broken clear almost off the foundation, clean over.

Q Well, did you see any contents of that store? A Of Store Q?

Q Yes. A No, almost entirely burned up.

Q Now, how about Store R? What about the wall of that? A Well, Store R, that was only a twelve-inch wall, one story high; that was entirely covered up.

Q Well, could you tell whether that had fallen— A No; that was covered up entirely. You see, Store Q wall covering Store R.

Q Well, Q had a larger wall, higher wall, hadn't it? A Q was six stories high.

Q Will you tell us a little more particularly whether you observed the structure of the tank? I do not mean the tank itself, but these steel supports you have told us

about, the tower—where did you observe that to be with reference to Store R or Store Q? A Well, the end of the structure—the furthest end from the base was probably about fifteen or twenty feet inside of Store R, but on top of the wall.

Q On top of wall what? A Inside of Store R—you see, when Store R shows on the map there—the end of the structure was probably from fifteen to twenty feet inside of that store.

Q Well, in which direction? A West; west from the tank.

Q Was any part of it over the place where Store Q had been? A No, but it was over Store Q wall.

Q Now, which part of the walls of Store Q had fallen when you saw them? A East wall.

Q The east wall; that is the one towards the North Pier? A Yes.

Q How about the front wall or the north wall? A Well, that was down. See?

Q Well, could you tell whether that had fallen out or in? A Fallen north, out.

Q Fallen outwards? A The masonry was all over the track, great humps.

Q And how did the other walls—how about the other walls of Store Q, the south wall and the west wall? A The south wall was standing. We had to take it down.

Q And how about the west wall? A The west wall had to be taken down.

Q So the only two walls that fell were the walls on the east and on the north of Store Q; is that right? A Yes. Of course, there were parts of this west wall, too, you know, down there. See? It stood up about four or five stories, and the other one stood about five.

Q Did any of the walls of Q fall over on the Warehouse R? When they fell did they fall on top of Warehouse R? A Yes, fell on Warehouse R and out on the railroad track.

Q Which railroad track did they fall on? A On that track that goes around to Pier 7; there is a single track goes around there.

Q Then this structure of the tank, in turn, was on top of the walls after they had fallen in the place they had fallen; is that it? A Yes.

Cross examination by Mr. Stallman.

Q Mr. Davidson, when you saw these three balls of fire go up in the air did they all go up simultaneously? A Yes, sir—one was about—big in the center and the small ones on each of the sides.

Q But you only heard one report? A One report, yes.

Q Now, the time you observed that you were several miles, of course, from the storehouses, weren't you? A I was about—I should say a mile and half in a straight line.

Q Up in Jersey City? A Yes.

Q You could not see the storehouses? A Well, you can see the storehouses very easily from Jersey City if there is any light.

Q But this was in the middle of the night? A Well, it was lighter than day at that particular time.

Q Could you actually see the storehouses? A You could if I had looked for the storehouses, but I didn't look.

Q What I asked you, did you really see the storehouses? A No, I didn't look for them at all; I was only interested in what was going to happen after that thing.

Q Now, you say that at the time of the second explosion you were in the Claremont yard? A Yes.

Q You were not standing at the place where you looked straight down the bulkhead yard, were you? A No, I was to the right of it.

Q And in order to get to a point where you could look right down to the bulkhead yard you would have to go

down the tracks and around a curve, wouldn't you? A I didn't follow that.

(Question repeated by stenographer.)

A Go straight left; go straight left, you see, down.

Q You would have to go down to a corner? A No; just go straight left, no corner; the tracks take a turn, and instead of going down the tracks, go straight left for probably two hundred feet, maybe one hundred and fifty.

Q You could not see what was going on down the bulkhead yard from where you were standing? A No.

Q You could see flame, glare of fire? A No, no; I saw all that explosion very handy, because that threw stuff all over the buildings and everything else; I could see all clear.

Q You saw something go up in the air? A Yes.

Q But you couldn't place the point? A No, no; no, no,

Q Now, isn't it a fact, Mr. Davidson, that when you got down there or when you made your first observation that practically the whole block of Stores Q, P, O and N were badly damaged? A You mean what I got down there?

Q Yes. A The first time?

Q Yes. A Oh, sure. I couldn't see Q at all by the time I got down there.

Q Yes, but wasn't Store H damaged, at the upper part of it? A Store O was the one I think I remember being damaged—O, not N.

Q What was the matter with O? A The walls seemed to be on the back side, the platform side there.

Q And how about the roof of that building? A Oh, I couldn't see the roof, it was on fire.

Q The roof was already on fire? A Yes.

Q How about the walls of Store N? A That was on fire, too.

Q Now, do you understand that the last store, Store R, is only a one-story building? A Yes.

Q About ten or twelve feet high? A Probably about twelve feet high on one side and about fourteen feet on the other, I should say from memory.

Q Which is the higher side, the rear end? A The side nearest to Store Q.

Q You mean the roof slopes up towards Q; it has a slanting roof? A Yes.

Q And Store Q was a five-story building? A Six.

Q Six? A Yes.

Q So Q was the last, then of the large stores? A Yes.

Q And it was the wall of Q, then, that is visible from the point near the float bridges or the North Pier? A How is that?

Q It is the wall of Store Q that is visible from a point near the float bridges or North Pier? A Exactly; yes.

Q Now, this tank, the hundred thousand gallon tank, was on a tower how high? A I never knew the exact height. It must have been around a hundred feet.

Q Did that tower fall in a westerly direction so as to strike Store Q? A Yes, yes; not the tank.

Q The tower? A The tower, yes.

Q So the top of the tower was laying over on Q? A Yes, that is it. No, half a minute. That is wrong. The top of the tower was laying over on Store Q wall, not on Q. Q is a specific piece of ground, the wall was over on Store R.

Q Well, let me put it this way, then, Mr. Davidson: Was the top of this tower laying over near where the roof of Q was when Q was standing? A No, it was not.

Q Well, where was the top of the tower then with reference to the location of Store Q? A You see Store R down there, don't you?

Q Yes. A The roof of it was down within—or the top of this was within ten or twelve or fifteen feet of this end of Store R and in Store R.

Mr. Garrison. You mean the east end?

The Witness. The south end

Q Did the tower, when you saw it, still have its normal shape? A It was all twisted to the dickens.

Q All twisted? A Yes.

Q Well, was that still about a hundred feet long when you saw it that morning? A Yes, it was about that original length.

Q Now, did it lay over on its side? A Sure, sure. No matter which way it lay it would be on its side.

Q All right. Where was the base of it laying? A Back across that railroad track there.

Q Well, the railroad track behind the foundation? A No, the railroad track that runs in this side of Store R, back behind the pump house.

Q Come down here a minute, Mr. Davidson, and show us.

(Witness goes to the map.)

Q Take my pencil and lay it on that map in the manner in which the tower was laying there when you saw it.

(Witness complies.)

Q Just about here (laying pencil on the map)? A Little further, I would say.

Q Extending— A That is the end around here and the other end here.

(Mr. Stallman marks on the map.)

Q Now, the tower then was laying in the position of this line that I have made with the red pencil? A Sure.

Q Now, which end is the space and which end is the top? A This is the upper end.

Q This is the top of the tower—

Mr. Garrison. This won't mean anything on the minutes.

Mr. Stallman. I am getting it down.

Q The top of the tower was laying toward the south end of Store R and the base of the tower is the end nearer toward the tank foundation? A Little bit too high up.

Q Just a minute. This map was made on a scale of twenty-five feet to the inch? A Twenty-five to the inch?

Q And if the tower is a hundred feet long, you would have to show a line approximately four inches long? A Oh, I don't know anything about that. I am giving the position here, you see. This is about, say, fifteen or twenty feet from the end of this building, the end of this tower, fifteen or twenty feet from here, as it lay.

Q Indicating fifteen or twenty feet from the south wall of Store R in a northerly direction? A That is it; from the corner.

Q Now, Mr. Davidson, what I want to know is whether or not the red line we have put on the map indicates approximately the location and position of the tower after it had fallen? A Only it is a little too far north; not so long.

(Mr. Stallman marks on map.)

A That is it.

Q Now, the red line then extending from near the tank foundation to the rear of Store R represents approximately the location of the tower after it had fallen? A Yes.

Q Isn't that right? A Yes.

Q And the end toward the rear of Store R would represent the top of the tower, and the end nearer the foundation the base of the tower? A Yes.

Q That will be all, I guess.

Re-direct examination by Mr. Hobart.

Q And when you have been speaking of the tower all this time are you referring to the steel girders or what-

ever they were on which the tank itself rested? A Yes, sir.

Q The tank is a big barrel, I suppose, isn't it; barrel-shaped? A Yes, big steel tank; a circular tank.

Q Is it round? A Yes.

Q And where was that, or what was left of it? A Down, inside the base of where the structure was.

Q So that, apparently, had fallen almost straight down? A Straight down.

Q You have already told us that the wall of Q had fallen outward. Now, will you just point out on the map where the wall of Q was? A This is Q wall here.

Q You are indicating now the easterly wall of Q? A Yes, sir.

Q Where did you find that? A Right over here, especially this section of this wall.

Q You are indicating directly over the location of Store R? A Directly over the location of Store R.

Q And the southerly half of Store R? A Yes, the southerly half.

Q And was the tank or tower on top of that wall? A Yes, right on top of it. So much so that we cut it up for junk and sold it before we moved the wall; we dug the wall.

Q Now, you have indicated the position of the easterly wall of Q; now, will you also show us the position of the northerly wall of Q? A Yes, sir; over these tracks.

Q When the wall was over these tracks— A There is the platform and here is the tracks. The wall was about as far as this track.

Q As far as— A It had fallen down in a heap. This wall had not fallen out the same.

Q It had fallen down in a heap and had gone out as far as the track on which a scale is located; is that it? A Yes.

Q The scale tracks, sometimes so-called? A The scale track?

Walter S. Washington, direct.

Q Well, at any rate, you know where the platform is. The platform was right in front of the warehouses; right in front of that was another track, wasn't it? A Yes.

Q Which is that? A Right there.

Q Opposite Q? A Yes.

Q And beyond that again to the north was a second track? A Yes.

Q Now, this you have just indicated to us was this second track? A Yes, sir; the wall was right there.

Q All right.

WALTER S. WASHINGTON, sworn.

Direct examination by Mr. Hobart.

Q Doctor, you are a practicing physician and surgeon in the City of Newark? A I am.

Q And have had considerable experience in that capacity for a great many years? A I have.

Q How many?

Mr. Stallman. Dr. Washington's qualifications are admitted.

Q All right. We won't take any further time on that. Doctor, did you, on the 26th of May, at my request and with the consent of Mr. Stallman, examine the gentleman by the name of Ira W. Allen, one of the plaintiffs in these several actions? A I did.

Q Where did you examine him? A At the office of Mr. Stallman in Newark.

Q Was your attention directed to any particular claims that were made as to personal injuries sustained by him in this Black Tom explosion? A There was.

Q Did you make any special examination with regard to the right leg? A I did.

Q What examination did you make and what did you find? A I found that he had had an old fracture of the shin bone when he was five years of age which left some

deformity and some scars. I was unable to find from an examination at that time any evidence of fracture of the small bone. That would have to be determined by the X-ray. I could not make it out from any physical examination that I could make. There was also quite a large patch of discoloration extending from the ankle about six inches up the leg and around to the inside. Those were all of the things to be found about the right leg.

Q Was there any apparent disability in the right leg? A Not so far as I could determine from any examination.

Q Did you examine both the bones of the right leg? A I did.

Q Both the tibia and the fibula? A And the fibula, yes.

Mr. Garrison. Just show now for our benefit.

Q Will you tell us which is which? A The tibia is ordinarily spoken of as the shin bone. It is the large bone on the front of the leg, extending from the knee to the ankle. The fibula is the small bone which is on the outer side of the leg, and during all of the upper part of its course it is so covered by thick muscles that it is quite impossible to feel it. You can feel the head at the knee joint and you can feel the lower end at the ankle joint, but through a large part of its course you cannot feel it at all.

Q Could you tell from your examination whether the tibia had been broken at any time within the past two and a half years or three years? A It had not. It was an old fracture that I saw.

Q And with regard to the fibula, was there any indication of a fracture there? A No, there was none that I could determine. It was not at any location or any part that could be felt—or if there had been a fracture at those parts it was so completely united that it left no deformity whatever.

Walter S. Washington, cross.

Q Now, did you make any examination of the right arm and shoulder? A Yes; he had about twenty scars on the skin of the right arm, which were superficial and which were not attached to any of the deeper structures, but moved freely over the muscles. There were a large number of scars from one to two inches long—these twenty were. He also had a number of scars on the right side of his face and his chin. There were also about half a dozen scars over the right collar bone near the inner end. All of these scars were superficial. I mean by that that they involved nothing below the skin, because they were not adherent and the skin of the scar moved quite freely over the soft parts, so that I did not consider that they were in any way disabilities in their form.

Q Was there any disability that you found in the right arm or the right shoulder or the right collar bone? A There was nothing that I could determine then. He could move the right arm in every direction, both over his head and behind his back and across his chest, without any indication of disability or without any evidence of limitation of motion.

Q Going back to the tibia for a moment, are you able to state with any degree of positiveness whether or not this man had suffered a broken tibia as recently as July, 1916? A Oh, it was not a recent injury; it was an old one.

Q Then he had not suffered any such injury recently? A No, he had not. There was no evidence of it, and he told me himself that this injury had taken place when he was five years old. The only fracture that he complained to me of was the one of the fibula.

Cross examination by Mr. Stallman.

Q He did tell you that he had one of the bones in his leg broken? A Yes.

Q And you say from your examination that you could not tell whether that was so or not? A Yes.

Q In other words, the bone that he said was broken was so encased in the flesh of his leg that it did not enable you to make any diagnosis without an X-ray? A Yes.

Mr. Garrison. I object. Wait a minute. I want to object to this. They have produced a medical witness here who testified that this man had a broken tibia. Now, I do not see that what the injured man said to this man about what bone was broken can be material. They are suing us, as I understand it, for a broken tibia.

Mr. Stallman. I am cross examining the doctor on his own testimony.

The Court. The difficulty with your objection is that in response to Mr. Hobart's question, he testified that there was not a broken tibia, but that he had said there was a broken fibula, and that, of course, coming out on examination, I suppose the other side indubitably has a right to cross examine him on his knowledge of what he ascertained, to find out whether it was complained of or not.

Mr. Garrison. He is getting now what he did not find. He says he did not find anything.

The Court. They have a right to find the rest of the conversation if you brought out a part of it.

(Question and answer repeated.)

Q You saw some evidences of a fracture of the tibia? A Yes.

Q You could not tell from your examination how old that fracture was, could you? A I could not tell exactly, of course.

Q And this man was apparently sixty years of age, was he? A Yes.

Q And if he had a fracture fifty-five years ago, when he was a small child, it is not probably that he would be

suffering any disability from that fracture at this time? A No.

Q And if he was disabled and unable to walk on account of a fracture to either of the bones of his leg you would not attribute that to any condition arising from this very old fracture? A Do you mean at the time I saw him?

Q Yes. A Why, he was able to walk as well as you or I could. There was no disability in walking at that time.

Q Now, you say that you saw about twenty scars on his right arm and shoulder and some on his face and some on his chin and some on his collar bone. Did he have thirty or forty scars all told? A I think he must have had fully that. At least, he had over thirty. I counted twenty on his arm, and I saw quite a number—more than ten—I think there were six on the inner side of the collar bone, and there were probably that many more on his face. There were a large number of small scars appearing from one to two inches in length.

Q And from that number of scars and the location of them, wouldn't you say that they had caused him quite a good deal of pain at and after the time he received these injuries? A He would have pain at the time until they were healed and until the scars were formed.

Mr. Garrison. May I ask this witness a question?

Mr. Stallman. The rule is that only one counsel may examine.

Mr. Garrison. Do you want to keep the rule?

Mr. Stallman. We have been keeping it.

Mr. Garrison. Keep it. It is your privilege.

Mr. Stallman. Go ahead.

By Mr. Garrison.

Q How old did this man appear to you to be, Doctor? A I should judge he was about sixty.

Frederick Wiedeman, direct.

Q You should judge he was over forty-five in July, 1916? A I should think so.

Q Is the tibia spoken of among laymen as the shin bone? A Yes.

Q It is this heavy bone that runs down the front of the leg? A Yes.

Q No question about that? A Oh, none whatever.

Mr. Garrison. That is all.

Re-cross examination by Mr. Stallman.

Q You examined this man about three or four weeks ago, didn't you, Doctor? A Yes, May the 26th.

Q Of this year? A Of this year, yes.

FREDERICK WIEDEMAN, sworn.

Mr. Henn. This witness is called in the case of St. Paul's Church against the Lehigh Valley.

The Court. Very well.

Direct examination by Mr. Henn.

Q Mr. Wiedeman, what is your business? A Maker of stained glass windows.

Q How long have you been engaged in that calling? A About 27 years.

Q Located where? A I am located at the present time in Jamaica, New York.

Q Did you examine any of the windows in the church building of St. Paul's church on Hoboken avenue in Jersey City? A Yes.

Q And when did you examine them? A The first order to go there I had about one month after the explosion.

Q The Black Tom explosion you are referring to? A The explosion on July 30, 1917, if I remember right.

Mr. Garrison. 1916.

Q 1916? A 1916. Excuse me.

Q And what kind of windows are they, Mr. Wiedeman? A The windows which I was sent to examine was a window made in Innsbruck, Austria, by the Tyrolese Art Glass Company, and that is the only window which I examined.

Q What kind of a window would you particularly call it, a plain window? A No; this is an art glass window, including group figures.

Q Well, just describe in what condition you found that window when you examined it? A When I found the window the fragments of the windows were put in a box and part of the panels were still in the window.

Q So part of the glass had stayed in the window and part of it was lying about?

Mr. Garrison. It was in a box.

A I think I ought to describe that the stained glass windows in this case is composed of a number of windows, of a number of panels, which, joined together, give the whole aspect of the window; and some of the panels were all torn out and some of the panels—part of the panels were still in the window.

Q Did you repair the window, Mr. Wiedeman? A I repaired—was ordered to repair those windows that possibly could be joined together again, and so I have done.

Q From what; new glass or glass that you found about there? A The glass that was still there with such pieces as had to be made up to complete the picture.

Q Was there sufficient glass lying about or in such condition that it could all be put in the window again? A No, there was not.

Q And is the window incomplete now? A The window is not complete.

Q And what would it cost, Mr. Wiedeman, to finish the window in the condition it was prior to the explosion? A After careful examination and taking everything into

consideration, my bid to refinish that window would be $760.

Q Now, would that be completing it with the imported glass, or with the American glass? A That would be a replica of the imported window in American glass—not in American glass—in imported glass, but done in America—American workmanship.

(No cross examination.)

JOHN H. MAHLENBROCK, sworn.

Direct examination by Mr. Henn.

Q You are the treasurer of St. Paul's Evangelical Lutheran Church of Jersey City? A I was in 1916.

Q And still are? A No, sir.

Q You are not treasurer at the present time? A No, sir.

Q I show you two checks, one dated October 4, 1916, to the Tyrolese Art Glass Company for $99.26, and a check dated December 27th, 1916, to Martin Hackett & Sons for $200.23, signed by John H. Mahlenbrock, Treasurer, and ask you what those checks were given for? A For repairing the plain glass and the iron on the windows that were exploded by Tom.

Q Black Tom explosion? A Black Tom explosion.

(No cross examination.)

Mr. Garrison. Do you want to put those in evidence?

Mr. Henn. No.

Mr. Garrison. Just let them stay on the record as they are. We do not care.

Mr. Hobart. I offer in evidence for the defendant, a map entitled Hudson and East Rivers from West 67th Street to Blackwell's Island, New York, with a note at the bottom of it, U. S. C. & G. S.

Mr. Garrison. Coast and Geodetic Survey.

Mr. Hobart. Coast and Geodetic Survey map, and otherwise identified as published at Washington in April, 1917, by U. S. Coast & Geodetic Survey.

(Marked Exhibit D. 2).

Mr. Hobart. By consent I now read into the record the testimony of one Kenneth Owen, given in another proceeding, as follows:

"KENNETH OWEN, sworn.

Direct examination by Mr. Garrison.

Q What is your occupation? A Civil engineer.

Q Employed by whom? A At present I am employed by the Springfield Asphalt—formerly with the Lehigh Valley.

Q When were you last with the Lehigh Valley? A Up to October, 1917.

Q And from what time? A From April, 1914.

Q Did you make some soundings in the vicinity of the North Pier at the National Docks terminal? A Yes.

Q Do you remember when you made them? A In October, 1916.

Q Is this a blue-print of it (indicating)? A Yes.

Q What is the paper that I now hand you? A It is a map platted from the notes which I made at the time of taking the soundings.

Q Does the map show just where the soundings were taken? A Yes; the figures on the map give the location of the soundings.

Q That is of course true; but does it show whereabouts you took the soundings—whereabouts you were when you took the soundings? A I don't quite—

Q For instance, I will put my finger anywhere; there is one, 5.9. Now, how would anybody know

where it was that it was 5.9 deep? A You will notice a small mark in front of each figure; that gives the point at which those soundings were taken.

Q Point on what? A Point on this area covered by the map.

Q The map shows a long projection marked 'North Pier'; that is the North Pier of what? A North Pier at Black Tom.

Q And on the left-hand side of the map there is a straight line marked 'Bulkhead.' What is that the bulkhead of? A That is the bulkhead line established by the U. S. Government.

Q There are some finger-like looking things which are marked 'Transfer Bridge.' Are those what we have called the float bridges between the North and South Pier? A Yes.

Q Then all this that you did was taken north of the North Pier? A Yes.

Q What is your scale? A Fifty feet to the inch.

Q And anybody by measuring fifty feet to the inch from any point here can find out how far it was north of the North Pier? A Yes.

Q Does this correctly show what you found the soundings to be? A Yes.

Q As delineated on this map throughout everything shown on this map? A Throughout that area, yes.

Q Is this a blue print taken from that? A Yes, sir.

Mr. Skinner. Can you spare one of these?

Mr. Garrison. Yes.

Q Now, Mr. Owen, these figures that appear all over the face of the map indicate what? A Indicate the depth of the water.

Q In feet or inches? A In feet.

Q For instance, where it is 5.4, that is five feet and— A And four-tenths.

Q And four-tenths? A Yes.

Q And of course the little point in front does not mean a decimal point? A No; that is simply to indicate the point where the sounding was taken.

Q So when you want to find out where the sounding was taken you measured your point? A Yes.

Q And the figure there shows what the depth was at that point? A That is the depth below mesne low water.

Q When the U. S. Government Bureau takes soundings and puts them on its map what is their datum line—mesne low water, too? A It varies, but the datum which they use is generally given on the maps.

Mr. Hobart. This is lettered Exhibit D. 9. That is the large map that we were just referring to, now marked Exhibit D. 2.

Q Will you please look at Exhibit D. 9 and tell me what the datum line was as shown by that map? A Yes; it shows—there is a note on this map saying the soundings are expressed in feet and show the depth at mesne low water.

Q Then that is the same as on your map? A Yes.

Q Which you measured at the same time? A Yes—not exactly at the same time, but during the same—

Q I mean the same period of the tide. Of course I do not mean the same day; but the same period of the tide. If you took it at mesne low water and they took it at mesne low water they did take them at the same period of the tide? A They are not taken that way. They are taken at any time, but the

stage of the tide is noted at the time they are taken and the variation is given.

Q Then the two that we will call the assumed heights are identical? A Yes.

Q Between yours and the Government? A Yes.

Q And if there is a variation between yours and the Government map it would show an actual variation in the water? A Yes.

Q As disclosed by the soundings? A Yes.

Mr. Garrison. I offer this blue print in evidence.

Mr. Skinner. No objection.

By the Court.

Q How do you arrive at mesne low water? What is the tide that you deem to be the regular tide? A The mesne low water has been established by the Government through observations on the tide covering a number of years and they have established monuments. When soundings are taken we refer to those monuments to get an elevation from a Government monument and refer all the soundings from the surface of the water to that monument, taking the relation of the surface to the monument at the time you take the sounding.

Q Then it is a monumental figuring and not a figuring on the exact state of the tide? A It is not taken from the tide itself, no.

Cross examination by Mr. Skinner.

Q This map, Exhibit D. 12, shows a line called 'Bulkhead Line.' That is an imaginary line? A Yes, all imaginary except at the end of the Pier 7 at Black Tom, which is this point, this line along here, what is generally known as the end of Pier 7—in that case it is an actual fixed line of the bulkhead.

Q You mean that so much of this line as shows

solid running southerly, or at least to the bottom of the map, with the inscription 'Bulkhead Line,' is the real end of Pier 7? A Yes.

Q But from that point on towards the top of the map it is imaginary? A Imaginary, yes.

Q And of course you do not know how long the depths that you found on this day had been there, do you? A No; we can only take them as being of that time."

Mr. Hobart. I will offer the map referred to by the witness, identified by the description, "Plans showing soundings in the vicinity of the North Pier, National Docks terminal, Jersey City, October 11, 1910, office of Chief Engineer K. D. Owen," and ask that it be marked Exhibit D. 3.

(Marked Exhibit D. 3 in evidence.)

HARRY A. CAMPBELL, sworn.

Direct examination by Mr. Garrison.

Q Where do you reside, Mr. Campbell? A Woodhaven, Long Island.

Q What is your employment? A Inspector of Bureau of Explosives.

Q Who is the chief of that bureau? A Col. B. W. Dunn.

Q What is the Bureau of Explosives? A Bureau of Explosives is an organization charged with enforcing the regulations of the Interstate Commerce Commission affecting the handling of explosives.

Q And it is composed of about how many employees? A There are approximately 50.

Q How long have you been employed there? A Oh, ten years.

Q As an inspector? A Approximately four or five years as an inspector outside.

Q And you are still such inspector? A I am.

Q Did you have any instructions from the chief of your bureau in respect to inspecting the handling of explosives in New York harbor? A I did.

Q In June and July of 1916? A I did.

Q Substantially, what were those instructions? A I supervised in general the unloading of explosives from cars in and about the Harbor of New York, and the loading thereon onto lighters, to regulate its handling and to see that instructions were carried out.

Q In the course of this duty did you visit the railroad terminals around New York harbor? A I did.

Q Which ones did you visit? A The New Haven and Harlem, Oak Point; the Erie and the West Shore at Weehawken; the Jersey Central at Jersey City; the Lackawanna at Hoboken; the Lehigh Valley at Black Tom, and the Pennsylvania at South Amboy.

Q Were all of those railroads at that time receiving munitions of war at tide water? A They were.

Q And what was the purpose of your visiting the various railroad terminals? A To see that explosives were handled in a safe, careful and proper manner.

Q How did you find the method of handling these explosives at the Lehigh Valley terminal at Black Tom as compared with the other terminals of the other railroad companies in this vicinity? A Similar.

Q Around June and July of 1916, about how often were you down at the Black Tom terminal of the Lehigh Valley railroad? A As conditions would warrant, I would make my inspections, possibly twice or three times a week.

Q Now what lighterage company did you find towing munitions of war away from the Black Tom terminal during the period of June and July, 1916? A The Johnson Lighterage Company, the Ackermann Lighterage Company and the Moran Towing Company.

Q Who was present at Black Tom representing the Johnson Lighterage Company? A There was a Swede;

I think his name was Aleck; that is what he was known as.

Q You knew him as Aleck? A Yes.

Q You don't know his last name? A No.

Q Did you have similar conversations with the representatives of the different companies down there, different towing companies? A Yes; I went to all the various piers; I went to the same towing companies; they were the only licensed people to handle the stuff.

Q Now, I want to know—for instance, did you have a conversation with Aleck? A I did.

Q Concerning the Johnson barges? A Yes.

Q Did you have similar conversations with the representatives of the other towing companies? A I did.

Q Now, what conversation did you have with Aleck about the Johnson barges?

Mr. Stallman. I object to this.

The Court. I do not think I will permit that. You may have an objection entered on the record. That is the purest kind of hearsay, I think.

Mr. Garrison. Well, your Honor understands the point we hope to make, don't you?

The Court. Well, I will hear if there is anything that you can urge that will make it relevant testimony and not hearsay. I may not understand it.

Mr. Garrison. Well, it is relevant on the question, in my judgment.

The Court. You mean logically?

Mr. Garrison. I mean legally relevant, because we purpose showing that the Johnson 17 exploded about 200 yards north of the North Pier, and we wish to show she was not legally at this place, and had been warned that she was loaded; that she should not tie up to this wharf, but go to the Government anchorage; and that he so notified the people who were representing that barge there or those barges.

The Court. Well, that is a different situation than that of this question. This question as to what Aleck said to him.

Mr. Garrison. No, it is as to what he talked with Aleck. If you think it is not I will put it the other way.

Q What did you say to Aleck with regard to those?

Mr. Stallman. I object to it.

Mr. Garrison. You cannot object to it. I have withdrawn the other question at the Court's suggestion.

Q Did you ever say anything to Aleck, the man you say represented the Johnson barges, concerning the movement of the Johnson barges in respect of the Black Tom Terminal? Just say yes or no. A Yes, sir.

Q Now, what did you say to Aleck?

Mr. Stallman. I object to it.

The Court. I think I will sustain the objection to that, because I do not think it makes the remotest difference on earth what he said to Aleck. If it was illegal to be there, it was illegal to be there, and he hadn't any right to license or give him the privilege to be there. If this man was there illegally he was there illegally, and this man's talk would not make it legal. So I think I will rule it out.

Q Were there Government regulations in respect to anchorage areas for loaded munition barges at that time? A There were.

Q Was it part of your duty to warn people in respect of having loaded barges at other places than at those anchorages? A I agreed to do that—

Q Oh, answer that question. If it was not your duty, say it was not. A Well, it was and it was not. It was the duty of the Coast Guard to enforce that regu-

lation, but I agreed to assist him in that respect in a conference with their officials.

Q The Coast Guards are Government officials? A They are.

Q And you were acting for the Government? A I was.

Q Now, did you issue any warning of that character to Aleck, in charge of the Johnson barges? A I did.

Q Where was this anchorage area? A It was known as the Black Tom anchorage area.

Q Well, where was it? A It was southwest of Bedloe's Island.

Q How far from Black Tom terminal? A A mile and a half to two miles.

Mr. Garrison. I desire to offer in evidence the rules and regulations relating to the anchorage of vessels in the Port of New York, published June 15, 1911, under the auspices of the Department of Commerce and Labor, Bureau of Navigation, with the amendment or addenda or supplement appearing on a separate sheet of paper headed "Department of Commerce, Office of the Secretary," dated May 18, 1914.

Mr. Stallman. I object to it on the ground that it is irrelevant, immaterial and incompetent, because this action is not predicated upon any allegation that there was any explosion of a barge which caused this —or on a barge which caused this damage, and that there is no defense set up in the pleadings to that effect; and that any regulations that may have been issued by any department of the Government specifying where barges should lie does not in my opinion constitute any defense to this particular action, and these actions which we are now trying. They are utterly irrelevant and incompetent so far as I can discern anything that might be called competency.

The Court. Well, I do not see anything in any of the grounds you urge at all. It seems to me they are entirely without merit. The first ground is that this action is not founded upon an explosion on a barge. Of course, nobody had the remotest idea that it was. We all know that it is founded upon the notion that the explosion took place at Black Tom; but just precisely, that being the fact, what legal cogency it has in ruling out the fact of an explosion somewhere else which may have caused the damage—that for the life of me I cannot see. It has neither logical nor. legal cogency so far as I can see. For instance, if a man claimed in his suit that he was injured by a trolley car, manifestly it would be perfectly relevant for somebody to show that the injuries he received he got from being struck by a wagon in the same neighborhood where the trolley car was and at the same time, and that would furnish precisely the same feature and involve precisely the same result as you are trying to urge me is illegal here. Then you urge that they have not pleaded it. They have denied that this explosion was occasioned by anything that took place on Black Tom. Now, manifestly, they have a right, as relevant to that circumstance, to show that the explosion did not take place on Black Tom, but that it took place on a barge adjacent thereto; that the damages occasioned were occasioned by reason of the explosion from the barge and not by reason of the explosion on Black Tom.

On your last point, your notion was that if there had been regulations passed by any of the departments of the Government they were irrelevant to the controversy being tried here. It seems to me if there is anything relevant on earth it would be precisely that thing; because the law is perfectly settled that if between the negligent act complained of and the result that ensued there is a culpable, intervening,

responsible agency, that that constitutes break in the proximate cause that you are obliged to establish, that exists between the negligence you complain of and the negligence for which you seek to recover damages. Now, if any United States authority had promulgated regulations the object of which was to segregate any barges of explosives that might be on the water in New York Harbor and put them in a certain anchorage location, and the barge happened to be at Black Tom in violation of that regulation, that would constitute culpability on the part of the barge owner or person who had control of the barge and if that culpability intervened between any negligence that you may establish between the Lehigh Valley Railroad Company and the result of which you complain, manifestly the chain of causes would be broken and the defense would be made out.

Consequently, I see nothing in any of the points you urge, and for the reasons I have indicated I will overrule the objection.

Mr. Stallman. I ask an objection.

(Papers marked D. 4 and D. 4A in evidence.)

Q Did you happen to know, Mr. Campbell, by reason of your constant association with the subject matter, how many pounds of T N T there were in each of these cases that were being shipped abroad? A A 100 pounds net.

Q How many detonators, do you know, that were in each case of detonators that were being shipped abroad? A I don't recall exactly.

Q Will you give us--what is your nearest memory? A One hundred.

Cross examination by Mr. Stallman.

Q Mr. Campbell, you say you were down to Black Tom yard two or three times a week? A Yes, sir; I was.

Q Over what period? A From the time the munitions started.

Q And when was that? A Well, shortly after the war—I don't remember the exact date.

Q How long did you stay down there? A Until I was satisfied everything was going the way I wanted it to go.

Q You were particularly watching the transfer of explosives from cars to barges? A I was.

Q That was what you went down there to look at, wasn't it? A Certainly—I stayed there until the work was completed, however, on a couple of occasions.

Q What is that? A I stayed there until the work was completed on a couple of occasions.

Q And what munitions were being handled there during that period that you watched; watched them loading? A I saw 3.3 shrapnel, T N T, and combination fuses handled.

Q Anything else? A I saw dynamite handled on one occasion—not—well, previous to the time that I saw these explosives for export being handled.

Q How long before? A I don't know whether it was a month or six weeks.

Q Yes. Do you know how many cars of these explosives that you have mentioned were handled down off the North Pier, on the average, daily? A No, I do not.

Q Never paid any particular attention to that? A No; that was not in my duty.

Q Do you know what kind of explosives were handled in the New Haven yard prior to July 30, 1916? A There was picric acid, machine gun ammunition and wet gun-cotton.

Q And what kind of explosives were handled in the New York Central yard at that time? A New York Central yards?

Q Yes. A No New York Central handled explosives on the Harlem River.

Q New York Central did not carry explosives? A Not on the Harlem River branch.

Q Anywhere within your jurisdiction? A West Shore, yes.

Q And what kind of explosives did the West Shore handle? A They carried picric acid and detonating fuses. That is all I recall came over that.

Q What kind of explosives were handled in the Lackawanna yard? A 2.97 explosive projectiles, complete rounds.

Q From the Canadian Car and Foundry at Kingston? A Yes.

Q That is all? A That is all; yes, sir.

Q What kind of explosives were handled in the Erie yard? A They handled blasting caps, black powder and dynamite.

Q And that is all? A That is all I recall.

Q And what kind of explosives were handled at the Jersey Central yard? A Wet guncotton, all explosive projectiles of practically all sizes up to 12-inch.

Q Yes. A And—

Q When you say—

Mr. Garrison. Let him finish.

Had you finished?

A No—and picric acid, guncotton.

Q And when you say at all these terminals they were handled in the same way, do you mean they were all loaded into barges in the same manner? A High explosives is a general term defined by the federal regulations to cover—

Q I didn't ask you what high explosives were, Mr. Campbell. I asked you— A I have to explain to you that certain articles are classified as high explosives, even though they be a projectile or whether they be a blasting cap.

Q When you say they were handled similarly in all these yards did you mean that they were transferred from cars to barges in the same manner in each of these places?

A That is the only definition I could take from that answer.

Q Yes. Were you ever at the Claremont yard of the Black Tom—Black Tom general terminal? A I don't know what Claremont—

Q Of the Lehigh Valley? A Yes, yes; I have been in there.

Q When were you there prior to July 30, 1916? A I don't know.

Q Were you ever in any yard near tidewater of the Jersey Central excepting the one just north of Black Tom? A Yes, I have been in other yards of the Jersey Central.

Q Where? A Bayonne, Elizabethport, Bayway.

Q Are those places where they transfer explosives to barges? A They do not.

Q Have you any idea, Mr. Campbell, how many of these hundred pound boxes of T N T usually comprise a carload? A That would depend upon the size of your car.

Q Well, freight cars in 1916 were usually of about 80,000 pounds in capacity, were they not? A Well, that is 100,000 pounds, and there were also 60,000-pound cars in 1916.

Q They averaged about 80,000 pounds capacity? A Did they average that?

Q Yes. A Well, a hundred thousand-pound car would not average 80,000 pounds. You mean all the freight cars in the country bunched—

Q Cars handling T N T, 60,000 and the 80,000 and the 100,000— A Yes.

Q Have you any idea as to the average carload of T N T? A I have.

Q What is it? A Fifteen ton.

Q Was that the average amount of T N T that was unloaded in your presence from the North Pier onto the Moran barges? A There was sometimes several cars

unloaded in my presence; fifteen tons in each car, approximately.

Q Did you ever seen a car unloaded down at Black Tom containing fifty or sixty thousand pounds of T N T? A Not that I ever recall.

Q Did you have anything to do with instructing individual carriers at that time? A I did.

Q With reference to the issuance of special regulations under Sections 1401 and 1429 of the regulations of the I. C. C.? A I did.

Q That will be all.

CHARLES P. BEISTEILE, sworn.

Direct examination by Mr. Garrison.

Q Where do you live, Mr. Beisteile? A Freehold, New Jersey.

Q What is your occupation? A Chief chemist, Bureau of Explosives.

Q How long have you been chief chemist of the Bureau of Explosives? A Twelve years.

Q Prior to that what were you? A Chemist for the Ordnance Department, War Department.

Q War Department of the United States? A Yes.

Q How many years' experience have you had in the matter of explosives? A Eighteen years.

Q Had your experience been confined to one class of explosives, by which I mean to low explosives in contradistinction to high explosives? A No; I have had experience with all kinds.

Q What is the characteristic distinction between high explosives and low explosives? A The principal, the simplest distinction between a high explosive and a low explosive, is, a high explosive is set off by a blasting cap or detonater, and the low explosive, the explosion of it is merely caused by burning.

Q Yes. What is the composition of smokeless powder? A The ordinary smokeless powder, military smokeless powder, is composed principally of nitro-cellulose.

Q Nitro-cellulose is what they usually call guncotton, isn't it? A Guncotton is one particular grade of nitro-cellulose.

Q And wet nitro-cellulose is not explosive at all, is it?

Mr. Stallman. I object. I do not think you ought to lead him.

Mr. Garrison. I withdraw it.

Q Please tell us the characteristics of wet nitro-cellulose in respect to explosibility? A Wet nitro-cellulose can only be exploded by the use of a primer of dry nitro-cellulose.

Q In other words you have to have detonation? A Yes, sir.

Q Could wet nitro-cellulose, in your judgment as an expert, be exploded by heat—by heating, by burning? A No.

Q Why not? A Because when you heat it the outer layer of material—

Q What? A When you heat wet nitro-cellulose the outer layer of it, the very outside layer dries and burns just on the very outside layer, and of course the inside layer cannot get above the temperature of boiling water, which would be about 212 Fahrenheit. It just dries out and burns progressively.

Q Yes. So that scientifically it would not explode, but would merely combust? A Just burns very slowly.

Q What kind of a shell is it I am pointing to on the table? A Looks like a shrapnel.

Q What is the proper name for the brass part of it which forms about half of the entire article? A That is the cartridge case.

Q What is the proper name for what seems to be steel or iron which is fitted into the brass part? A That is the shell projectile.

Q What is the name of this little things in the end, this nose? A That is the fuse.

Q The fuse? A Yes.

Mr. Garrison. (Aside to Mr. Hobart.) I thought this was the one we had in court before.

Q Now, what is contained, when these shells are in the condition to be delivered to the artillery, what is contained in this brass part? A Smokeless powder.

Q What is contained in this iron or steel part? A The main portion of the content is just bullets, leaden bullets.

Q Sometimes called shrapnel? A Yes. Well, that is part of the shrapnel. The whole projectile is shrapnel.

Q Yes, I know they call it shrapnel shell. A Yes.

Q But as a matter of fact the thing which goes off and kills the soldiers is the little pieces of lead bullets that are in this iron part? A Yes.

Q What is usually in this nose or cap? A Well, there are two small primers—it is arranged so that the shock of firing from the projectile ignites one, that is, sets off one which ignites the train in the fuse, which is arranged so it burns varying times, according to the desire of the gunner, and there is another primer which explodes, which ignites on impact, that is, when it hits something, and if it hits anything before the time train has fired it, it will explode it when it strikes.

Q Now, then, where do you set the time? A Why, there is a ring on there.

Q On this nose? A Just below the nose, that is, right around there. You twist that around.

Q Around the circle of the base of this nose there is a lug, and you push that lug around to the time where you want it to go off? A Yes.

Q When that time is reached something, I suppose, hits this first little cap that is in there? A No, sir; the first little cap is hit when the projectile starts from the gun.

Q I see? A And that starts the powder, the powder train burning inside the fuse, and when a certain time, interval, elapses, that throws the fire into what they call the magazine of the fuse, which is the base of the fuse.

Q That is the base? A No, the bottom of the fuse—no, no, the bottom of the point fuse.

Q What we call the nose? A Yes.

Q The bottom of this fuse? A Yes, what they call the magazine or fuse.

Q Then what happens? A Then that blows the flame down into the projectile, into the shrapnel.

Q It blows the flame down through the hole that is just below the bottom of the nose and out the top of this iron part of the projectile.

Q Then that runs down into the bottom? A Yes.

Q And then throws the whole contents out? A Yes.

Q Is this thing supposed to break, this iron part, supposed to be shattered? A No, not shattered. It sometimes breaks into one or two pieces.

Q But the design is not that they should break into small pieces and kill people? A No.

Q Now, as I understand it, this whole thing is loaded into a gun when you are intending to shoot? A Yes.

Q And at the base of the brass part I presume is a cap? A A primer, yes.

Q Well, a cap we understand it, in every day talk? A Yes.

Q And that cap is hit by the thing that is in the breech lock of the gun? A Yes.

Q And that then explodes the smokeless powder that is in the brass part? A Yes.

Q And that smokeless powder projects this iron part away? A Yes.

Q And that goes hurtling through the air? A Yes.

Q And then at the same time that explosion has set off a cap that is in the nose? A Yes.

Q And that cap at a particular time runs this down through the center of the iron part and finally projects the shrapnel out of the shell? A Yes.

Q Is that correct? A Yes.

Q Now, what is spontaneous combustion? A Spontaneous combustion is the starting of ignition of any material from sources inside itself.

Q A fire? A Yes.

Q By combustion we mean fire? A Yes.

Q Then spontaneous combustion is fire produced by something inside the thing itself and not by an external cause? A Yes; and it starts at ordinary temperatures much below the temperatures of ignition; it does not require any great external heat.

Q To get that perfectly plain, if you apply a match to a fire that is not spontaneous combustion? A No.

Q But some substances themselves generate fire? A Yes.

Q Is smokeless powder a substance which is capable of spontaneous combustion? A It is.

Mr. Garrison. The witness is yours.

Cross examination by Mr. Stallman.

Q What do you understand is meant by the words ammunition for cannon?

Mr. Garrison. Who uses them? Do you mean in the regulations? I object to the question until he gives—

Mr. Stallman. I withdraw the question.

Q In your work for the Bureau of Explosives, have you become familiar, or were you familiar during the war with a commodity known as ammunition for cannon? A Yes; I was familiar with it at that time.

Q Is this shell which Mr. Garrison has been showing you ammunition for cannon? A Yes.

Q And I suppose there are other kinds? A Oh, yes.

Q Then I understand that by ammunition for cannon you are referring to a shell of this or other sizes containing a cap in the end, a smokeless powder projectile charge, a steel shell and a fuse on the end of it? A Yes; that would be ammunition for cannon.

Q Do you know the weight of this shell that is exhibited here?

Mr. Garrison. When loaded?

Mr. Stallman. Yes.

A Why, the weight of that shell—let's see—is that a 3.3 size?

Mr. Garrison. Measure it across the base.

A It would be between 18 and 15 pound, according to the size—3.3—

Mr. Stallman (after measuring). It is three point two.

Mr. Garrison. Well, it is a 3.3.

A I do not know exactly. It is between 15 and 18 pounds—that is just for the projectile.

Mr. Garrison. That is for this part on the end?

The Witness. Yes.

Q How much smokeless powder is put in the brass case in order to fire the steel shell? A I do not know the exact charge on that, but I believe it would be about 20 or 22 ounces, something like that. Of course it would depend on the powder and what velocity they wanted and some other things.

Q And you are not familiar with those details? A Not in that particular shell, no.

Q And of course when you said that it was not the intention that this shell should be broken, you did not mean that after it had performed its function it would still be intact, did you? A What I understood the question, was the case of the shell—

Mr. Garrison. The outside.

A —the outside section of the shell; the fuse blows off and the bullets are projected out through the front of it. The base of the shell and the body of it are pretty much intact afterwards, although they may break off—but it does not fragment the body of the shell in a shrapnel.

Q Then we understand all the bullets go out of the hole in the front of the shell? A That is the idea.

Q More or less like bullets out of a repeating rifle go out of the muzzle of the rifle; is that the idea? A Yes; the idea is for them to go out in the form of a cone so as to cover more space, spread the damage.

Q What explosive is inside of that steel shell in order to fire these bullets? A Black powder.

Q And black powder and smokeless powder are both subject to explosion, are they not, under high heats? A Yes.

Q When you speak of the spontaneous combustibility of smokeless powder, is there any particular circumstance or condition under which it is more likely to ignite spontaneously than any other? A It depends on numerous elements. One of the most important elements is the purification of the material in manufacture. The other elements would be the climatic conditions to which it is exposed—

Q Does it make any difference as to its susceptibility for spontaneous combustion, whether it is exposed to the air or confined to packages or not? A Yes; it is best to have it confined in packages, that is, it is the safest; it is less liable to have spontaneous combustion if the air is kept away from it—not so much the air as the moisture.

Q Well, it needs air, or the oxygen in order to assist in the combustion, doesn't it? A No, it does not.

Q And is the liability or susceptibility of smokeless powder to ignite spontaneously a well known fact in the chemistry of explosives? A It is.

Q And was it in the year 1916? A It was.

Mr. Stallman. I think that is all.

JOHN M. JULIAN, recalled.

Direct examination by Mr. Garrison.

Q Where did you obtain this shell that I have in my hand? A At Black Tom.

Q When? A About three days after the explosion.

Mr. Garrison. I offer it in evidence.

Cross examination by Mr. Stallman.

Q Where did you find it, Mr. Julian? A That shell was picked up on the south side of Pier 7.

Q It was picked up; how do you know it was? A I picked it up.

Q On the south side of Pier 7? A On the south side of Pier 7.

Q Anywhere near the channel tracks—anywhere near those tracks along the channel side of Pier 7? A About there where the planking starts at Pier 7.

By the Court.

Q Well, the shell is unloaded? A Yes; it is unloaded.

Q And it was unloaded when you picked it up? A No; I unloaded it.

By Mr. Garrison.

Q The shrapnel balls are still in there? A Yes.

Q And the black powder charge is still in there? A The charge of black powder has been withdrawn.

John M. Julian, cross.

Cross examination by Mr. Stallman (resumed).

Q And when you discovered this shell, was this brass case full of powder? A Yes.

Q And the steel shell was full of powder? A Yes.

Q And bullets? A Yes.

Q And this fuse was on it? A No; that fuse was not on it; that is a different nose.

Q So this in its entirety is not the thing you found there then? A With the exception of the nose. The nose was badly damaged and I substituted another nose in its place.

Q Where did you get that nose? A Picked it up at Black Tom.

Q Down around near where this same shell lay? A No; that was picked up in the vicinity of the North Pier.

By Mr. Garrison.

Q This shell had not been exploded when you picked it up? A No.

Q And it had all its content in? A Yes, it had all its contents in.

Q And you picked the contents out? A Yes.

By the Court.

Q And you say the nose was badly battered and still it had not been exploded? A That is it.

Mr. Garrison. That is all as far as I am concerned. I offer the shell.

(Shell marked Exhibit D. 3.)

By Mr. Stallman.

Q This shell from its present appearance does not look as if it had been burned. Have you cleaned it off? A No; it has been laying around the other trophies and where I have cleaned other shells the fumes of the acid from cleaning the shells; that is what caused those stains on it.

Q But this shell has not been cleaned up in any way? Not dressed up at all? A No.

By Mr. Garrison.

Q Did you see other unexploded shells down there in the same vicinity where you picked this one up? A Quite a number of them.

Mr. Garrison. That is all.

Mr. Garrison. I understand, Mr. Stallman, that it has been agreed that the testimony of Charles A. Gamble—

Mr. Stallman. That is another one that nobody has said anything to me about.

Mr. Garrison. This is the man who testified to the indication on the dial of the explosion.

(Mr. Garrison reads testimony as follows:)

"CHARLES A. GAMBLE, sworn.

Direct examination by Mr. Garrison.

Q Where do you reside? A In Brooklyn.

Q And where were you employed on the 29th and 30th of July, 1916? A New York Sugar Trade Laboratory, 80 South street, New York.

Q Was there some sort of an instrument used there in connection with a thermometer? A Yes.

Q And just describe generally what that instrument was? A It is just a recording thermometer that works by clockwork, and we keep it there to keep a temperature record.

Q Yes; and what made the record? A Why, it is a pen that works by an expansion of metal. As the temperature rises and falls the metal contracts or expands and moves this pen, recording it.

Q And is that pen open to the air or is it enclosed? A It is enclosed in a clock—just like the face of a clock.

Q Practically airtight? A Yes.

Q Have you got the sheet that was in this recording clock, or whatever you call it, on the night of July 29 and the morning of July 30, 1916? A Yes (witness produces it).

Q I call your attention to a line, a thick red line running parallel to the irregular circular line that runs around this disc, and ask you to tell me about what time that mark was made as indicated by the things on the face of that piece of paper? A I would say that this was made—the first mark was made about quarter after two.

Q When would you say the second right-angle line was made? A The second line I would say would be about quarter of three, according to this.

Q Are these marks such as would be occasioned in the normal operation of this machine by temperature? A No, sir.

Q What, among other things, would cause such irregular right-angle lines to appear? A A very severe shock or a jar.

Q Such as an explosion might make? A An explosion would cause it; might shake the building and might jar the clock.

Q You removed that from the disc when? A I removed it from the disc, I think it was on the morning of August 5. It will show there. The dates I have written on it; I show it there.

Q And those two marks made at the time indicated and given in your testimony appear to have been made on what date? A Why, it was made on the night of the—

Q You would better look at your paper here. A That was made on the morning of July 30.

Q Now, I notice in the part of this disc that is marked 'Wednesday noon,' and then a '3' some more similar right-angle marks. Can you tell us what caused those? A Yes; these are caused by jarring the table. This clock frame sets on a table between our two polariscopes, and we are working there continually through the day, and during this hot weather we operate an ammonia compressor, which also causes vibrations during the day.

Q Is there anything working there at night? A No, sir.

Q Is there anything to cause a jar there at night? A No, sir; that room is locked up.

Q Nothing in there at all? A No, sir; nothing in there. This room is insulated. It is padlocked so that no one can get in there.

Q What do you mean by insulated? A Insulated so that there is no radiation of heat. We keep the room at a constant temperature.

Mr. Garrison. I want to offer that disc in evidence.

Mr. Skinner. May I just ask the witness a question or two before this is marked, so that I may be sure that I understand what he has already told us.

Q Mr. Gamble, turning to the sector of this circle that is marked in pen and ink July 29th, I notice eight irregularities in the red line? A Yes.

Q Does that indicate to you some disturbance of this recording instrument? Yes or no? A Well, yes.

Q Well, then, again turning—going to the next, the next sector to that one that has the inscription July 29th, it is colored green? A Yes.

Q What period of time is that supposed to represent? A That is from six P. M. to six A. M.

Q On the 29th? A Yes.

Mr. Garrison. Well, no; it is 29th and 30th.

The Witness. Six P. M. July 29th to six A. M. July 30th.

Q And the line that is—and then the next sector which is a black and white, and not colored, has the figure 30 in it? A That is July 30th.

Q That is July 30th, from six A. M.? A To six P. M.

Q So that the entire period of time between six P. M. on July 30th and six A. M. on the morning of the 30th is supposed to be represented here covered by this green sector? A Yes, sir.

Q And in that green sector and on the red line I notice a mark at right angles almost to the red line? A Yes, sir.

Q Do I understand you that that indicates some disturbance? A Yes, sir.

Mr. Garrison. He said, 'Yes, sir.'

The Witness. Yes, sir.

Q And there is nothing else in the red line within that green sector to indicate any other disturbance, is there? A No, sir.

Q So that this red line apparently—this record that you produce here shows one disturbance by explosion or shock of some kind in the period of time here mentioned? A Well, it really shows a slight one annexed to that; there is really two there, if you notice it.

Q Where is it? A Right next to this one; you can see it if you look at it closely. It is very slight, but it is there.

Q In red, is it? A Yes, sir.

Q You mean that other—that slight thickening of the line? A That slight thickening. There was a

slight jarring of the instrument there that caused that.

The Court. Where was that, before or after the big one?

The Witness. After.

Mr. Garrison. He gave the time.

The Court. Yes, I know the time.

Q Now, these sectors have on the margin under the different points in them various hours, 6 P. M., 9 P. M., 12 o'clock at night and 3 A. M. Apparently this red line that marks disturbances—that is the large one—is somewhere between 12 and 3, isn't it? A Yes, sir.

Q Midnight and 3 A. M.? A Yes, sir.

Q Does this record with any exactness as to when it was? A I would not say exactness; but I say approximate.

Q Yes; and each one of these lines then read an hour, don't they? A Supposed to represent an hour; yes, sir.

Q And according to this, there was a severe shock by explosion very, very close to 2 o'clock and a little after it; isn't that right? A I would say that; yes, sir.

Q Not—

The Court. Why do you say it represents a severe shock by explosion?

The Witness. I did not say that. I say it represents a severe shock.

The Court. You just did answer it. He asked you if it represented a severe shock by explosion and you said yes.

Mr. Skinner. Well, I think he has already said that.

Mr. Garrison. I think he said it was a shock that might be caused by explsion. He didn't say it was.

Q Now, this mark that is here—where was the other one you found, Mr. Gamble? A Down there. (Indicating.)

Q The mark that shows in the sector marked 2, do you know what caused that? A Yes, sir.

Q You think that was caused by some person jarring the table? A Yes, sir; we were working around there at that time; or caused by a jar of the ammonia compressor, which causes vibration.

By Mr. Garrison.

Q Judge Skinner asked you about some irregularities that appeared during the day time of July 29th in the day time record? A Yes, sir.

Q What causes those? A Why, this was caused where I changed the chart.

Q This irregularity? A Yes, that is caused—

Q Now you are going too fast. That is this irregularity between 9 A. M. and after noon, as indicated here, on July 29th, was caused by what? A No; that is caused by us working around that instrument, jarring it. This break in the line is caused where I changed the chart.

By Mr. Skinner.

Q Well, then, if those are caused by—these in the sector marked July 29th—are caused by your working around the instrument, is it not a fact, Mr. Gamble, that just walking around the room will disturb that instrument? A No, sir; I don't think it is delicate enough for that.

Q Well, what did you mean when you said "we were working around"? A We were working on

that bench and we were handling our sets of tubes there and jarring the table, perhaps.

Q Now, that indicates, does it not, to you, a jarring condition of that table from 9 A. M. on the 29th to 3 P. M.? A Well, that line is not broken there; that is a steady line from there on.

Q Well, from 9 A. M. to some time around half-past one. Do you mean, then, that you were—that men working there were continuously jarring that table all that time? A No; I don't say they were continuously jarring it. We were working around there and we were very apt to jar it.

Q Working around it might disturb it, then? A Yes.

Q It is quite susceptible? A It is, to a jar on the table, yes.

Q Well, wouldn't it be to anything on the table; if there were a jar on the floor? A That would perhaps do it, yes.

Q So that this second marking that you point out there may have been caused by just some slight jar of the room or the building? A Well, it would take quite a jar to jar the pen that much.

Q Well, it didn't take much of a jar to jar it on the 29th, did it, between 9 A. M. and half-past one? A Well, as that jar there is not anything like that; that extends to at least a quarter of an inch there.

Q But the jar on July 29th between 9 and half-past one, as indicated here, as a good deal more severe than the one on the 30th; wasn't it? A Well, for this particular time; this particular time was perhaps just one great big jar.

Q No. I mean the little one? A The little one, yes.

Q Yes. These on the 29th indicate a very much more severe jar, don't they? A Well, that is a jar

probably jarring the clock. We were right there. We may have hit the clock.

Q But the indication is on a very much more severe jar? A Yes.

Q Given to the instrument between the hours of 9 to half-past one? A Yes, sir.

Q And that was just due to the men working around? A Yes, sir; that is all these jars were.

By Mr. Garrison.

Q Now, when you speak of these jars, I notice that the line coming up to 9 A. M. of the gray part, which means day time— A Yes.

Q July 29th—comes up a little below 80? A Yes.

Q And then there is a drop below 70? A Yes.

Q Was that drop caused by some artificial physical means, or was there a drop in temperature? A That was a drop in temperature.

By Mr. Skinner.

Q Well, what portion of that on the 29th was due to your changing a pen? A Just this point here; this break in the line.

Q Indicating a point where it begins to drop downward? A Drop downward; yes, sir.

By Mr. Garrison. I offer it in evidence.

(Marked D. 13 in evidence.)

By Mr. Skinner.

Q Where was this clock or recording instrument located in the building? A On the fifth floor.

Q And where with reference to the front of the building? A Well, it was toward the rear of the building.

Q Rear of the building. And what direction or point of the compass would that rear of the building face? A Well, let's see. That faces away from the

East River, it faces across Manhattan; that would probably be west.

Q Faces west. Where was this building, the trade laboratory building? A 80 South street, New York.

Mr. Skinner. That is all.

Mr. Garrison. That is all.

Mr. Garrison. Now, what he called attention was that big long line at right angles to this line, and the little bit of thickening. Just pass that around. (Hands a disc to the jury.) It is the big broad line, the green line there, and the little bit of a thickening next to it."

HARRY A. CAMPBELL, recalled.

Direct examination by Mr. Garrison.

Q Mr. Campbell—

Mr. Garrison. This is not any subject matter I took up with him before, if your Honor please.

Q When after the explosion at Black Tom did you next go to Black Tom? A We got there at four o'clock on Sunday morning.

Q The explosion was on Sunday morning and you got there at four o'clock on that same morning. When did you first get into a position where you could observe the cars on the North Pier? A On the following day, Monday.

Q Monday. And about what time on Monday? A I think about ten o'clock.

Q How many cars were out on the North Pier at that time? A Intact?

Q Yes—well— A Two.

Q By intact you mean not hurt at all? A No; I mean you could tell they were freight cars.

Q Well, they were not intact, you did not mean that? A No; they had their lading in.

Q You say they had their lading in them? A Yes, sir.

Q What was their lading? A 3.3 shrapnel.

Q And what was the effect in respect of the other things that were out on the North Pier in regard to cars? A The only thing—the only other things left there were just steel frame works.

Q Steel frame works of what? A Freight cars, box cars.

Q And did you see any of their contents about? A They were entirely consumed.

Q By what? A Fire.

Q Now, why do you say consumed by fire, Mr. Campbell? A Because if they had exploded they would have entirely shattered the steel frame work of the cars; it would also have had an effect on the pier, which was not in evidence.

Q Now, did the cars that were still out there so that you could identify them as cars—were they in a shattered condition? A Somewhat, on the north side principally.

Q And were they standing level on the track or were they cantered one way or the other? A They were tilted to the side.

Q From the north to the south? A Yes, sir.

Q I show you a photograph and ask you whether you recognize that as correctly representing one of those sets of cars on the North Pier? A It does.

Q And I show you another photograph and ask you the same question. Does that represent— A It does.

Mr. Garrison. All right. I would like to offer these two photographs in evidence.

(Marked D. 5 and D. 6 in evidence.)

Q Was there any torn matter evident on the cars or any part of the North Pier? A On the extreme east end and all over those two cars of which I have just identified

the photographs there was a heavy grayish clay or mud, which it was evident came from the bottom of the river.

Q And that was on which side of it, on which side of the cars? A North.

Q Now, did you see a shell imbedded in a beam of any pier there? A I did.

Q In the beam of what pier? A South Pier.

Q What was the calibre of the shell, could you tell? A It was around a five-inch shell.

Q I show you a photograph and ask you whether that correctly represents what you saw with respect to the shell in the pier? A That does.

Mr. Garrison. I would like to offer that in evidence.

Mr. Stallman. No objection.

(Marked D. 7 in evidence.)

Q Did you make any observations in the yard on either Sunday or Monday at the point on the map where there is shown to have been three cars of wet introcellulose? A I did.

Q And what did you find in respect to those three cars? A The wooden part of the car and the contents had been entirely consumed by fire.

Q Had there been any explosion of the contents of those cars? A Absolutely not.

Q Did you make any observation in respect of the cars shown on the map as being on the east end of track 16 containing benzol? A I did.

Q And what did you find with respect to those cars? A The drums had burst from internal pressure generated in them.

Q Well, had there been an explosion in those cars or any fire or what? A There had been a fire. The drums had burst from the pressure and set fire to everything, the benzol being consumed by fire.

Q Well, in your judgment was there any explosion? A An explosion of very, very low order; just sufficient to burst the drum, open the seam in it.

Q An internal explosion you say? A Yes.

Q Was not an explosion that would shatter— A No.

Mr. Stallman. I object to telling the witness what happened.

The Witness. Not an explosion of high order.

Q Was that the character of an explosion that would affect structures at a distance from Black Tom? A It was not.

Mr. Stallman. I object. The witness cannot possibly know.

The Court. I will let it stand.

Q What did you observe on the South Pier on Sunday or Monday—I suppose it was Monday you made this observation? A Yes, sir; Monday.

Q Monday. What did you observe with respect to cars on the South Pier? A Borax, what you call the borax pier?

Q Borax pier. A On the borax pier there were—I recall two cars with borax in them and they were shattered on the northerly side, side facing the north, and imbedded in the borax I found two five-inch projectiles unexploded.

Q And the face of these projectiles were in which direction, the projectiles you found in the cars of borax, which way was the face, north, south, east or west? A I do not recall that.

Q I show you a photograph and ask you whether that correctly represents what you saw on that Monday in respect to the South Pier? A Yes.

Mr. Garrison. Do you want to see that, Mr. Stallman? I want to offer that in evidence.

(Marked D. 8 in evidence.)

Harry A. Campbell, cross.

Q Now, I show you D. 8 and ask you which side of the South Pier you were looking at as you looked at the cars in that photograph? A The north side.

Q I show you D. 7 and ask you which side of the pier you were looking at when you were looking at the photograph with the shell imbedded in the pier? A North side.

Q And the base of the shell was towards the north? A Facing north.

Mr. Garrison. Take the witness.

Cross examination by Mr. Stallman.

Q Mr. Campbell, referring to the exhibits that you have identified and which are now marked D. 6 and D. 5, representing a shattered car body, or shattered car bodies of cars out on the North Pier, were these car bodies burned at all? A They were very slightly singed on the outside, sort of charring effect on the lower end.

Q And you mean by the lower end the end towards the bulkhead? Or the end towards the bay? A Well, the ends that are remaining.

Q The ends that show in the picture? A Yes.

Q As still being more or less intact? A I am speaking now of this car.

Q You are speaking of the car shown on the right-hand side of Exhibit D. 5? A Yes, sir.

Q The other car shown in the middle of that picture— A I do not recall any evidence of fire on that car.

Q Is there anything or was there anything from the appearance of that car that would lead you to say positively whether or not that roof had been blown off? A Yes, sir, from the brushed appearance of the wood, wood always shows the evidence of a high explosion.

Q The roof was not there, was it? A The sides were.

Q The roof was not there, was it? A The sides were.

Harry A. Campbell, cross.

Q Was the roof there? You can answer that question. That is perfectly plain English. A You want me to tell you how I could tell the roof was blown off, don't you?

The Court. No; he asked you whether the roof was there. I cannot see anything very complicated about that, and you seem very obtuse about it yourself, so far as I can see. Was the roof there?

The Witness. No, sir.

The Court. That is the answer. Do you know where the roof was?

The Witness. No, I do not.

Q If there were any signs or marks indicating an explosion, it would be very apt to be shown on that part of the car against which the force of the explosion was directed, wouldn't it? A It would.

Q Are those the cars that you speak of of which nothing but the steel frames were left, the cars shown on Exhibits D. 5 and D. 6? A They are not.

Q And where were the cars that you said only the steel frames were visible? A To the west of those two cars.

Mr. Garrison. Here is a picture of it if you want it.

Q These two cars shown on Exhibits D. 5 and D. 6 were located where on the North Pier? A Extreme end.

Q You mean the extreme easterly end? A I do.

Q Why do you say that these cars were plastered with clay that evidently had come from the bottom of the river? A Because the land at Black Tom was cinders.

Q What is that? A The land at Black Tom was composed of cinders.

Q Then you came to that conclusion by a process of deduction, did you? A No; by what the diver brought up.

Q Now, you say that you noticed the remains of the cars of benzol on track 16? A I didn't say what track it was on.

Q Well, what track were they on? A I don't know.

Q Were they in the same position as the four cars of benzol shown on this map on track 16? A Approximately.

Q What's that? A Approximately.

Q And are you familiar with the properties of benzol? A In what respect?

Q You said there were drums in those cars that had the appearance of having exploded, as I understood it? A They bursted from internal pressure.

Q Will benzol cause a tank in which it is contained to burst? A If it is a—

Q When it gets to a certain temperature? A If it is expanded by temperature raise.

Q Do you know what that temperature is? A No; I do not.

Q Is benzol a highly inflammable liquid? A Commercial benzol is; that benzol was not.

Q That would not burn at all? A Yes, that burned at 91 degrees Fahrenheit.

Q Did you ever see a tank of that kind of benzol burst from heat before? A Never did.

Q Now, did you make any observations of any cars to the west of the three cars of wet nitro-cellulose? A It seems to me that those cars would be in what is described as the crater.

Q Did you see any cars in the crater? A No, sir.

Q That is all.

Re-direct examination by Mr. Garrison.

Q What was in the crater when you were there? A Water.

Q Couldn't tell what was under the surface of the water? A No, sir.

Harry A. Campbell, re-direct.

Q I hand you a photograph and ask you whether you can identify that as correctly representing the cars on the North Pier, only the steel frames of which were existing? A It does.

Mr. Garrison. I want to offer it in evidence. That represents the steel frame.

(Photograph marked Exhibit D. 9.)

Q And the two standing cars that you have identified were which direction from the cars that are shown, or the remains of the cars that are shown on this photograph; were they out toward the top of the photograph or down toward the bottom of it? A Out—east.

Q Out toward the end in the photograph? A Yes.

Q Toward the top? A Yes.

Q I think that is all from Mr. Campbell.

Mr. Garrison. Will you look these over, Mr. Stallman and see if you have any objections?

Mr. Stallman. Are these the ones that you just put in evidence?

Mr. Garrison. I think so.

Mr. Stallman. All right, Vice-Chancellor.

Mr. Garrison. I want to put in evidence a photograph. This picture shows the south side of Warehouses P and Q and is a companion picture to 12C, for comparison.

(Photograph marked Exhibit D. 10.)

Mr. Garrison. This thing here is the steel structure.

(The jury examines the picture.)

Mr. Garrison. I next want to put in a photograph taken August 4, 1916, from the south side of the east end of the crater near track 14 and 15, looking east. Shows the extreme east end of the crater; shows the

condition of cars wrecked at the southeast side of the crater.

(Photograph marked Exhibit D. 11.)

Mr. Stallman. Is there any need to take time to read the legend on each photograph?

The Court. You do not need to string this out. I will adjourn now, if you like, until two o'clock. I know your witness is coming at that time.

Mr. Garrison. Your Honor is on.

The Court. We will adjourn until two o'clock.

Mr. Garrison. I had to get this time somehow.

(Photographs marked Exhibits D. 12 to D. 20, inclusive.)

RECESS.

AFTERNOON SESSION, 2 P. M.

Mr. Hobart. I read now by consent the testimony of one Raymond Carinne, given on another occasion (reading):

"RAYMOND CARINNE, sworn.

Direct examination by Mr. Hobart.

Q Are you the young man referred to by the last witness as the one who kept the powder book? A I am.

Q You kept this at the office of the Johnson Lighterage Company? A Yes.

Q Made entries in it from day to day? A Yes.

Q State generally what it shows. A It shows my record of just what is on the boats for future reference.

Q A record of the loading of the boats? A Yes.

Q And how do you get the record? A I got them from the railroad company—reports of the Lehigh.

Q You kept the record of it in the regular course of business, did you? A Yes.

Q I observe certain pages have been turned down here with notes at the top marked 'No. 17' and 'Frank'—Frank—there may be some others—now, does that show the lading? A Yes, sir.

Q Of the different barges? A Yes, sir.

Q I show you this typewritten sheet, to which I have already called the attention of Mr. Johnson. Have you seen that before? A Yes, sir.

Q Who made it up? A I did.

Q Made it up from what? A Made it up from the records in the book.

Q Now, will you show us the records in the book from which you prepared this typewritten memorandum? A I will.

Q Where are they—any pages in the book? A Yes; that is why I did not have them—

Mr. Garrison. Have him read the items from the book.

Q Can you refer to the book and pick out the item?

Mr. Skinner. Tell us what it is; perhaps we can agree on it.

Q Was it made from the book; this memorandum? A Yes.

Mr. Skinner. Mr. Johnson says that the book this was taken from is a record of the contents of the barges kept by this young man, and if the young man says the paper you have is a copy, that is all right; use it.

Mr. Hobart. That is all we want.

Q Now, refer to the memorandum and tell us by reference to the memorandum what cargo was on the barge Frank?

Mr. Skinner. On—

Q On July 29 and 30—I mean to include—1916. If you have taken this memorandum from the books it will save time if you just look at the memorandum and then if Judge Skinner or anybody wants to look at the book later they can.

Mr. Skinner. Can't you use the memorandum now?

Mr. Hobart. Yes; I am willing to if you agree to it.

Mr. Skinner. I am willing to shorten it up.

Q Look at the memorandum and tell us what was on the barge Frank. A There was three cars of explosive projectiles and five cars of T N T.

Q How do you determine from your records or from your memorandum based on the records that that cargo was there on the evening of July 29? That is what I want to know. A I have no idea. I was just keeping that record; that is all.

Q Does the record show that? A The records show the exact date the boat was loaded.

Q You give so many cars? A Yes.

Q How do you tell the number of cars? A By the car numbers.

Mr. Garrison. Does he know where he got them?

Q Is there anything to show where they came from? Does your book show? A Yes.

Mr. Garrison. Tell us from your book what railroad the car came from.

Q Take the barge Frank, the first car number is, according to this memorandum, 562724. Is there anything to show where that came from? A Jersey Central.

Q And that had what? A 378 boxes of explosive projectiles.

Q The next car is 24788. Where did that come from? A From Jersey Central.

Q What did that have? A 520 boxes of explosive projectiles.

Q Now, 6964; where did that come from? A Jersey Central.

Q And what did that have? A 227 boxes of explosive projectiles.

Q That makes three cars. You spoke of five. A I said three cars of explosive projectiles and five cars of T N T.

Q Five cars of T N T? A Yes.

Q I do not see any car number for T N T. Is there anything to show the car number or where those cars came from? A Yes.

Q Where did they come from? A Lehigh Valley.

Q On what date? A On July 29 they were loaded.

Q July 29th? Anything to show the hour or the time or anything of that sort? A No, sir.

Q Where is the record of that, please, in the book? A There is a part of it right there, and of course we did not have room enough there so I put it on this page.

Q On those two separate pages? A Yes.

Q You have got this marked 'Czaritza.' What does that indicate? A That is the steamer it was intended for.

Q This barge Frank you are speaking of now all the time? A Yes.

Q Now, turn to the barge known as Johnson 11. What have you got as to Johnson 11? A Three hundred barrels of wet picric acid.

Q Where did that come from? A New Haven Railroad, Harlem River.

Q That is all that was on that one? A Yes.

Q Now we come to—

Mr. Garrison. Where was that to go?

Q Indicate where that was to go. A Yes; that was intended for the steamship Novgorod.

Q Is that a Russian boat, do you know? A Yes.

Q Now, come to Johnson 17, what is the record that you have as to that? What is the record of that? A 1,005 cases of T N T.

Q Now, where did that come from according to your memorandum? A West Shore Railroad, Weehawken.

Q Is there anything there to show the consignee of that? A Why, no—it was the orders from the Russian Government, that is all.

Mr. Garrison. Where was that to be delivered?

A For Gravesend Bay, intended for the steamship Novgorod.

Q Before you leave the T N T, is there anything to show the car number or numbers? A Yes, sir.

Q How many cars were there? A Two cars.

Q Both of them, according to your record, loaded at what point? A At West Shore Railroad, Weehawken.

Mr. Garrison. Give the numbers of those cars.

Q Have you the numbers of them? A Yes.

Q Read them, please? A C. R. I. 37511; C. & N. W. 109022.

Q I notice opposite those cars in your memorandum some name that looks like C. J. Med. A That

is the shipper. His name is C. J. Medjakowski. I could not put it in there.

Q It was too long to write in? A Yes.

Q Do you know what his position was? A Why, he was attached to the Russian Embassy.

Mr. Garrison. Is he the person to whom it was shipped?

A No; that is the person that ordered it shipped.

Q Ordered it— A Ordered us to deliver alongside steamers in Gravesend Bay.

Q Was there anything else on Johnson 17 according to your memorandum? A 417 cases of detonators.

Q You marked them exploders on your typewritten memorandum? A Yes, sir.

Q Is that the same as detonators? A Yes, sir.

Q Where did you get those? A From the Erie —Erie Railroad Company, Weehawken.

Q Have you the car number? A I have C. P. 201681.

Q Is there anything to show who gave you the order for those? A It was received from the Newcastle Construction Company.

Q Where were they going, according to your record? A Overseas to Russia—intended for the steamship Czaritza.

Q There was only one car in regard to those? A That is all—417 cases.

Q And you have given us the car number? A I have.

Q Was there anything else on Johnson 17, according to your records? A That is all.

Q Now, according to this memorandum you have got here at the bottom of it—you say this was written by you—'Statement of cases, etc., received by Johnson Company and on board at the time of the ex-

plosion.' How do you determine or how do you know whether they were on board as far as your records show? A According to the records."

Mr. Hobart. The colloquy is omitted.

(Continues reading.)

"Q Can you tell by your records now—you spoke of some cars containing T N T that had been loaded on the barge Frank—does your record give the numbers of those cars? A Yes.

Q Refer to them and give us those car numbers.

Mr. Garrison. He said Lehigh Valley cars. That is how I knew they were loaded at Black Tom.

Q Look at that so that we will not have any question. A C. & N. W. 141052; C. & N. W. 139326; C. & N. W. 121346; Omaha 29468; Omaha 30764.

Q Those are the five cars you have already mentioned?

Mr. Garrison. I do not want to consent that they were out of the yard. They are not; they are still in the yard.

Q Now, does your record show that those five cars whose numbers you have just given us, were loaded from the cars on to the barge on July 29th? A Yes, sir.

By Mr. Skinner.

Q Just one question. Can you tell whether these memoranda show the barges that are mentioned to have been completely loaded, was there a cargo still incomplete, something more to be added to it? A There was, the next day.

Q You mean that there was more to go into those barges the next day? A Yes, sir.

Mr. Skinner. That is all.

By Mr. Hobart.

Q Do you know which of the barges were to have more the next day? A I do not; I was only keeping the record. I had no charge of the supervision of the lighters.

Q The records show that the barges were to have something more put on the next day. Does that apply to all three of those barges that you have mentioned, or to some of them or two of them or all of them—according to your records, of course; that is all you know about it, I suppose? A Well, as far as I know about how much a boat would carry, I know she didn't have a full load.

Q Well, do you know that any of them had a full load? A I don't know all of them.

Q Well, which is the one that didn't have a full load?

Mr. Skinner. He doesn't say it was one.

Q Well, which were the two or which were the three? A You see, I only kept the records; I don't know.

Q You really don't know about that, do you? A No, I don't know; I just kept records, that is all.

Mr. Hobart. That is all."

Mr. Garrison. By consent of counsel on the other side it is agreed that Christopher Casperson, a witness who has already been examined, if he were placed on the witness stand would testify in answer to the following questions the following answers:

"Q Captain Casperson, in July, 1916, were you doing anything at all upon a boat? A Yes, I was captain of No. 11 Johnson.

Q How far back were you from the Johnson 17? A Oh, I was—he was just alongside of me—he was

not very far inside; I passed him at the time I hollered out.

Q Did you ever see the 17 again? A No; I never saw the 17 any more.

Q The 17 was blown up, as you understand it? A Yes, sir.

Q And as you understand it, Johansen, or whatever his name was, was killed—the captain? A Yes."

Mr. Stallman. What page is that on?

Mr. Garrison. The first I read was page 389. The next I read was 400 and 401. And the last I read was 405 and 406. There was no cross examination. That is the Howell case. After my cross examination there was no re-direct or other examination of Casperson.

Mr. Stallman. All right.

GEORGE A. HIGGINS, sworn.

Direct examination by Mr. Hobart.

Q Mr. Higgins, were you employed by the Lehigh Valley Railroad Company in July, 1916? A Yes, sir.

Q What was your position? A Grain clerk.

Q At what point? A National docks.

Q And what was your position at that time? A Grain clerk.

Q Well, were you one of Mr. Dickman's assistants? A I was acting chief clerk.

Q In Mr. Dickman's office? A Yes, sir.

Q Were you on duty at the terminal on July 29, 1916? A Yes, sir.

Q Did you on that day make any arrangement with anybody connected with the Johnson Lighterage Company to have any of their barges or lighters remain over until the next day or any time after that Saturday? A No, sir.

George A. Higgins, cross.

Q Are you the person who had charge of such matters under the direction of Mr. Dickman? A Yes, sir.

Q How late were you there that Saturday? A Five o'clock—about 5:30.

Q 5:30 that Saturday? A Yes, sir.

Q Now, you have called yourself the acting chief clerk, I believe? A Acting chief clerk, yes.

Q Was the regular chief clerk away? A He was; he was away; yes, sir.

Q Who was that, do you remember? A His name was Kirk, Walter F. Kirk.

Q And you were filling his place for that day? A In his absence; yes, sir.

Q And in his absence was it your duty to look after the telephone? A Yes; if anybody wanted the chief clerk the telephone operator would connect them up with me.

Q So far as you know was any arrangement made at all with your office— A Not to me; no, sir.

Mr. Hobart. That is all.

Cross examination by Mr. Stallman.

Q How long had you been acting as acting chief clerk at the time of the explosion? A About ten days.

Q Were you familiar with the transferring of explosives from cars to barges at the North Pier? A No, sir.

Q I thought you said that you were the man who made any arrangements with the lighters? A I would, so far as the ordering, but I did not do anything with the North Pier.

Q So far as the office? A Ordering.

Q Ordering of what? A Ordering of cars placed and holding boats.

Q You mean ordering cars out of the yard on to the North Pier for the purpose of being unloaded? A Yes.

Albert M. Dickman, direct.

Q Then you did not make any arrangement with Johnson of any kind at all, either positive or negative, about disposing of barges there, did you? A No, sir.

Q Do you know whether the Johnson barges were customarily used to take explosives from cars on the North Pier? A I was not familiar with the North Pier.

Q I say, do you know—

Mr. Garrison. He says he was not familiar.

Q Do you know whether the Johnson barges were extensively used in taking explosives away from the North Pier? A I know they were used down there; yes, sir.

Q Did you ever go down to the North Pier yourself? A No, sir.

Mr. Stallman. That is all.

Re-direct examination by Mr. Hobart.

Q If any arrangement were to be made for the barges at the North Pier, or anywhere else, would they be handled through your office? A They would be handled through our office—either Mr. Dickman or myself.

ALBERT M. DICKMAN, recalled.

Direct examination by Mr. Hobart.

Q The gentleman who just testified, Mr. Higgins, was acting chief clerk on July 29, 1916, was he? A Yes, sir.

Q And if any arrangement had been made with anybody to have anybody's barges stay at the North Pier or anywhere else at the terminal, either with or without explosives, over night, with whom would that arrangement be made? A With me, or in my absence, my chief clerk.

Q In this case, Mr. Higgins? A In this case Mr. Higgins, yes.

Q Was any such arrangement made with you as to any Johnson barges or any other barges to stay over night? A No, sir.

Q To stay at Black Tom on the night of July 29, 1916? A No, sir.

Cross examination by Mr. Stallman.

Q Do you know that there were barges there that had not yet completed their load? A I did not hear that.

(Question repeated.)

A Yes, sir.

Re-direct examination by Mr. Hobart.

Q Did you give any of them permission to stay there after working hours? A No, sir.

By Mr. Stallman.

Q The Johnson barges were there after working hours, weren't they? A I was down there—my last trip down there that day was three o'clock in the afternoon.

Q During the week preceding this explosion the Johnson barges were there habitually after 5:30, weren't they?

Mr. Garrison. I object.

The Court. I think I shall permit that question, because—

Mr. Garrison. I object on the ground it is irrelevant. I forgot to state my ground.

The Court. Yes, and I am permitting it because it seems to me to be pre-eminently relevant, because the defendant company would be called upon to act possibly as a reasonably prudent and cautious person in the light of the facts that were present to their knowledge; and knowledge might come either by actual notice of it or might come from the existence of a fact for such a length of time as that by the exercise of reasonable care on their part they should have known of it. Therefore, I am permitting this to

go in as relevant because they may infer from the fact of the length of the existence of the presence there that the parties were at least acquiescing in the presence and acting with respect to taking guard in the light of the fact that they knew of it.

A No, sir.

Q Assuming that the Johnson barges 11 and 17, to which the immediately preceding testimony has referred, were there on the night of July the 29th, to your knowledge would that be the first time that they were ever there?

Mr. Garrison. The first time they were ever there at night?

Q After the usual hours for knocking off work.

Mr. Garrison. I do not think it is material in this case as to whether empty barges were there. We have made no claim in this case—barges could come there and lie there empty, as I understand it, without violating the law. The law relates to loaded barges—not empty barges.

The Court. There is not any question about that.

Mr. Stallman. I will reframe the question, Mr. Garrison.

Q During the seven months that you were at that station before this explosion occurred on July 30, and during which period they were handling explosives off the North Pier, the Johnson barges, 11 and 17, among others, were during that time used for transporting explosives from the North Pier, weren't they? A They were.

Q And during that period do you know whether or not those barges, after having been working there during the afternoon taking on a load of explosives, were ever there after 5:30 at night? A I do not know.

Q Were you ever down there after 5:30 at night? A Not after 5:30; I have been down there at 5:30 to see them close up.

Q And you never gave any instructions, then, to the Johnson lighters to move the loaded lighters away from the pier when they had not yet finished loading? A I had given them instructions to keep their lighters away from there after closing—or take their lighters away from there after the closing hour of business.

Q And was that because they had been in the custom of laying there after the working hours had closed? A That was general instructions given to all of them.

Q I say, did you give those instructions because they had been in the habit of laying there after the close of working hours? A If you refer specifically to the Johnson Lighterage Company, I cannot answer. Those other lighters, I will say yes.

Q And by other lighters you mean Moran, for instance? A Yes.

Q They had been laying there after 5:30? A I had known them to violate the rules, and I have instructed all hands to keep their barges out of there.

Q And you were not down there, then, often enough in the evening to know whether or not they were there or not? A I would be down there—what do you mean by early in the evening?

The Stenographer. He said, "often enough in the evening."

Q I mean after 5, on up to 8 o'clock? A No; I did not stay down there all night.

Q Was there anybody there representing you in your absence after your day's work was over? A Yes, sir.

Mr. Garrison. You mean after 5:30?

Q After 5:30. A Yes, sir.

Q And who was that? A My watchmen.

Q Mr. Kane? A He was one of them.

Q And you mean through him the other watchmen? A Yes, sir.

Q They were your representatives there after working hours? A After the closing hour; yes, sir.

Mr. Stallman. That is all.

Mr. Garrison. That is all.

HUDSON MAXIM, sworn.

Direct examination by Mr. Garrison.

Q Where do you live? A Borough of Hopatcong, in New Jersey.

Q Have you ever had any experience in the scientific study and experimenting and learning about explosives? A Yes, sir.

Q When did you commence such studies and experiments and research into the subject matter? A In the autumn of 1888.

Q And how long from that time to now have you devoted yourself to that subject? A More or less all the time.

Q Have you ever made any inventions in respect of explosives? A Yes.

Q What, for instance? A I invented the multi-perforated smokeless powder grain, in use by the United States Government.

Q Now, proceed, Mr. Maxim; what else? A I invented a high explosive, known as Maximite, which was adopted by the United States Government in 1901.

Q Named after your name—Maxim-ite? A Yes. I also invented a delay-action fuse—a safety delay-action fuse—which was purchased and adopted by the United States Government in 1908. I also invented a system of driving torpedoes by means of a self-combustive material known as motorite, which is being experimented with by the Government at the present time.

Q Has your study of this subject matter been extensive? A Yes, sir.

Q Have you made numerous experiments in respect of explosives and with explosives? A Yes, sir.

Q What is the characteristic distinction between high explosives and low explosives? A A high explosive is one that can be set off by a detonator and caused to decompose substantially instantaneously throughout its entire mass. The speed of the explosive wave is about from 17,000 to 20,000 feet a second. A low explosive, as for example, gunpowder, either smokeless gunpowder or black gunpowder, is consumed by surface combustion.

Q And by surface combustion you mean simply burning, don't you? A By simply burning.

Q Then the characteristic distinction is the difference between detonation and combustion? A Yes, sir.

Q Now what is detonation? A Detonation is the passage through an explosive mass of the wave of decomposition which I have just referred to as passing through the mass at the rate of 20,000 feet a second.

Q Is the detonation in itself an explosion, caused by an explosion? A It is caused by a detonator or detonative explosive.

Q Then, it is a small explosion occasioning a big explosion? A Yes.

Q What is T N T? A It is a nitro compound of toluol.

Q What is wet nitro-cellulose? A Wet nitro-cellulose is a product of cellulose treated with nitric acid.

Q And what do you mean by wet nitro-cellulose? A It is nitro-cellulose that contains water, generally in the form of compressed nitro-cellulose containing from 28 to 30 per cent. of water.

Q Now, wet nitro-cellulose, so classified under the Interstate Commerce regulations in respect of the transportation of explosives, means the kinds of wet nitro-cellulose that you have just adverted to? A Yes, sir.

Q Would that kind of wet nitro-cellulose explode? A No, sir.

Q What would happen to it if brought in contact with fire? A It would slowly burn away as the surface of it dried under the heat of the flame.

Q Would there be scientifically any possibility of the water drying out of it and then its exploding? A No, sir.

Q Why not? A Because as fast as it dried it would burn.

Q What is your scientific judgment as to the possibility of wet nitro-cellulose exploding as the result of ignition, for instance, by fire? A I think it would be impossible. I do not think there has a case ever been known.

Q Now, in respect of benzol, what is benzol? A Benzol is a by-product of the manufacture of coke and gas.

Q The manufacture of coke and gas? A Yes, sir.

Q And is that classified as an explosive? A It is not an explosive.

Q It is not an explosive. Will it explode? A No, sir.

Q What will it do if brought in contact with flame? A It will burn.

Q Burn? A Burn.

Q Burn without exploding? A Without exploding.

Q How is trinitrotoluol classified? A As an explosive.

Q Well, what character? A T N T.

Q I know, but what character of explosive, high or low? A It is a high explosive.

Q And what is required to cause the explosion of T N T? A A strong detonator.

Q In your judgment, would such a detonator—or will detonation in T N T be caused by the application of flame, of heat, if the T N T is not confined in a cylinder or gun or some confining chamber? A T N T will not explode from ignition without it is confined.

Q What will it do? A It will simply burn like oil or pitch.

Q And why, in your judgment, is it that the heat does not become intense enough when the T N T is not confined in a chamber or a gun or some confining thing—why will not the flame cause detonation? A It is because the heat is absorbed by melting the T N T and then again by volatilizing, and then the zone of flame, the zone of intense heat of the flame is removed further away from the T N T, or the body of the T N T, in proportion to the speed of melting and volatilization.

Q What is the first effect of flame upon T N T? A It is the melting, and then it volatilizes it.

Q Wait a minute; you go a little too fast. To melt it? A Yes.

Q As it melts what goes off from it? A The T N T vapor.

Q Gases? A Vapor of T N T.

Q Well, are they gaseous? A They are gaseous, yes.

Q When you say volatilize, that means made a vapor? A Yes.

Q Just like alcohol— A Yes, sir.

Q —evaporates? A Yes.

Q Now, then, T N T melts and volatilizes or goes off into vapor, why is it that you say the heat cannot become intense enough when it is not confined to cause detonation? A It is because the heat is absorbed by melting it and by volatilizing it just as heat applied to ice would be absorbed by melting it, and converting the water into steam; and then, as I have already said, the zone of flame or the zone of ignition or combustion, whatever you may term it, is carried further away from the T N T according to the speed of combustion.

Q Given a certain amount of T N T burning, would it get any hotter after the flames had once ignited it by continuous burning? A It would not make any difference at all how much T N T was on fire. The actual intensity of the heat on the surface of the T N T would be a constant.

Q And in your judgment would that constant heat—and by constant you mean stable? A Yes.

Q Reach a certain point and stay there? A Yes.

Q Now, would that point of heat in your scientific judgment—never mind how much T N T was on fire—be sufficient to cause detonation? A It would be impossible to cause detonation in my opinion.

Q What is a detonating fuse? A It is a fuse carrying a detonator which may consist of fulminate of mercury, of picric acid, or dry guncotton or any detonating explosive compound.

Q What, in your judgment, would be the effect of throwing water through a hose or any other way that you propel water on to a mass of burning T N T? A It would be very quickly evaporated and a portion of the steam would be very quickly decomposed and the oxygen combined with carbonic oxide liberated from the burning T N T, producing more carbonic acid gas than would otherwise be produced, or substituting the oxygen of the steam for the oxygen of the air.

Q Now, you are telling us the scientific result. But what I want to know is what practical result it would have towards putting the fire out in the T N T? A It would not put it out.

Q When a high explosive—I am using the high because the low may not have the same characteristics, but we are only interested at this moment in high explosives—when a high explosive explodes, in what direction does the energy that is created or released—whatever the proper scientific term is—go? A In all directions.

Q And is it more intense in one direction than another? A It is when it is exploded adjacent to a body offering great resistance. It bounds away from the resisting body.

Q Well, that is not exactly what I want to know. What I want to know is this: That when you release it—

Mr. Garrison. Strike that out.

Q When an explosion takes place energy is generated, isn't it? A Yes.

Q Do you call it generation or do you call it release? A Liberation.

Q Liberation. Now, when energy is liberated from an explosion, at the instant of explosion what is the fact in respect of that pressure of that energy into different directions? A Exactly equal in all directions.

Q Precisely. Now, is that a simple scientific fact? A It is an absolute scientific fact.

Q It cannot be disputed by anybody who really knows anything about the subject, can it? A No, sir.

Q Now, go on from where I interrupted you. After this energy has been liberated is there any difference in its result in regard to what it encounters? A Yes, sir.

Q Now, tell us about that. A When the explosion or detonation takes place in contact with the body offering great resistance, as, for example, earth or water, assuming that it is on a horizontal plane, the action is to propel the body of gases upward into the air in the form of an inverted cone.

Q Just like throwing a rubber ball on a hard floor? A Yes, sir.

Q It hits the floor and bounces up? A Yes, sir.

Q And the explosion does the same thing?

Mr. Stallman. Why don't you let him testify?

The Court. Well, that is what he said in plain language. That is what you mean?

The Witness. Yes, sir; that is what I meant.

The Court. My only purpose is that the jury and I do not understand scientific terms and I am trying to get all I can. I am not leading this witness. You try to lead Hudson Maxim and see where you come out. You cannot lead him.

Q Now, Mr. Maxim, supposing that there were eight cars of approximately 57,000 pounds of T N T in hundred-pound boxes in a string, in a train, on a railroad track, and fire is communicated to those eight cars, what in your scientific judgment would be the result upon the contents of the cars? A They would burn up; the contents would burn as though it were pitch.

Q And in your judgment would the contents explode? A No, sir.

Q What would cause the explosion of T N T under those circumstances? A It could only be caused to explode by some detonator brought in contact with it.

Q Would such a thing as detonating fuses be such a thing as a detonator? A Yes, sir.

Q Would the projectiles out of 3.2 or 3.3 and larger calibre shells, shot into a mass of T N T, be such a detonator? A They would if they contained a detonative material like T N T, which, getting hot, would detonate in the shell under the pressure and detonate the surrounding T N T.

Q What is the scientific fact in respect of the susceptibility of T N T to detonation when it is hot or when it is cold? A Its susceptibility, as is true of all high explosives, is increased with raise of temperature.

Q The higher the temperature the quicker the detonator will set off? A Or the smaller amount—

Q Or the smaller amount of detonator will set it off? A Yes.

Q In respect of the local effect, first, of an explosion of eight cars of T N T or of one car of T N T, what have you to say in respect of the local effect? And by the local effect I mean the effect on the ground where the cars stood before the explosion? A The crater would be less, but would practically have the same depth and width.

Q Well— A That is, the intensity or carving out effect on the earth as far as depth were concerned would be substantially the same.

Q What about width? What about width? A But the width would be about the same.

Q With one car as with eight? A The width of the crater would be the same; the length would be greater.

Q With one car as with eight? A The eight cars would be greater in length, but the width would be the same substantially.

Q As to distance, what have you to say of the different effects away from the site of the explosion, of the explosion of one car of T N T or of eight cars of T N T? A If one car of T N T would explode it would have substantially the same effect on a line transverse to the longitudinal axis of the train, as would the eight cars, although there would be a little greater effect from the combining gases of any two adjacent cars, but it would not be very much. But the total amount of air displaced throughout the length of the train would be greater; but the intensity of the action would be substantially the same whether one car or eight cars exploded.

Q Now, go back. You began your answer by saying something about longitudinal and transverse; I did not get that. Can you use some simpler terms that I will understand and tell me what you meant by that? A The lateral effect—

Q The effects going out from the side? A Yes, the lateral effect and upward effect of one car would be nearly as great as it would from a line of cars as far as intensity of action is concerned.

Q But not as far as the width of action? A For the same reason—

Q Just one minute; but not as far as the width of the action and area covered by the action are concerned; is that what you mean? A The width of the action would be nearly the same.

Q I have got to get this clear or else it won't do me any good. What would be the same? You say the amount of energy would be the same; do you say the amount of

energy upwards would be the same or about the same? A The amount of energy upwards would be the same.

Q And the width or area would be the same? A Would be substantially.

Q Well, now, what would not be the same? A The quantity of air that would be set in motion by the eight cars would be somewhat greater than it would with one car.

Q Well, that is what I would call width; that is what I had in mind that the width would be different. A No; that is not the width.

Q Well, I misunderstood it. A The eight cars repeats the action of one car eight times; consequently, if eight cars explode you do the same thing over eight times; but the intensity of your effect is substantially the same. If you will let me state—if you take a line of cartridges and dynamite and lay them end to end, the depth of the crater will be substantially the same as though one stick of dynamite alone were to be exploded; but the length of the crater would correspond with the length of the eight sticks of dynamite; therefore, the lateral effect must be a counterpart of the same effect as you get upon the earth —would be substantially equal in intensity whether or not one stick or eight sticks were used. The intensity would be somewhat more, but not very much more.

Q In other words, if there were, we will say, an iron weight placed upon the top of the easternmost car and they were exploded one after the other, or simultaneously, if you please— A Yes.

Q —your iron weight would not be forced up any higher into the sky than if only one car exploded, that one being the one on which the iron weight rested; is that what you mean? A Yes; if it were near the car, when it exploded.

Q And the only thing that would be greater with eight cars exploding than with one would be the area of air displaced? A Yes.

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Q Is that right? A Yes. At a distance you would get a little more action than you would from one car by the combination of the gases of the eight cars; but close up you would get substantially the same effect.

Q In other words, an object close to one exploding car would be just as much affected by that one exploding car as it would be by eight cars in a string? A Substantially the same; yes, sir.

Q Well, now, which would produce the greater intensity of explosive force, 100,000 pounds of T N T on a barge in the bay or eight cars containing 57,000 pounds each? A The explosion of the 100,000 pounds in the barge.

Q Why? A Because there would be more intense action on account of the greater concentration of the gases liberated from the explosive when detonated.

Q Now, supposing that eight cars of T N T, each car containing about 57,000 pounds, were to catch fire and to burn for, say—well, say three-quarters of an hour, forty-five minutes, and then be detonated and explode, about how much in your judgment of T N T would have been burned up by the fire before the explosion?

Mr. Stallman. I object to that question, if the Court please. I do not see how any man, however learned an expert he might be, can guess at the extent of a conflagration and the quantity of stuff that would be burned up on the facts which the Vice-Chancellor has given to the witness. It seems to me that must be certainly pure speculation. He asked Dr. Maxim now how much of that stuff he thinks would be burned up after three-quarters of an hour. It depends upon so many factors of wind, kind of cars and that sort of thing, that I think that it is pure guesswork.

The Court. I am sure I do not know whether an expert can answer it or not, but I am going to let the expert say whether he can or not. It may be that he has knowledge that you and I do not possess.

Mr. Garrison. Well, let me ask him first if he can tell us. It may be that he will say no, and then we will not need the question.

Q Doctor, do you feel competent as an expert to tell us about how much approximately of the T N T contained in eight cars of substantially 57,000 pounds each would be burned up in a fire lasting three-quarters of an hour? Just say yes or no. A I should think, if I may—

Q No, please do not say anything but yes or no? A Repeat the question.

Q (Repeated by the stenographer.) Doctor, do you feel competent, as an expert, to tell us about how much approximately of the T N T contained in eight cars of substantially 57,000 pounds each would be burned up in a fire lasting three-quarters of an hour? Just say yes or no. A No.

Q In the state of the art and knowledge of this kind, are there instances of T N T brought in contact with the flame and the result thereof? A Yes.

Q And what has been the experience in the state of this art of bringing T N T in contact with fire? A It has been known for a great many years that T N T will burn up in large quantities without detonation. The most notable instance that has come to my attention was the burning of 256,700 pounds of T N T at the Hercules Powder Company's works at Camden, N. J., on August 14, 1915.

Q Doctor, how do they get the T N T into the shell?

Mr. Garrison. Strike that out.

Q When T N T is manufactured in what shape is it? After it has been manufactured. Liquid, solid or what? A It is in a solid, crystalline state.

Q Can you give us some common substance that it is like? Like sugar, salt, starch? What does it look like?

A It is yellow, as in a clean fracture; looks a little bit like sulphur.

Q Sulphur. That will do. Now, how do they get it from that state, the crystalline, or whatever you call it, state, into the state into which they put it into the shell? A They generally melt it.

Q They melt it and pour it? A And pour it into the shell.

Q Have you had any personal experience by experiments in burning T N T? A Yes.

Q What happens to it when you burn it? A Simply burns like pitch.

Q And does not explode? A Does not explode.

Q What would you say scientifically in respect to the likelihood of explosion in a case where you have upon a barge one hundred thousand pounds of T N T and four hundred and seventeen cases of detonators? A I should say you have all of the conditions necessary to detonation.

Q What would you say of the likelihood of explosion where there were eight separate cars each containing fifty-seven thousand pounds of T N T in boxes of one hundred pounds each and a fire being communicated to these cars, eliminating any question of outside detonation? A It would be absolutely impossible for the cars to explode; that is to say, the T N T would burn up, to my mind without any question, without exploding.

Q When did you say that Hercules explosion was? A At Kenville.

Q When? A August, 1916.

Q Aren't you wrong about the year? A Oh, 1918.

Q 1918?

Mr. Stallman. What was the last question?

Mr. Garrison. I want to change that question to "fire".

(Question and answers repeated by the stenographer as follows: "Q When did you say that Hercules explosion was? A At Kenville. Q When? August, 1916? Q Aren't you wrong about the year? A Oh, 1918. Q 1918?")

Q When I used the word "explosion" I meant the word "fire." Does that alter your answer in any way? A No, sir; I understood you to mean fire, in that case. Q Yes. Mr. Maxim, I want you to assume that there were eight cars of substantially fifty-seven thousand pounds each of T N T in boxes containing a hundred pounds each located on this map at the place indicated by the cars marked H, and that there were one hundred thousand pounds of T N T in one hundred pound cases, and four hundred and seventeen cases of detonators on a barge to the north of the North Pier; that after the 30th of July, 1916, there was a crater appearing on the face of the earth, three hundred and seventy-five feet long, one hundred and seventy-five wide, and at the deepest point ten feet; and another crater in the bottom of the river here, about one hundred and twenty-five feet one way and seventy-five feet at its widest point, and narrower at other points, and about fifteen and a half feet deep below the previous floor or level of the bay or river; I want you to assume that an explosion takes place at the site of the eight cars and an explosion takes place on the barge; the top two stories of the block of storehouses shown on the map N to Q and all or some of the same stories or storehouses G to M were blown off; that the wall of storehouse Q was blown to the north and the one hundred feet steel structure, which had theretofore supported a water tank, as shown on the map, laid on top of the wall of it; that the first explosion was very much more severe than the second explosion, and indicated on a thermometer record in an office building in New York that it was three or four or more times as severe as the second; that the

crater in the water was somewhere between two hundred and three hundred feet north of the north side of the North Pier; that the floor of the railroad yard was cinders; that there was a man on a freight car, standing upon a freight car, within one hundred and fifty or one hundred and seventy-five feet of the west end of the crater, and other men within anywheres from, we will say to be safe, one hundred to one hundred and fifty feet. From those facts would you be able to draw a scientific conclusion as to which of those explosions was first in point of time? A Yes, sir.

Mr. Stallman. If the Court please, assuming now that he were asking the question that would naturally follow, I desire to object to that hypothetical question on the following grounds—and before I state it, may I ask whether you conceive, Mr. Garrison, that you have stated all the facts or proved all the facts contained in your hypothesis?

Mr. Garrison. I thought I had. I did not intend to include any fact that is not included in this case.

Mr. Stallman. Then I object to the question on the ground that there is no evidence in this case that the depression, if I may so call it, existing at a point two hundred feet or two hundred and fifty north of the North Pier in the bay is a crater.

Mr. Garrison. What would you like me to call it? I will call it something else.

Mr. Stallman. Nor is there any testimony that a barge containing one hundred thousand pounds of T N T or a number of detonators was at or about that place at or about the time of the explosions contained in Mr. Garrison's question.

On that particular question I call your attention to the testimony, which has been read by counsel, quoting Casperson to the effect that the 17 was

right alongside his boat when he was tied up to the west end of the North Pier, and I also object to the assumption in that question that there is evidence that the railroad yard was composed of cinders. I have not heard any testimony to that effect.

The Court. Well, there has been testimony to the effect that the railroad yard was composed of cinders. That came from Mr. Julian this morning. Mr. Julian stated that the railroad yard is composed of cinders, and that is why he thought that the mud that was on the cars on the North Pier had come from the bottom of the river; that in connection with the fact that he had seen what the diver brought up afterwards.

Mr. Garrison. You mean Campbell?

The Court. I should have said Campbell. Now with respect to the other part, that the barge is not shown to have been two hundred feet or so off the North Pier, I do not recall whether there was any evidence of that kind in the case or not. If there is, why, you can point it out to me now. I do not remember.

Mr. Garrison. In this case. What we will argue in respect to that is this: Casperson, on page 355 of this record, was asked this: "Q And the boats on that side had gotten loose—at least the Frank and the Johnson had been cast loose before the first explosion, hadn't they? A No; I don't know. Q You don't know? A No. Q You know the Frank had been, don't you? A No, sir; I don't know. Q Well, you know the 11 had been, you know that you cast her loose after you were blown away from the Frank by the first explosion? A Yes, sir. I walked her down towards the end of the pier. Q You had gotten your boat down to the end of the pier? A Yes, sir. Q You were

trying to get away? A Yes, sir. Q When the captain of the 17 came and spoke to you you were asleep in your cabin, and your boat was then tied up alongside of the Frank? A Yes."

The Court. What you are arguing is that there are facts enough there for you to presume that the jury may find that when the 17 was cast off that he did get out to that point?

Mr. Garrison. Yes.

The Court. And afterwards she was discovered to have been blown up by something?

Mr. Garrison. The witness said she was blown up.

The Court. Yes. If there are facts from which the jury might as reasonable men find those facts, you have the right, of course, to include them in your hypothetical question.

Mr. Garrison. My point is that we have shown, on page 355—Baker, you remember, said—it is in evidence in this case that the Johnson 17 was loose from the pier. It is in evidence in this case that the crater appears on the bottom of the river, a certain place two hundred or two hundred and fifty feet north of the North Pier, and it is in evidence in this case that this boat contained one hundred thousand pounds of T N T. Now I mean to say that this jury has a perfect right to infer she exploded at the place where the crater appears at the bottom of the river, just as much as they will have a right to infer that the crater on land was formed by an explosion of the dynamite cars on land—the T N T cars on land. If I cannot draw that inference I do not see what case the plaintiff has.

Mr. Stallman. I feel I must call your attention to the testimony Mr. Garrison just read, that Casperson cast off after the first explosion, and pushed the 17 and 11 out at that time, went by them.

Mr. Garrison. That is, she was loose, the 17 was loose.

Mr. Stallman. After the first explosion.

Mr. Garrison. I am bound by what the witness says, he cast her loose. If I find she was loose from my testimony I have a right to try to prove when she was loose. I am not bound by the time the witness gave, an incorrect time.

Mr. Stallman. I think a hypothetical question has to be based upon evidence in the case and not something directly contrary to that evidence.

The Court. Well, so it has, but I do not yet see the point that you raise has any substance in it. I think that there is evidence here—

Mr. Boles. Here is the place.

Mr. Garrison. "Q And the Johnson 17 got loose from the pier before the first explosion? A Yes, sir."

There is Baker's testimony.

Mr. Stallman. The testimony of the next witness was that they said the 17 was laying right alongside the pier, because Casperson passed it, he went around the corner.

Mr. Garrison. That we are going to decide this case on the contradictory evidence—

The Court. You need not bother about it, because our own Court of Errors and Appeals has passed upon the precise point, Mr. Stallman, in the case of Thorpe against ————————, which you will find reported in 11 Dickinson's Chancery, that if a man calls a witness and the witness testifies to a certain state of facts that the man who calls him is not absolutely bound by that testimony, that he can produce somebody else to show what the actual fact is, as he contends it to be, and then leave it to the jury to determine what the fact is.

Mr. Stallman. I had already asked the Vice-Chancellor whether or not he had assumed that he had proven the hypothesis embraced in his question to Dr. Maxim, and he said he had.

The Court. He says so now. He contends now that the evidence of the civil engineer with respect to the area of the depression, or whatever it may be—you may call it a crater or a hole—crater does not mean anything, if you call it a crater it is a misuse of language, in my judgment, but whatever you call it we all understand what it means. It means a depression or carving out of the earth. There is evidence in the case that there is a crater at that point; there is evidence in the case that the Johnson 17 was cast off before the first explosion had taken place; there is evidence in the case that the Johnson 17 was loaded with one hundred thousand pounds of trinitrotoluol and the ammunition that it is said was on it, and I cannot for the life of me then see what the real point of your objection is. The law is perfectly settled everywhere where the common law is administered that the facts included in a hypothetical question do not have to be demonstrated. If there is any evidence from which the jury might as reasonable men conclude the facts to be as counsel assumes them to be in his hypothetical question the question is properly framed and the duty of the Court is to admit it, and in this case it seems to me there are facts from which the assumptions made may be found to be facts by the jury, and if that is so, my particular function is to rule the question in, and that accordingly I do, and you may have the objection entered on the record.

Mr. Stallman. I will have it entered.

The Court. Of course.

(Question repeated by stenographer.)

Mr. Garrison. His answer was that he could?

The Witness. Yes.

Q All right; will you please give us your opinion on that assumed state of facts as to which one of those two explosions was prior in point of time? A The explosion of the barge.

Q Why do you say that? A On account of the result mentioned and the sequence of the results mentioned.

Q Proceed. A The blowing down of the wall of the warehouse outward in the direction of the explosion in one mass or bodily could not have been effected or produced by the explosion of the eight cars, and it is the unroofing of the warehouses and the prostration of that wall that would naturally be expected from the explosion of the barge containing that quantity of T N T at that distance and in that position. The position of the barge being low in the water would bring a greater intensity of action upon the roofs of the warehouses than it would lower down on the warehouses, and the warehouse wall having been blown out in the direction of the explosion must have been blown out by a vibratory wave of atmospheric compression instead of by air, compressed air, propelled forward in the nature of a projectile such as obtains near to a large blast or explosion. Again: the location of the support of the water tank on top of the prostrated wall of the warehouse, it seems to me, is absolute proof that it could not have been placed there by the first explosion, if the first explosion was what located the wall of the warehouse; and it is absolutely certain that if the eight cars had been the first explosion the warehouse walls would not only have been destroyed, but they would have been disintegrated, propelled forward in a separate mass of bricks, each brick being impelled by the pressure of gas behind it. So that it seems to me that it would be utterly impossible for the first explosion to have oc-

curred on land. The character of the support was such that it could not have been thrown forward except by a strong blast. An atmospheric vibration, of however great an amplitude, would not have produced that effect, because reaction follows action too quickly to carry a support like that to that distance and then drop it, because the wave of compression at that distance would be traveling at the speed of sound and vibrating back and forth exactly as a sound wave.

Q When you state support, you mean the support of the tank? A I do, of the water tank.

Q What, in your judgment, has the presence of the human beings at the points I have indicated upon this question of which explosion was first A The fact that the men mentioned survived the explosion is absolute proof that the cars could not have been the first explosion.

Q Now, you spoke of the unroofing of these storehouses as having an effect upon your judgment. Why would they be more likely, in your judgment, to be unroofed by the explosion of the hundred thousand pounds of T N T on the barge than from an explosion proceeding from the eight cars? A Because of the location of the mass of explosives, the distance and the quantity, and the fact that the unroofing of the warehouses and the falling of the wall bodily is a phenomenon which would be very likely to be produced by an explosion of that quantity of high explosive at that distance and in that position, whereas the explosion of the cars, had the cars exploded first, would not have merely unroofed the buildings, but it would have blown them right over in a mess of disordered, disintegrated material.

Q Would that have occurred, in your judgment, from the shaking of the earth or from the compression of the air? A From the blast of air.

Q And when air is compressed like that, is it similar to a solid substance? A Yes.

Q So it would be like striking them with a battering ram, in your judgment? A Yes.

Q Would the fact that the effect was high up on the roof rather than low down have any effect? A The unroofing of the buildings, yes.

Q Explain that? A It is on account of the fact that that quantity of high explosive—

Q What quantity? A 100,000 pounds of T N T on a barge on the surface of the water would throw up a column of gasses in the form of an inverted cone.

Q Like a funnel? A In a funnel shape, and the lateral or unroofing action would be produced by the edges or sides of that cone striking the buildings in that position up at the roof.

Q Did you assume the fact that the walls of these storehouses which were affected at all by the first explosion fell out—by which I mean north or east and not in— A Yes.

Q —what effect would that have on your judgment? A It would prove that the action which blew the wall outward in that direction was similar to the action or of the same character as the action that blows glass outward into the street instead of blowing it into the building.

Q What effect does that have—you are telling us now what produced it, so to speak, but I what I want to know is, what effect does that have on your judgment as to which of these two explosions was first? Why wouldn't that same effect have been true if the first explosion had been on land instead of on water? A Because had the first explosion been the explosion of the cars, the character of the blast would have been in the character of a projectile, while from the explosion of the barge it was a vibratory wave of air like a sound wave which pressed the wall forward and then it was followed up by a node or partial vacuum and the wall

reacted outward from the pressure of the atmosphere in the building and fell flat outside.

Q Then the first thing that an explosion does is to drive air with great force against a wall, for instance? A Yes.

Q Then the air rushes back with great force? And the interior pressure of air then is greater than the exterior pressure and that throws the wall out? A Yes, when the wave of compression is a vibratory wave.

Q Yes; that is what I am talking about. A Yes.

Q Now, when is not a wave of compression a vibratory wave? A When the action of the blast is such as to carry the air forward with it, in the nature of a projectile without time for the reaction of the atmosphere.

Q And that has largely to do with proximity to the site of the explosion? A Exactly. It has to be very near the explosion.

Q If the wall is within a certain distance of the explosion the gases drive the air in front of them and it is just like a battering ram? A Exactly.

Q If you get far enough away the gases set the air in motion and the effect is produced by that motion in the air? A Exactly.

Q I show you an exhibit in this case marked D. 7. I want you to assume that that shell was found on the north side of the South Pier and I want to ask you whether that could have been projected into that position from an explosion at the site of the eight cars containing T N T? A It could not.

Q I show you an exhibit D. 5, and want you to assume that that is a freight car on the eastern end—that is the extreme water end of the North Pier, and that you are looking from the north and that the car is tilted toward the south and that the north side of the car is shattered, as you see it, and ask you whether or not that effect would have been produced by an

explosion at the site of the eight T N T cars? A It could not.

Q I show you another picture of a similar car in a similar position and ask you whether you make the same answer to the same question? A I do.

Q Doctor, I want you to assume that the sides of the freight cars on the east end of the North Pier were found spattered with mud and that the pier itself on the north side was found spattered with mud, and I want to ask you whether that result could have been produced by an explosion at the site of the eight T N T cars? A It could not.

Q Doctor, if a scientific expert states that this could have been produced by suction out of the bay from an explosion at the site of the eight cars, what have you to say as to such scientific judgment? A I should call it most unscientific.

Q What could he have meant by a suction of mud out of the bay at the site of the eight T N T cars?

Mr. Stallman. I object. That is improper.

Mr. Garrison. I am just trying to find out what the man could have meant.

Mr. Stallman. I do not think it proper to have one expert characterize the testimony of another.

The Court. I think I shall sustain the objection. He would not be able to tell what he meant.

Mr. Garrison. I am trying to find out honestly. I do not know. Am I not entitled to find out what effect the suction would have had?

The Court. You can find out what effect the suction would have had without finding out what Mr. McKenna meant. One expert does not characterize another.

Q Would an explosion at the site of the T N T cars by any possibility have any effect of sucking mud out of the floor of the bay? A No.

Q I understood there was no question as to the fundamental law that an explosion exercised identical force in every direction. A Yes.

Q Now, then, would it be scientifically possible for an explosion at this point where the eight cars were to hurl itself around and produce a shattering effect on the north side of objects standing on the east end of the North Pier? A It would be absolutely impossible.

Q Absolutely what? A Absolutely impossible.

Q In an explosion on any kind of a substance—and by that I mean either on earth or on water—which produces the more destructive effect, the force transmitted through the earth or the force transmitted through the air? A The force transmitted through the air.

Q What do you call the force that is transmitted through the earth? A Shock.

Q Which is the better transmitter of shock, the land or water? A Water.

Q Why? A On account of its uniform character and density.

Q And what is the effect of an explosive shock on water? A The same as though it were a solid.

Q Just as though it were a battering ram? A Exactly.

Q Glass broken at a distance from an explosion is broken by what kind of force? A Broken by the wave of the atmosphere—the atmospheric wave.

Q What you call the vibratory wave? A Yes.

Q As against a direct action? A Yes.

Q What kind of action do you think would produce the deviation of a thermometric needle on a recording chart in a building in Manhattan by an explosion at Black Tom? A Why, the earth shock, through the earth and water.

Q Why do you say that? A Because the shock through the earth would be transmitted by a shorter wave of vibration—a much quicker vibration than the

atmospheric vibration, and it would therefore be of the exact character that would produce the deflection of the needle on the card.

Q What is the seismograph? A To measure earthquake.

Q To measure the shock of earthquakes? A Yes.

Q And that means the shock of the earth is measured by the seismograph? A Yes.

Q Would this thermometric needle be similar to the registration of a seismograph? A I would think so.

Q And that would be produced by earth shock? A Yes.

Q Now, if this thermometric needle registered on a chart a line which to the eye it at least four or five or six times as great as a shorter one twenty minutes thereafter, what would you say as to the intensity of those two explosions on the earth? A The first one, I should say, was correspondingly more intense.

Q Yes, and that that registration came from the earth shock? A Exactly.

Q Now, which do you think would produce the greater earth shock in the Borough of Manhattan, being indicated on such a chart by such a needle, the explosion of the 100,000 pounds of T N T and the detonators, or the explosion at the site of the eight cars on land? A The explosion of the T N T in the barge most certainly.

Q Why do you say that? A On account of the fact that the barge, due to its low position and its position in the water, would be able to transmit a much severer shock than would the explosion of the T N T in the cars. Furthermore, the 100,000 pounds of T N T in the barge would exert upon the walls of the crater formed by it a much greater intensity of action, an action or shock energy of longer duration; whereas on the shore explosion at the position of the cars, they being some three or four feet above the ground, and the earth underneath being composed of cinder and gravel and so forth, and

the surface of the earth being some eight feet above average high water, an explosion there would not and could not transmit the shock downwards into the water, and therefore, underlying that position and through the earth and water to Manhattan Island with anything like the same intensity as would the explosion of the 100,000 pounds in the barge.

Q Now, is it—is there scientifically a relationship between the mass of explosives exploded and the distance to which the effects are felt? A Yes, sir.

Q Is it or is it not a fact that after you reach a certain distance you can increase the mass of your explosives with a slighter effect mathematically or geometrically than the amount you have added? A Yes, sir.

Q Have you made a special study of that? A Yes, sir.

Q Have any of the municipal, civic, state or national authorities published tables showing zones of safety in respect of explosives? A Yes, sir.

Q And they are based upon what law? I mean what scientific law? A The fact that when a mass of explosives is detonated at the distance, say, twice as great from a given object as another quantity of explosives, it would take eight times the quantity of explosives to produce the same intensity of action upon the object.

Q In other words, you increase the distance 100 per cent. and you increase the mass of explosives how much to get the same effect? A Eight-fold.

Q 800 per cent.? A 800 per cent.

Q Have you prepared a table which shows this? A Yes, sir.

Q Is this the table? A That is the diagram, yes.

Q The diagram or chart? A Yes.

Q Now, please explain that diagram to us, Mr. Maxim. Tell us first what the different letters represent? A X represents what we may call the target or object, as, for instance, a building.

Q Yes. A A represents the mass of explosives. B represents another mass of explosives twice the distance of A.

Q Well, do not let us depart from B for a minute. Now, what are we assuming with respect to the mass of explosives that has a given effect on X as existing at A? How much of explosives are we assuming at A? A We will say one unit quantity.

Q One unit of quantity of explosives has a certain definite effect at X, a certain and certained effect at X? A Yes.

Q Now, then, B is located twice as far from X as A? A Yes, sir.

Q And how much of explosives would you have to have at B to produce an identical effect at X? A Eight times as much.

Q And what is the box or cube, or whatever you call it, shown as between B and BE? A That shows an intermediate quantity not double the distance; and D shows the distance again doubled from X.

Q Doubled from B, you mean; doubled from B or doubled from A? In other words, how far— A It is twice the distance from X as B is.

Q Twice the distance from X as B is? A Yes.

Q How much explosives do you have to have at D to produce the same effect on X? A Sixteen times as much.

Q Sixteen times as much? A Yes.

Q Although you have only doubled the distance one time as much? A That is it.

Q Now, what about F? Can you see at that distance? A I cannot see very well.

Q I will give you another copy of the blue print; then you need not come down. In other words, tell me how far F is from B or from X. Now, what about F? A 216 times as much as to A.

Q 216 times as much as to A? 216 times as much in your mass of explosives as F, as you had at where? A At A.

Q Now, what figures did you give me as to D? How many times as much as you had at A would you have to have at D? A 16 times as much—64.

Q Those are cubes? A Yes, sir.

Q And how much would you have to have at H to produce the same effect at X as you produce by one unit at A? A 512 times as much.

The Court. Doctor, you were going to say to us a moment ago, and I think you were interrupted in it, the law you deduce from these figures you give us. You said it increases—

The Witness. It increases as the square of the distance. The intensity is inversely as the square of the distance.

Cross examination by Mr. Stallman.

Q Mr. Maxim, is wet nitro-cellulose capable of explosion if detonated? A Yes, sir.

Q And is benzol if confined in drums, tight drums so that it won't leak, capable of explosion to any extent if heated to a high temperature? A It would have the same effect as water, would burst from the vapor; burst it open just as water would if heated.

Q And after it bursted the surrounding flames would also ignite the benzol and— A Burn it, yes, sir.

Q Do you consider, Mr. Maxim, that if T N T if packed 576 boxes to a freight car, would be confined as to any part of it sufficiently to cause it to explode as the result of combustion? A No, sir.

Q Are you familiar with shrapnel? A I know something about shrapnel.

Q You know that it is filled with bullets or missiles of some sort—that is, the shell? A Yes, sir.

Q And is it an explosion or detonation that causes those bullets to be thrown around? A It is an explosion—they generally use black gunpowder in those.

Q That is an explosion that causes the bullets, or whatever it is, to fly out? A Yes, sir.

Q You said that when T N T is detonated it explodes in the shape of an inverted cone?

Mr. Garrison. No, he did not say that. He said the effect on the water of the explosion was to send it up like a funnel or inverted cone. He did not say that with respect to the explosion of T N T as such.

Q What did you say, Doctor, as to this inverted cone? A When a mass of high explosives is detonated on the surface of the earth or on the surface of the water the effect is to propel the gases upward into the atmosphere in the form of an inverted cone, producing a crater in the earth or water underneath.

Q Now, I think you said that the eight cars of T N T containing 57,000 pounds each might be exploded by shells being shot into the mass when heated? A If the shell contained a detonative explosive, or an explosive which when heated under confinement such as it would have in the shell, and detonate, it would detonate the entire mass of surrounding T N T.

Q You assume that if the eight cars of T N T caught on fire, that it would heat the T N T to a point where it would be more easily susceptible of detonation than it would otherwise? A It would be more susceptible to detonation than it would if it were cold.

Q Yes. And if a shell or a number of shells of shrapnel should be exploded in that mass of burning T N T wouldn't it be likely to make it explode? A No, sir; it would not. I—

Q Would you feel absolutely free to be in very close proximity to a carload of T N T with shrapnel being

shot into it so far as your personal safety is concerned? A I melted some T N T—

Q Well, now, just a minute, Doctor. Just answer that question.

Q (Repeated by the stenographer.) Would you feel absolutely free to be in very close proximity to a carload of T N T with shrapnel being shot into it so far as your personal safety is concerned? A I would not court the vicinity of any large mass of explosives because I would not know what might be the elements of detonation in the vicinity; but as far as the explosion of T N T by shrapnel is concerned, I should think it would be most unlikely, but I would not want to sit on a car while it was on fire, or stand in its immediate vicinity with shrapnel shell being fired into it; but I have myself taken and melted T N T, put it in a steel container—

Q I didn't ask you what you did. A And I—

Q I didn't ask you for your experiments. I am coming to that later. Your judgment is, then, that you would not feel personally safe because of the probability of an explosion in a carload of T N T if shrapnel shells were being shot into it? A I should not want to be in the vicinity of a carload of T N T with shrapnel shells being shot into it.

Q Now, I think you said, Doctor, that if one car of T N T loaded with 57,000 pounds were to explode it would not cause an effect much different so far as the lateral or adjacent territory was concerned, than the eight cars of T N T in a string? A Yes, sir.

Q Now, is it a fact that if the end car of this supposed string of eight cars were to explode, that there would be a succession of explosions involving one car after the other? A They would all explode in a small fraction of a second.

Q But, in fact, it would be a succession of explosions, wouldn't it? A Certainly.

Q And would those explosions be further subdivided into the number of boxes or 100-pound boxes with which the cars were loaded? A The explosion would be practically the same as though they were all in one mass in the car, and the entire line of cars would explode substantially exactly the same as though they were all in one solid carload.

Q And is that because of the application of the rule that the detonating wave travels about 17,000 feet a second? A Yes, sir.

Q Did I understand you to say that one hundred thousand pounds of T N T located on a barge about two hundred and fifty feet north of the North Pier would have a greater explosive force than the eight cars located where the red rectangles are on the map? A I do not get your meaning. There is a difference in the character of the explosive force. In the barge the explosive force would be much more concentrated and capable of exerting on the earth or any surrounding media much greater concussion than the explosion on the cars, but the explosion on the cars would push, displace more atmosphere, as when you take into account the total amount of the atmosphere displaced.

Q Well, what I want to know is whether I understood you correctly in the first place, and if not, what your opinion is—if a barge containing the hundred thousand pounds of T N T and located two hundred and fifty feet north of the North Pier, which on this map would be ten inches—off this map—would exert any more or any different force on the structures that are located over here in the center of the map than the explosions of one car of T N T located about where I am pointing, which is the last, the most easterly car of the string of cars of T N T? A The one car of T N T would, in my opinion, exploded in the position in which that car stood, exert a more destructive effect upon the warehouses than would the barge.

Q Can you say, Mr. Maxim, whether or not a freight car loaded with T N T whose length was longer than it was wide, in the proportion of the dimensions of a freight car, would exert any more force at the time of the explosion in one direction than another? A I don't get your meaning, sir.

Q Take a freight car that is standing due east and west? A Yes.

Q And it is loaded to capacity of that car? A Yes.

Q And the volume of explosives in that car—there is a greater volume of it lengthwise than there is sidewise? A Exactly.

Q Would that fact, that there is a greater quantity of explosives lengthwise than sidewise, make any difference in the force of the explosion in any direction? A Yes.

Q Then, do I understand you to mean by that that the force of the explosion longitudinally would be greater than it would sidewise? A The explosion sidewise would be slightly more than it would lengthwise, because at a given point either way from the car there would be more explosive within a given distance to a given point on each side of the car, but the car is so short compared to its length that the difference would be very slight; but if you were to exaggerate, say, and draw the one car out to the length of the eight cars, it is very easy to see that the effect would be very greatly exaggerated.

Q You mean that there would be more force exerted according to the longitudinal line on this mass of explosives than transversely? A No; the opposite—the opposite—for the reason that the action upon a body from the explosion of a mass of explosives in proximity to the body depends upon the amount of the explosives and the proximity. Now, if you take a stick of inch and a quarter by eight dynamite and put a point down close to either side of it, you will see you will have a little more mass of explosives near the point if it is placed

alongside the dynamite than if it was placed at the end of the dynamite. That is the point.

Q Assuming that that envelope which I hold in my hand is a mass of explosives— A Yes.

Q —and it was detonated— A Yes.

Q —what I want to know is whether or not this oblong mass upon explosion, upon detonation, would exert any more force longitudinally than it would laterally, or would it exert more laterally than it would longitudinally? A In close proximity to it it would exert slightly more effect laterally.

Q Now did I understand you to say that there would be a more destructive effect on these storehouses from an explosion of one car of T N T in the yard than from the barge out in the bay, that is, the effect on the storehouses? A Mention the quantities, please?

Q Taking the quantities that we have been discussing, of about fifty thousand pounds in the car and a hundred thousand pounds in the bay? A You would get more destructive effect upon the warehouses from the explosion of the cars in the position in which those cars were, elevated above the ground about three or four feet, which would give them—the explosion—a great deal more lateral action than if it was placed down in contact with the earth, and then the much greater proximity of the car to the warehouses.

Q Does it make any difference in the detonation of a very large quantity of T N T in its effect upon the earth as to whether the mass is one or two or three feet removed from the earth? A Yes, sir.

Q The length of time that it would take for the effect of the explosion to reach the earth would be infinitesimal, wouldn't it? A That is not the—

Q Well, that is the fact, isn't it? A No, not infinitesimal. It would be mighty considerable, when we are to take into consideration what takes place in that time.

Q Now did I understand you to say that when the explosion takes place the energy is distributed in all directions equally? A No; exerted equally.

Q Exerted equally? A Yes.

Q And the length of time it would take for that exerted energy to travel one or two feet is too small to be considered, is it? A That is not the point at all. During that interval the explosive would get its direction downward. It tends to rebound from itself. It is expanding in all directions with enormous velocity, and it would get a great velocity in that distance, you understand, which it would not get if it was on the earth, and consequently it would not have very much greater downward velocity and consequently greater—it would be in that little interval of time, while that was going down four feet, it would get a tremendous start in a lateral direction; don't you see?

Q Would it lose any of its energy in traveling that two or three feet? A It loses its energy in proportion to the work it does on surrounding media and also on propelling itself.

Q Would a carload of T N T exploding exert any less energy on the ground than it would at a point three feet above the ground? A It would exert more energy on the ground—on the ground than it would if it was in a position at any height above the ground.

Q That is not the question I asked you now, Mr. Maxim. I say if this carload of explosives, of T N T. would explode, would the energy striking the ground be any less than was exerted by the explosion at the point three feet above the ground?

(Question repeated by stenographer.)

Mr. Garrison. That is saying the same thing over again.

The Court. I think your question is rather meaningless, because you are asking him whether the explosion in the car would be any greater than the

explosion in the car. Just listen to your question and you will see what I mean.

Mr. Garrison. You had it above the ground.

Mr. Stallman. I won't ask Mr. Maxim to answer it, but what I was getting at was this: I want to know whether or not at the time of the explosion at a point three or four feet above the ground, assuming it to be a car floor and there is a certain amount of energy expressed in that explosion at that point downward, by the time it strikes the ground would it be any less than it was when it left the car floor?

A I think the best way I can answer your question is to tell you the difference in the effect. If you explode a car four feet above the ground, the space between the car and the ground gives the explosive more time to expand in a lateral direction than it would if it were placed on the ground. If placed on the ground, the immediate, intense action of the blast would be to form a crater in the ground, and then the entire mass of the explosive would be projected upward with greater velocity than if it were exploded at any height above the ground.

Q Well, can't you answer this question? Now I don't know how much exertion or how much pressure explosive exerts, but assume that explosion of a large mass of T N T exerted one hundred pounds to the square inch, and right here; by the time that force of that explosion struck the ground three feet below, would it exert as much or more or less than the hundred pounds per square inch by the time the effect of that explosion struck the ground?

The Court. He has already answered that.

Mr. Stallman. If he cannot say, all right.

The Court. He has answered it.

Q Did you see this burning of the T N T at the Hercules, in August of 1918? A I did not.

Q Do you know how that T N T was, what form it was in, what shape it was in? A Yes.

Q At the time it was burning? A Yes.

Q What was it? A It was in boxes, in a magazine.

Q Was it all in one magazine? A All in one magazine.

Q All in one pile? A All in one pile.

By the Court.

Q Let's see if we are talking at cross purposes, Mr. Maxim. I understood Mr. Stallman's question to be to you whether when the T N T explodes on a car floor three or four feet above the ground it exerted any greater energy on the ground when it reached there, that is, the waves reached there, than it would exert if it exploded on the ground? I understood you to say if it exploded above the ground before the waves reached the ground they had an opportunity to explode more in a lateral direction? A Yes.

Q And that would result logically in your meaning to answer him that it would cause less, or exert less, force on the ground if it exploded above it than it would on the ground? A Exactly.

Q That I understood to be the answer to Mr. Stallman's question.

Mr. Stallman. No; I think the Court was mistaken in the question I was asking.

The Court. Maybe I am, but that is what you did ask, and if you read it again you will find it.

Mr. Garrison. He is asking whether it did not lose some of its direct energy.

Mr. Stallman. No, that is not the question. I might as well make myself clear. It think it is a well-known scientific fact that if pressure is

exerted, whether it is a solid body or whether it is water or air in motion, or whatever it is, it may be expressed in terms of an explosion, of an explosive, if it is in any direction, and I am assuming it is downward, it would have some sort of a force or pressure that might be expressed in pounds per square inch. What I wanted from Mr. Maxim was that if this explosion took place at a height of three or four feet above the surface and went down, whether or not by the time that effect reached the ground, the effect on the ground in pressure per square inch would be less than it was when it started from that level.

Mr. Garrison. That is what he answered.

A It would be less.

Mr. Garrison. He tells you it squelches out like that.

A Because the pressure would be relieved in the lateral direction and upward. The higher you lift it from the ground the less effect you have on the ground.

Q Yes. I understand perfectly well, Mr. Maxim, that if an explosive was laid on the ground and exploded it would have a greater—exert a greater pressure, if I may say so, on the ground than if it was exploded upon the ground. I understand that clearly, but I did want to know if it was exploded at an elevation above the ground whether or not the initial force of that explosion at that plane would be any less than the force of the explosion at that plane, by the time that force reached the ground?

Mr. Garrison. An initial force cannot be less, it must be the same.

The Court. At that plane, because the plane is the one of the explosion.

Mr. Garrison. He has answered it.

Q But it traveled from that plane to the ground. A Then it would not be on that plane. The intensity to which you refer or pressure would not be in the plane any longer, it would be on the earth's surface.

Q The detonating wave would reach the earth? A No, it would travel through the mass itself, and the results of the detonating wave, the product of the detonating wave would reach the earth in terms of gas in motion.

Q Then I stand corrected as to my terminology; but what I was getting at was the effect of the exploding wave, if I may so call it, on the ground; whether that was any less than it was the moment of its initiation, and I understood you to say you could not answer that question? A I did not say so.

Mr. Garrison. He has answered it over and over.

A I have answered it in several ways.

Mr. Garrison. It covers a larger area, but it is not as intense at any one place as when it started.

By the Court.

Q And the further you get away from the point of explosion the less it is? A Yes.

Q After a while it is nothing? A Yes.

Q If you get far enough away? A Certainly.

By Mr. Stallman.

Q I understood you to say that, and what I wanted to know is whether or not in a carload of T N T it would make any appreciable difference in a distance of two or three feet? A It would make a great deal of difference.

Q Now, Mr. Maxim, I understood you to say that an explosion, looking at your chart, of a quantity of explosives as indicated by the lot B, would have the identical effect on the point X as the explosion of the

smaller quantity represented as A? A Substantially, yes.

Q Well, now, I think you said to Mr. Garrison it would be identical; is that right?

Mr. Garrison. You mean right that he said it?

A If you had ideal conditions it would be identical, because it is governed by the same laws as the laws of acoustics.

Q Is there any scientific law, as Mr. Garrison calls it, regulating the distance at which the explosive effect and the vacuum effect of an explosion is felt? A You mean the vibratory wave?

Q I think that is what you called it. A Yes, sir; there is a law.

Q And can you give us the formula, if there is one, so that we can understand it? A I do not know that I can give you the formula, but I can state the thing to you, I think, in general terms, so that you will understand it.

Q What is it? A When the pressure and velocity of the gases are such that the air has not time to react, that is, is greater than the reacting power of the elastic atmosphere and there is the steady following of gases behind, then the air acts as a projectile; but when you reach a point where the air can react, then you reach the period of the vibratory wave, which is the same thing as a sound wave.

Q Well, that is the manifestation of its peculiarity; but is there any scientific law or rule that says that a given volume of explosives will act as a battering ram for a certain distance and then after that it will create a vacuum? A "Create a vacuum" is not a good way to state it.

Q Or vibratory wave, to use your expression. A Yes, the vibratory wave travels at exactly 1,088 feet per second, the speed of sound. Now, then, your projectile effect is maintained so long as the energy of the blast is

sufficient to carry the atmosphere forward with it as it would a projectile, and when that limit is reached then the air reacts again and you get the vibratory wave known as a sound wave, which travels 1,088 feet a second.

Q What I want to know is if you would go out in an open space and detonate a hundred pounds of T N T—

A Yes.

Q —how many feet away would it be before that vibratory wave would be set up? A I do not know how far it would be if you would take a hundred pounds. I never made any scientific determinations of that quantity at that distance.

Q Do you know of anybody that ever did? A I do not know of anybody that has made any particular determination to know exactly the distances at which the projectile effect is reached and the vibratory effect is set in; but it is a well recognized fact—

Q That is all I asked you. A —that that is the result, by all men that are experienced in explosive materials and their actions.

Q What is the detonating point of T N T, Dr. Maxim? A I do not know; the ignition point, I believe, is about 300 degrees Centigrade, or 276 degrees Fahrenheit—wait a minute; it is 300 degrees Centigrade and I do not know what it would be Fahrenheit. You could tell by multiplying it by 9, dividing by 5 and adding 32.

Q Would you call that the detonating point under any conditions? A If it were to be confined in a steel shell so that it could not get away or release its pressure, then the temperature of ignition would substantially instantly react to produce detonation. The temperature of detonation, however, may be considerably greater than that. It certainly would, because the temperature of T N T under detonation would be very great; it would be equal to molten steel.

Q Well, as a matter of fact, T N T heated to about 300 degrees Centigrade would be very apt to detonate

itself? A No, not unless it was confined. It would not detonate unless it was confined. If you had it confined to such an extent that you could heat it up to that point—if you heat it up to 300 Centigrade, and that is the point when it ignites, then it would continue simply to burn from that point on, unless it were confined.

Q And if it was confined at that temperature, it would explode? A No; it would simply generate a pressure which would result in detonation, because it could not expand.

Q And then it would explode? A Then it would explode, yes; but the detonating temperature is not 300 degrees Centigrade; it is much higher.

Q Do you remember being asked these questions and answering them this way in the Howell case: "Q What is the detonating point of T N T? A A little over 300, I think, Centigrade. Q 300 degrees? A Yes; I don't know the—the melting point is about 50 and the ignition point is about 300. Q And that is also the detonating point, isn't it? A If it is confined it would be the detonating point. If it is heated up to 300 degrees of heat in a closed state, I should say it would be likely to detonate. Q That is, T N T itself? A Yes, be self-detonating." Didn't you answer those questions that way? A I mean exactly the same thing now. The—

Q That is all right. I just asked you if you answered those questions that way. A I am averring the same thing now.

Q Is there any substantial difference, Doctor, between the force exerted by a solid mass striking the water and a force exerted by an explosion upon water, except in the degree? A Yes; there is a difference; a vast difference.

Q Don't you consider that a body of water has a more cushioning effect than the land—that is, under force applied to it? A Far less cushioning effect. That is a well known scientific truth.

Mr. Stallman. That is all.

Re-direct examination by Mr. Garrison.

Q Doctor, I think you told me there were some scientific data on this matter of distance in feet of structural damage effect of explosion. I show you a pamphlet and ask you if you know what that pamphlet is? A Yes.

Q What is it? A It is a sheet issued by the—I do not know that I remember the exact name of the railroad commission—for the handling and storage of explosives, of which Colonel Dunn is at the head.

Q I notice on the first page there is a series of columns of figures headed, "minimum distances." That means minimum distances in respect of what? A The distance at which the different quantities of explosives may be stored either in a barricaded magazine or in one that is not barricaded.

Q I notice certain charts on pages 6 and 7 with a legend underneath, "Distance in feet of structural damage." What is that exhibit? A That shows at what distance magazines may be safely located from buildings and not endanger them to structural damage or demolition by an explosion of the magazine; and by structural damage is meant the breaking of beams and serious shattering of the foundation, not merely the breaking of glass.

Mr. Garrison. I will put in the table of distances on the first page, with Mr. Stallman's consent—I mean by his consent that I do not have to put in all this reading matter—and the charts on pages 6 and 7.

Mr. Stallman. May I ask in that connection whether or not that table and the chart are made up with reference to any particular quantity of explosives?

Mr. Garrison. That is what it is.

Q Do you know who prepared charts 6 and 7? A They were prepared, I think, by a commission of the Du Pont Powder Company and this Bureau of Handling

Explosives on Railroad, co-operating together, based on accurate experience and knowledge derived from explosions occurring in different parts of the world, and especially in the United States.

Mr. Garrison. I would like to offer in evidence as illustrative of this witness' testimony this chart that he used during the course of his testimony.

(Pages 6 and 7 marked Exhibit D. 21.)

By Mr. Stallman.

Q Did you in answering Mr. Garrison as to the explosion in the barge out in the bay assume that the T N T was detonated by the detonators on board the same barge, either by those detonators or some other detonator, because the T N T on the barge would never have exploded from fire; it had to have some detonating means?

Q Well, do you assume in answering the question that there was any specific cause for the detonation of that T N T? A Yes, sir.

Q And what was the detonation that you assume? A It would be caused by the fuses or detonators that were carried on board.

Q And do you at the same time assume any cause for those fuses being detonated? A Why, the flame of the combustion of the T N T would detonate the detonators.

Q The flame would? A Detonate the detonator, and then the detonators would detonate the T N T.

Q And that same thing would hold good if there were fuses up in the yard near to the T N T cars, wouldn't it? A It would depend upon the kind of fuses. If they were detonating fuses, yes; if they were not detonating fuses, no.

Q What kind of fuses did you assume were on board this barge? A Detonating fuses.

Mr. Garrison. He was told in the question so.

Q If it were a fact, Doctor, that this barge 17, containing the 100,000 pounds of T N T and 400-odd cases of detonators had not exploded at the time of the damage to the storehouses, do you still say that the damage to the storehouses could not have been caused by the explosion of the cars on the track? A I certainly should if—I think you better restate that question again, so I will be sure to get the correct answer.

Q I will restate it rather, in order to avoid any confusion. If the barge which, it is said, contained 100,000 pounds of T N T and 400-odd cases of detonators— A Yes—

Q —had not exploded— A Yes, sir.

Q —and there was an explosion of the eights cars of T N T on the track and there was this damage that has been described to you, to these storehouses— A Yes, sir.

Q —would you still say that the damage to the storehouses did not result or could not have resulted from that explosion of T N T in the cars? A Why, I should have certainly known that it could not, for one reason that it would have been utterly impossible for that wall to have been thrown outward and downward bodily without being shattered all to pieces and propelled forward in a mass of disintegrated bricks; and also for the reason that the tower could not by any possibility have been thrown on the outward fallen wall by a single explosion; and, consequently, I should have known that there must have been two explosions, and if it was not in the barge it was somewhere else; if it was not in the barge it must have been somewhere else.

Mr. Stallman. That is all.

Mr. Garrison. That is all.

(Witness excused.)

Mr. Garrison. If your Honor please, and Mr. Stallman, as I do not intend to take advantage of the tecnical and

legal situation that I am about to describe, I do not move to instruct the jury for a verdict, but I want to call Mr. Stallman's attention to the fact that he has not produced the slightest evidence that either explosion destroyed the specific windows or glass belonging to the insured, the claimant through whom the insurance companies sue us. There is not a scintilla of evidence in this case that we destroyed any of the windows of the people whom they insured.

Mr. Stallman. Well, we tried another plate glass case under certain theories and under a certain stipulation.

Mr. Garrison. I am perfectly willing to cure the situation. To date you have not proved that any of these people suffered any loss or damage through any explosion at any time.

Mr. Stallman. Well, I want to say this: There is proof in the case—

Mr. Garrison. We will concede it.

Mr. Stallman. —that the first explosion, the explosion which damaged all the plate glass windows according to the testimony of the policemen, and that the second explosion did not cause any damage to the plate glass doors and windows—

Mr. Garrison. I concede that.

Mr. Stallman. So that the fair inference is that the first explosion which damaged all this glass is the explosion which damaged the specific item for which we have been—

The Court. The whole point the Vice-Chancellor makes is that you haven't any evidence in the case that the first explosion destroyed the glass.

Mr. Garrison. I am willing to concede that by his police evidence he has shown that the first explosion destroyed the glass, but there is not a scientilla of proof here that the glass of any of the insured was destroyed.

The Court. That is the point I was about to make.

Mr. Garrison. You said that I did not concede that the first explosion destroyed the glass. I do.

The Court. I did not say anything of the kind.

Mr. Garrison. But there is nothing in this case to prove that anybody that was paid $10 or $100 had any glass destroyed by the first or second or any other explosion. There is no evidence here that they lost any glass—

Mr. Stallman. We offer in evidence—

Mr. Garrison. Well, do you want to let it stand as it is? If you do not want it I am perfectly willing to agree upon a stipulation to go on the record.

Mr. Stallman. Let us agree, then.

Mr. Garrison. The last time you had two or three men on the stand and I finally said I would agree that each of the insureds whose names appeared attached to your complaint would, if called to the witness stand, testify that the night before this explosion their glass was intact and the next morning their glass was broken.

Mr. Stallman. Suppose I read the stipulation?

Mr. Garrison. I will make the same stipulation now. I do not want to take any time over it. We have got to have something or else we have no protection if there is a verdict against us.

Mr. Stallman. It all went down in the record. I offered affidavits which are in evidence giving the names of these several plaintiffs, the names of every person whose glass was broken and the amount of damage that was caused, and the affidavits show that they were caused as the result of this explosion and Mr. Garrison said: "We have consented on behalf of the defendant to this method of proof to save the time of the Court and the expense of various plaintiffs so they might put in an affidavit of a responsible officer, including the names of their insureds, and the amounts paid them, with the understanding on the part of each of the companies that if hereafter any of the

parties named should sue us and obtain a judgment as to his individual loss, they will indemnify us in the event that they have recovered for that loss in this cause."

Mr. Garrison. I said they did not need to bring the assignments to them.

The Court. I do not see the need of wasting any time over it.

Mr. Garrison. I said they did not need to bring us the assignments to them, or some officers who said we paid the following people the following amounts for insurance.

The Court. I do not see the need of wasting any time over it. The other side is perfectly willing to enter into a stipulation on the record that when they went to sleep the night before this occurrence the glass was intact, that when they woke up the next morning the glass was smashed, and thereby to permit the inference that if the first explosion did smash all the glass and you have proven that the first explosion was due to the negligence of the defendant proximately, that manifestly the glass was destroyed by the explosion.

Mr. Garrison. You mean if that sequence of events is proven.

The Court. Yes.

Mr. Garrison. I am willing to concede on the record that each of the persons whose names appear in the respective complaints as having been insured by the respective insurance companies, if he were called to the witness stand he would state that he owned the glass in the windows for which the insurance company subsequently paid him for the loss, and that before the 30th of July his glass was in the windows in good condition and after the 30th of July it was broken—I mean on the morning of the 30th of July, and on the 31st of July, if you please, it was broken—so as to permit the inference that it was broken by the explosion. Without that he has not anything.

The Court. Have you anything in rebuttal, Mr. Stallman?

Mr. Garrison. We want your policies in, too, Mr. Stallman, please.

Mr. Smith. We desire to have admitted in evidence the testimony of Mr. Burns taken at the coroner's inquest.

Mr. Hobart. The entire testimony or only some parts of it?

Mr. Smith. Only some parts of it. It is very short.

Mr. Garrison. Read what you want.

Mr. Smith. That Mr. Burns, who testified on the witness stand at the coroner's inquest, testified as follows, speaking of certain cars. I want to prove that this is the testimony before the coroner's inquest.

Mr. Garrison. We will admit that.

Mr. Smith. That he testified as follows, speaking of certain cars, taking an answer at page 68: "I walked down through here (indicating) and I hollered to the watchman, an old watchman, I don't know his name, there was a fire in a car down there, to turn in the alarm. He said, "I don't know how to work it." So I went in and broke the glass, turned in the alarm and I walked down the track again and took a look at the fire. At that time they got three cars ablaze."

Mr. Garrison. Did you call his attention to that?

Mr. Smith. Yes.

The Court. Yes; he called his attention to that.

Mr. Garrison. Anything he called his attention to I am perfectly willing to admit that that is the minutes of the coroner's inquest.

Mr. Smith. Q "That was the first place where you had seen the other car on fire?" A "Right in between those tracks." Q "They were on the third track here?" (Indicating.) A "I couldn't say which track it was. I didn't come down here to see it. I came up here."

(Indicating.) "But it was the third car from the end. It was not the first car, but it was the third car."

The Court. Now, is there any further rebuttal?

Mr. Garrison. Before we get to his rebuttal I want him to put in as part of his main case his policies.

The Court. Well, of course that can be done later. We need not wait.

The jury may go until half-past ten tomorrow morning.

(The jury retire.)

Mr. Stallman. In response to the request of the other side I produce sample policies of each of the insurance companies who were plaintiffs in these causes, with the exception of the Chicago Bonding & Insurance Company, whose sample has not yet arrived from Chicago.

Mr. Garrison. And Mr. Smith, under the same conditions, puts in sample policies of the Fidelity & Casualty Company of New York, and Mr. Stallman puts in under similar conditions typical policy of the Commercial Casualty Insurance Company. I understand each counsel stipulates that all the policies were similar in form to the samples.

Mr. Stallman. Yes.

(Policies marked as one Exhibit P. 1-A.)

Mr. Garrison. If your Honor will permit—and I think it will be a great saving of time if you will permit me—to make a motion now without understanding that I have exhausted all motions under the same head, but simply to make one point now—

The Court. Yes.

Mr. Garrison. I would like to make a motion based upon the policies which have just been placed in evidence, the disposition of which has been dispositive of the plaintiffs insurance companies' cases. I want to make it in this informal fashion before we finally dispose of it. I shall probably renew it in writing tomorrow and we will

gain the time spent in discussion, which I would rather take tonight than tomorrow morning. For instance, in the Metropolitan Casualty Company's Insurance case, Clause 6 of the policy reads as follows: "The company shall not be liable for (a) any loss or damage resulting directly or indirectly from fire whether on the premises above described or elsewhere."

Now, similar clauses with almost similar language are in some or all of the other policies; I mean the policies of the other companies. I will in time select out each one and whatever rule your Honor applies, will, of course, be applied properly to each policy as its language imports.

Now, I cannot see if that language means what it says, and it says what it means, how the Metropolitan Casualty Insurance Company can collect any money from us, because they claim subrogation to a loss of an insured paid by them, when under this policy they were under no legal obligation whatever to pay until they lost; because undoubtedly the loss or damage here in issue, according to their own testimony, resulted directly or indirectly from fire.

Mr. Stallman. I think the whole answer to Mr. Garrison's argument is this: that the clause in the policy simply means that the assured shall not assert any claim against this insurance company which he would have under his fire insurance policy or for which he would be covered by a fire insurance policy. This is an accidental breaking of plate glass and not a fire insurance policy, and it seems to me that as between the insurance company and the assured, this damage to the glass is not caused by fire, it was caused by an explosion, violent concussion of the air breaking the glass. There is nothing of fire as the moving cause.

The Court. I have not looked lately at this question you are now discussing, but if you can over night find

an authority as to the meaning of that clause, I would like to see it.

Then there is another phase of it, which may be an answer to the motion that is now made, and that is that you will find a great number of cases to the effect that where there is a disputable question between the insurance company and the insured as to whether a payment shall be made under the policy, and the insurance company pays under the policy, whether it should have paid or not, is not a question that can be raised by the defendant in a suit of this kind. I remember this question came up in somewhat the same shape in one of the other cases.

Mr. Hobart. The Howell case.

The Court. And I had occasion to rule on it then, and my recollection is that there are cases—I believe I found them then in Richards, the second volume of Richards on insurance, but one of the books anyway; and the law seems quite well settled that if in good faith a settlement under the policy was effected between the insured and the insurance company, that the insurance company had the right to bring that suit here.

Mr. Garrison. All other questions aside, of course there must be a legitimate ground.

The Court. Oh, yes.

Mr. Garrison. If, in other words, your Honor should find that the language "loss or damage is caused in consequence of fire directly or indirectly," and you found that did not admit of any dispute, any legitimate dispute, then the doctrine you have been repeating would not apply.

The Court. It might be. I would not say it would not.

Mr. Garrison. It ought not to.

The Court. The chances are it would have no effect. And that besides that, a great deal of attention, I think, in looking at this question, must be paid to the legal

meaning in a context such as this, to the words, "resulting from fire." Resulting may not mean in consequence, no matter how far removed.

Mr. Garrison. That is the language it used.

The Court. It does say resulting but not consequence. I think you read "resulting."

Mr. Garrison. "In consequence." I admit some of them were not the same, and I told you we were to take them all. "Any loss or damage resulting directly or indirectly from fire, whether on the premises above described or elsewhere."

The Court. That is what you read.

Mr. Garrison. The standard form of the Lloyds: "Any loss or damage resulting directly or indirectly by or in consequence of any fire."

The Court. That may make a difference.

Mr. Garrison. That is what I said. I have read all of these and I do not think it is worth while now.

The Court. That company clearly understood, or thought they understood, or else they were including in mere verbiage, that there is a difference between the mere words, "resulting directly," or "resulting in consequence."

Mr. Garrison. I thought some time would be gained if I brought it up this evening.

The Court. I am glad you did and I will look at it.

Mr. Garrison. We will renew it as one of our reasons in the morning.

I do not think—you see, on our other point I am not going to argue this time, because your Honor has been all over them—I mean the other technical points.

The Court. If we were absolutely free I could deliver a charming charge on this subject, but I am constrained by the opinion of the Court of Appeals and by one or two observations of the United States Supreme Court, and it is an awkward predicament.

Mr. Garrison. All I meant, our motions to instruct the jury, I do not propose to spend much time on them, because we have been over them and I know your points of view.

The Court. How many pages are there in the requests to charge this time?

Mr. Hobart. I don't remember now. Not more than forty or fifty.

Mr. Garrison. Requests or pages?

The Court. At this stage of the proceeding I think that is very small.

Mr. Hobart. We will try to get a few more this evening.

Mr. Garrison. You are not free from us yet.

The Court. I might say in passing, I would not spend too much time on it because I do not think I shall pay an awful lot of attention to the requests at this time. I will read them over, of course, to see whether they should be charged.

Mr. Garrison. Did you ever pay much attention to our requests?

The Court. Yes, both times, and I charged something that I was heartily ashamed of afterwards, because it was more a reading of a pile of requests than a charge.

Mr. Hobart. Will it be agreeable to your Honor if we have them ready to hand up in the morning?

The Court. Yes, just before you start to sum up.

Mr. Hobart. Now, there is a question about that thermometer. I do not know whether it was formally offered.

Mr. Garrison. You will admit the thermometric record? They will admit the card that contained—

Mr. Smith. Sure. Let it go in.

Mr. Garrison. I am sure it is in. It was shown to the jury.

The Court. Both sides have used it, and I think under the established practice it is in, whether it has been marked or not.

Mr. Garrison. Just make a memorandum that the thermometric chart which was testified to by the witness in the read testimony and shown to the jury will be marked in evidence, bearing the mark Exhibit D. 22.

Mr. Stallman. I had some claims for the Metropolitan Company which I did not have when they sent over the rest of them, and they executed subrogation receipts, and I didn't think it would be in time to include them, and I now show them to Mr. Hobart and I now make a motion to amend the addendum clause in the complaint so as to include those claims. I think it amounts to about $1,200.

Mr. Garrison. Provided I do not, by stipulating I have no objection, waive all my rights to combining the cases and all that sort of thing, I am perfectly willing to agree.

The Court. Then the amendment will be admitted subject to those rights, whatever they are.

Adjourned to Friday, June 27th, 1919, 10 o'clock A. M.

Sixth Day.

Jersey City, Friday, June 27, 1919.

Trial Resumed.

Mr. Henn. May it please the Court: In the case of St. Paul's Church against the Lehigh Valley Railroad Company, in the filing of my complaint I founded my cause of action on the ground of a nuisance, the same count as contained in the complaints of the other plaintiffs.

Mr. Garrison. The others are different. Which one do you select of the others?

Mr. Henn. Royal Indemnity Company.

Mr. Garrison. It is entirely within your Honor's discretion, I presume.

The Court. I will permit the amendment.

Mr. Garrison. Now, Mr. Stallman and Mr. Henn: before I submit to the Court a motion for binding instructions there is a matter which properly comes within such motion, but I do not desire to take advantage of it. In either the church case or the Childs case is there any evidence whatever that the glass for which they are suing was broken as the result of any explosion at Black Tom? If I am wrong about that I am ready to be set right; and at any rate I am ready to stipulate on the record what will stand for proof.

Mr. Stallman. I thought we stipulated as to that. I want that stipulation put on the record.

Mr. Henn. I would like to make the same stipulation. My understanding with Mr. Hobart was that the only question in my case was as to the damages—that is, as to the liabilities.

Mr. Garrison. You had no right to understand that.

Mr. Henn. I would like to ask to stipulate on the record.

Mr. Garrison. I am ready to stipulate for the purposes of this case that reputable witnesses, if called by the plaintiff, the church, would testify that the window for the loss of which the suit is brought, was intact on Saturday night, July 29, and was destroyed on Sunday morning after 2:30—after 2:30 it was found destroyed.

The Court. Yes; not that it was destroyed after 2:30.

Mr. Garrison. I mean that some time after 2:30 it was found destroyed.

Now, I am ready to make the same stipulation with reference to the other company if Mr. Stallman wants it.

Mr. Stallman. Yes.

Mr. Garrison. In respect of the Childs Company case, there is in my recollection no proof whatever as to the amount of the damage.

Mr. Stallman. You are mistaken, because there is a special affidavit—

Mr. Hobart. In the Childs case?

Mr. Stallman. Yes.

Mr. Garrison. If there is such an affidavit in the case, all right; if not, we are willing to accept one, if they have not any one here to make the affidavit I am willing to accept Mr. Stallman's personal statement that the amount of the damage was so and so much money.

The Court. All right.

Mr. Garrison. I desire to make a motion on behalf of the defendant for a direction of a verdict in its favor. The motion is based upon twenty grounds which are specifically set forth in a written statement of such motions, a copy of which I have just handed to the Court and to opposing counsel, and which I will now read to the Court. It is as follows:

"The following grounds are urged in each and all of the cases on trial, and whenever the word *plaintiff* is used, it is intended to be applicable to each of the several plaintiffs and to each of the insured, in each case in which an insurance company sues for damages occasioned to the company by paying losses to its insured.

1. The plaintiff has failed to prove facts sufficient to constitute a cause of action.

2. Congress having taken jurisdiction of the subject matter and having enacted statutes thereon to provide for the safe transportation of explosives in interstate commerce on land, and the Interstate Commerce Commission, in accordance with the directions of said statutes having made rules and regulations governing the subject matter, and the explosives in question in this suit having been in the course of transportation on

land in interstate commerce, the plaintiff can only succeed if it has proved a violation of said statutes or the rules and regulations of the Interstate Commerce Commission above referred to. This the plaintiff has failed to do.

3. The plaintiff has failed to prove any negligence on the part of the defendant in respect of the starting of the fire, and the facts in this case do not permit the Court to allow the case to go to the jury upon the doctrine of *res ipsa loquitur.*

4. Assuming that the Court holds that there may have been some other duty to which the defendant was subject which is not covered by the statutes of the U. S. and the rules and regulations of the I. C. C. above referred to, there is no proof of any violation of any such other duty, if any existed.

5. Since there is no proof from which any inference could be drawn of any negligence on the part of the defendant in respect of the starting of the fire, and since the facts do not permit the Court to allow the case to go to the jury upon the doctrine of *res ipsa loquitur,* if it is sought to hold the defendant legally responsible because of the conduct of its employees after the fire started then plaintiff may not succeed in this case on this theory because the evidence shows that the fire, when discovered, was in a car, and that such car was either a car containing ammunition or explosives, or was in the immediate vicinity of cars containing ammunition and explosives; and, therefore, the only inference which a jury could be permitted to draw is that any one going near such fire would be in great danger; and therefore the defendant cannot be held responsible even if its employees under these circumstances of emergency made any error of judgment in their conduct.

6. There is no proof that the omission of any duty set forth in the complaint with which the defendant was legally chargeable was the proximate cause of the injury to the plaintiff.

7. There is no proof that the performance of any duty set forth in the complaint with which the defendant was legally chargeable would have prevented the injury of which the plaintiff complains.

8. The defendant may not be held legally liable upon the assumption that the failure of its employees to procure water and put out the fire was the proximate cause of the injury to the plaintiff, because the proofs show that the Jersey City Fire Department, although promptly notified, came to the scene of the fire without means of pumping water, and any failure in this respect was the failure of the Jersey City Fire Department and of its duties as a public agency and is not attributable to the defendant.

9. Since there is no proof that the fire was started by human agency directly applied at the point of the origin of the fire, there is no proper legal inference that the presence of any number of watchmen would have prevented the outbreak of the fire, and there is, therefore, no proper ground to attribute negligence to the defendant in respect of the number of watchmen furnished by it; and if the plaintiff seeks to hold the defendant responsible with respect to the starting of the fire as the proximate cause of the injury complained of, it may not legally do so under the proofs.

10. Since there is no testimony that the fire was started by human agency at the place where it commenced, and there is testimony that one of the ingredients in the material composing the shells was capable of spontaneous combustion, the jury may not legally infer that the fire was started by human agency at the place of the commencement of the fire.

11. The plaintiff may not have a verdict against the defendant upon the assumption that the proximate cause of the injury complained of was the negligence of the defendant in respect of the starting of the fire, because

the evidence in this case is consistent with the non-existence of any negligence in that respect.

12. The plaintiff may not have a verdict against the defendant upon the assumption that the proximate cause of the injury complained of was the negligence of the defendant in respect of the spreading or non-extinguishment of the fire, because the evidence in this case is consistent with the non-existence of any negligence in that respect.

13. There is no evidence in this case from which the jury can legally infer that the defendant was bound to anticipate or expect that any negligence on its part in respect of the explosives in its possession or custody would affect the property of the plaintiff, and therefore the defendant cannot be held legally liable in this action.

The following additional ground applies to each case wherein an insurance company is plaintiff:

14. Under the terms of the policy, the insurance company was not under any legal duty to pay its insured for the damage alleged to have resulted from the breakage of glass, because the plaintiff alleges that the breakage of glass resulted (directly or indirectly) either by or from or was in consequence of, a fire on defendant's premises, or that the loss or damage was caused or resulted from fire.

The following additional grounds apply to the case wherein Eleazer E. Clark and others are plaintiffs:

15. The proofs show that after the outbreak of the fire the plaintiffs could have removed the schooner Walcott from the proximity of danger, and the failure on the part of the plaintiffs to take reasonable precautions in caring for their property in this respect was the proximate cause of the damage to the property of the plaintiffs for the loss of which they sue.

16. The proofs show that the proximate cause of the damage to the plaintiffs' schooner was the failure on the

part of the employees of the plaintiffs to use reasonable care in respect of extinguishing any fire communicated to said schooner, and therefore the plaintiffs cannot recover from the defendant for such damage.

The following additional ground applies to the case wherein Ira W. Allen is plaintiff:

17. The proofs show that the said plaintiff could have easily removed himself from the proximity to danger if he had exercised reasonable care for his own safety, and since he did not exercise reasonable care in this respect he may not recover against the defendant.

The following additional grounds apply to the case wherein the trustees of the Evangelical Lutheran St. Paul's Church is the plaintiff:

18. There is no proof that the defendant was guilty of the acts alleged in the complaint to be negligent.

19. There is no proof that the negligence alleged in the complaint was the proximate cause of the damage suffered by the plaintiff.

20. There is no proof that the defendant created or maintain a public nuisance as alleged in the complaint.

Therefore the plaintiff may not recover against the defendant. I do not think it is necessary, unless your Honor is differently minded, for me to take time to elaborate in respect of all or any of these grounds. Most of them have been most carefully considered by your Honor who has sat patiently through long arguments. In respect of the legal points involved, and I assume that your Honor's state of mind reached after consideration of such arguments, remains as it was when you last had occasion to express yourself in respect of these legal principles.

I do not for the moment recall any especial ones applying particularly to this batch of cases excepting such as I will now specifically readvert to.

The Court. All right.

Mr. Garrison. I think that 13 is different in its effect, if not entirely novel, because in this case we have very clear proof in the first place that masses of T N T are not to be expected to explode from fire. That is not contradicted. Mr. McKenna and Mr. Maxim testified that so far as the time of 1916 was in question, the knowledge concerning this material would not lead anyone to believe—would not lead the legal average mind to assume that fire would explode T N T. Mr. Maxim says that is the state of the knowledge today. Mr. McKenna disagrees with him about that, but concurs with him that in 1916 that was the state of the knowledge. Therefore, we respectfully submit that we should not be held liable to the legal rule further than the expected consequences of the neglect, if there was neglect. Of course, you will leave it to the jury, I assume—but assuming that there was neglect, assuming that we are to be charged with responsibility because we did not put a fire out which was in danger of communicating with T N T; if you Honor finds that the fire ignited the T N T and the T N T exploded that was beyond the expectable results of our conduct.

Secondly, if Professor McKenna, their witness, is to be taken as a guide, there was no expectation that this T N T would produce the disastrous results within the radius of the parties who sue us in this case—by parties, of course, I mean the insured. We do not lose any benefit by our concession that these individuals do not have to each bring the suit. So I think, for any purpose of defense, if we had a legitimate defense against John Jones, living in New Rochelle, New York, we will say we have a right to urge in respect of him, at least, as represented by his subrogee—if I may use the word—whatever defense we would have against him if he sued, himself. Now, as I remember McKenna's general statement concerning this matter, he said that there was no way you could ascertain anything about the limits within which

explosions would do damage. Of course, Maxim disagrees with him. Maxim says there is. He says a barge might lie off a certain number of feet; that is, they might go thirty-five feet back of their own notion of safety, or something, but here, as I understand the attitude of the representatives of the plaintiff, it makes no difference what limit—if a man lived in Newark or lived in Trenton and a window was broken as the result of this explosion, they desire to hold us; and we say that unless the Court can say that it was due to the expectable result of whatever negligence we may be found guilty of, we should not be held.

It does seem to me if we are going to be half universally liable for whatever happened, although no one could possibly properly say we should have expected it, of course; that is a brand new principle of law. Of course, since this carboy of molasses blew up in some railroad station in Boston, there may be some possibility that a carboy of molasses in your cellar or mine may go off and hurt somebody, but up to that time your Honor would not go to the extent of saying that a carboy of molasses that blew up and hurt my neighbor must render me liable because I should have expected it to do such thing.

The Court. I rather agree with Dr. Maxim, as opposed to McKenna, that there is a certain limit beyond which the destructive effects of explosives could hardly be expected to wreak damage, but I do not think that that limit has been reached in this case.

Mr. Garrison. I am only contending for the principle. Whether it applies or not is for your Honor to decide, and there is no use of my attempting to elaborate on that. I simply want the benefit of a proper consideration both in respect of what we had a right to expect this stuff to do and in respect of within what radius we are to be held responsible on the ground of expectability.

The Court. Yes.

Mr. Garrison. Now, in regard to the expectability of explosion of T N T by contact with fire, there is nothing for the jury there, because experts agree—and that is all we have before us—that in 1916 at the time of this explosion no one would have expected, not even these experts, to know all about it—no one would have expected it would explode from fire.

Mr. Garrison (after an off-the-record discussion). I would like specifically to call your Honor's attention to 14: "Under the terms of the policy, the insurance company was not under any legal duty to pay its insured for the damage alleged to have resulted from the breakage of glass, because the plaintiff alleges that the breakage of glass resulted (directly or indirectly) either by or from or was in consequence of, a fire on defendant's premises, or that the loss or damage was caused by or resulted from fire." Your Honor asked us about authorities on that, or rather asked the plaintiff. We had very little time to make a search. There are several in different states, and we find that the different courts have decided the question differently. I remember the leading case in Corpus Juris, or some textbook, was a Colorado case which held that such language did not exonerate the insurance company; and a Wisconsin case disagreed with them, as I recall it, and held that it did.

The Court. I have looked at that myself, and I think the general rule is found in 19 Cyc. under the title "Fire Insurance," at page 896, sub-title "Invalidity of Claim against the Insurer"; and there the rule laid down as governing is that the third person liable for the loss—in this case the railroad company, if it is liable—cannot question the right of the insurance company on the ground that the claim of the insured against the company was not valid. And it cites the authorities. And then there is, anyway, some considerable question as to whether or not that particular kind of a clause in a policy is meant

to govern a case like this; and that, you will find in volume 30 of Cyc., at page—

Mr. Garrison. It was to the last point that I was addressing myself, as to how this language should be interpreted in an issue where it was proper to interpret it. We do not care to go into it, if your Honor just makes your ruling on the record.

The Court. Let me say this to you, Vice-Chancellor, in passing. So far as the first part is concerned and its being valid, governing the situation, that that precise point has been passed upon by the United States Supreme Court, has been decided, as I cited, and the case is United States against American Tobacco Company, 166 U. S., 468; so that it is right flat-footed on the point, and if you or the other side go with this case to the other court, that would be the rule, apparently, that would govern.

Mr. Garrison. Now, the following additional grounds I desire specifically to revert to. They apply to the case where Clark and others are plaintiffs, and the first is No. 15: The proofs show that after the outbreak of the fire the plaintiffs could have removed the schooner Walcott from the proximity of danger, and the failure on the part of the plaintiffs to take reasonable precautions in caring for their property in this respect was the proximate cause of the damage to the property of the plaintiff for the loss of which they sue. We feel justified in asking your Honor to so rule, because there are no facts in dispute with respect to this point. There is no fact or no proof that the Walcott could not have been removed from the proximity of danger; that the agents of the plaintiff made no attempt whatever to move her, and, in fact, did nothing but sit around until she got on fire and burned up; and we think that under those circumstances there is no question of fact to go to the jury, and your Honor has the responsibility of deciding whether a plaintiff situated as these plaintiffs were has a right to sit supinely and do

nothing, resting in the glad consciousness that he will be paid even if somebody else is at fault, never mind how much he was at fault himself.

The Court. Well, I think, in respect to that—just one or two words in passing—I think with respect to that, the ground you have been urging in respect to your own case has some bearing on it, and that is as to what was the reasonable expectability of the men on the Walcott as to what would occur from this fire.

Mr. Garrison. I do not think that two things are comparable.

The Court. Well, they are in a way.

Mr. Garrison. Oh, I do not see that, if your Honor please. It does not seem to me if I have a piece of property on your front lawn—supposing I have a grand piano in a box on the front lawn of your house, and your house gets on fire. If I am not this average man that the law is always talking about, any court would be justified in finding that I was charged with notice and responsibility that fire adjacent to my box of grand piano would likely communicate itself to that box.

On the other hand, if I have a material in that box which up to that time no one has ever believed could explode, and I leave it there, and it does explode, then a very different question—a radically different question is presented. There cannot be any question that these people had no right to assume that fire would not communicate itself to adjacent inflammable material, like the rigging of a ship, or a ship with its tar and other quickly inflammable parts of a ship. I do not think the two situations are even parallel. They diverge at right angles.

The Court. I think they are quite strongly analagous. I think the parallel that you draw about leaving the grand piano on the front lawn is probably a very accurate one. Suppose I have a truck, and during the course of the day

the horses become disabled, or one of them does, and I have to leave the truck in front of a place where the fire has taken place, but at a distance of several hundred feet, one or two hundred feet, at least, and I leave one man in charge of the loaded truck, and in the course of the night the house in front of which it is standing takes fire. What would a reasonably prudent and cautious man who owned the truck do? And what would the man who was left in charge of it do with respect to moving that truck? Now, what he would do in my judgment is a question for the jury to determine, and whether it would have been in the judgment of an ordinarily prudent man safe to have let it stand there or not, even though the truck might have been loaded with something that was not inflammable. I do not see that that is a law question.

Mr. Garrison. Now, I am entirely content to have your Honor, if you take that thesis, reach the conclusion you have by some other conclusion—by which I mean that does not run counter to what I think the law is—I think it is a question for either you or the jury, for you if there is no contradictory testimony, for the jury if there is—but I do not think that the same principle at all applies with regard to the expectability of explosion from T N T; because there is nothing here that the average man does not know. People who had T N T in their possession in July, 1916, had no reason to believe if it caught on fire anything would happen but a fire.

The Court. Oh, I know; but you want to bear in mind one other thing: That the people who had the T N T in their possession knew also that they had ammunition in close proximity to it—

Mr. Garrison. That is still a question.

The Court. And to use the language of Professor Maxim, the explosion of an explosion within the bulk of the T N T would explode the T N T; and it may be a cautious man should have anticipated that.

Mr. Garrison. That may be true, but that does not hit the nail on the head.

The Court. Well, it hits the nail on the head so far as this schooner and the man was concerned; because he probably didn't know whether it was T N T or whether it was explosive or what it was.

Mr. Garrison. Well, still you do not catch my point, or I do not see how you could disagree with me. I start with this fundamental statement: That any average man, the kind the Court has to take as its standard, and which the jury takes as its standard, will be charged forever and under all circumstances with knowledge that a fire is likely to communicate itself to anything adjacent that can burn. Now, that doctrine I think is too well settled to have any difference about. Your Honor may be entirely right without cavil that when you apply that to this case, it is still a question for this jury to say what they should have done on the schooner. That is all right. But to say it is the same doctrine that I urge, that we are not to be charged with responsibility for explosion of T N T by fire—why not confined it to that, confine it to the fire. In the state of the art no one believed at that time believed it could explode by fire. Those are two entirely different things.

The Court. I am not resting on that proposition, but what I am saying is this: I do not think there is any advantage in discussing whether the doctrine which governs the two is the same or different. What I do say is this, and the authorities are absolutely uniform on it, and that is that a man who owns property adjacent to a railroad and who permits inflammable material to gather there, although he knows that fire is going by in a train all the time and sparks may get to his property, is not held to be, as a matter of law, contributorily negligent because he lets the inflammable material gather. Our own case of Salmon against the D., L. & W., 10 Vroom, is clear authority for that, and the cases every-

where support that doctrine; the reason being that one of the elements that enter into the question of whether or not a man is contributorily negligent is that such a man has the right to assume that the party who has the fire in his control and management will not be negligent.

Mr. Garrison. Well, once you are on the proper basis I am not going to quarrel with your inference.

The Court. I agree with you so far as you say that it becomes the job of someone to pass upon the question as to whether or not such a person, in the circumstances this man was, and with the facts that were or should have been within his knowledge, should not have removed that thing, and if not, have been made guilty of contributory negligence. That I agree on with you. But what I disagree upon with you is as to my job. I say it is the jury's job.

Mr. Garrison. Then I do not think it is necessary to do more than refer to No. 17, with regard to Allen, the plaintiff who claims injury. We claim he should have removed himself. Your Honor, I presume, will make the same ruling there?

The Court. Yes.

Mr. Garrison. Now, there is one other thing I want to say. At the time we prepared these grounds, which was last night, your Honor knows from the transactions in court this morning that the church plaintiff had a totally different character of complaint from the others, and so we have three separate grounds, 18, 19 and 20, with respect to that complaint.

The Court. Yes.

Mr. Garrison. Now that your Honor has given them the right to amend so that their complaint is similar to that of the Royal Indemnity Company, we would crave the privilege of striking out 18, 19 and 20. I think what I would want to do is to strike out 18, 19 and 20, and

perhaps include something in the general grounds bringing the church in.

The Court. You want to have all the others similar—

Mr. Garrison. To the church.

The Court. To the church?

Mr. Garrison. Yes.

The Court. All right.

Mr. Garrison. I will ask Mr. Hobart about the technical side.

The Court. Well, if you want it, put it in.

Mr. Garrison. You will let us mold that in view of the arrangement?

The Court. Yes. The object of this is to get at the justice of the thing, and if you need to have the point you want to have raised, raised, I will let you have it.

Mr. Garrison. We did not anticipate they were going to amend it, and, therefore, we were not prepared.

The Court. I understand it.

Mr. Stallman. The Court asked for a list of allegations. (Hands paper to the Court.) There is just one thing that counsel called your Honor's attention to in regard to the Clark case, the schooner case. In looking through the pleadings of the Vice-Chancellor I am unable to see that there is any issue raised of contributory negligence on the part of the owners of that vessel. They specifically say that they were lawfully there: she was unloading wood in the Lehigh Valley freight cars, and while there is a general denial that any negligence caused the fire which destroyed the schooner, there is no plea anywhere in the papers—

Mr. Garrison. Is it in the Allen case?

Mr. Stallman. Nor in the Allen case—

Mr. Garrison. I move, if your Honor please, for the privilege of amending the answer in the Walcott case by

a proper allegation charging the plaintiff therein with contributory negligence.

The Court. In the Walcott and Allen cases?

Mr. Garrison. Well, I thought I would make them separate.

The Court. Well, all right. I do not see any objection whatever to granting that amendment. I do not see how there can be any other than what has been called intellectual surprise, and not legal surprise.

Mr. Garrison. I make the same motion in the case in which Ira W. Allen is plaintiff.

The Court. Very well. That amendment will be granted. Of course, it is necessary under our new practice act to have that answer pleaded or you could not have the benefit of it.

Mr. Stallman. There is this suggestion I have to make. Mr. Smith and I have been talking over these things which the Vice-Chancellor has been discussing as to these insurance policies, and whether or not we should ask the Court or whether the Court should feel it proper on its own motion to amend the pleadings in this case, adding to plaintiffs in the alternative the several property owners whose property was damaged by these explosions. In other words, after we have gone through the trial and submitted all the facts and tried it out fully on the merits, we think if there is any right to recover, or any doubt about recovering because of the form in which the papers now are, that that ought to be corrected now, and not have in effect a mistrial just on account of the manner in which the parties plaintiff were set off in the pleadings.

Mr. Garrison. What is your exact point? I do not think I catch it.

Mr. Stallman. Well, that the name of the plaintiff, for instance, the Royal Indemnity Company, is set out as plaintiff, setting up its rights as a subrogee, or, in the

alternative, the names of the parties set up in there and the amounts set opposite their names.

The Court. Let me ask you this: Have the insurance companies actually paid these policies?

Mr. Stallman. Yes, they are all paid.

The Court. I do not see any necessity—

Mr. Stallman. I do not see any, either; it was only on the point that the Vice-Chancellor made.

The Court. I have not looked up this point for a long time, but not only does the law uphold the right to claim where there are specific, express provisions of right of subrogation on the part of the insurer, but the law implies subrogation.

Mr. Garrison. He is not bothering about the subrogation; he is bothering about the form of the suit. Now, I concede this: I concede that the law is where there has been a loss, the insurance company if subrogated must either bring a suit in the name of the insured for its use, or if it brings the suit in its own name, it must bring the suit in its own name to the use of the insured. I do not see that there is any proper ground whatever for the insurance company as it has done here, bringing the suit in their own names without mentioning the insured. We have not taken advantage of that, and we do not purpose taking advantage.

Mr. Stallman. Well, it was done by agreement of counsel on the other side.

The Court. He is telling you he is not going to disagree about it.

Mr. Garrison. I have said all along we will not take advantage of that, and we put that on the record in the most solemn form. I do not think that is the right, proper form, but we do not care anything about it in these cases.

The Court. I think old Uncle Remus used to say, "What is the use of brushing us when there ain't no dust to brush?"

Mr. Stallman. There is one request we want to make. We have not had a chance to formulate it. Would your Honor be willing to accept it during the noon hour?

The Court. Oh, yes. I do not think it makes a lot of difference.

Mr. Garrison. Now, your Honor has not made any ruling on the motion to direct a verdict.

The Court. I will make one now. I will make a ruling that I deny the motion and you may have an objection in the nature of an exception entered to that ruling. Now, is there anything further before we call the jury in?

Mr. Smith. Nothing only this, as to the arrangement for the summing up and as to the time.

The Court. The arrangements were that the defendant would sum up first, because unless you gave an opening of some considerable amplitude an opening was not wanted. Each party is to have an hour and a half, and the number of counsel who desire to expatiate on each side within that hour and a half is a matter of indifference to me and to the counsel on the other side in each case. But I do not suppose it will be a matter of indifference to the jury. They might like to hear a lot of it. I do not care what you do. Then the summing up will continue until concluded before lunch, and then we will adjourn for lunch for a reasonable time to give the jury at least a reasonable time to get over the effects of it, and then I will charge if you are able to come back. I expect the casualties will be much greater from that.

Mr. Garrison. We have been requested to consent that plate 1, attached to a copy of Colonel Dunn's report, shall be admitted in evidence as if proven, and they can use it.

(Marked P. 23 in evidence.)

Charge to Jury.

Gentlemen of the Jury:

I suppose it is a subject for congratulation to all of us that we have at last reached the almost final stage of this case. It becomes my duty now to tell you what the rules of law are which shall govern you in the determination of these suits.

There are, as you have been told, twelve cases that are being tried together. Eight of those cases are brought by plate glass insurance companies which have paid the insurance for glass which it is claimed they had insured and which was destroyed, as they claim, by the first of the explosions that took place at Black Tom on the early morning of July 30, 1916.

One other suit is brought by a church—the St. Paul's Church—and that suit is for plate glass which the church claims was destroyed by that explosion.

Still another suit is brought by the Childs Company. That, likewise, is for plate glass which the company claims was destroyed by the explosion.

That accounts for ten cases. There are two other cases that differ somewhat from these cases, in that the articles destroyed or injured were not plate glass. One of the other suits is brought by E. E. Clark and others and is brought for the recovery of damages for the alleged destruction of a schooner, which is known as the Walcott and which was lying alongside, I think, Pier 6 at the time of the explosion which it is claimed caused fire to be communicated to it and to cause damage to it which afterwards, it is claimed, resulted in its destruction by fire, or, at least, in its burning to the water's edge.

It is also claimed in that suit that there was certain freight due for cargo on board the boat, which freight would not be earned until a delivery of that cargo. And, then again, there were some effects which belonged to the captain of the boat, mariner's implements and other things you have heard described here, which it is claimed

were destroyed and for which it is sought to recover damages in this suit. The master, I think, was called Jamieson. Then, there was a man on the boat by the name of Ira W. Allen, who claims to recover damages for personal injuries, which he says were inflicted upon him by reason of the alleged negligence of the defendant company in the matter of explosives which, it is said, were on their property and which, it is claimed by him, were caused to explode by the negligence of the defendant company and which, having communicated the fire to the schooner upon which he was, caused the injuries of which he complains and for which in his suit he seeks to recover damages.

Now, those are the twelve suits that are being tried together; and while we are upon the subject I will state to you in brief what the claim in money is of each of these twelve plaintiffs against the defendant company.

The New York Plate Glass Company claims $60,835.65.

The Royal Indemnity Company claims $4,118.51.

The Metropolitan Casualty Company claims $51,201.51.

The Lloyds Plate Glass Insurance Company claims $48,306.21.

The Ocean Accident Insurance Company claims $6,443.52.

The Chicago Bonding & Indemnity Company claims $5,529.21.

The Childs Company claims $2,515.95.

The Fidelity & Casualty Company claims $19,625.95.

The Commercial Casualty Company claims $22,557.54.

And the St. Paul's Church claims $1,059.49.

Concerning those claims the defendant and the plaintiffs in the suit have stipulated that upon the production of affidavits setting forth the extent of the payments made by the insurance companies and of the value of the glass destroyed by the companies that were not insured, or at least that did not receive insurance for them, that there would be no contest made over the amount of those claims so far as your decision of it is concerned.

The claims in the other two suits are matters that you will have to determine upon the evidence that has been introduced in the cause. For instance, in the case of Clark and others, the owners of the schooner Walcott, it is claimed that the schooner was worth $100,000; that is the plaintiff's claim. They have brought evidence here which they think supports that claim. The defendant contends that that is not the correct and true value that should be allowed by you if you should find for the plaintiff because they contend that when the schooner was bought, some sixteen years ago I think it was, it then only cost $74,000 and some odd dollars, and that the accession of age to the schooner has not added to its value. They claim, therefore, that you should not allow the hundred thousand dollars sought by the plaintiff, but you should allow such sum as in your judgment upon all the facts produced, if you find for the plaintiff in that suit, will represent the fair and reasonable value of the schooner at the time of its destruction.

And so with respect to freight money; the burden rests upon the plaintiff of showing what the freight due was and that its loss was due to the act or fault of the defendant as charged by the plaintiff in the plaintiff's complaint.

And with respect to the amount or value of Mr. Jamieson's personal effects; whatever the evidence is with respect to those you must consider, and if they represent $605.50, why, that would be what you would allow. If they do not represent that sum then you would allow what they are reasonably worth as established by the evidence.

Then when you come to the matter of Mr. Ira W. Allen's claim for injuries and for loss of his personal effects you come to a still more difficult question, with respect to finding out just how much, if anything, he is entitled to if the defendant is responsible and must pay him. The injuries there are of a personal character, and I understand that the ones claimed for are that he had a broken

leg and that he had shock, that he had bruises, lacerations, that he suffered pain, and that he has a disability, and that he has suffered a loss of earnings. And while we are upon that phase of the case I will charge you as requested by the defendant so far as he is concerned, that if the jury finds any verdict for this plaintiff—that is Allen—no allowance can be made therein for any injury to the left arm and shoulder or any disability arising from any injury thereto—that is, to the left arm and shoulder.

And with respect to his personal belongings, his clothes and his cash and his watch and so on, the burden rests upon him to show by the greater weight of the evidence what those things were reasonably worth. Whatever he has thus shown, if he is entitled to a verdict, he will be entitled to recover. For anything that he has not thus shown of course he ought not to be reimbursed.

Now, I have dealt with this matter of damage in this brief manner at the beginning of the charge because, as the parties themselves in most of the cases have agreed upon the matter of damage, it was a matter of much less immediate importance to you than is the question of liability over which we have spent so much time—not at all unnecessarily, but over which we have spent so much time and of which you have heard so much both in the evidence and from the arguments of counsel. So that I now address myself to that phase of the case.

First of all, gentlemen, the basis of every one of the actions brought here is what is called in the law negligence. If there is no negligence there can be no recovery. Only if there is negligence and that negligence is the proximate cause of the injuries to the plaintiffs can the plaintiffs recover. That brings us to consider first of all, what is the negligence that these plaintiffs charge against this defendant company? And upon that subject these are the charges that are made in the several suits:

In the case of the Childs Company, the Ocean Accident Company, the Chicago Bonding & Insurance Company, the Royal Indemnity Company, the New York Plate Glass Insurance Company and the Commercial Casualty Company of Newark, the first claim is that this material which is alleged to have exploded constituted a nuisance, and the second claim is that there was negligence. The grounds of negligence charged are, first, a failure to exercise a high degree of care to prevent fires and explosions; secondly, failure to exercise a high degree of care to watch and guard said explosives and discover and extinguish fire; thirdly, a failure to employ sufficient watchmen to detect trespassers or incendiaries; fourthly, the failure to provide sufficient fire fighting devices and apparatus; fifthly, failure to use a high degree of care to store, handle and dispose of said explosives, to prevent communication of fire and detonation from one part to another; sixthly, failure to provide sufficient means for communication with fire and police departments of Jersey City; next, failure to notify the fire department. And the third count, failure to comply with the regulations of the Interstate Commerce Commission.

The Metropolitan Casualty Company charges, first, negligence in caring for the explosives, failing to provide a proper and adequate means of protection against explosion and fire. Their second cause of action was nuisance, and the third cause failing to comply with the regulations of the Interstate Commerce Commission.

The Lloyds Plate Glass Insurance Company charged, first, negligence in keeping and maintaining large quantities of explosives, negligently keeping, managing and controlling the same, negligently and carelessly failing to provide proper and adequate means of protection against explosion and fire; and the second cause of action, failure to comply with the provisions of regulations of the Interstate Commerce Commission.

The Fidelity & Casualty Company have a first count of nuisance and the second the same as in the Childs Company, and others which I read to you first.

In the case of E. E. Clark and others and Jamieson, the owners of the schooner Walcott, and Jamieson, the owner of certain material which he claims, personal belongings, was lost; and Ira W. Allen, who claims to have been personally injured—the claim is that the defendant transported and transshiped at Black Tom explosive projectiles and ammunition which it knew or should have known to be of explosive and inflammable nature, and also permitted barges to be tied up at its pier containing similar commodities. It was the duty of the defendant to provide the Walcott with a safe berth, to prevent the accumulation of such explosives in such quantities that the combustion or detonation thereof would cause damage to property; to exercise a degree of care commensurate with the risk for the purpose of preventing, discovering, controlling and extinguishing fires and limiting damage from any one explosion; to prevent the access of unauthorized persons to said explosives, especially in view of the war, etc.; common report of depredations and to warn plaintiff of the dangerous situation it had created. Then the complainant also sets up certain paragraphs in the Interstate Commerce Commission regulations which will be called to your attention later. The negligence charged is in failing to give the schooner safe berth; in collecting explosive cars to such an extent that the combustion and detonation thereof would result in great damage to property in permitting the accumulation of inflammable material; in failing to provide competent men and sufficient facilities for patrolling and guarding the yard; in neglecting to exclude trespassers or incendiaries; in failing to provide hydrants and water; in failing to provide firemen; in failing to instruct employees as to duties in case of fire; in failing to provide facilities for removing or insulating burning cars; in failing to

dispose of the cars so as to control communication of fire, etc.; in permitting barges to tie up at the piers; in failing to provide means of communicating alarms; in failing to give alarm; in failing to prevent fire; in failing to discover and extinguish the fire; in failing to warn the schooner of the presence of danger, and in failing to comply with the regulations of the Interstate Commerce Commission. Those are the charges that are made in the respective cases brought by the plaintiffs against the defendant.

The defendant makes these defenses: First, general denial of the allegations of the plaintiffs as to nuisance and negligence. That is, it denies all these charges which I have read you, which have been made by the respective plaintiffs; and, secondly, its defense is a general denial of the violation of the Interstate Commerce Commission rules; and, thirdly, a claim that the Interstate Commerce Commission statutes and rules are exclusively applicable. And this morning an amendment was made which interposed the defense as against Clark and Jamieson and Allen, that their contributory negligence deprived them of any right to recover.

Now those, gentlemen, are the defenses that are interposed to the respective claims that are made in the suits. Having stated what it is all about, now I wish to direct your attention for a few moments more particularly to the rules of law which I conceive govern these cases and which you gentlemen will have to apply in arriving at your verdicts.

First of all, you will have observed that one of the defenses interposed by the defendant was that the Interstate Commerce Commission's regulations exclusively governed, and that therefore inasmuch as they claim to have completely complied with those regulations, there can be no responsibility on the part of the defendant company for any damage that resulted to any of the plaintiffs in any of these suits. It becomes necessary, therefore, to

know first of all what the Interstate Commerce Commission regulations are; secondly, what they mean, and thirdly, to what extent they do govern in actions of this kind.

I charge you first of all that under the Constitution of the United States, which gives to Congress the right to regulate interstate commerce, that is, commerce with foreign nations and commerce amongst the various states and with the Indian tribes—that that power conferred upon Congress, when Congress has acted under it, is exclusive, and the regulations of commerce insofar as they have occupied the field, solely govern; insofar as they have not occupied the field, if there are at the time of their passage existing State regulations not inconsistent with the regulations of the Interstate Commerce Commission, those State regulations are not deposed or abrogated, and if afterward the states pass laws with respect to the regulation of the transportation of explosives in the exercise on the part of the State of its police power, those regulations, if they do not directly and immediately interfere with interstate commerce or if they are not in antagonism to the regulations of the Interstate Commerce Commission, would be valid regulations and would be effective. The Supreme Court of the United States has said that through a long series of decisions dealing with the scope and effect of the commerce clause it has come to be well settled that a State possesses power to adopt reasonable measures to promote and protect the health, safety, morals and well-being of its people, even though interstate commerce be incidentally or indirectly affected; and I charge you that the effect of the regulations that were in force at the time of the explosions on Black Tom was this, that individuals or companies maintaining agencies dangerous to human life must exercise a high degree of care for the safety of those who may be thereby exposed to danger. And by a high degree of care is meant no more than a degree of care

commensurate with the risk of danger. So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger; and the burden, therefore, rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out, then the plaintiff is entitled to have a verdict and to have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict, but the verdict would have to be for the defendant. And in the cases of Clark and Jamieson and Allen, even if the plaintiff had made out that the defendant did not use the degree of care commensurate with the risk of danger, still if it appeared by the greater weight of the evidence—and the burden rests upon the defendant so to make it appear—that these men were contributorily negligent and that their contributory negligence was responsible either in whole or in part for the production of the injury of which they complain and for which in their suit they seek to recover damages, there could be no recovery by them, no matter how negligent the defendant may have been, for the very obvious reason that our law has laid it down perfectly clearly that if both parties to an accident are negligent neither party can recover anything against the other. You can readily see the reason for that. It is the common sense of the thing as it is the common law of the thing. The reason is that if both parties are in fault neither party ought to have any remedy against the other.

Now, there are certain regulations to which your attention will be specifically directed which were adopted by the Interstate Commerce Commission, and I might say

first of all, gentlemen, in order to get this matter disposed of once and for all, that the defendant company was a common carrier of freight for hire, and I charge you that as such common carrier of freight for hire before and at the time of this explosion—or these explosions—the law imposed upon the defendant the duty of transporting the explosives in the cars as testified about in this case, and at the time of the explosion they were still in course of such transportation in interstate or foreign commerce by land. And I charge you that after engaging in the business, the railroad company had the right to restrict its operations under the following sections of the regulations of the Interstate Commerce Commission: Regulation 1401. When location conditions make the acceptance, transportation or delivery unusually hazardous, local restrictions may be imposed. And Section 1429 provides that all carriers must report to the chief inspector for compilation and publication full information as to restrictions which may be imposed as provided in paragraph 1401a, to which I have just directed your attention, against the acceptance, delivery or transportation of explosives over any portion of their lines.

Now, the regulations of the Interstate Commerce Commission will be found in the following paragraphs: Regulation 1643a provides as follows: Careful men must be chosen to handle explosives. The platform and the feet of the men must be as free as possible from grit, and all possible precautions must be taken against fire. Suitable provision must be made outside of the station when practicable for the safe storage of explosives, and every effort possible must be made to reduce the time of this storage. If a shipment of explosives is not removed within forty-eight hours after notice of arrival at destination it must be disposed of by return to shipper or by storage at the expense of the owner or by sale or, when necessary to safety, by destruction under supervision of a competent person, and (b), unauthorized persons must

not have access to explosives or other dangerous articles at any time while such articles are in the custody of the carrier.

And I charge you, gentlemen, that insofar as those provisions have a bearing upon the duty of the defendant company with respect to handling these explosives, it cast upon them, as I told you a moment ago, the duty to use a high degree of care for the safety of those who might be thereby exposed to danger, and that a high degree of care denotes no more than a degree of care commensurate with the risk of danger. And you can readily understand that in determining what a degree of care commensurate with the risk of danger is you will take into consideration all the circumstances in which the company found itself placed at the time it was called upon to act and say, what would a reasonably prudent and cautious person have done if in a like or similar situation with respect to the transportation of these explosives? If this company did all that a reasonably prudent and cautious person would have done, it did all that it was required to do; if it did not, it might be found to be negligent; and if it were found to be negligent and that negligence was the proximate cause of the injury to the plaintiff, the plaintiff would be entitled to have your verdict under the rules which I have given you and to have you assess the damages.

The next provision of the regulations is this: Placard —Section 1666—A certified car of the dangerous explosives specified in paragraph 1661 must be protected by attaching to each outside end and side door, the lower edge not less than four and a half feet above the car floor, a standard placard, 12 by 14 inches, on which appears in conspicuous red and black printing on strong tag board the following notice—I do not attempt to read the whole notice to you; you will have the whole notice with you and will look at it, of course, when you come to consider the case—but in large lettered type appears the

word, "Explosives"; and underneath that "Handle Carefully"; and underneath that, "Keep Fire Away." Now, whether this be a regulation of the Interstate Commerce Commission or a part of a regulation of the Interstate Commerce Commission or whether it be a warning, it correctly and aptly expresses the duty of a railroad company handling explosives, which duty when properly interpreted means that they shall use a high degree of care; that is, care commensurate with the risk of danger, to keep fire away from those explosives; and it also correctly and aptly expresses the duty resting upon the defendant when it says that they shall handle the explosives carefully; because a high degree of care involves the notion that anybody in the course of his business dealing with explosives, where dealing with them and handling them may subject others to danger comes under the duty to use a high degree of care to so handle them as to minimize the danger resultant from not handling them with care. In other words, their duty is to use a high degree of care to handle them carefully. If they do not use that degree of care and injury results from a neglect to use it and that neglect is a proximate cause of that injury, manifestly, the persons thus injured would have a right to recover damages because of that injury.

Section 1689 provides that they must be—speaking of handling cars containing explosives—they must be coupled carefully and all unnecessary shocks must be avoided. Other cars must not be cut off and allowed to strike a car containing explosives. They must be so placed in yards or on sidings that they will be subject to as little handling as possible, and be removed from all danger of fire. Now that last clause, that they must be removed from all danger of fire, does not impose upon the company an absolute duty that they must at all hazards remove them from all danger of fire; but they must use a high degree of care, a degree of care commensurate

with the risk of danger involved in the transaction, to remove them from all danger of fire.

Now, then, you might ask yourselves when we are talking about reasonable care and a high degree of care and care commensurate with the risk, what is this reasonable care, this high degree of care or care commensurate with the risk which it is the duty of the defendant company to use? I charge you, gentlemen, that reasonable care is first of all a relative term. It is a term which has reference to the situation in which the defendant finds itself when it is called upon to act. A high degree of care in some circumstances might be a low degree of care with respect to the same act in other circumstances. If a man, for instance, were driving an automobile along a lonesome and unfrequented country road he certainly would not be called upon to exercise the same amount of care and alertness that a man would be called upon driving the same car to exercise at the corner of 42nd street and Fifth avenue in New York City. The care varies with the circumstances and conditions in which a man finds himself placed before and at the time he is called upon to act. Therefore very wisely the law says that the care to be used is a care commensurate with the risk, that is a care which measures up to the risk in which one finds one's self placed at the time he is called upon to act. If that care is used it is all the party is called upon to use. If it is not used, manifestly it amounts to carelessness or negligence, and if that negligence proximately causes the injury there may be a recovery so far as that is concerned.

In this case a most interesting situation arises right on this phase of the case. Here the claim is made that these things that were on fire or in proximity to which a fire had started were explosive things, they were dangerous things; and you might ask yourselves, Well, how much courage is a reasonably prudent man expected to exhibit? You might phrase that inquiry in these words:

How bold would a prudent man be expected to be? and how prudent must a bold man be in acting in such a conjuncture of circumstances? Now you will have observed that I said to you that the duty of the defendant company is to use reasonable care, and that that care is such care as a reasonably prudent and cautious person would use under the circumstances. You will observe that the person is prudent and cautious; and that means that the party is called upon to use such care in the light of all the circumstances that confront him and such boldness in the right of his knowledge of existing conditions as a reasonably prudent and cautious man would use under the circumstances. When a man uses that much it is all he is called upon to use. So that you ask yourselves in the last analysis with respect to this matter of boldness or its absence: How would a reasonably prudent and cautious man act, circumstanced as the employees of this defendant company found themselves circumstanced on the night in question? If these men acted as a reasonably prudent and cautious man would have acted they did all that was required of them. If they did not act as a reasonably prudent and cautious man would have acted under the circumstances, why, then such neglect on their part would constitute negligence, and if that negligence was the proximate cause of the injury manifestly there might be a recovery, and should be a recovery. If it was not, there should not be a recovery under the circumstances.

And then we have had a great deal of talk here on both sides by counsel in summing up—we must all admit, I think, very eloquent talk on both sides—with respect to what has been called the emergency doctrine; that when men are called upon to act in an emergency, as one of the counsel expressed it that when emergency flies into the window judgment goes out of the door. Well, we have got to be a little careful in defining terms, and we must not allow ourselves in the disposition and decision

of a law suit to fall too readily into the ruling tendency of the American people generally to be governed too much by epigrams and by catch phrases and by headlines. First of all, what is an emergency? and, secondly, how great must the emergency be to absolve a person from responsibility if he exercises no judgment whatever, but simply acts upon what I think more accurately might be called instinct; if you please, the instinct of self-preservation. Now, then, you can readily see that many situations in life are emergencies which are not crises. Many situations in life are emergencies which are not exigencies; and, therefore, you ask yourselves this: What were the precise facts which were present to the apprehension of the person when he was called upon to act? Was the condition so overwhelming and overpowering on the instant as to leave him no time for deliberation, no time for thought, no time for calm judgment? If they were that would be indubitably a pure emergency. I think it might be more accurately called a pure exigency. And under such circumstances a man would not be responsible even if he did not use any judgment, for the very obvious reason that a man under such circumstances uniformly acts from instinct. The crisis comes, the act is done, and it is all over in an instant. Then there are other things that are popularly called emergencies which furnish time for thought and for deliberation and for judgment, and when they do furnish time then the jury, called to pass upon a question of this kind, asks itself, How much time did he have? How much excitement, how much fear was engendered by the circumstances which confronted him? How calmly could he consider, determine and act? Now, upon that subject one of our cases has some rather illuminating language. The case says:

"The rule is well-settled that where the sole basis of liability is the omission to perform a certain duty suddenly and unexpectedly arising there ought to be at least a consciousness of the facts which raise the duty on the

part of the person who is charged with its performance, and a reasonable opportunity to discharge it."

Now, to analyze that thing for just a moment, you see inherent in it the very things that I have been talking about to you for the last three or four moments. There ought to be at least a consciousness of the facts which raise the duty on the part of the person who is charged with its performance and a reasonable opportunity to discharge it. And, therefore, you ask yourselves very properly, what did these men see down there that night? What, in the exercise of reasonable care on their part, ought they to have seen that night? And in the light of the facts that were known to them, or should have been known to them, could a reasonably prudent and cautious man have acted, and acted effectively, with respect to the condition that existed there in an effort to prevent the catastrophe that subsequently occurred? If a reasonably prudent and cautious man could have discovered the condition and have remedied it by the exercise of reasonable care and prudence on his part, he was bound to do it. If he could not he was not. And then, again, we find the rule which I have been endeavoring to elucidate to you stated in the same case in these words:

"Parties are not liable for a mistaken exercise of judgment on the part of their employees in an emergency or for a failure to act with the utmost promtitude and in the right direction when circumstances are such as to afford no time for deliberation. Where an employee of the railroad company is confronted with a sudden emergency, failure on his part to exercise the best judgment the case renders possible does not establish lack of care or skill upon his part which renders the company liable. It is not responsible in such circumstances even for his error of judgment."

And, therefore, to make a resumé of all that I have been trying to say to you upon this subject you ask yourselves, What was the situation that confronted the em-

ployees of this company on that night? Did it amount to an emergency of such a character, so overpowering in its nature as not to give time to a reasonably prudent and cautious man in the exercise of reasonable prudence and caution, for deliberation and decision? Why, if that condition existed, it was an emergency, and if a man on the instinct of self-preservation ran away, that is what a reasonably prudent and cautious man would do; but if, on the other hand, there was time for thought and deliberation and the condition of affairs down there was such that a reasonably prudent and cautious man in the light of what confronted him would have made an effort to put the fire out, then you might naturally say that the neglect on the part of the servants and agents of the defendant company to put it out under the circumstances was negligence; and if their neglect to make the effort to put it out was negligence under the rules which I have given you and it proximately caused the injury to the plaintiffs, the plaintiffs would have a right to recover.

So that, you see, reduces itself again to just this proposition, and that is that in any given set of circumstances you erect your reasonably prudent and cautious man there and ask yourselves the question, What would he have done? If the defendant's servants did what he would have done under the circumstances they were not negligent. If they did not do what this reasonably prudent and cautious man would have done under the circumstances, then they were negligent, and if that negligence proximately caused the injury, then there might be a recovery in that particular.

Now, there has been talk also in this case about spontaneous combustion, and the claim made by the defendant is that if the explosion on the land was the first explosion, and if that was brought about by spontaneous combustion in one of the cars and the spontaneous combusion was the proximate cause of the injury complained of by these plaintiffs, there could be no recovery; and there could be

no recovery if the spontaneous combustion did originate in one of these cars and was the proximate cause of the injury of which these plaintiffs complain. If the spontaneous combustion originated in one of these cars and if reasonable care and prudence on the part of the defendant after it had started would have sufficed to discover it and to have extinguished it, then manifestly the spontaneous combustion would not have been the proximate cause of the injury to these plaintiffs and they would have a right to recover and to have you assess their damages, because the proximate cause there would have been the neglect to discover and put the fire out, and not its origination. So you see on this doctrine of spontaneous combustion the question is this: Assuming there was spontaneous combustion there and that originated the fire that was there, if the origin of the fire was spontaneous and the spontaneous origin of the fire was the proximate cause of this injury, this defendant cannot be held; but if it was not, but was on the other hand negligence of the defendant with respect to the fire after it had been discovered or after it had been originated, why then, of course, there could be a recovery and an assessment of damages.

Now, there is another claim made, that the first explosion did not take place on the land at all, that it took place on a barge, the Johnson 17, which was in the water and moored to the pier in violation of the anchorage regulations of the United States and that it was what first exploded and that it exploded without fault on the part of the defendant company, and that it, being the first explosion, caused the injury. Of course, if the Johnson 17 was moored there in violation of the anchorage regulations of the United States, and the first explosion was the explosion that took place on that barge, why, it would follow as a matter of law that the defendant would not be responsible for the injury wrought by the explosion on the Johnson 17 to these plaintiffs for the obvious

reason that it would not have been their fault at all. If a third person seees fit to, in violation of law, tie up his barge to my pier and then because of some fault on his part, or even without fault on his part, an explosion takes place on that barge, of course I am not responsible for his act in violating the law and putting the barge there and causing the damage that ensues from its presence there, the point being that you can only assess damages where you have ascertained fault to lie .

Now, I have been requested to charge certain things by the defendant, and I charge you these as stating the law:

The sole duty of the defendant to the plaintiff in regard to the explosives received by it for interstate transportation by land and still in the course thereof, in respect of all matters within the scope of the statutes of the United States and the regulations of the Interstate Commerce Commission concerning the same, was to comply with such statutes and regulations; and the plaintiff is not entitled to recover in respect of any such subject matter unless it proves a failure on the part of the defendant to so comply and that such failure was the proximate cause of the injury complained of by the plaintiff.

I also charge you that since the proofs in this case are uncontradicted that the shipments of explosives and so forth in this case were from points outside of the State of New Jersey and were in carload lots and that it was the practice of the consignee or owner thereof to unload the said explosives from the cars, therefore paragraph 1643-a of the Interstate Commerce regulations, providing that careful men must be chosen to handle explosives, the platform and the feet of the men must be as free as possible from grit, and all possible precautions must be taken against fire, applies to the consignee or owner in unloading the explosives from the cars and does not apply to the defendant herein, and any alleged negligence in this respect is not chargeable to the defendant.

But I charge you again, as I have previously charged you in the case, that there does exist a duty with respect to the matter of taking precautions against fire, to use care commensurate with the risk of danger involved, against fire.

I charge you that the language in paragraph 1689 of the Interstate Commerce regulations referring to the handling of cars containing explosives and providing they must be so placed in yards or on sidings that they will be subject to as little handling as possible and be removed from all danger of fire, means that in the operation of the railroad company's yard or its sidings the cars containing explosives must be removed from such danger of fire as might reasonably be expected. This regulation does not impose upon the railroad company an absolute duty to remove such cars from all possibility that fire might ever reach them. They must simply use, as I have told you before, care commensurate with the risk of the danger involved.

I charge you that there is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it, by law, to install and provide and to keep in good order and repair sufficient means of communication whereby the occurrence of any fire or other agency capable of igniting such explosives could be immediately communicated from said pier to the police and fire departments of the City of Jersey City or that any such alleged failure was the proximate cause of the injury complained of.

I charge you that if the jury finds that the fire which was discovered upon the premises of the defendant on July 30, 1916, was started by spontaneous combustion, the defendant cannot be held legally responsible in respect of the starting of the said fire.

I charge you that if the jury finds that the fire which was discovered upon the premises of the defendant on July 30, 1916, was started by spontaneous combustion

and that the starting of such fire was the proximate cause of the injury to the plaintiff, then the defendant cannot be held legally responsible for any damage suffered by the plaintiff. But I charge you that if a fire which starts by spontaneous combustion could, by the exercise of reasonable care by the defendant, have been discovered or extinguished, that spontaneous combustion would not under such circumstances have been the proximate cause of the injury to the plaintiffs, but the neglect to discover or extinguish it.

With respect to the Jersey City Fire Department I charge you that if the jury finds that the spreading of the fire caused the injury to the plaintiff and that such spreading could have been prevented in time to have avoided any serious injury to the plaintiff by the throwing of water upon the fire, and that the proximate cause of the spreading was the failure to throw water upon the fire, then the jury must consider that the Jersey City Fire Department, although promptly notified and present at the scene of the fire, came there without their fire engines and they testified that for the lack of such fire engines they were unable to throw water upon the fire, and the jury may therefore consider whether that was not the proximate cause of the spreading of the fire which caused the injury to the plaintiff.

And I charge you furthermore that even if the Jersey City Fire Department did get there and was insufficiently equipped to put the fire out, and even if that was a proximate cause of the spread of the fire, that if also you find that the defendant company was negligent in not using care commensurate with the risk to prevent the spread of the fire, that that also might be found to be a proximate cause of the fire; and if both the Jersey City Fire Department and the defendant were negligent in not using care commensurate with the risk to prevent the spread of the fire, that the mere fact that the Jersey City Fire Department might

also be responsible for it would not discharge the defendant company from its responsibility, because there can be concurring proximate causes, and if two parties by their joint negligence or by the separate concurring negligence of each concur in bringing about the destruction of property, either or both may be responsible and may be called upon to respond in damages.

I charge you, as requested, that the jury cannot find a verdict against the defendant upon the theory that the defendant was guilty of maintaining a nuisance without proof of some negligence on the part of the defendant which was the proximate cause of the damage complained of.

I have already charged you, and charge you again, that if the jury finds that the T N T on Johnson barge 17 exploded and caused the damage of which the plaintiff complains, the jury cannot legally find the defendant responsible. The plaintiff in this case having shown that the damage of which it complains was occasioned by the first of the two explosions which the witnesses say occurred on or near Black Tom on July 30, 1916, the jury cannot legally hold the defendant responsible for such damage unless it find that the explosion on the premises of the defendant was the first of the two explosions.

With respect to the Clark case, I charge you that if the jury finds that the proximate cause of the damage to the plaintiff's schooner was the failure on the part of the employees of the plaintiff to use reasonable care in respect either of the removal of the schooner or of the extinguishing of any fire communicated to said schooner, then the jury must find for the defendant in this case.

I charge you in respect to the Allen case that if the jury finds that the plaintiff could have removed himself from proximity to the danger, if he had exercised reasonable care for his own safety, and that he did not

exercise such reasonable care in this respect, the jury must find for the defendant in this case.

I charge you also that even if the jury finds that the defendant—I am not speaking now about the Clark or the Allen cases, but the other cases—that if the defendant was negligent and that such negligence was the proximate cause of the damages complained of, it can only hold the defendant liable for such results as from common experience and the usual course of events might reasonably have been expected. That does apply as well to the Clark and the Allen cases as it does to the cases of the destruction of the plate glass, and I charge you that you must apply it to them.

Now, that, gentlemen, is all that I think it is necessary for me to say, and probably more than is necessary to be said, in endeavoring to enable you to know what the rules of law are that you are to apply in determining this case, and you will take the case under those rules and decide it.

I might say this, gentlemen, before you go out: That is, by anything I said I did not mean to have you think that the Court meant to hold as a matter of fact and charge you as a matter of fact either that there were enough men there or that there was enough apparatus there or enough facilities to meet an emergency. Whether there was or not is for you to determine; and how the men acted in the light of the circumstances that confronted them depends upon what they had to act with, and whether the defendant company was negligent or not in respect of the facilities and the men depends upon what you say reasonable care, or care commensurate with the risk, would require with respect to the number of men required and the facilities required to be furnished and had by the defendant in the exercise of reasonable care in the transportation of explosives.

Mr. Stallman. I desire to take exception to that part of your Honor's charge where you charge the jury that the law imposed upon the defendant the duty of transporting these explosives.

I also desire to take exception to that part of your Honor's charge where you charge the jury that these men, referring to the watchmen, acted—if they acted as prudent men would have acted under the circumstances, then they did all that was required of them, acting as the agent of this corporation.

I take exception to your Honor's charge with reference to the violation of the anchorage regulations, because there is nothing in the anchorage regulations that relates to barges moved around by tow-boats; that the regulations refer to the anchoring of vessels and not to barges.

The Court. You may have that. I would like to see a ruling myself on the proposition that you can *ad libitum* pull a lot of explosives around New York Harbor by tug boats and tie them up to any old pier you please when the very spirit and reason and object of the rule is to segregate explosives and thereby prevent precisely the thing that, if this barge did explode, occurred, because of its explosion. So you may have that entered upon the record and let the Court above say whether I am wrong about it. I am satisfied to have them say it.

Mr. Stallman. I also desire to take exception to that part of the charge where your Honor charged as to these watchmen of the defendant, that if there was no time for them to deliberate as to what to do after discovering the fire, then the plaintiffs would have no right to recovery.

Mr. Smith. I would like to except to that part of the Court's charge where the Court said if this barge was moored to the pier in violation of the United States regu-

lations and the explosion originated on the barge there could be no recovery.

The Court. Yes.

Mr. Smith. My idea being that if they permitted this barge to be there—

Mr. Garrison. Of which there is no proof.

Mr. Smith. I do not know about that. And also to that part of your Honor's charge where you said that if the spontaneous combustion originated in any one of these cars there could not be any recovery.

The Court. Provided, I said, that spontaneous combustion was the proximate cause of the accident. That is what I said. I was careful to say that; then I went on and said—

Mr. Garrison. And put the "bug" on us.

The Court. And put the bug on you, and said that if it had originated spontaneously and these men by the exercise of reasonable care could or should have discovered and did not, then the proximate cause—

Mr. Smith. My idea of that spontaneous combustion is this: They knew that these shells contained smokeless powder. They knew that smokeless powder was susceptible to spontaneous combustion. They knew if that was so it was likely to explode. If it was likely to explode then they placed it alongside of T N T, and the fire originated in one of these cars by reason of spontaneous combustion—it is my idea that it is one of the things they should have guarded against.

Mr. Garrison. You might as well try to guard against lightning. We might try to guard against the results of it, and we did that.

The Court. That makes against your argument a little while ago to the jury, that they did not know what was in the car; that all they knew was that it was explosives.

Mr. Smith. They are claiming it was T N T, and that, therefore, they didn't have to guard against T N T because it could not explode except by detonation. If they knew that and they knew that smokeless powder was susceptible to spontaneous combustion and would explode, and they placed T N T alongside of it, it seems to me that was one of the things they were to guard against, that it did not explode; or not place T N T alongside of it.

The Court. Well, all right. You may have the exception.

Mr. Holmwood. I wish to enter the same objection. I suppose Mr. Stallman and Mr. Smith spoke for all.

The Court. Oh, yes. These exceptions, or objections entered by one of the plaintiffs will be considered as applying to the cases of all of them.

Mr. Holmwood. Yes.

DEFENDANT'S EXCEPTIONS.

Mr. Garrison. First I desire to except in respect to each of our requests to charge where your Honor refused or refrained from charging as requested, which we understand your Honor grants us—

The Court. I do. You may have an objection in the nature of an exception to each and every request to charge and refusal and modification.

Mr. Hobart. I am satisfied if you put in modification.

Mr. Garrison. Now, the first specific objection is to that part of your Honor's charge, speaking of the effect of the Interstate Commerce legislation of Congress, where you said, I charge you first of all that under the Constitution of the United States, which gives to Congress the right to regulate Interstate Commerce—

that is, commerce with foreign nations and commerce among the various states and with the Indian tribes—that the power conferred upon Congress, when Congress has acted under it, is exclusive; and the regulations of commerce insofar as they have occupied the field, solely govern. Insofar as they have not occupied the field, if there are at the time of their passage existing State regulations not inconsistent with the regulations of the Interstate Commerce Commission, those State regulations are not deposed or abrogated; and if aferwards the states pass laws with respect to the regulation of transportation of explosives in the exercise on the part of the State of its police power, those regulations if they do not directly and immediately interfere with interstate commerce, or if they are not in antagonism with the regulations of the Interstate Commerce Commission, would be valid regulations and would be effective.

The Court. That State regulations that were theretofore in existence were not displaced, and that subsequent regulations might be adopted, and to that portion of the charge that contained all of that thing, you may have an exception.

Mr. Garrison. Second, I desire an objection to that part of your Honor's charge where you said, "The Supreme Court of the United States has said that through a long series of decisions dealing with the scope and effect of the commerce clause, it has perfectly well settled that a State has power to adopt reasonable measures to promote and protect the health, safety, morals and welfare of its people, even though interstate commerce be incidentally or indirectly affected; and I charge you that the effect of the regulations that were in force at the time of the explosions on Black Tom was this: That individuals or companies maintaining agencies dangerous to human life must exercise a high degree of care for the safety of those who may be thereby exposed to

danger, and by a degree of care is meant no more than a degree of care commensurate with the risk of danger."

The Court. You want an exception now to the case of New Jersey Fidelity Plate Glass Company against the Lehigh Valley, because that is the language that I charged in that case. So you may have that.

Mr. Garrison. Now, thirdly, I want an exception to that part of your Honor's charge where you said, "So that, so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger," my theory being that the degree of care in transporting was regulated by the rule, and not by these common law rules.

Fourth, I desire an exception to that part of your Honor's charge where you said, "and the burden, therefore, rests upon the plaintiff in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger, and that such neglect upon the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out, then the plaintiff is entitled to have a verdict and to have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict, but the verdict would have to be for the defendant." My reason there being that you have permitted a recovery for the plaintiff upon the theory that does not exist in the case. My theory is that that is in effect telling them that they may determine whether or not such and such a thing was a degree of care commensurate with the risk; and I say if it was covered by the regulations it is none of their business to determine whether it was covered by the risk; that those are the regulations.

Now, fifth, I ask an exception to that part of your Honor's charge with respect to the meaning of the first

sentence 1643-A; or, to put it another way, I object to your having charged them anything with respect to that as if it applied to this case. Now, it may be that your Honor cured that by our request to show it did not apply to this case, but you did charge them at first as if it applied; and, as we say, it entirely applied to the consignee's duty, and not our duty; and I think it was an error for your Honor to charge them that that regulation should be considered by them.

The Court. You may have that. I had in mind when I charged this thing your request, and I put a note on my own paper intending to charge the request; and I felt, and I think the Court above will feel, that that does clearly indicate how much of the section (I read the whole section) does apply, and how much does not.

Mr. Garrison. I object to the first part of the section.

The Court. You may have it.

Mr. Hobart. I ask an exception to the same part of the charge relative to 1643-A on the ground that there is no evidence to justify the jury in finding that even if it did apply—there is no evidence that the violation of it, or failure to comply therewith, was the proximate cause of the damage complained of.

Mr. Garrison. I ask an exception to that part of your Honor's charge where it said, "And I charge you, gentlemen, that insofar as those provisions have a bearing upon the duty of the defendant company with respect to handling these explosives, it casts upon them, as I told you a moment ago, the duty to use a high degree of care for the safety of those who may be thereby exposed to danger, and that a high degree of care denotes no more than a degree of care commensurate with the risk of danger."

The Court. You may have that.

Mr. Garrison. I ask an exception to that part of your Honor's charge where you said, "And you can

readily understand that in determining what a degree of care commensurate with the risk is, you would take into consideration all the circumstances in which the company found itself placed at the time it was called upon to act, and say, what would a reasonably prudent and cautious person have done, if in a like or similar situation with respect to the transportation of these explosives? If this company did all that a reasonably prudent and cautious person would have done, it did all that it was required to do. If it did not, it might be found to be negligent, and if it was found to be negligent, and that negligence was the proximate cause of the injury to the plaintiff, the plaintiff would be entitled to have your verdict under the rules which I have given you, and to have you assess the damages."

I ask an exception to that part of your Honor's charge where you said, "Now, whether this be a regulation of the Interstate Commerce Commission or a part of a regulation of the Interstate Commerce Commission, or whether it be a warning, it correctly and amply expresses the duty of a railroad company handling explosives, which duty, when properly interpreted, means that they shall use a high degree of care; that is, care commensurate with the risk of danger, to keep fire away from those explosives; and it also correctly and amply expresses the duty resting upon the defendants when it says that they shall handle the explosives carefully; because a high degree of care involves the notion that anybody in the course of his business dealing with explosives, where dealing with them and handling them may subject others to danger, comes under the duty to use a high degree of care to so handle them as to minimize the danger resultant from not handling them with care. In other words their duty is to use a high degree of care to handle them carefully. If they do not use that degree of care and injury results from the neglect to use it, and that neglect is the proximate cause of that

injury, manifestly the person thus injured would have a right to recover damages because of that injury." I think that "handle with care" does not mean "keep fire away." That is, that they have occasion to open the car and handle the explosives.

I ask an exception to that part of your Honor's charge where you said, "Now, then, you might ask yourselves when we are talking about reasonable care and a high degree of care, and care commensurate with the risk, what is this reasonable care, this high degree of care, or care commensurate with the risk which it is the duty of the defendant company to use?" My notion is that with respect to the I. C. C. regulations insofar as they obtain this duty does not apply.

The Court. I see your point. What you really mean is that high degree of care, and care commensurate with the risk, and reasonable care have nothing to do with the case; that you have only to comply with the regulations.

Mr. Garrison. I mean even limiting the regulations to what your Honor charged, namely: within their scope, not now arguing that Congress, having taken the subject up for legislation, must be assumed to have laid down all the law that they wanted to lay down on the subject; but even assuming that they only went so far as the extent to which they did go, high degree of care, or care commensurate with the risk has nothing to do with it; because if we did what the regulations told us to do, that is the degree of care, whether you call it high, low or none.

The Court. I felt that whatever I said about the subject with respect to that regulation so far as the regulations of the Interstate Commerce Commission were concerned, imposed, to say the least, the amount of care the common law required; and if I did charge anything less severe than that it is something that you cannot successfully complain of.

Mr. Garrison. To make ourselves perfectly clear, our notion is that where a legislative body having jurisdiction over a subject matter indicates what is to be done, it is not a question for the jury to say whether that is more than the common law or less than the common law, or whether it is good care or bad care or no care. If you do that thing—like ringing an audible signal at a crossing—that is the end of it, if the subject is audible signals. And here we claim that we did what the regulations told us to do. It is not to be left to the jury to say whether that was good care or bad care or no care.

The Court. I understand.

Mr. Garrison. Now, then, I object to that part of the Court's charge where you said, "And I charge you, gentlemen, that reasonable care is, first of all, a relative term. It is a term which has reference to the situation in which the defendant finds itself when it is called upon to act. A high degree of care in some circumstances might be a low degree of care with respect to the same act in other circumstances." My basis of objection there is not that that is not as a general rule a perfectly proper statement of law; but it is improper when applied to a legislative act prescribing your duty; because then it is not a question of relation at all. It is a question, did you obey the Act of the Legislature?

The Court. In other words, it is the same point you made before in another part of the charge.

Mr. Garrison. Yes. Now, next as to courage. I want the whole of that because I do not think that that is a correct definition of the doctrine.

The Court. What do you think is a correct definition? I might want to give your definition of it to the jury.

Mr. Garrison. My notion is that when the fact of emergency has once been established—

The Court. We are not talking about the emergency doctrine now. We are talking about the courage. You

haven't got the emergency yet. The "courage" doctrine you are talking about, and I asked you what do you object to as to that doctrine?

Mr. Garrison. My impression was, and still is, that this part of the charge has to do with what we have always termed the emergency doctrine; in other words, the question of boldness and courage and other like characteristics or qualities has to do with what a man does in the face of certain conditions; and my notion is that as long as the conditions are such that he is to be presumed or required by law to act as a reasonably prudent man should—

The Court. That is what I charged them. That is exactly what I told them.

Mr. Garrison. Then you have not an emergency.

The Court. I did not say it was an emergency.

Mr. Garrison. Why I am taking an exception to this part of the charge is that you led the jury to believe that they had a right in the case of emergent conditions to say how bold a man should be, or how much courage he should have. There, I think, your Honor erred. Once given emergent conditions, I do not think the law requires a man to be bold or courageous; because, as you said yourself, facing emergent conditions, we act on instinct and not on reason; and the minute we get away from reason the reasonably prudent doctrine does not apply.

The Court. I left it clearly and distinctly to them to say that if there were conditions which amounted to an absolute necessity, and undeliberate action, then judgment flew out. I told them that in so many words. But there is something that runs the gamut from instinct on the high point clear down to placid action on the low point; and what is reasonable action or reasonable care running from instinct down to placidity, depends upon the circumstances that confront the man.

Mr. Garrison. Now, I desire to maintain the correctness of that exception with all I have said.

The Court. Oh, I want you to have the exception.

Mr. Garrison. I want to make it clear in your mind by what I have said and by this additional elaboration of it: That is, as you state your doctrine, I cannot see that there is any difference between emergent conditions or other conditions, normal conditions; because in each case you apply the doctrine of reasonable care; and I think if that is true the courts never would have drawn a line between emergency and exigency on the one hand and normal conditions on the other.

The Court. Well, I think you are absolutely right, and I do not think the courts ever have in the last analysis, when they have gotten right down to it, drawn any such line. I think that the use of the term "emergency" is the most slipshod and idiotic use you can find anywhere; and, of course, I would not characterize any opinion of our own courts as those things. For instance, where they say that a man in an emergency must use judgment, well, if by emergency is meant a crisis where he hasn't any time to think, and then say that he must use judgment, that is nonsense. That is instinct. It may be "unconscious judgment." There is no judgment about it.

Mr. Garrison. Now, I except to that part of your Honor's charge where you said, "and, therefore, you ask yourselves this, what were the precise facts which were present to the apprehension of the person when he was called upon to act. Was the condition so overwhelming and overpowering on the instant as to leave him no time for deliberation, no time for thought, no time for calm judgment? If they were, that would be indubitably a pure emergency. I think it might be more accurately called a pure exigency, and under such circumstances a man would not be responsible, even if he

did not use any judgment, for the very obvious reason that a man under such circumstances uniformly acts from instinct."

Now, I say I do not think the condition has to be so overwhelming and overpowering. I do not think that is the test. I think, in other words, this very case is an excellent test. There was no condition of overwhelming or overpowering force, or whatever you propose to apply "overwhelming" or "overpowering" to. There was a condition of grave danger, if they went down into the zone where these shells were going off, and I think that is an excellent example of where the emergency doctrine ought to apply. It is not a question of overwhelming or overpowering. If they kept far enough away there was nothing to overwhelm or overpower them. If they went down to where the danger was, it was at great peril and danger to their lives.

I ask an exception to that part of your Honor's charge where you said, "The crisis comes, the act is done, and it is all over in an instant." I do not think it is measured by time. I think it is measured by other things as well as time. In some instances time might be the sole factor; in other words, it might be only one factor.

The Court. You may have that.

Mr. Garrison. I object to that part of your Honor's charge where you said, "And, therefore, you ask yourselves very properly, what did these men see down there that night? What in the exercise of reasonable care on their part ought they to have seen that night? And in the light of the facts that were known to them or should have been known to them, could a reasonably prudent and cautious man have acted and acted effectively with respect to the conditions that existed there, and in an effort to prevent the catastrophe that subsequently occurred?" That is the same general subject.

The Court. Yes. Why not just take an exception to the part of my charge, and I grant it to you, that had

to do with the emergency doctrine, in that it incorrectly stated the law on that subject?

Mr. Garrison. That is it. There are five or six individual sentences.

I now except to that part of your Honor's charge where you said, "But I charge you again, as I have previously charged you in the case, that there does exist a duty with respect to the matter of taking precautions against fire, to use care commensurate with the risk of danger involved, against fire."

You read 1643-A as an interpretation and said it was correct. And then you said, "I charge you again that that duty was still upon the defendant to take precautions against fire."

The Court. Whatever I said, you may have an exception to it.

Mr. Garrison. I except to that part of your Honor's charge where you said, "This regulation does not impose upon the railroad company an absolute duty to remove such cars from all possibilities that fire might ever reach them. It must simply use, as I have told you before, care commensurate with the risk of danger involved."

The Court. I want you to have an exception to it.

Mr. Garrison. I except to that part of your Honor's charge where you said, "But if, on the other hand, there was time for thought and deliberation, and the condition of affairs down there was such that a reasonably prudent and cautious man in the light of what confronted him would have made an effort to put the fire out, then you might naturally say that the neglect on the part of the servants and agents of the defendant company to put it out under the circumstances was negligence; and if their neglect to make the effort to put it out was negligence under the rules which I have given you, and it proximately caused the injury to these

plaintiffs, the plaintiffs would have a right to recover it."

I ask an exception to that part of your Honor's charge where you said, "I charge you, furthermore, that even if the Jersey City Fire Department did come there and was insufficiently equipped to put the fire out, and even if that was a proximate cause of the spread of the fire, that if also you find that the defendant company was negligent in not using care commensurate with the risk to prevent the spread of fire, that also might be found to be a proximate cause of the fire; and if both the Jersey City Fire Department and the defendant were negligent in not using care commensurate with the risk to prevent the spread of the fire, the mere fact that the Jersey City Fire Department might also be responsible for it would not discharge the defendant company from its responsibility; because there can be concurring proximate causes; and if two parties by their joint negligence, or by the separate concurring negligence of each, concur in bringing about the destruction of property, either or both may be responsible and may be called upon to respond in damages."

The Court. Yes; and you may have an objection to all I said in the modification of it with respect to concurrent negligence.

Mr. Garrison. I except to that part of your Honor's charge where you said, "I might say this before you go out, gentlemen, by anything that I said I did not mean to have you think that the Court meant to hold as a matter of fact, and charge you as a matter of fact either that there were enough men there or that there was enough apparatus there, or enough facilities to meet an emergency. Whether there was or not is for you to determine; and how the men acted in the light of the circumstances that confronted them depends on what they had to act with; and whether the defendant company was negligent or not in respect to the facilities

and the men depends upon what you say reasonable care, or care commensurate with the risk would require in respect to the number of men required and the facilities required to be furnished and had by the defendant in the exercise of reasonable care in the transportation of explosives."

Mr. Hobart. I would like to have an exception also on behalf of the defendant to that part of the charge that dealt with Sections 1401 and 1429 of the regulations relative to the imposition of legal restrictions when the conditions make the acceptance, etc., unusually hazardous, on the ground that it has no application to the circumstances of this case.

I would also like to except to your Honor's leaving to the jury for their consideration Section 1643-B.

The Court. That is about the approach of unauthorized persons?

Mr. Hobart. Yes.

The Court. Yes.

Mr. Hobart. On the ground that it does not apply, and there is no proof of its violation, or that the violation was the proximate cause.

I would also like an exception to that part of your Honor's charge which dealt with Section 1666 and which permitted the jury to consider as a part of the regulations, or as a statement of its duty, the so-called explosives placard, which is referred to in the said section.

The Court. All right, sir.

Mr. Hobart. And one other matter, in regard to the Johnson 17. I except to that part of your Honor's charge which dealt with that subject wherein you stated in substance that if the Johnson 17 was moored in violation of the regulations and that the first explosion took place there, then the defendant could not be responsible; the particular point of that being that it

seems to me there is no question for the jury as to whether it was moored there in violation of the regulations.

The Court. All right. You may have it.

Defendant's Requests to Charge.

NEW JERSEY SUPREME COURT.

ROYAL INDEMNITY COMPANY and eleven other cases consolidated therewith,

vs.

LEHIGH VALLEY RAILROAD COMPANY.

The following requests are submitted in each case and to the extent applicable include, in those cases in which insurance companies are plaintiffs, their insured respectively, and whenever throughout these requests the term "plaintiff" is used it is intended to cover the plaintiff in each case in which there is a single plaintiff and the plaintiffs in each case in which there is more than one plaintiff.

(A) INTERSTATE COMMERCE DUTIES? RIGHTS, STATUTES AND REGULATIONS.

1. The law imposed upon the defendant the duty of transporting the explosives in the cars as testified about in this case, and at the time of the explosion they were still in course of such transportation in interstate or foreign commerce by land.

2. The sole duty of the defendant to the plaintiff in respect to the explosives, received by it for interstate transportation by land and still in the course thereof was to comply with the statutes of the United States and the regulations of the Interstate Commerce Commission

respecting the same, and the plaintiff is not entitled to recover unless the jury shall find that the defendant failed to so comply and that such failure was the proximate cause of the injury complained of by the plaintiff.

If the Court refuses to charge No. 2 then we respectively request the Court to charge No. 3 as follows:

3. The sole duty of the defendant to the plaintiff in regard to the explosives received by it for interstate transportation by land and still in the course thereof in respect of all matters within the scope of the statutes of the United States and the regulations of the Interstate Commerce Commission concerning the same, was to comply with such statutes and regulations; and the plaintiff is not entitled to recover in respect of any such subject matter unless it proves a failure on the part of the defendant to so comply and that such failure was the proximate cause of the injury complained of by the plaintiff.

4. The "explosive" placard is not a regulation of the Interstate Commerce Commission.

5. The proper construction to be placed upon the placard required to be put upon cars containing explosives by paragraph 1666 of the Interstate Commerce Regulations, is that the words, "Keep fire away" mean do not bring fire near. They do not constitute an injunction to put out fire in the neighborhood of the cars, and only refer to the voluntary action of a person in regard to the bringing of fire to or near the cars. There is no evidence that the defendant disregarded this injunction.

6. In the condensed rules on the so-called "explosive" placard, Section 7, which reads: "Avoid placing it near a possible source of fire," means not to put the car near a place where fire might reasonably be expected to be.

There is no evidence that this injunction was disregarded by the defendant.

7. Since the proofs in this case are uncontradicted that the shipments of explosives involved in this case were from points outside of the State of New Jersey and were in carload lots, and that it was the practice of the consignee or owner thereof to unload the said explosives from the cars thereof, paragraph 1643 (2) of the Interstate Commerce Regulations providing that "careful men must be chosen to handle explosives, the platform and the feet of the men must be as free as possible from grit, and all possible precaution must be taken against fire," applies to the consignee or owner in unloading the explosives from the cars, and does not apply to the defendant herein, and any alleged negligence in this respect is not chargeable to the defendant.

8. The language of paragraph 1643 (b) of the Interstate Commerce Regulations prescribing that "unauthorized persons must not have access to explosives * * * at any time while such articles are in the custody of the carrier" means that before the cars are sealed and after the cars are unsealed, the carrier must not permit unauthorized persons to have access to the explosives in the cars. It does not refer to cars in which explosives are contained while such cars are under seal.

9. There is no evidence in this case that the defendant permitted any unauthorized persons to have access to the explosives while such articles were in its custody.

If the Court refuses to charge No. 9 then the defendant requests the Court to charge No. 10 as follows:

10. If the jury finds that unauthorized persons had access to the explosives on the night of July 29 and 30, 1916, while such articles were in the custody of the defendant, there is no evidence that the access of any such person was the proximate cause of the injury complained of.

11. The language in paragraph 1689 of the Interstate Commerce Regulations referring to the handling of cars containing explosives and providing "they must be so

placed in yards or on sidings that they will be subject to as little handling as possible and be removed from all danger of fire," means that in the operation of the Railroad Company's yard or its sidings, the cars containing explosives must be removed from such danger of fire as might reasonably be expected. This regulation does not impose upon the Railroad Company an absolute duty to remove such cars from all possibility that fire might ever reach them.

12. There is no evidence from which the jury can legally infer that under paragraph 1689 of the Interstate Commerce Commission Regulations, the cars containing explosives in the Black Tom yard at the time of the fire had not been removed from whatever danger of fire might reasonably have been expected by the defendant.

13. There is no evidence in this case but that the explosives in defendant's yard were in all respects carried, conveyed, transported, handled and held by the defendant in compliance with the statutes of the United States and the regulations of the Interstate Commerce Commission respecting the safe transportation of explosives in interstate commerce by land.

14. There is no proof that the origin of the fire was the result of any failure of duty imposed upon the defendant by the regulations of the Interstate Commerce Commission relative to the safe transportation of explosives in interstate commerce by land, and therefore the jury cannot infer that the defendant was guilty of any violation of said regulations up to and including the time of the origin of the fire.

(B) GENERAL ALLEGATIONS OF NEGLIGENCE.

15. There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to prevent the occurrence of fires, detonations or other means whereby the explosives and

munitions in question might become exploded; or that any such alleged failure was the proximate cause of the injury complained of.

16. There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to watch and guard the said explosives and the yard, piers, cars and vessels containing the same or lying in proximity thereto, so as to prevent and to extinguish and control when discovered fires, detonations and other means by which such explosives might be exploded; or that any such alleged failure was the proximate cause of the injury complained of.

17. There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to employ a sufficient number of watchmen and guards to police the said yard and approaches and the waters adjacent thereto, to observe and detect the approach or presence of any persons not authorized or licensed to visit said pier and who might by accident or felonious intent set fire to said pier or property thereon; or that any such alleged failure was the proximate cause of the injury complained of.

18. There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to furnish, provide and install and keep in good order and repair sufficient fire-fighting devices and apparatus on and about its said pier; or that any such alleged failure was the proximate cause of the injury complained of.

19. There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to store, handle and dispose of said explosives and munitions so as to prevent and control the ignition and communication of fire and detonation from one portion or mass of the same to any other part or mass of the same; or that any such alleged failure was the proximate cause of the injury complained of.

20. There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to install and provide and keep in good order and repair sufficient means of communication whereby the occurrence of any fire or other agency capable of igniting said explosives could be immediately communicated from said pier to the fire and police departments of the City of Jersey City; or that any such alleged failure was the proximate cause of the injury complained of.

21. There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law, immediately upon the happening and discovery of a fire on or near its said premises, to notify the fire department of Jersey City of the existence and location of said fire; or that any such alleged failure was the proximate cause of the injury complained of.

22. The defendant can only be held responsible in damages for the failure to exercise reasonable car under the circumstances, and the jury in considering the circumstances and the degree of care exercised may consider the fact that there were four watchmen on the premises in the immediate vicinity of the cars containing the explosives on the night of the explosion in question, in addition to the watchmen employed by the defendant.

23. Since there is no proof that the fire on the defendant's premises was started by human agency directly applied at the point of the origin of the fire, the jury cannot conclude that the presence of more Lehigh Valley watchmen in the yard than in fact were there would have prevented the starting of the fire, and therefore the jury cannot find negligence on the part of the defendant in that respect.

24. There is no evidence from which the jury can legally infer that the defendant did not observe the usual

custom of railroads in respect to the fire protection afforded at Black Tom on July 29-30, 1916.

25. There is no legal duty resting upon the defendant in respect of its terminal at Black Tom, to furnish fire hydrants in addition to those furnished by the City of Jersey City, the said terminal being within the limits of that municipality.

26. There was no legal duty resting upon the defendant in respect of its terminal at Black Tom, to furnish its own fire protection, in addition to that furnished by the City of Jersey City, the said terminal being within the limits of that municipality.

27. There was no legal duty resting upon the defendant in respect of its terminal at Black Tom to furnish men and equipment to extinguish fires, in addition to the men and equipment of the municipality of Jersey City, within the limits of which the said Black Tom terminal is.

28. The proofs show that the witness Burns was the first person on the premises to discover the fire, and that he was in a position promptly to discover the fire, and therefore the jury may not infer that if there had been more Lehigh Valley watchmen present the fire would have been discovered any earlier than it was.

(C) EMERGENCY DOCTRINE.

29. If the jury finds that the defendant was not negligent in respect of the starting of the fire and that the said fire was either in a car of explosives or ammunition or was immediately adjacent to cars containing explosives or ammunition, then a condition of emergency existed by reason of which the defendant cannot be held responsible for errors of judgment on the part of its employees or any of them in respect of what they did or failed to do concerning the putting out of the fire.

If the Court refuses to charge No. 29, then we respectfully request the Court to charge No. 30 as follows:

30. If the jury finds that the defendant was not negligent in respect of the starting of the fire and that the said fire was either in a car of explosives or ammunition or was immediately adjacent to cars containing explosives or ammunition, then the jury should consider whether the situation thus disclosed was not an emergency and if the jury finds that the situation was that of emergency then it may not find the defendant legally responsible for the errors of judgment of its employees in respect of what they did or failed to do concerning the putting out of the fire.

(D) SPONTANEOUS COMBUSTION.

31. If the jury finds that the fire which was discovered upon the premises of the defendant on July 30th, 1916, was started by spontaneous combustion, the defendant cannot be held legally responsible in respect of the starting of said fire.

32. If the jury finds that the fire which was discovered upon the premises of the defendant on July 30th, 1916, was started by spontaneous combustion and that the starting of such fire was the proximate cause of the injury to the plaintiff, then the defendant cannot be held legally responsible for any damage suffered by the plaintiff.

33. Since there is no testimony that the fire was started by human agency at the place where it commenced and there is testimony that one of the ingredients in the material composing the shells was capable of spontaneous combustion, the jury cannot find a verdict against the defendant on the ground that the fire was started by human agency applied at the place of the commencement of the fire as the result of defendant's negligence.

(E) JERSEY CITY FIRE DEPARTMENT.

34. If the jury find that the spreading of the fire caused the injury of the fire and that spreading could have been prevented in time to have avoided any serious injury to the plaintiff by the throwing of water on the fire, and that the proximate cause of the spreading was the failure to throw water upon the fire, then the jury must consider that the Jersey City Fire Department, although promptly notified and present at the scene of the fire, came there without their fire engines and they testified that for the lack of said fire engines they were unable to throw water upon the fire, and the jury may therefore consider whether that was not the proximate cause of the spreading of the fire which caused the injury to the plaintiff, and if it so concludes, should find for the defendant.

(F) NUISANCE.

35. The jury cannot find a verdict against the defendant upon the theory that the defendant is guilty of maintaining a nuisance without proof of some negligence on the part of the defendant which was the proximate cause of the damage complained of.

The following requests apply to all the cases except that wherein Ira W. Allen is plaintiff.

(G) JOHNSON BARGE 17.

36. The undisputed evidence is that Johnson Barge No. 17, with ten hundred and five cases of T N T and four hundred and seventeen cases of detonators (all obtained elsewhere) was moored at North Pier at Black Tom on July 30, 1916, and there is no evidence that the defendant had any knowledge whatever of the materials thus loaded on said Johnson 17 at that time and the jury must find under the law as contained in the Anchorage Regulation of the United States Government

that a boat thus loaded should not have been moored at Black Tom, but should have proceeded to the Anchorage Grounds as designated in the said United States Regulations, and that the act of mooring her thus loaded at the North Pier at Black Tom was an unlawful act.

37. If the jury finds that the Johnson 17 containing 1005 cases of T N T and 417 cases of detonators (all obtained elsewhere) was unlawfully moored at Black Tom Pier, and that the T N T thereon subsequently exploded on the night of July 30th, 1916, and caused the damage complained of by the plaintiff, the jury cannot legally find the defendant responsible for such damage.

38. There is no evidence in this case from which the jury can legally hold the defendant responsible in respect of materials on Johnson Barge No. 17 or of the result from any explosion of such materials.

39. If the jury finds that the T N T on the Johnson Barge No. 17 exploded and caused the damage of which the plaintiff complains the jury cannot legally find the defendant responsible.

40. The plaintiff in this case having shown that the damage of which it complains was occasioned by the first of the two explosions, which the proofs show occurred at or near Black Tom on July 30th, 1916, the jury cannot legally hold the defendant responsible for such damage unless it finds the explosion on the premises of the defendant was the first of the two such explosions.

41. In view of the fact that the regulations concerning the transportations of explosives and other dangerous articles on land in Article 1647 contained a prohibition against the loading of such materials as detonators and high explosives in the same car or storage place, and of the evidence in this case in respect to the danger of thus loading such articles in the same carrier, the jury may legally find that the presence on Johnson Barge 17 of the detonators and T N T constituted negligence on behalf of the proprietor of such barge, and if it thus finds and also

finds that the explosion on the Johnson 17 was the proximate cause of the damage complained of by the plaintiff, then it may not find against the defendant.

(H) INTEREST.

42. The jury is not at liberty to allow the plaintiff any interest in respect of any sum found to be due it.

(1) ADDITIONAL REQUESTS. Clark case.

The following additional requests are submitted in the case in which Eleazer E. Clark and others are plaintiffs.

43. If the jury find that after the outbreak of the fire the plaintiffs or their agents or employees could have removed the schooner Walcott from the proximity of danger therefrom and that the failure on the part of plaintiffs or their agents or employees to take reasonable precautions in caring for their property in this respect was the proximate cause of the damage to the property of the plaintiffs for the loss of which they sue, then the jury must find for the defendant in this case.

44. If the jury finds that the proximate cause of the damage to the plaintiffs' schooner was the failure on the part of the employees of the plaintiffs to use reasonable care in respect of extinguishing any fire communicated to such schooner, then the jury must find for the defendant in this case.

(J) ADDITIONAL REQUESTS. Allen Case.

The following additional requests are submitted in the case in which Ira W. Allen is plaintiff.

45. If the jury finds that the plaintiff could have removed himself from the proximity to danger if he had exercised reasonable care for his own safety and that he did not exercise such reasonable care in this respect, the jury must find for the defendant in this case.

46. If the jury finds any verdict for this plaintiff, no allowance can be made therein for any injury to the left arm and shoulder or any disability arising from any injury thereto.

(K) ANTICIPATED CONSEQUENCES.

The following additional request is submitted for all cases except that wherein Clark, *et als.*, are plaintiffs and that wherein Ira W. Allen is plaintiff.

47. Even if the jury finds that the defendant was negligent and that such negligence was the proximate cause of the damages complained of, it can only hold the defendant liable for such results as according to the common experience and the usual course of events might reasonably have been expected.

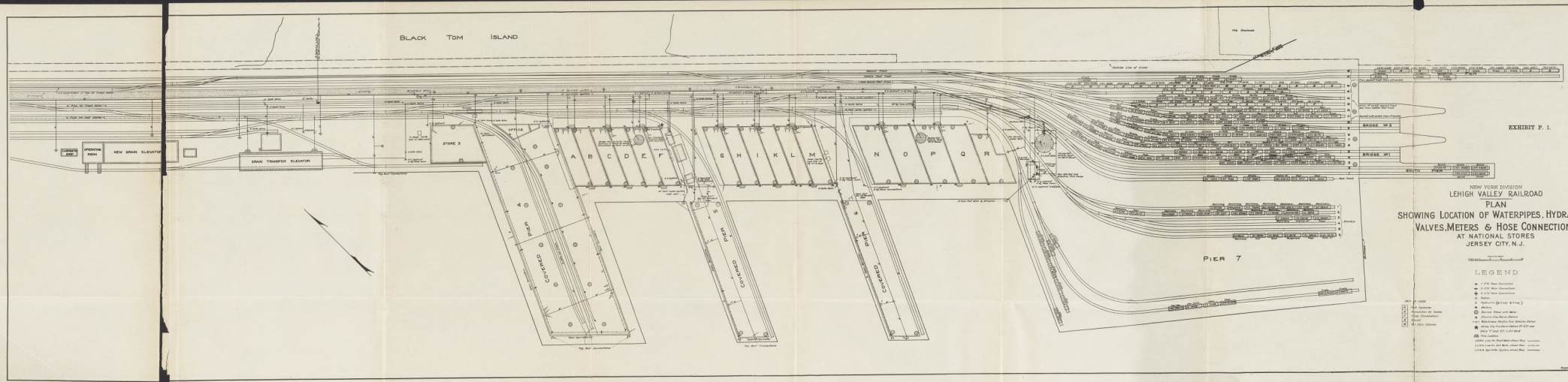

BLACK TOM ISLAND
NEW BRAIN ELEVATOR
BRAIN TRANSFER ELEVATOR
OFFICE
STORE 3
A B C D E F
G H I K L M
N O P Q R
PIER 4
PIER 5
PIER 6
PIER 7
BRIDGE NO 2
BRIDGE NO 1
SOUTH PIER
EXHIBIT P. 1.
NEW YORK DIVISION
LEHIGH VALLEY RAILROAD
PLAN
SHOWING LOCATION OF WATERPIPES, HYDRANTS, VALVES, METERS & HOSE CONNECTIONS
AT NATIONAL STORES
JERSEY CITY, N.J.
LEGEND

Exhibit P. 1A.

EXHIBITS.

PLAINTIFF'S EXHIBITS.

EXHIBIT P. 1 A.

Insurance Policies.

Glass Policy.

ROYAL INDEMNITY COMPANY
HEAD OFFICE: NEW YORK
Charles H. Holland, General Manager

Policy No. Expiry Date

G..... .....

IN CONSIDERATION OF

the premium of.....Dollars, the Royal Indemnity Company (hereinafter called "the Company") hereby agrees with..... (hereinafter called "the insured") that if, between noon of the.....day of.....191.., and noon (standard time at the place at which this policy has been issued) of the.....day of..... 191.., or noon of the last day of any subsequent period in respect of which the Company shall have accepted the premium required for the continuation of this policy, there shall happen any breakage of any glass described in the schedule hereto,

Then the Company will indemnify the Insured up to such amount as may be specified in the schedule, or, if no such amount is specified, up to the actual market value of the glass broken.

Exhibit P. 1A.

Provided always, that the insurance hereby made is and shall be subject to the following conditions, and to the memoranda, if any, endorsed hereon in like manner as if the same were respectively repeated and incorporated herein, and compliance with such conditions and memoranda, and each of them, shall be a condition precedent to the right of recovery hereunder.

In witness whereof the Company has caused this policy to be signed by

CHARLES H. HOLLAND,
Vice-President and General Manager.

Dated this.....day of.....191..
Countersigned at.....
this..... day of.....191..
by .....
Authorized Agent.

Exd.....

CONDITIONS

Commencement of Insurance.

1. This Insurance shall not commence until this policy has been countersigned by an official or agent of the Company duly authorized in writing.

Breakage.

2. In the event of breakage of any of the glass mentioned in the schedule, the Insured shall give the Company immediate notice thereof, with full particulars of the cause of the breakage. The word "breakage" shall not include any disfiguration or damage other than a

Exhibit P. 1A.

fracture extending through the entire thickness of the glass. The Insured shall, at his own expense, remove and replace any frames, fixtures or other obstructions to the replacement of the glass.

Obstructions.

Privilege of Company as to Settlements.

3. The Company may, at its own option, either replace any broken glass, or pay in cash the amount for which such broken glass is insured hereunder. If no such amount is specified in the schedule; then the actual market value shall be deemed to be the amount insured. In any event the salvage, if any, shall belong to the Company.

Risks Not Covered.

4. This policy does not cover:

(a) Breakage resulting directly or indirectly from fire, earthquake, inundation, insurrection, riot, military or usurped power, or from the legal blowing up of buildings, or from any act or operation of workmen engaged in the construction, demolition, alteration or repair of the building or frames in which the glass is set;

(b) Loss of or damage to frames or sashes;

(c) Breakage of any glass which is not completely glazed in a workmanlike manner.

Risks Not Covered Unless Specifically Included.

5. Unless specifically included herein, this policy does not cover:

(a) Breakage of or damage to any ornamentation on the insured glass;

(b) Breakage of clamped, bent, glued, or other specially treated glass;

(c) Breakage of any art, leaded or other ornamental glass.

Exhibit P. 1A.

If ornamentation on glass is specifically insured hereunder, loss of or damage to the ornamentation is covered only when such loss or damage is caused by the breakage of the glass.

Subrogation of Rights.

6. The Company shall be subrogated to all rights which the Insured may have against any person or other entity, in respect of any claim or payment made under this policy, and the Insured shall, upon request by the Company, execute all papers necessary or convenient to secure to the Company such rights.

Cancelation of Policy.

7. The Insured may, by notice to the office of the Company at which this policy is issued, cancel this policy at any time, in which event the Company will return to the Insured the unearned portion of the premium, computed by the Short Period Table printed hereon. This policy may be canceled by the Company at any time by five days' written notice mailed to the Insured at the address mentioned in the schedule hereof, in which event the Company shall return to the Insured the unearned pro-rata portion of the premium received. The check of the Company or of its authorized agent shall be sufficient tender of such unearned premium.

Assignment of Interest.

8. No assignment of interest shall be valid unless consented to by endorsement hereon, signed by a duly authorized official or agent of the Company.

Alteration of Policy.

9. No alteration in the terms of this policy or its conditions shall be valid unless the same be signed or initialled by some official thereunto authorized in writing by the Company.

Exhibit P. 1A.

No.....

$100,000 in N. Y. State Bonds Deposited With the Insurance Department of the State of New York for the Security of All Policy Holders.

THE NEW YORK PLATE GLASS INSURANCE COMPANY

OF NEW YORK CITY

Cash Capital $200,000.

Home Office Maiden Lane and William Street
New York City

In Consideration of.....Dollars
Does Insure.....
against loss by breakage of the glass described in the schedule set forth hereon, located at the premises
No. .....
in the town or city of.....
and State of.....and
occupied as.....

And this Company does hereby promise and agree to make good unto the Assured, or to his, her or their heirs, executors, administrators or assigns all such loss or damage by breakage as shall happen to the glass herein specified,
from the.....day of.....
One thousand nine hundred and.....at twelve o'clock noon
until the.....day of.....
One thousand nine hundred and.....at twelve o'clock noon

This Policy Is Issued and Accepted by the Assured Subject to the Following Conditions:

Liability Limited.

1. The Liability of the Company under this policy is limited to the value of the glass at the time of breakage. Such breakage shall be the result of accident and due to cause beyond the control of the Assured.

Exhibit P. 1A.

Reporting Loss.

2. In case of loss notice thereof must be given to the Company immediately with particulars and a statement of the cause as far as same can be determined.

Co-Operation of Assured.

3. It shall be the duty of the Assured to use all reasonable efforts to prevent breakage and to allow employees of the Company to take all necessary measures to preserve the glass from further loss or damage.

Whenever necessary the Assured shall, at his own expense, remove and replace any frames, fixtures, woodwork, gas fixtures or other obstructions to the replacing of the glass.

Adjustment of Loss.

4. In case of loss it will be optional with the Company to pay the actual value of the glass broken or replace the glass as it shall elect. In case it shall elect to replace the glass, it shall replace the same without unnecessary delay. In either event the broken glass belongs to the Company.

Re-Instatement.

5. In case a portion of the glass hereby insured shall be broken and the Company shall replace or pay for same the insurance thereon shall continue in force, but in case all the glass insured shall be broken, when same has been replaced or paid for by the Company, this insurance shall cease.

Causes Not Covered.

6. The Company shall not be liable for:

a Any loss or damage resulting directly of indirectly by or in consequence of any fire (whether on the premises above described or elsewhere.)

b Any loss or damage resulting directly or indirectly from earthquake, inundation, insurrection, riot or any military or usurped power.

Exhibit P. 1A.

c Any loss or damage caused directly or indirectly by the blowing up of buildings when authorized by civil authorities.

d Any loss or damage to glass caused by the same being scratched or defaced.

e Any loss or damage to ornamentation of the glass, such as silvering, staining, painting, carving, cutting, lettering, embossing or other fancy work thereon unless same is specifically described in the policy *and unless the loss of or damage to such ornamentation is the result of the breakage of the glass on which it appears.*

f Any loss or damage caused by the acts or operations of persons engaged in or concerned with the construction, completion or demolition of the building or while engaged in making repairs, alterations or additions in or to the building, or any of its component parts, or to the frames in which the glass is located.

g Any loss or damage consequent upon the removal of the glass, or while glass is being stored during construction or demolition of building, or during any alteration, addition or repair to the same or any of its component parts.

h Any loss or damage while the glass is being glazed, and until such glazing is completed in a workmanlike manner.

i Any loss or damage to the frames or sashes.

Subrogation of Rights.

7. That all rights and equities of the Assured against any party or parties who may have caused or are liable for any damage or loss covered by this policy, shall revert to said Company, and the Assured shall on demand by any necessary instrument in writing subrogate the Company to such rights and equities.

Exhibit P. 1A.

Cancelation.

8. This policy may be canceled at any time at the request of the Assured, in which case the Company may retain the customary short rates for the time the insurance has been in force. This policy may be canceled by the Company on giving five (5) days notice in writing to the Assured at the location covered by this policy and tendering a pro rata proportion of the premium paid; and the Company's check mailed to the Assured at the same address shall be sufficient tender thereof.

Change of Interest.

9. No assignment of this policy shall be valid unless endorsed thereon by an officer or authorized agent of the Company.

Authorized Agents.

10. In any matter relating to this insurance, no person, unless duly authorized in writing, shall be deemed the agent of this company.

Alteration in Policy.

11. No condition or provision of this policy shall be waived or altered except in writing by an executive officer of the Company, and no notice given to, or possessed by any agent or other person shall be held to effect a waiver or change in this Contract.

Right of Recovery.

12. No suit or action of any kind against the Company for the recovery of any claim under this policy shall be sustainable in any court of law unless suit or action shall be commenced within the term of two years after such loss or damage shall have occurred.

Other Insurance.

13. If the Assured carry other insurance, whether valid or not, against loss, for which indemnity is pro-

Exhibit P. 1A.

vided hereunder, the Company shall be liable only for its pro rata share of any such loss.

In Witness Whereof, The New York Plate Glass Insurance Company, of New York has caused these presents to be signed by its President and Secretary, but the same shall not be binding upon the Company until countersigned by a duly authorized representative of the Company.

MAJOR A. WHITE,
President.

J. C. FRENCH,
Secretary.

Countersigned at .....
this.....day of.....19..
by .....Agent

PRUDENTIAL CASUALTY COMPANY

HOME OFFICE, INDIANAPOLIS
(Hereinafter called the Company)

In Consideration of the Premium stipulated in the Schedule incorporated herein, Does Hereby Agree to Indemnify The Assured named in the said Schedule Against Loss or Damage by Breakage, from causes beyond the Assured's control, the glass described in said Schedule during the policy term as defined therein.

This Policy Is Issued to and Accepted by the Assured Subject to the Following Conditions:

Liability Limited.

The liability of the Company under this Policy is limited to the value of the glass at the time of the breakage.

Exhibit P. 1A.

Reporting Accidents.

Upon the occurrence of an accident causing loss or damage covered hereunder, the Assured shall give immediate notice thereof in writing to the Company or its authorized agent, with full particulars, and a statement of the cause so far as the same can be determined.

Co-operation of Assured.

In the event of any loss or damage the Assured shall take all reasonable precaution to prevent further loss or damage, and shall allow employees of the Company to take all necessary measures to preserve the glass from further breakage. The Assured shall at his own expense, whenever requested by the Company, remove and replace any partitions, frames, woodwork, gas fixtures, or electric light fixtures, or any other obstructions required to be removed in the replacing of any light of glass.

Replacement.

The Company may replace any broken glass or any lettering or any ornamentation or pay for the same in money. In either case the salvage, if any, shall belong to the Company. If the Company elects to replace any glass, the replacement shall be made without unnecessary delay.

Continuation of Coverage.

In the event of a loss by the breakage of any of the glass described in the Schedule of this Policy and the replacement of such glass, or the payment therefor by the Company, the insurance hereunder shall apply to the new light or lights.

Exclusions.

The Company shall not be liable for:

1. Any loss or damage caused by or resulting in any manner from fire, whether in the premises described in the Schedule or elsewhere.

Exhibit P. 1A.

2. Any loss of or damage to any ornamentation, such as silvering, staining, painting, carving, cutting, lettering, embossing or other fancy work on any glass, unless such ornamentation is specifically described in the Schedule and unless the loss of or damage to such ornamentation is the result of the breakage of the glass on which it appears.

3. Any loss or damage caused by or resulting, wholly or partly, from the making of any additions, alterations, or repairs in or to the building containing the glass.

4. Any loss or damage caused by the glazing of any light of glass or by the removal of any light of glass from its frame or caused by the repairing of any frame.

5. Any loss or damage occuring before the glass is completely glazed in a workmanlike manner.

6. Any loss or damage caused by the scratching or defacing of any glass.

7. Any loss or damage resulting, directly or indirectly, from an earthquake or any inundation, insurrection, or riot, or any military or usurped power.

8. Any loss or damage caused, directly or indirectly, by the blowing up of any building or buildings when authorized by the civil authorities.

9. Any loss or damage to frames or sashes.

Subrogation of Rights.

In case of payment of loss under this Policy the Company shall be subrogated, to the amount of such payment, to the Assured's rights of recovery against others for such loss, and the Assured shall execute all papers required and shall co-operate with the Company to secure such rights.

Cancellation.

This Policy may be cancelled at any time by either of the parties hereto, upon five days' notice in writing to

Exhibit P. 1A.

the other party stating when thereafter cancellation shall be effective; if cancelled by the Company the earned premium shall be computed and adjusted upon a pro rata basis. If, however, such cancellation is at the request of the Assured, the earned premium shall be calculated at short rates, in accordance with the table printed hereon. Notice of cancellation mailed to any address of the Assured herein given shall be sufficient notice, and the check of the Company similarly mailed a sufficient tender of any unearned premium.

Change of Interest.

No assignment of interest under this Policy shall be valid unless the written consent of the Company is endorsed hereon, signed by one of its officers or an authorized agent of the Company.

Assured's Right of Recovery.

No action shall lie against the Company to recover for any loss under this Policy unless it shall be brought by the Assured within two years after the date of the occurrence resulting in such loss.

Concurrent Insurance.

If the Assured carry a policy of another insurer, against any loss covered by this Policy, the Assured shall not recover from the Company a larger proportion of the entire loss than the amount hereby insured bears to the total amount of valid and collectible insurance applicable thereto.

Alterations in Policy.

No condition or provision of this policy shall be waived or altered except by written endorsement attached hereto and signed by the President or General Manager of the Company; nor shall notice to any agent, nor shall knowledge possessed by any agent or by any other person be held to effect a waiver or change in any part of this

Exhibit P. 1A.

contract. The personal pronoun herein used to refer to the Assured shall apply regardless of number and gender.

Authorized Agents.

No person shall be deemed an agent of the Company unless such person is authorized in writing as such agent by the President or General Manager of the Company.

In Witness Whereof, the Prudential Casualty Company has caused this contract to be signed by its President, but the same shall not be binding upon the Company until countersigned by a duly authorized agent of the Company.

E. J. JACOBY, President.

Countersigned at .....
this.....day of.....19...
by .....
Authorized Agent.

Form P. G. 409 A

Glass Policy.

THE OCEAN ACCIDENT AND GUARANTEE CORPORATION, LIMITED,
of London, England,
Founded 1871

herein called the Corporation, in consideration of the premium herein provided, Does Hereby Agree to Indemnify the Assured hereinafter named against loss or damage by breakage, from causes beyond the control of the Assured, of the glass described in Statement No. 4, provided such loss or damage occurs within the policy period defined in Statement No. 5.

Exhibit P. 1A.

The foregoing General Agreement is subject to the following Special Agreements which shall be construed as conditions:

SPECIAL AGREEMENTS

1. The Assured, upon the occurrence of any loss or damage covered hereunder, shall give prompt written notice thereof, with the fullest information obtainable at the time, to the New York Office of the Corporation or to its duly authorized Agent. The Assured shall make and shall allow the Corporation to make, all reasonable efforts to preserve the glass and prevent further loss or damage. At the request of the Corporation the Assured shall file with the Corporation affirmative proof of loss together with full particulars of such loss.

2. The liability of the Corporation under this policy is limited to the value of the glass at the time of the breakage, including damage, resulting from breakage, to any lettering or ornamentation thereon described in the schedule.

3. The Corporation may replace any broken glass or any such lettering or ornamentation—such replacement to be made without unnecessary delay—or pay for the same in money. In either case the salvage, if any, shall belong to the Corporation. In case of replacement or payment for loss under this policy, the Corporation shall be subrogated to all the rights of the Assured against any person or corporation as respects such loss to the extent of its interest, and the Assured shall execute all papers required to secure to the Corporation such rights.

4. The Corporation shall not be liable for any loss or damage: (1) caused by or resulting in any manner from fire whether in the premises described in the Schedule or elsewhere; (2) to any lettering or ornamentation on the insured glass unless such lettering or ornamentation is specifically described in the Schedule, and unless the loss of or damage to such lettering or

ornamentation is the result of the breakage of the glass on which it appears; (3) caused by or resulting, directly or indirectly, wholly or partly, from the making of any additions, alterations, or repairs in or to the building containing the glass; (4) caused by the glazing of any light of glass, or by the removal of any light of glass from its frame, or caused by the repairing of any frame; (5) occurring before the glass is completely glazed in a workmanlike manner; (6) caused by the scratching or defacing of any glass or any disfiguration or damage which is not a fracture extending through the entire thickness of the plate; (7) resulting directly or indirectly, from earthquake, inundation, insurrection, riot, or any military or usurped power; (8) caused, directly or indirectly by the blowing up of any building or buildings when authorized by the civil authorities; (9) to frames or sashes.

5. If the Assured carries a policy of another insurer, against loss or damage covered by this policy, the Assured shall not be entitled to recover from the Corporation a larger proportion of the entire loss than the amount hereby insured bears to the total amount of valid and collectible insurance.

6. The Corporation may cancel this policy at any time by a written notice delivered to the Assured or sent by registered mail to the Assured at the address given in Statement No. 2, at least five days prior to the date the cancelation is effective as stated in such notice. The Assured may cancel this policy by like notice to the Corporation. If canceled by the Corporation the Corporation shall be entitled to collect or retain the earned premium pro rata. If canceled by the Assured the Corporation shall be entitled to collect or retain the earned premium calculated on the basis of the short-rate table set forth hereon. The check of the Corporation or of its agent delivered to the Assured, or sent by registered mail to the Assured at the address given in Statement

Exhibit P. 1A.

No. 2, shall be a sufficient tender of any unearned premium.

7. The Assured shall at his own expense remove or replace any frames, fixtures or other obstructions to the replacement of the glass. The Assured shall take all reasonable precaution to prevent loss or damage to the glass.

8. No suit shall be brought against the Corporation under or by reason of this policy unless it be brought within twelve months after the occurrence of the loss or damage. If the limitation set forth in this condition is prohibited by the Statutes of the State in which the policy is issued, the said limitation shall be considered to be amended to agree with the minimum period of limitation permitted by such Statutes.

9. No assignment or change of interest under this policy shall bind the Corporation unless its consent shall be endorsed hereon or attached hereto signed by the Manager and Attorney at the City of New York.

10. In the event of any loss or damage of any lettering or cathedral glass described in the Schedule of this policy the Corporation may pay the Assured the actual value of such lettering or cathedral glass, or replace the same as the Corporation shall elect. In no event shall the Corporation be liable for any loss or damage to such lettering or cathedral glass in excess of the amount specified as the value thereof in the said Schedule.

11. In the event of a loss by the breakage of a portion of the glass described in the schedule of this policy and the replacement of such glass, or the payment therefor by the Corporation, the insurance hereunder shall apply to the new light or lights. In the event of a loss by the breakage of all the glass described in the said schedule, this insurance shall not apply to any new light or lights but shall terminate.

12. No condition or provision of this policy shall be waived, extended, modified, or altered by anyone unless

Exhibit P. 1A.

by written consent of the Manager and Attorney at the City of New York, nor shall notice to any agent, nor shall knowledge possessed by any agent or any other person, be held to effect a waiver or change in this contract or any part of it.

13. No person shall be deemed an Agent of the Corporation unless such person is authorized, in writing, as such Agent, by its Manager and Attorney at the City of New York.

In Witness Whereof, The Ocean Accident and Guarantee Corporation, Limited, has caused this policy to be signed by its Manager and Attorney at the City of New York, but the same shall not be binding upon the Corporation until countersigned by a duly authorized agent of the Corporation, and the premium actually paid to the Corporation or its duly authorized agent.

CHARLES H. NEELY,
Manager and Attorney.

Countersigned at .....
this.....day of.....19...
by .....
Authorized Agent.

Exhibit P. 1A.

William T. Woods, President. Charles E. W. Chambers, Secretary.

George M. Olcott, Vice President.

No. 609632

$100,000.00 in New York State Bonds Deposited With the Insurance Department of the State of New York for the Security of Policy Holders.

By This Policy of Insurance the

LLOYDS PLATE GLASS INSURANCE COMPANY
OF NEW YORK
Cash Capital $250,000.00
Home Office, 63 William Street, N. Y. City.

In Consideration of Thirty-seven and 67/100 Dollars Does Insure Elizabeth M. Walter, Owner against loss by breakage of the glass described in the schedule set forth hereon, located at the premises No. 887 Fulton Street—N. E. Cor. Vanderbilt Ave. Street, in the town or city of Brooklyn and State of New York and occupied as.....

And this Company does hereby promise and agree to make good unto the Assured, or to his, her or their heirs, executors, administrators or assigns all such loss or damage by breakage as shall happen to the glass herein specified,

from the 4th day of April, One thousand nine hundred and Sixteen at twelve o'clock noon until the 4th day of April, One thousand nine hundred and Seventeen at twelve o'clock noon.

This Policy Is Issued to and Accepted by the Assured Subject to the Following Conditions:

Liability Limited.

1. The Liability of the Company under this policy is limited to the value of the glass at the time of breakage.

Exhibit P. 1A.

Such breakage shall be the result of accident and due to cause beyond the control of the Assured.

Reporting Loss.

2. In case of loss notice thereof must be given to the Company immediately with particulars and a statement of the cause as far as same can be determined.

Co-Operation of Assured.

3. It shall be the duty of the Assured to use all reasonable efforts to prevent breakage and to allow employees of the Company to take all necessary measures to preserve the glass from further loss or damage.

Whenever necessary the Assured shall, at his own expense, remove and replace any frames, fixtures, woodwork, gas fixtures or other obstructions to the replacing of the glass.

Adjustment of Loss.

4. In case of loss it will be optional with the Company to pay the actual value of the glass broken or replace the glass as it shall elect. In case it shall elect to repace the glass, it shall replace the same without unnecessary delay. In either event the broken glass belongs to the Company.

Re-Instatement.

5. In case a portion of the glass hereby insured shall be broken and the Company shall replace or pay for same the insurance thereon shall continue in force, but in case all the glass insured shall be broken, when same has been replaced or paid for by the Company, this insurance shall cease.

Causes Not Covered.

6. The Company shall not be liable for:

a Any loss or damage resulting directly or indirectly by or in consequence of any fire (whether on the premises above described or elsewhere.)

Exhibit P. 1A.

b Any loss or damage resulting directly of indirectly from earthquake, inundation, insurrection, riot or any military or usurped power.

c Any loss or damage caused directly or indirectly by the blowing up of buildings when authorized by civil authorities.

d Any loss or damage to glass caused by the same being scratched or defaced.

e Any loss or damage to ornamentation of the glass, such as silvering, staining, painting, carving, cutting, lettering embossing or other fancy work thereon unless same is specifically described in the policy, and unless the loss of or damage to such ornamentation is the result of the breakage of the glass on which it appears.

f Any loss or damage caused by the acts or operations of persons engaged in or concerned with the construction, completion or demolition of the building or while engaged in making repairs, alterations or additions in or to the building, or any of its component parts, or to the frames in which the glass is located.

g Any loss or damage consequent upon the removal of the glass, or while glass is being stored during construction or demolition of building, or during any alteration, addition or repair to the same or any of its component parts.

h Any loss or damage while the glass is being glazed, and until such glazing is completed in a workmanlike manner.

i Any loss or damage to the frames or sashes.

Subrogation of Rights.

7. *a* That all rights and equities of the Assured against any party or parties who may have caused or are liable for any damage or loss covered by this policy, shall revert to said Company, and the Assured shall on demand by any

Exhibit P. 1A.

necessary instrument in writing subrogate the Company to such rights and equities.

b That the Assured shall not release, in any manner whatsoever, any person or persons liable for any damage or loss covered by this policy from any liability therefor, and the Company shall not be liable for any loss sustained by the Assured in any instance where the Assured shall have so released any such person or persons. In the event that the Company shall have made good unto the Assured any loss or damage under this policy and the Assured by release or otherwise shall have released any such person or persons causing said damage from liability, thereby depriving the Company of its complete subrogation to all and every right of the Assured in and to all claims and demands for damage against such person or persons, the Assured shall repay to the Company the amount previously paid to him by the Company under this policy or the value of the glass and the cost of replacement, if the glass shall have been replaced.

Cancelation.

8. This policy may be canceled at any time at the request of the Assured, in which case the Company may retain the customary short rates from the time the insurance has been in force. This policy may be canceled by the Company on giving five (5) days notice in writing to the Assured at the location covered by this policy and tendering a pro rata proportion of the premium paid; and the Company's check mailed to the Assured at the same address shall be sufficient tender thereof.

Change of Interest.

9. No assignment of this policy shall be valid unless endorsed thereon by an officer or authorized agent of the Company.

Exhibit P. 1A.

Authorized Agents.

10. In any matter relating to this insurance, no person, unless duly authorized in writing, shall be deemed the agent of this Company.

Alteration in Policy.

11. No condition or provision of this policy shall be waived or altered except in writing by an executive officer of the company, and no notice given to, or possessed by any agent or other person shall be held to effect a waiver or change in this Contract.

Right of Recovery.

12. No suit or action of any kind against the Company for the recovery of any claim under this policy shall be sustainable in any court of law unless suit or action shall be commenced within the term of two years after such loss or damage shall have occurred.

Other Insurance.

13. If the Assured carry other insurance, whether valid or not, against loss, for which indemnity is provided hereunder, the Company shall be liable only for its pro rata share of any such loss.

In Witness Whereof, The Lloyds Plate Glass Insurance Company of New York, has caused these presents to be signed by its President and Secretary, but the same shall not be binding upon the Company until countersigned by a duly authorized representative of the Company.

WM. T. WOODS,
President.

CHAS. E. D. CHAMBERS,
Secretary.

Countersigned at Brooklyn, N. Y. this 6th day of March 1916 by W. H. Young, Manager.

Exhibit P. 1A.

Plate Glass Policy

Chartered 1874 No. 1320920

THE METROPOLITAN CASUALTY INSURANCE CO.
OF NEW YORK.

Cash Capital $200,000.00

(Formerly: The Metropolitan Plate Glass and Casualty Insurance Co.)

In Consideration of.....Dollars
Does Insure.....
against loss by breakage of the glass located in the premises No.....Street, in the town or city of.....and State of.....
and described in the schedule set forth hereon.

And this Company does hereby promise and agree to make good unto the Assured or to his, her, or their heirs, executors, administrators or assigns, all such loss or damage as shall happen by breakage of the glass described in the schedule hereon from the.....
day of....., One thousand nine hundred and..... at twelve o'clock noon, until the.....
day of....., One thousand nine hundred and.....at twelve o'clock noon.

This Policy Is Issued to and Accepted by the Assured Subject to the Following Conditions:

Liability Limited.

Clause 1. The liability of the Company under this policy is limited to the value of the glass at the time of the breakage. That such breakage shall be the result of accident and due to causes beyond the control of the Assured.

Reporting Loss.

Clause 2. In the event of a loss, notice thereof must be given to the Company immediately, with particulars

Exhibit P. 1A.

and a statement of the cause so far as the same can be determined.

Co-Operation of Assured.

Clause 3. It shall be the duty of the assured to use all reasonable efforts to prevent further breakage and to allow employes of the Company to take all necessary measures to preserve the glass from further loss or damage. Whenever necessary the assured shall at his own expense, remove and replace any frames, fixtures, wood-work, gas fixtures, or other obstructions to the replacing of the glass.

Adjustment of Loss.

Clause 4. In the event of a loss the Company shall be at liberty to pay the actual value of the glass broken, or to replace the glass, as it may elect. In case it shall elect to replace the glass it shall replace the same without unnecessary delay. In either case the broken glass belongs to the Company.

Reinstatement.

Clause 5. In the event of a loss by the breakage of a portion of the glass hereby insured, and the Company shall replace the same or pay for the same, the insurance hereunder shall apply to the new light or lights; but in the event of all of the glass insured being broken this insurance shall cease upon the replacement of such glass or the payment therefor by the Company.

Causes Not Covered.

Clause 6. The Company shall not be liable for:

a Any loss or damage resulting directly or indirectly from fire, whether on the premises above described or elsewhere.

b Any loss or damage resulting directly or indirectly from earthquake, inundation, insurrection, riot, or any military or usurped power.

Exhibit P. 1A.

c Any loss or damage caused directly or indirectly by the blowing up of buildings when authorized by Civil Authorities.

d Any loss or damage to glass caused by the same being scratched or defaced.

e Any loss or damage to ornamentation of the glass, such as silvering, staining, painting, carving, cutting, lettering, embossing or other fancy work thereon unless same is specifically described in the schedule of this policy.

f Any loss or damage caused by the acts or operations of workmen engaged in making repairs, alterations, or additions in or to the building or frames in which the glass is located.

g Any loss or damage while the glass is being glazed or before such glazing is completed in a workmanlike manner; or by the removal of any light of glass from its frame.

h Any loss or damage to the frames or sashes.

Subrogation of Rights.

Clause 7. That all rights and equities of the assured against any party or parties who may have caused or are liable for any damage or loss covered by this policy shall revert to the Company; and the assured, by any necessary instrument in writing, shall, on demand, subrogate the Company to such rights and equities.

Cancellation.

Clause 8. This policy may be cancelled at any time, at the request of the assured, in which case the Company may retain the customary short rates for the time the insurance has been in force. This policy may be cancelled by the Company on giving five days notice, in

Exhibit P. 1A.

writing, to the assured, at the location mentioned in this policy, and tendering a pro-rata proportion of the premium paid; and the Company's check mailed to the assured, at the same address, shall be sufficient tender thereof.

Change of Interest.

Clause 9. No assignment of this policy shall be valid unless endorsed hereon by an officer or authorized agent of the company.

Authorized Agents.

Clause 10. In any matter relating to this insurance no person unless duly authorized in writing, shall be deemed the agent of this Company.

Alterations in Policy.

Clause 11. No condition or provision of this policy shall be waived or altered except in writing, by an executive officer of the Company; and no notice given to or possessed by an agent or other person shall be held to effect a waiver or change in this contract.

Right of Recovery.

Clause 12. That no suit or action of any kind against the Company for the recovery of any claim under this policy shall be sustainable in any Court of Law unless suit or action shall be commenced within the term of two years after such loss or damage shall have occurred.

Concurrent Insurance.

Clause 13. If the assured carry other insurance against loss for which indemnity is provided hereunder, the Company shall be liable only for its pro-rata share of any such loss.

In Witness Whereof, The Metropolitan Casualty Insurance Company of New York has caused these presents to be signed by its President and Secretary, but the same shall not be binding upon the Company until coun-

Exhibit P. 1A.

tersigned by a duly authorized representative of the Company.

....., ...,
Secretary President

Countersigned by.....Agent
at.....this.....day of
.....19..

Plate Glass Policy No. 665977

THE FIDELITY AND CASUALTY COMPANY
OF NEW YORK
(hereinafter called the Company)

Does Hereby Agree to Indemnify the person, firm, or corporation named in the schedule set forth hereon and hereinafter called the Assured, against loss or damage of the glass described in the schedule by breakage from causes beyond the Assured's control during the term of this policy.

The foregoing agreement is subject to the following conditions:

1. Upon the occurrence of an accident causing loss or damage covered hereunder the Assured shall give immediate written notice thereof, with the fullest information obtainable at the time, to the Company at its home office or to the agent who has countersigned this policy. At the request of the Company the Assured shall file with the Company affirmative proof of loss together with full particulars of such loss.

2. The liability of the Company under this policy is limited to the value of the glass at the time of the breakage.

Exhibit P. 1A.

3. The Company may settle for any loss or damage covered hereunder by paying therefor in money or by replacing any broken glass or any lettering or any ornamentation. In either case the salvage, if any, shall belong to the Company. If the Company elects to replace any glass the replacement shall be made without unnecessary delay. In case of replacement or payment for loss under this policy, the Company shall be subrogated to all the rights of the Assured against any person or corporation, as respects such loss, to the extent of its interest and the Assured shall execute all papers required to secure to the Company such rights.

4. The Company shall not be liable for—(1) any loss or damage caused by or resulting in any manner from fire whether in the premises described in the schedule or elsewhere; (2) any loss of or damage to any ornamentation such as silvering, staining, painting, carving, cutting, lettering, embossing, or other fancy work on any glass unless such ornamentation is specifically described in the schedule, and unless the loss of or damage to such ornamentation is the result of the breakage of the glass on which it appears; (3) any loss or damage caused by or resulting, directly or indirectly, wholly or partly from, the making of any additions, alterations, or repairs in or to the building containing the glass; (4) any loss or damage caused by the glazing of any light of glass or by the removal of any light of glass from its frame or caused by the repairing of any frame; (5) any loss or damage occurring before the glass is completely glazed in a workmanlike manner; (6) any loss or damage caused by the scratching or defacing of any glass; (7) any loss or damage resulting directly or indirectly from an earthquake or any inundation, insurrection, or riot, or any military or usurped power; (8) any loss or damage caused, directly or indirectly, by the blowing up of any building or buildings when authorized by the civil authorities; (9) any loss or damage to frames or sashes.

Exhibit P. 1A.

5. If the Assured carries other insurance, not issued by the Company, against a loss covered by this policy, the Assured shall not be entitled to recover from the Company a larger proportion of the entire loss than the proportion that the amount of this policy bears to the total amount of his valid and collectable insurance against such loss.

6. Without prejudice to the rights of the Assured as respects anything that may occur during the period that the policy is in force the Company may cancel this policy at any time by a written notice, stating when the cancelation takes effect, served on the Assured, or sent by registered mail to the Assured at any address given in the schedule of this policy, at least five days prior to the date that the cancelation takes effect. The Assured may cancel this policy by like notice to the Company. If canceled by the Company the Company shall be entitled to the earned premium pro rata. If canceled by the Assured the Company shall be entitled to the earned premium calculated on the basis of the short-rate table set forth hereon. The Company's check served on the Assured, or sent by registered mail to the Assured at any address given in the schedule of this policy, shall be a sufficient tender of any unearned premium.

7. The Assured shall at his own expense, whenever requested by the Company, remove and replace any partitions, frames, settings, woodwork, gas-fixtures, or electric-light-fixtures, or anything else required to be removed or replaced in the setting of any light of glass. In the event of any loss or damage the Assured shall take all reasonable precautions to prevent further loss or damage to the glass.

8. No action shall be brought against the Company under or by reason of this policy unless it shall be brought within twelve months of the occurrence of the loss or damage. If the limitation set forth in this condition is prohibited by the statutes of the state in which this

policy is issued, the said limitation shall be considered to be amended to agree with the minimum period of limitation permitted by such statutes.

9. No assignment of interest under this policy shall bind the Company, unless the written consent of the Company is endorsed hereon by one of its officers or by an authorized agent of the Company.

10. In the event of any loss or damage to any lettering described in the schedule of this policy, the Company may pay to the Assured the actual value of such lettering or replace the same as the Company shall elect. In no event shall the Company be liable for any loss or damage to such lettering in excess of the amount specified as the value thereof in the said schedule.

11. In the event of any loss by breakage of any cathedral glass described in the schedule of this policy, the Company may pay to the Assured an amount not exceeding the estimate of the original manufacturer for making the necessary repairs or replace the same as the Company shall elect. In no event shall the Company be liable for any such loss in excess of the amount specified in the said schedule as the value of such cathedral glass.

12. In the event of a loss by the breakage of a portion of the glass described in the schedule of this policy and the replacement of such glass, or the payment therefor by the Company, the insurance hereunder shall apply to the new light or lights. In the event of a loss by the breakage of all the glass described in the said schedule, this insurance shall not apply to any new light or lights but shall terminate.

13. No erasure or change appearing on this policy as originally printed, nor change or waiver of any of its terms or conditions, whether made before or after the date of this policy, shall be valid unless set forth in an endorsement added hereto and signed by the President, Vice-president, Secretary, or one of the Assistant Secre-

Exhibit P. 1A.

taries of the Company. Neither notice given to nor the knowledge of any agent or any other person, whether received or acquired before or after the date of this policy, shall be held to waive any of the terms or conditions of this policy, or to preclude the Company from asserting any defense under said terms and conditions, unless set forth in an endorsement added hereto and signed by one of the said officers.

14. The Company may suspend this insurance as respects the entire risk or as respects any part thereof by a written notice served on the Assured, or mailed to the Assured at the address given herein.

15. The term of this policy begins at noon of the beginning date specified in the schedule set forth hereon, and ends at noon on the ending date so specified, standard time at the location given in the said schedule. The premium for this policy, and the description of the glass insured hereunder are also specified in the said schedule which is hereby made a part of this policy.

IN WITNESS WHEREOF the Company has caused this policy to be signed by its President and its Vice-President—Secretary, but the policy shall not be binding upon the Company until countersigned by a duly authorized representative of the Company.

THEO. E. GATY, *Vice-president—Secretary* ROB'T J. HILLAS, *President*

Countersigned by .....

TABLE OF SHORT RATES, SHOWING WHAT PERCENTAGE OF THE PREMIUMS IS EARNED AT ANY GIVEN DATE.

Number of months since issuance of policy	1	2	3	4	5	6	7	8	9	10	11	12
Percentage of premium earned ...	20	30	40	50	60	70	75	80	85	90	95	100

Exhibit P. 1A.

No.....

COMMERCIAL
CASUALTY INSURANCE COMPANY
NEWARK, NEW JERSEY

In Consideration of.....*Dollars*
DOES INSURE .....
(State whether tenant or owner)
against loss to glass by breakage in the premises No.....
.....Street, in the town or city of.....
and State of.....and occupied as.....
and described in the schedule set forth hereon.

And this Company does hereby promise and agree to make good unto the Assured or to his, her, or their heirs, executors or administrators, all such loss or damage to the glass hereon specified as shall happen by breakage, from the.....day of....., One thousand nine hundred and.....at twelve o'clock noon, until the.....day of....., One thousand nine hundred and.....at twelve o'clock noon.

THIS POLICY IS ISSUED AND ACCEPTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. That such breakage shall be the result of accident and due to causes beyond the control of the Assuerd.

2. That in the event of breakage written notice thereof must be given to the Company immediately, with particulars and a statement of the cause so far as the same can be determined; and it shall be the duty of the Assured to make all reasonable efforts to prevent further breakage, and to allow employees or a contractor designated by the Company to take all necessary measures to preserve the glass from further loss or damage. When-

Exhibit P. 1A.

ever necessary, the Assured shall, at his own expense, remove and replace any frames, fixtures, woodwork, gas or electric fixtures or other obstructions to the replacing of the glass. The Company may require the Assured to file affirmative proof of loss under oath on forms provided by the Company, together with full particulars of such loss.

3. That any loss is to be estimated according to the value of the glass at the time the breakage happens, providing this Company shall be at liberty to pay the actual value of the glass broken or to have the glass replaced, as it shall elect; and in case it shall elect to have the glass replaced, such replacement shall be made without unnecessary delay after satisfactory proof of said loss has been made by the Assured. In either case the broken glass belongs to the Company.

4. That this Company is not liable for any loss or damage resulting directly or indirectly from fire (whether on the premises above described or not), earthquake, inundation, insurrection, riot, or any military or usurped power, or by the blowing up of buildings when authorized by Municipal, State, or National Governments, or caused by the acts or operations of workmen engaged in the construction or alteration of or repairs to the building or frames, or for any loss reported after the expiration of this policy.

5. That this Company is not liable for any loss or damage to glass caused by the same being scratched or defaced; nor for loss or damage to frames or sashes, nor for loss or damage while the glass is being glazed; nor until such glazing is completed in a workmanlike manner.

6. That this Company is not liable for any loss or damage to Clamped or Glued Glass, or glass set in any manner other than in sashes or bars, nor for loss or damage to ornamentation of the glass, such as silvering, staining, painting, carving, cutting, lettering, embossing

Exhibit P. 1A.

or other fancy work thereon, unless the same is specifically described in the schedule.

7. That all rights and equities of the Assured against any party or parties who may have caused or are liable for any damage or loss covered by this policy, shall revert to the said Company, and the Assured by any necessary instrument in writing shall on demand subrogate the Company to such rights and equities.

8. That this policy may be cancelled at any time at the request of the Assured, in which case the Company may retain the customary short rates for the time the Insurance has been in force. This policy may be cancelled by the Company, on giving five days' notice in writing and tendering a ratable proportion of the premium paid; and the Company's check mailed to the address of the Assured as given in this policy shall be a sufficient tender.

9. That no assignment of this policy shall be valid, unless endorsed hereon by an Officer or authorized Agent of the Company.

10. That in case any portion of the glass hereby insured shall be broken, the Company will have the glass replaced or pay for the same, and will, without additional charge, keep it insured until the expiration of the policy. In case all the glass insured shall be broken, then, upon the same being replaced or paid for by this Company, this Insurance shall cease.

11. That no condition or provision of this policy shall be waived or altered save in writing by an Executive Officer of the Company, and no notice given to or possessed by any agent or other person shall be held to effect a waiver or change in this contract.

12. That in any matter relating to this Insurance, no person, unless duly authorized in writing, shall be deemed the Agent of this Company.

13. That no suit or action of any kind against the Company, for the recovery of any claim under this policy,

Exhibit P. 1A.

shall be brought unless such suit or action shall be commenced within the term of twelve months after such loss or damage shall have occurred. If the limitation set forth in this condition is prohibited by the statutes of the state in which this policy is issued, the said limitaton shall be considered to be amended to agree with the minimum period of limitation permitted by such statutes.

14. If the Assured carry other Insurance, whether valid or not, against loss for which indemnity is provided hereunder, the Company shall be liable only for its pro rata share of any such loss.

In Witness Whereof the Commercial Casualty Insurance Company has caused these presents to be signed by its President and Secretary, but the same shall not be binding upon the Company until countersigned by a duly authorized representative of the Company.

Secretary. *President.*

Countersigned at.....this.....
day of.....19....

.....Agent.

Form 100 P.G. Feb. 1914

Exhibit P. 2.

EXHIBIT P. 2.

(Cover)

FORM T-686

Supersedes Form T-629 Effective March 31, 1912.

Lehigh Valley Railroad Company

REGULATIONS

for the

Transportation of Explosives and Other Dangerous Articles by Freight

and

SPECIFICATIONS FOR SHIPPING CONTAINERS

Prescribed under the Act of March 4, 1909, and Section 15 of the Act to Regulate Commerce, as amended June 18, 1910

Effective October 1, 1914, Except as Noted Herein

Paragraphs are numbered to correspond to the Rules and Regulations of the American Railway Association

Exhibit P. 2.

NOTICE.

The regulations herein contained have been adopted by the LEHIGH VALLEY RAILROAD COMPANY, and must be complied with by all concerned, in order to make effective the regulations prescribed by the Interstate Commerce Commission. Every employe concerned must thoroughly familiarize himself with them and see that they are carried out.

The placards and labels provided for in these regulations are kept in stock by the General Storekeeper, and may be obtained by making requisition for them in the usual way. Shippers are required to furnish their own labels, but Agents must keep on hand an adequate supply as samples, and for emergency use to replace lost and detached labels.

C. W. KINNEY,
Supt. of Transportation.

Approved:

J. F. MAGUIRE,
General Manager.

Exhibit P. 2.

FORM T-868

Supersedes Form T-629 effective March 31, 1912.

Lehigh Valley Railroad Company

REGULATIONS

for the

Transportation of Explosives and Other Dangerous Articles by Freight.

and

SPECIFICATIONS FOR SHIPPING CONTAINERS

Prescribed under the Act of March 4, 1909, and Section 15 of the Act to Regulate Commerce, as amended June 18, 1910

Effective October 1, 1914, Except as Noted Herein

Paragraphs are numbered to correspond to the Rules and Regulations of the American Railway Association

The American Railway Association

RULES

for the

Transportation of Explosives and Other Dangerous Articles of Freight.

GENERAL NOTICE.

The following rules are prescribed in order to make effective for interstate and intrastate shipments of articles subject thereto, the Interstate Commerce Commission Regulations for the Transportation of Explosives and other Dangerous Articles published July 2, 1914 to become effective October 1, 1914.

It is necessary for railway employes and shippers to become familiar with their specific duties. Railway employes are specially designated to perform certain duties

Exhibit P. 2.

under these regulations, and the paragraphs referred to in the following rules should be studied carefully.

RULES.

1301. Serious violations of the regulations and fires or accidents occurring in connection with the transportation or storage of dangerous articles on railway property, must be reported promptly to the proper official, who will forward reports to the Chief Inspector, Bureau of Explosives, 30 Vesey Street, New York City. Samples of blank forms for reporting such violations, accidents, fires or explosions, will be furnished by the Bureau on request.

1302. Dangerous articles for railway use (not explosives) may be shipped in emergency in baggage cars or caboose cars when properly packed and protected by the prescribed labels. Such packages should not be shipped in these cars unless a railway employe is riding therein.

1303. Inspectors of the Bureau of Explosives are furnished with a red credential card bearing thereon their photographs and an impression of the Bureau seal, and in the following form:

Bureau for the Safe Transportation of Explosives and Other Dangerous Articles The American Railway Association	Photo
This certifies that Mr..... is an Inspector of this Bureau. Dated at 30 Vesey Street, New York, N. Y. 191	
	Chief Inspector

Exhibit P. 2.

Inspectors presenting this credential card properly signed, are authorized to inspect everything pertaining to the transportation, handling and storing of explosives or dangerous articles other than explosives, and should be given full opportunity to do so, and all necessary assistance in the performance of their duties.

1304. Should the services of an Inspector of the Bureau of Explosives be required, application should be made by the Agent to the Superintendent or other designated official.

1305. **Trainmasters, Yardmasters and Station Agents** should study carefully the regulations. They will be held responsible respectively, for the proper instruction of the employes under them and for their compliance with the regulations.

1306. The following mentioned paragraphs have specific reference to the duties devolving on the employes in the various classes named:

Employes Receiving Freight. Paragraphs 1404, 1422, to 1425, 1427, 1428, 1430, 1431, 1500, 1501, 1531, 1641, 1654 1656, 1687, 1702, 1704, 1711 to 1713, 1801, 1807, 1822, 1864 to 1867, 1871, 1877, 1895, 1902, 1904.

Employes Billing Freight. Paragraphs 1428, 1652, 1654, 1657, 1712, 1871, 1873, to 1876.

Employes Loading and Unloading Freight. Paragraphs 1422, 1433, 1434, 1531, 1642 to 1651, 1655 to 1657, 1661 to 1667, 1682, 1687, 1692, 1714, 1715, 1833 (*f*), 1871, 1890 to 1894, 1903, 1909, 1910, 1912, 1913, 1941, 1943.

Employes Delivering Freight. Paragraphs 1434, 1531, 1643, 1656, 1657, 1692, 1714, 1715, 1871 (*c*), 1890, 1903, 1909, 1910, 1912.

Yard and Train Employes. Paragraphs 1654 to 1657, 1661 to 1667, 1680 to 1692, 1697, 1715, 1874 to 1877, 1890 to 1895, 1902 to 1911, 1913, 1941, 1943, 1946, 1951 to 1959.

Employes Inspecting Cars. Paragraphs 1434, 1654, 1655, 1661 to 1667, 1680, 1681, 1691, 1822 (*d*), (*e*), (*f*), 1946, 1951 to 1959.

Wreck Crews. Paragraphs 1697, 1946, 1951 to 1959.

Exhibit P. 2.

LOADING CHART.

1307. The following chart shows the explosives and other dangerous articles which must not be loaded or stored together, and this chart should be used by employes in charge of loading as a means of ready reference:

REGULATIONS

for the

Transportation of Explosives by Freight.

Prescribed under act of March 4, 1909. Originally formulated and published January 15, 1910, effective 90 days thereafter. Revision formulated and published July 2, 1914, effective October 1, 1914, and superseding the regulations published January 1, 1912.

GENERAL NOTICE.

1401. (*a*) As the use of explosives is essential to various business activities throughout the country, it is the duty of interstate railroad carriers to accept and transport such explosives under these regulations. When local conditions make the acceptance, transportation, or delivery unusually hazardous, local restrictions, as provided by paragraph 1429 herein, may be imposed.

(*b*) It is also the duty of carriers and shippers to make these regulations effective and to thoroughly instruct their employees in relation thereto.

1402. The Bureau for the Safe Transportation of Explosives and other Dangerous Articles, hereinafter called Bureau of Explosives, organized by the railways under the auspices of the American Railway Association, is an efficient bureau in charge of an expert chief inspector. This bureau will make inspections and conduct investigations, and will confer with manufacturers and shippers with a view to determining what specifications and regulations will within reasonable limits afford the highest degree of safety in packing and preparing these danger-

ous articles for shipment and in transporting the same. The Commission will seek to avail itself of the expert knowledge thus developed, and in formulating amendments to these regulations or specifications supplemental thereto, while not bound thereby, will give due weight to such expert opinions.

1403. The Commission will make further provision as occasion may require for new explosives not included in or covered by the following regulations.

1404. These regulations apply to all shipments of explosives as defined herein, including carrier's material and supplies.

GENERAL RULES.

1421. Unless specifically authorized by these regulations, explosives must not be packed in the same outside packages with each other or with other articles.

1422. Explosives, when offered for shipment by rail, must be in proper condition for transportation and must be packed, marked, loaded, stayed, and handled while in transit in accordance with these regulations. All packages of less-than-carload shipments must also be plainly marked on the outer covering or boxing (outside package) with the name and address of the consignee.

1423. Except on through bills of lading to a foreign destination, shipments of dangerous explosives as named in paragraph 1661 must not be accepted when consigned "order notify."

1424. **Empty boxes or kegs** previously used for high explosives are dangerous and must not be again used for shipments of any character. Empty boxes which have been used for the shipment of other explosives than high explosives must have the old marks thoroughly removed before being used for the shipment of other articles. **Empty metal kegs** which have been used for the shipment of black powder which was not contained in an interior package, must not be again used for shipment of any explosive,

and if used for the shipment of other articles must have the old marks thoroughly removed or obliterated.

1425. (*a*) Explosives except such as are forbidden (see par. 1501) may be offered for transportation to railroads engaged in interstate commerce, provided the following regulations are complied with, and provided their method of manufacture, packing, and storage, so far as it affects safe transportation, is open to inspection by a duly authorized representative of the initial carrier or of the Bureau of Explosives. Shipments of explosives that do not comply with these regulations must not be received.

(*b*) Shipments offered by the War and Navy Departments of the United States Government may be packed, including limitations of weight, as required by their regulations.

1426. When practicable at any point, **regular and separate days** should be assigned for receiving from shippers less-than-carload lots of dangerous explosives named in paragraph 1661.

1427. To enable the carrier to provide proper cars at stations where less-than-carload shipments of the dangerous explosives named in paragraph 1661 are accepted for loading by the carrier, the shipper must give to the carrier not less than **24 hours' notice** of his intention to offer such shipments, and state their destinations. When a regular day to receive all explosive shipments offered at such a station has been appointed, this notice may be waived by the carrier, but the explosive shipments must be delivered on such days in time to permit proper inspection, billing and loading, on that day.

1428. Before any shipment of dangerous explosives as named in paragraph 1661 destined to a point beyond the lines of the initial carrier is accepted from a shipper, the initial carrier must ascertain that the shipment can go forward via the route designated.

1429. All carriers must report to the chief inspector of the Bureau of Explosives for compilation and publi-

cation, full information as to **restrictions** which may be imposed as provided in paragraph 1401 (a) against the acceptance, delivery, or transportation of explosives over any portion of their lines.

1430. (*a*) **Forbidden explosives,** as defined in paragraph 1501, and explosives condemned by the Bureau of Explosives (except properly repacked samples for laboratory examination), must not be offered for shipment.

(*b*) Samples of any **new explosive must be examined** and approved as safe for transportation by the Bureau of Explosives before shipments (except samples for this examination not exceeding 5 pounds net in weight) can be accepted. For this purpose a **new explosive** is defined to be the product of a new factory or an explosive of an essentially new composition made by any factory.

1431. **Leaking or damaged packages** of explosives must not be offered for shipment. Should any package of high explosives when offered for shipment show excessive dampness or be mouldy or show outward signs of any oily stain or other indication that absorption of the liquid part of the explosive is not perfect, or that the amount of the liquid part is greater than the absorbent can carry, it must be refused in every instance. The shipper must substantiate any claim that a stain is due to accidental contact with grease, oil, or similar substance. In case of doubt, the package must be rejected.

1432. **Condemned or leaking dynamite** must not be repacked and offered for shipment unless the repacking is done by a competent person in the presence of, or with the written consent of an inspector, or with the written authority of the chief inspector of the Bureau of Explosives.

1433. Carriers must forward shipments of explosives promptly and within 48 hours after acceptance at originating point or receipt at transfer station or at interchange point, and consignees must remove such shipments from

the carrier's property within 48 hours after notice of arrival at destination, Sundays and holidays not included.

1434. (*a*) Serious **violations** of these regulations (such as defective packing, improper staying, rough treatment of car, broken packages, etc.) and **accidents** or **explosions** occuring in connection with the transportation or storage on carrier's property of explosives must be reported by the carrier to the chief inspector, Bureau of Explosives, 30 Vesey Street, New York City.

All violations must be corrected before forwarding the explosives.

(*b*) Consignees should report promptly to the chief inspector, Bureau of Explosives, all instances of improper staying and broken or defective packages of explosives in shipments received by them.

SECTION 1.

INFORMATION AND DEFINITIONS.

GROUPING.

1500. For transportation purposes, explosives are divided into the following groups:

1. **Forbidden explosives.**
2. **Acceptable explosives.**

GROUP 1.—FORBIDDEN EXPLOSIVES.

1501. The following are forbidden explosives:

(*a*) **Liquid nitroglycerin.**

(*b*) **Dynamite** containing over 60 per cent. of nitroglycerin (except gelatin dynamite).

(*c*) **Dynamite** having an unsatisfactory absorbent, or one that permits leakage of nitroglycerin under any conditions liable to exist during transportation or storage.

(*d*) **Nitrocellulose** in a dry and uncompressed condition, in quantity greater than 10 pounds, net weight in one exterior package.

Exhibit P. 2.

(*e*) **Fulminate of mercury in bulk** in a dry condition, and fulminates of all other metals in any condition except as a component of manufactured articles whose transportation is not forbidden herein.

(*f*) **Fireworks** that combine an explosive and a detonator or blasting cap.

(*g*) **Explosive compositions** including **fireworks** that ignite spontaneously or undergo marked decomposition when subjected for 48 consecutive hours to a temperature of 75° C. (167° F.)

(*h*) **Firecrackers** whose dimensions exceed 5 inches in length or three-quarters of an inch in diameter or whose explosive charges exceed 45 grains each in weight.

(*i*) **Toy torpedoes** exceeding 1½ inches in diameter, or toy caps containing more than an average of thirty-five hundredths of a grain of explosive composition per cap.

(*j*) **Fireworks** that can be exploded en masse by a blasting cap placed in one of the units or by the impact of a rifle bullet or otherwise.

Such articles may be shipped when packed, marked, and certified in accordance with these regulations and offered for shipment as high explosives.

(*k*) **Fireworks** containing a match tip or head, or similar igniting point or surface, unless each individual tip, head, or similar igniting point or surface is entirely covered and securely protected from accidental contact or friction with any other surface.

(*l*) **Fireworks or explosives** containing an ammonium salt and a chlorate.

(*m*) **New explosives** (except samples for laboratory examinations) until approved for transportation by the Bureau of Explosives.

(*n*) **Explosives properly condemned** by the Bureau of Explosives (except properly repacked samples for laboratory examinations.) Parties who are dissatisfied with the decision of the Bureau may appeal to the Commission and if it is a question of chemical composition the

Commission will arrange to have a test made by a disinterested government laboratory.

GROUP 2.—ACCEPTABLE EXPLOSIVES.

1502. **Low explosives and black powder** are general names that may be used to describe all explosives having a composition similar to that of ordinary black powder, such as carbonaceous material, sulphur, and a nitrate of sodium or potassium, and that cannot be detonated by a commercial blasting cap. Examples are, rifle, sporting, cannon, and blasting powders.

1503. **High explosives** are all explosives more powerful than ordinary black powder, except smokeless powders and fulminates. Their distinguishing characteristic is their susceptibility to detonation by a blasting cap. Examples of high explosives are the dynamites, picric acid,[1] picrates, chlorate powders, nitrate of ammonia powders, dry trinitrotoluol, dry nitrocellulose (gun cotton), and fireworks that can be exploded en masse.

1504. **Smokeless powders** are those explosives from which there is little or no smoke when fired. They include smokeless powder for cannon and smokeless powder for small arms. **Smokeless powder for cannon** used in the United States at the present time consists of a nitrocellulose colloid, and is comparatively safe to handle and transport. **Smokeless powders for small arms** may consist of nitrocellulose or nitrocellulose combined with nitroglycerin. Detonable picrate or chlorate mixtures are classed as high explosives.

1505. **Fulminates** are fulminates of mercury or of other metals in bulk form, that is, not made up into percussion caps, detonators, blasting caps, toy torpedoes, or exploders.

[1]Picric acid for medicinal purposes, and not exceeding 4 ounces in one outside package, may be shipped without other restrictions when in securely closed glass bottles, properly cushioned to prevent breakage.

Exhibit P. 2.

1506. **Small-arms ammunition** (such as is used in sporting or fowling pieces, or in rifle or pistol practice, etc.), consists usually of a paper or metallic shell, the primer, and the powder charge, with or without shot or bullet, the materials necessary for one firing being all in one piece.

1507. **Ammunition for cannon** embraces all fixed or separate-loading ammunition too heavy for use in small arms. When the component parts are packed in separate outside packages such packages may be shipped as smokeless powder for cannon, explosive projectiles, empty (including solid and sand loaded) projectiles, primers, or fuzes. Igniters composed of black powder may be attached to packages in shipments of smokeless powder for cannon.

1508. **Explosive projectiles** are loaded shells for use in cannon. They are not liable to be exploded except by fire of considerable intensity, and the flying fragments would then be very dangerous.

1509. **Blasting caps** contain from 5 to 50 grains of dry fulminate of mercury, or other substance similar to or in combination with fulminate of mercury, packed in a thin copper shell and fired by a slow-burning safety fuse. When a small "bridge" of fine wire is imbedded in a suitable priming material and arranged to fire the fulminate by heating the bridge by means of an electric current, the cap is called an "electric blasting cap." They cause explosions of a high order, or "detonations." This means the instantaneous conversion of the entire explosive into gas instead of the gradual conversion known as "combustion." Dynamite "detonates" and smokeless powder for cannon "burns."

1510. **Detonating fuzes** are used in the military service to detonate the high explosive bursting charges of projectiles or torpedoes. In addition to a powerful detonator they may contain several ounces of a high explosive, such

as picric acid or dry nitrocellulose, all assembled in a heavy steel envelope.

1511. **Primers, percussion and time fuzes** are devices used to ignite the black powder bursting charges of projectiles, or the powder charges of ammunition. For small-arms ammunition the primers are usually called "small-arms primers" or "percussion caps." **Tracer fuzes** consist of a device which is attached to a projectile and contains a slow-burning composition to show the flight of projectiles at night.

1512. **Safety fuse** consists ordinarily of a core of granular black powder, which is surrounded by yarn, tape, pitch, rubber, etc.

Cordeau detonant is a fuse containing trinitrotoluol, assembled in a drawn lead tube.

Safety squibs are small paper tubes containing a small quantity of black powder, one end of each tube being twisted and generally tipped with sulphur.

1513. **Fireworks** include everything that is designed and manufactured primarily for the purpose of producing a visible or an audible pyrotechnic effect by combustion or by explosion. They consist of common fireworks and special fireworks. (See par. 1501 (*j*).)

1514. **Common fireworks** include all that depend principally upon nitrates to support combustion and not upon chlorates; that contain no phosphorus and no high explosive sensitive to shock and friction; that produce their effect through color display rather than by loud noises. If noise is the principal object, the units must be small and of such nature and manufacture that they will explode separately and harmlessly, if at all, when one unit is ignited in a packing case. They must not be designed for ignition by shock or friction. Examples are Chinese firecrackers, Roman candles, pinwheels, colored fires, rockets, serpents, railway fuses, flash powders, etc.

1515. **Special fireworks** include all that contain any quantity of phosphorus, a fulminate, or other high ex-

plosive sensitive to shock or friction, or that contains units of such size that the explosion of one while being handled would produce a serious injury, or that require a special appliance or tool, mortar, holder, etc., for their safe use, or that are designed for ignition by shock or friction. Examples are giant firecrackers, bombs, and salutes (not high explosives), toy torpedoes and caps, ammunition pellets fired in a special holder, railway torpedoes, etc.

SECTION 2.

PACKING, MARKING AND CERTIFYING ACCEPTABLE EXPLOSIVES.

1531. (*a*) The construction of **shipping containers** purchased hereafter and used in shipping explosives must conform to specifications approved by the Interstate Commerce Commission that apply, and excepting shipments offered by the United States Government, each container must be stamped, labeled, or marked "Complies with I. C. C. Spec'n. No. ———". or equivalent marking, as stated in the specification.

(*b*) In addition to standing the tests prescribed, the design and construction of packages must be such as to prevent the occurrence in individual packages of defects that permit leakage of their contents under the ordinary conditions incident to transportation. The results of experience, gained by an examination of broken or leaking packages on arrival at destination, must be reported to and recorded by the Bureau of Explosives, to the end that further use of any particular kind of package shown by experience to be inefficient may be prohibited by the Commission.

(*c*) Pending approval and promulgation by the Commission of specifications for types of shipping containers other than those for which specifications are published

herein, containers may be used which after investigation made by the Bureau of Explosives or by other competent testing laboratory in the presence of a representative of the Bureau of Explosives, are shown to possess the general efficiency and the protection against leakage of contents afforded by the standard types of corresponding capacity described in the specifications published herein, provided they are labeled or marked to show compliance with this requirement.

SAMPLES OF EXPLOSIVES TOGETHER.

1532. **Samples of explosives** (except blasting caps) in separate interior containers may be packed in the same outside package of gross weight not exceeding 50 pounds, provided the weight of any one sample does not exceed eight ounces, and provided the interior packages are so cushioned and protected as to insure their transportation without rupture or leakage of contents. The package must be marked and described with the name of the most dangerous explosive included among the samples, such as "HIGH EXPLOSIVE," "BLACK POWDER," etc.

LOW EXPLOSIVES AND BLACK POWDER.

1533. **Packing.**—Packages containing less than 12½ pounds of black powder or low explosives must be inclosed in a tight wooden box complying with specification No. 16. Each inside package containing less than 12½ pounds and more than 1½ pounds must be so placed in the outside box that the filling hole will be up. The boxes must be marked on top "THIS SIDE UP" and also as prescribed by paragraph 1536.

1534. Twelve and a half pounds or over of black powder or low explosives must be packed in packages that comply with specification No. 11 or 13. Kegs less than 8 inches long must be boxed as prescribed by paragraph 1533.

Exhibit P. 2.

1535. **Weight.**—Packages must not weight over 200 pounds gross.

1536. **Marking.**—Each outside package must be plainly marked, stamped, or stenciled "BLACK POWDER" or "LOW EXPLOSIVES," and may also show "BLASTING," "RIFLE," etc., as "BLACK BLASTING POWDER," "BLACK RIFLE POWDER," "LOW BLASTING EXPLOSIVE," etc. Additional marks, trade names, etc., may appear if desired by shipper, but such additional marking must not be more conspicuous nor must it obscure the marking prescribed herein.

HIGH EXPLOSIVES.

1551. **High explosives** consisting of a liquid mixed with an absorbent material must have the absorbent (wood pulp or similar material) in sufficient quantity and of satisfactory quality, properly dried at the time of mixing; nitrate of soda must be dried at the time of mixing to less than 1 per cent of moisture; and the ingredients must be uniformly mixed so that the liquid will remain thoroughly absorbed under the most unfavorable conditions incident to transportation.

1552. Explosives containing nitroglycerin must have uniformly mixed with the absorbent material a satisfactory antacid which must be in quantity sufficient to have the acid neutralizing power of an amount of magnesium carbonate equal to 1 per cent of the nitroglycerin.

1553. (*a*) **Packing.**—High explosives containing more than 10 per cent of nitroglycerin must be made into cartridges not exceeding 4 inches in diameter or 8 inches in length, and must not be packed in bags or sacks. This does not apply to gelatin dynamite.

(*b*) High explosives containing not more than 10 per cent of nitroglycerin may be shipped in bags or sacks. Each bag or sack must not contain more than 12½ pounds of explosive, and must be placed in a box with filling end up. These bags or sacks and the coverings of all cart-

ridges must be strong and so treated that they will not absorb the liquid constituent of the explosive.

1554. (*a*) All boxes in which high explosives in cartridges, bags, sacks, or in bulk are packed must be lined with strong paraffined paper or other suitable material. The lining must be without joints or other openings at the bottom or on the sides of the box, and must be impervious to water and to any liquid ingredient of the explosive.

(*b*) In packing cartridges of nitroglycerin explosives at least one-quarter of an inch thickness of dry, fine wood pulp or saw-dust must be spread over the bottom of the lined box before inserting the cartridges, and all the vacant space in the top must be filled with this material.

(*c*) All cartridges exceeding 4 inches in length, except explosive gelatin or gelatin dynamite, must be placed horizontally in boxes.

1555. Inside packages containing not more than 1 pound each of dry uncompressed nitrocellulose, wrapped in strong paraffined paper or other suitable spark-proof material, will be accepted for shipment if securely packed in an outside package that complies with Specification No. 14 and is marked as prescribed in paragraph 1559. Outside packages must not contain more than 10 pounds of dry nitrocellulose.

1556. (*a*) High explosives containing no explosive liquid ingredient and not having, with their normal percentage of moisture, a sensitiveness to percussion greater than measured by the blow delivered by an 8-pound weight dropping from a height of 7 inches on a compressed pellet of the explosive three-hundredths of an inch in thickness and two-tenths of an inch in diameter confined rigidly between hard steel surfaces, as in the standard impact-testing apparatus of the Bureau of Explosives, may be shipped in bulk when securely packed in authorized containers. These explosives may also be packed in cartridges, and must be so packed when their sensitiveness is greater than the above limit. Wooden boxes or wooden

kegs provided with suitable linings to prevent leakage must be used for chlorate powders.

(*b*) When the addition of water to any such explosive will make it nonexplosive according to tests made by the Bureau of Explosives, the wet material may be shipped and handled in transit as prescribed by the Regulations for the Transportation of Dangerous Articles other than Explosives by Freight and by Express.

1557. **Containers** for high explosives must comply with Specifications Nos. 11, 14, 20, 21, and 22 as specified therein.

1558. (*a*) **Weights.**—Packages of high explosives containing an explosive liquid ingredient must not exceed 75 pounds gross weight.

(*b*) Packages of high explosives containing no liquid explosive ingredient whose shipment in bulk is authorized by paragraph 1556 must not exceed 125 pounds gross weight.

(*c*) The gross weight of an outside package containing not exceeding 10 pounds net of dry nitrocellulose, not compressed, packed as prescribed in paragraph 1555, must not exceed 35 pounds. Compressed sticks or blocks or dry nitrocellulose (gun cotton) wrapped in strong paraffined paper may be shipped in outside packages complying with specification No. 14, with a gross weight not exceeding 75 pounds.

1559. **Marking.**—Boxes must be plainly marked on top and on one side or end and kegs must be marked on one end "HIGH EXPLOSIVE—DANGEROUS," in letters not less than 7/16 inch in height. The tops of boxes must be marked "THIS SIDE UP."

SMOKELESS POWDER FOR CANNON.

1571. **Packing.**—Smokeless powder for cannon must be packed in tight wooden boxes free from loose knots and cracks, or in wooden barrels that comply with Specification No. 11, or in metal barrels or kegs that comply

with Specification No. 13. Smokeless powder for cannon may be packed in water in metal barrels or in strong wooden barrels of the type used for alcohol.

1572. **Weight.**—Packages must not weight over 180 pounds gross unless the powder is packed in water.

1573. **Marking.**—Each package must be plainly marked "SMOKELESS POWDER FOR CANNON," or "SMOKELESS POWDER FOR CANNON, IN WATER."

SMOKELESS POWDER FOR SMALL ARMS.

1575. **Packing.**—Packages containing less than 9 pounds of smokeless powder for small arms must be inclosed in a tight wooden box complying with Specification No. 16. Each inside package containing less than 9 pounds and more than 1½ pounds must be so placed in the outside box that the filling hole will be up. The box must be marked on top "THIS SIDE UP" and also as prescribed by paragraph 1578.

1576. Quantities of 9 pounds or over of smokeless powder for small arms must be packed in tight wooden boxes free from loose knots or cracks, or in wooden barrels that comply with Specification No. 11, or in metal barrels or kegs that comply with Specification No. 13. Kegs less than 8 inches long must be boxed as prescribed by paragraph 1575. Smokeless powder for small arms may be packed in water in metal barrels or in strong wooden barrels of the type used for alcohol.

1577. **Weight.**—Packages must not weigh over 150 pounds gross.

1578. **Marking.**—Each outside package must be plainly marked "SMOKELESS POWDER FOR SMALL ARMS," or "SMOKELESS POWDER FOR SMALL ARMS, IN WATER."

Exhibit P. 2.

FULMINATES.

1591. **Packing.**—Fulminate of mercury in bulk must contain when packed not less than 25 per cent of water, and must in this wet condition be placed in a bag made of heavy cotton cloth of close mesh, equal in quality and weight to the cotton twill used for pockets in high-grade clothing. There must be placed inside the bag and over the fulminate a cap of the same cloth and of the diameter of the bag, and the bag must be tied securely and placed in a strong grain bag, which must, in turn, be tied securely and packed in the center of a cask or barrel in good condition and of the kind used for shipment of alcohol. The grain bag must not contain more than 150 pounds dry weight of fulminate and it must be surrounded on all sides by tightly packed sawdust not less than 6 inches thick. The cask or barrel must be lined with a heavy, close-fitting jute bag, closed by secure sewing to prevent escape of sawdust. After the barrel is properly coopered it must be filled with water and the bung sealed. The barrel must be inspected carefully and all leaks stopped.

1592. **Marking.**—Each cask or barrel must be plainly marked "WET FULMINATE OF MERCURY—DANGEROUS."

SMALL-ARMS AMMUNITION.

1601. **Packing.**—Small-arms ammunition must be packed in pasteboard or other boxes, and these boxes must be packed in strong outside wooden or metal containers.

Small-arms ammunition in pasteboard or other boxes, and in quantity not exceeding a gross weight of 75 pounds, may be packed with nonexplosive and noninflammable articles and with small-arms primers or percussion caps (see par. 1619), provided the outside wooden or metal container is marked as prescribed in paragraph 1602.

Exhibit P. 2.

1602. **Marking.**—Each outside package or case must be plainly marked "SMALL-ARMS AMMUNITION."

1603. No restrictions, other than proper packing and marking, are necessary for the shipment of small-arms ammunition.

AMMUNITION FOR CANNON.

1604. **Packing.**—Ammunition for cannon must be well packed and properly secured in strong wooden or metal containers.

1605. **Marking.**—Each outside package must be plainly marked "AMMUNITION FOR CANNON WITH EXPLOSIVE PROJECTILES," or "AMMUNITION FOR CANNON WITH EMPTY PROJECTILES," or "AMMUNITION FOR CANNON WITH SAND-LOADED PROJECTILES," or "AMMUNITION FOR CANNON WITH SOLID PROJECTILES," according as the projectiles do or do not contain a bursting charge, or "AMMUNITION FOR CANNON WITHOUT PROJECTILES."

Empty cartridge bags having attached black powder igniters must be marked "EMPTY CARTRIDGE BAGS —BLACK POWDER IGNITERS."

1606. No restrictions other than proper marking are prescribed for shipments of material relating to ammunition for cannon, but containing no explosive or other dangerous article, such as cartridge cases, "dummy" or "drill" cartridges, etc.

EXPLOSIVE PROJECTILES.

1607. **Packing.**—Explosive projectiles must be packed in strong wooden or metal boxes and each projectile must be properly secured. Projectiles exceeding 100 pounds in weight may be shipped without being boxed, if desired. When necessary, detonating fuzes of an approved type may be assembled in explosive projectiles.

Exhibit P. 2.

1608. **Weight.**—The gross weight of a box containing more than one explosive projectile must not exceed 160 pounds.

1609. **Marking.**—Each exterior package or projectile must be plainly marked "EXPLOSIVE PROJECTILE," "SAND-LOADED PROJECTILE," "SOLID PROJECTILE," "EMPTY PROJECTILE," "EXPLOSIVE TORPEDO," or "EMPTY TORPEDO."

No restrictions, other than proper marking, are prescribed for the shipment of sand-loaded projectiles, empty projectiles, solid projectiles, or empty torpedoes, and tracer fuzes of an approved type may be assembled in projectiles.

BLASTING CAPS.

1611. **Packing.**—Blasting caps contain such a sensitive and dangerous explosive that very efficient packing is necessary, and the outside of all caps must be free from fulminate.

(*a*) Blasting caps must be packed in strong interior packages or containers, in which they must fit snugly, and the caps must be closed securely by teats projecting from a plate of suitable elastic material placed over the caps. Not more than 100 blasting caps may be packed in a single inside container. All inside containers must then be packed snugly in cartons or wrappings made of paper or pasteboard.

(*b*) For not more than 5,000 caps the inside containers in cartons or wrappings must be packed in an outside box which must comply with Specification No. 15, and they must be separated from the outside box by at least 1 inch of tightly packed sawdust, excelsior, or equivalent cushioning material.

(*c*) For more than 5,000 caps the inside containers, in cartons or wrappings, must be packed in an inside box made of sound lumber or in a hermetically sealed metal box made of not less than 30 gauge United States stand-

ard, and this inside wooden or metal box must then be packed in an outside box made of sound lumber; both of these boxes must comply with Specification No. 15. Tightly packed sawdust, excelsio, or equivalent cushioning material at least 1 inch thick at all points must separate the inside box from the outside wooden box.

(*d*) More than 20,000 blasting caps must not be placed in one outside package.

(*e*) Not more than five tin boxes, containing not more than 100 blasting caps in each box, may be packed with safety fuse, each box to be placed in the center of a coil of fuse, and in this case the outside box must be made of sound lumber, complying with Specification No. 15.

(*f*) Electric blasting caps must be placed in pasteboard cartons containing not more than 50 caps each. These cartons must be packed in a wooden box, complying with Specification No. 15.

1612. **Weight.**—The gross weight of an outside package containing blasting caps or electric blasting caps must not exceed 150 pounds.

1613. **Marking.**—Each outside package must be plainly marked "(number) BLASTING CAPS—HANDLE CAREFULLY," or "(number) ELECTRIC BLASTING CAPS—HANDLE CAREFULLY." In addition, each box must bear the marking "DO NOT STORE OR LOAD WITH ANY HIGH EXPLOSIVE."

DETONATING FUZES.

1615. **Packing.**—Detonating fuzes must be packed in strong, tight wooden boxes, and each fuze must be well secured.

1616. **Weight.**—The gross weight of one outside package must not exceed 165 pounds.

1617. **Marking.**—Each outside package must be plainly marked "DETONATING FUZES—HANDLE CAREFULLY."

Exhibit P. 2.

PRIMERS, PERCUSSION AND TIME FUZES.

1619. (*a*) **Packing.**—Primers, percussion and time fuzes must be packed in strong, tight wooden outside boxes, with special provision for securing individual packages of primers and fuzes against movement in the box.

(*b*) Small-arms primers containing anvils must be packed in cellular inside packages, with partitions separating the layers and columns of primers, so that the explosion of a portion of the primers in the completed shipping package will not cause the explosion of all of the primers.

(*c*) Percussion caps may be packed in metal or other inside boxes containing not more than 500 caps, but the construction of the cap and the kind and quantity of explosives in each must be such that the explosion of a part of the caps in the completed shipping package will not cause the explosion of all of the caps.

(*d*) Small-arms primers and percussion caps may form a part of the gross weight of 75 pounds of small-arms ammunition that may be packed with other articles as authorized by paragraph 1601.

1620. **Weight.**—The gross weight of one outside package must not exceed 150 pounds.

1621. **Marking.**—Each outside box must be plainly marked "SMALL-ARMS PRIMERS—HANDLE CAREFULLY," or "PERCUSSION CAPS—HANDLE CAREFULLY," or "CANNON PRIMERS—HANDLE CAREFULLY," or "COMBINATION PRIMERS—HANDLE CAREFULLY," or "PERCUSSION FUZES—HANDLE CAREFULLY," or "COMBINATION FUZES—HANDLE CAREFULLY," or "TRACER FUZES—HANDLE CAREFULLY," etc.

1622. No restrictions other than proper packing and marking are necessary for the shipment of primers, percussion and time fuzes. No restrictions other than proper marking are prescribed for the shipment of "Empty cartridge shells, primed."

Exhibit P. 2.

COMMON FIREWORKS.

1631. **Packing.**—Common fireworks must be in a finished state, exclusive of mere ornamentation, as supplied to the retail trade, and must be securely packed in strong, tight, spark-proof wooden barrels that comply with Specification No. 11, or in boxes complying with Specification No. 12A.

1632. **Weight.**—The gross weight of one outside package containing common fireworks must not exceed 325 pounds, except that exhibition set pieces when specially packed may have weight not exceeding 400 pounds.

1633. **Marking.**—Each outside package must be plainly marked in letters not less than $\frac{7}{16}$ inch in height "COMMON FIREWORKS—KEEP FIRE AWAY."

SPECIAL FIREWORKS.

1634. **Packing.**—Special fireworks must be in a finished state, exclusive of mere ornamentation, as supplied to the retail trade, and must not contain forbidden fireworks. (See par. 1501 (*f*) *to* (*l*), inclusive.)

Special fireworks must be securely packed in strong, spark-proof wooden barrels that comply with Specification No. 11, or in boxes complying with Specification No. 12.

1635. **Weight.**—The gross weight of one outside package containing special fireworks must not exceed 200 pounds, and the gross weight of a package containing toy torpedoes must not exceed 65 pounds.

1636. **Marking.**—Each outside package containing special fireworks or a mixture of common and special fireworks must be plainly marked in letters not less than $\frac{7}{16}$ inch in height "SPECIAL FIREWORKS—HANDLE CAREFULLY—KEEP FIRE AWAY."

Exhibit P. 2.

SAFETY FUSE, CORDEAU DETONANT, AND SAFETY SQUIBS.

1638. **Safety fuse, cordeau detonant, and safety squibs** must be packed in strong wooden boxes or barrels properly marked, and may be loaded in any car with any other kind of an explosive or inflammable substance or with other freight. Cordeau detonant must not be packed in the same package with blasting caps, or with any high explosive.

SHIPPING ORDER.

1641. (*a*) **Shipper's certificate.**—The shipping order for any package containing an explosive named below must show each article under its proper name as specified in this paragraph, and must show the following certificate in the lower left-hand corner, over the written or stamped facsimile signature of the shipper or of his duly authorized agent:

This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation according to the regulations prescribed by the Interstate Commerce Commission.

LIST OF SHIPPING NAMES.

Low explosives.
Black powder.
High explosives.
Smokeless powder for cannon.
Smokeless powder for small arms.
Wet fulminate of mercury.
Ammunition for cannon with explosive projectiles.
Ammunition for cannon with empty projectiles.
Ammunition for cannon with sand-loaded projectiles.
Ammunition for cannon with solid projectiles.
Ammunition for cannon without projectiles.

Exhibit P. 2.

Explosive projectiles.
Explosive torpedoes.
Detonating fuzes.
(Number) blasting caps.
(Number) electric blasting caps.
Common fireworks.
Special fireworks.

(*b*) The following acceptable explosives must be described under their proper names as given below, but shipper's certificate is not required:

Small-arms ammunition.
Small-arms primers.
Cannon primers.
Empty cartridge shells, primed.
Empty cartridge bags—black powder igniters.
Combination primers.
Percussion caps.
Percussion fuzes.
Time fuzes.
Tracer fuzes.
Combination fuzes.
Safety fuse.
Cordeau detonant.
Safety squibs.
Empty projectiles.
Sand loaded projectiles.
Solid projectiles.
Empty torpedoes.

(*c*) Whenever orders are placed in foreign countries for the importation of explosives, to be forwarded from port of entry by carriers subject to these regulations, the importer must furnish with the order to the foreign shipper, and also to the forwarding agent at the port of entry, full and complete information as to the necessary packing and marking required by these regulations. The forwarding agent must file with the originating carrier a properly prepared and certified shipping order as prescribed herein.

Exhibit P. 2.

SECTION 3.

RULES FOR HANDLING.

1642. In handling packages of explosives at stations and in transferring them to and from cars the greatest care must be taken, and shocks or falls liable to injure the containing package must be avoided. Where an inclined chute is employed such chute shall be constructed of 1-inch planed boards, with side guards 4 inches high extending 3 inches above top face of bottom of chute and throughout its length, fastened with brass screws. **D**-shaped strips or runners, not more than 6 inches apart and running lengthwise of chute, must be fastened to the upper surface of the bottom board by means of glue and wooden pegs extending through the bottom board and runners. Chutes must be occasionally wiped down with waste moistened with machine oil when dynamite packages are being handled.

A stuffed mattress, 4 feet wide by 6 feet long and not less than 4 inches thick, or a heavy jute or hemp mat of like dimensions, must be placed under the discharging end of the chute.

1643. (*a*) Careful men must be chosen to handle explosives, the platform and the feet of the men must be as free as possible from grit, and all possible precautions must be taken against fire. Suitable provision must be made, outside of the station when practicable, for the safe storage of explosives, and every effort possible must be made to reduce the time of this storage. If a shipment of explosives is not removed within 48 hours after notice of arrival at destination, it must be disposed of by return to the shipper, or by storage at the expense of the owner, or by sale, or when necessary to safety by destruction under supervision of a competent person.

(*b*) Unauthorized persons must not have access to explosives or other dangerous articles at any time while such articles are in the custody of the carrier.

Exhibit P. 2.

LOADING IN CAR.

1644. (*a*) Packages receive their greatest stresses in a direction parallel to the length of the car and must be loaded so as to offer their greatest resistance in this direction. Boxes of dangerous explosives named in paragraph 1661 when loaded in the car must rest on their bottoms and with their long dimension parallel to the length of the car.

(*b*) A car must not contain more than 70,000 pounds gross weight explosives. This limit does not apply to shipments of small-arms ammunition or ammunition for cannon.

(*c*) When the lading of a car includes explosives and exceeds 5,000 pounds the weight of the lading must be distributed in approximately equal parts in both ends of the car.

1645. Explosives packed in kegs, except when boxed, must be loaded on their sides with ends toward ends of the car; and packages of explosives must not be placed in the space opposite the doors unless the doorways are boarded on the inside as high as the lading.

Large casks, barrels, or drums may be loaded on their sides or ends as will best suit the conditions.

1646. (*a*) Packages containing any of the explosives for the transportation of which a certified and placarded car is prescribed (see par. 1661), must be stayed (blocked and braced) by the one who loads the car, by methods not less efficient than those described in Bureau of Explosives Pamphlet No. 6, to prevent change of position by the ordinary shocks incident to transportation. Special care must be used to prevent them from falling to the floor or from having anything fall on them or slide against them during transit.

(*b*) To prevent delays to local freight trains, when there are shipments of explosives for different destinations loaded in a "peddle car" or "way car," the shipments for each destination must be stayed separately.

(*c*) Forwarding and transfer stations for explosives must be provided with the necessary materials for staying.

(*d*) Shippers must furnish the material for staying packages loaded by them.

1647. Detonating fuzes or blasting caps, or electric blasting caps, must not be loaded in a car or stored with high explosives of any kind, including explosive projectiles, nor with wet nitrocellulose.

1648. Wet fulminate of mercury must not be loaded with any explosive or inflammable article.

1649. Fireworks must not be loaded in the same car nor stored on carriers' property with any explosive named in paragraph 1661.

1650. Explosives named in paragraph 1661 that require a certified car, placarded "EXPLOSIVE," must not be transported in the same car with nor stored on railway property near any of the dangerous articles for which labels are prescribed by the Regulations for the Transportation of Dangerous Articles other than Explosives by Freight.

1651. In a car containing explosives all packages of other freight must be loaded, and when necessary must be stayed to prevent injury to packages of explosives during transit. When practicable explosives should be loaded so as to avoid transfer at stations.[1]

[1] At stations where it is necessary to handle explosives at night it is recommended that incandescent electric lights be provided.

WAYBILLING.

1652 (*a*) The carrier must see that each shipment of explosives is properly described on the shipping order and on the revenue waybill under one of the names in the "List of shipping names," paragraph 1641, and that the correct gross weight is given.

(*b*) The revenue waybill or astray waybill for a shipment, and the card waybill and envelope containing reve-

nue waybill when used as a card waybill for a car containing any of the following explosives:

Low explosives,
Black powder,
High explosives,
Wet fulminate of mercury,
Ammunition for cannon with explosive projectiles,
Explosive projectiles,
Explosive torpedoes,
Detonating fuzes,
Blasting caps,
Electric blasting caps, { In quantity exceeding 1,000 blasting caps or 1,000 electric blasting caps,

must have plainly stamped or plainly written across the top, in letters not less than three-eighths of an inch high, the word "EXPLOSIVES."

(*c*) The revenue waybill and astray waybill for a shipment, and the card waybill and envelope containing revenue waybill when used as a card waybill for a car containing:

Ammunition for cannon with empty projectiles,
Ammunition for cannon with sand-loaded projectiles,
Ammunition for cannon without projectiles,
Ammunition for canon with solid projectiles.
Smokeless powder for small arms,
Smokeless powder for cannon,
Common fireworks, or
Special fireworks,

must have plainly stamped or plainly written across the top, in letters not less than ⅜ of an inch high, the word "INFLAMMABLE."

(*d*) No indorsements are required on revenue waybills, card waybills, or other billing for shipments or for cars of the following explosives:

Small-arms ammunition.
Small-arms primers.

Cannon primers.
Empty cartridge shells, primed.
Empty cartridge bags—black powder igniters.
Combination primers.
Percussion caps.
Percussion fuzes.
Time fuzes.
Tracer fuzes.
Combination fuzes.
Safety fuze.
Cordeau detonant.
Safety squibs.
Empty projectiles.
Sand-loaded projectiles.
Solid projectiles.
Empty torpedoes.
Blasting caps.
Electric blasting caps. { In quantity not exceeding 1,000 caps.

SHIPMENTS FROM CONNECTING LINES.

1654. (*a*) Cars containing explosives named in paragraph 1661 which are offered by connecting lines must be carefully inspected by the receiving line on the outside, including the roof, and if practicable the lading must also be inspected. These cars must not be forwarded until all discovered violations have been corrected.

(*b*) If the car shows evidence of, or if there is any reason to suspect that it has received rough treatment, the lading must be inspected and placed in proper condition before the car is permitted to proceed. When interchange occurs and inspection is necessary after daylight hours, electric flash lights or other suitable covered lights should be provided. Naked lights must not be used.

Exhibit P. 2.

(*c*) Shipments of explosives offered by connecting lines must comply with these regulations, and the revenue waybill, freight bill, manifest of lading, card waybill, switching order, or other billing must bear the indorsement "EXPLOSIVE" or "INFLAMMABLE" prescribed by paragraph 1652 (*b*) and (*c*).

DISPOSITION OF INJURED, CONDEMNED, AND ASTRAY PACKAGES.

1655. **Packages found injured or broken** in transit may be recoopered when this is evidently practicable and not dangerous. A broken box of high explosives that can not be recoopered should be reinforced by stout wrapping paper and twine, placed in another strong box, and surrounded by dry, fine sawdust, or dry and clean cotton waste, or elastic wads made from dry newspaper. A ruptured can or keg should be inclosed in a grain bag of good quality and boxed or crated. Injured packages thus protected and properly marked may be forwarded.

1656. **Condemned packages** of leaking explosives should (1) be returned immediately to shipper if at point of shipment; or (2) disposed of to a person who is competent and willing to remove them from railway property, if leakage is discovered while in transit; or (3) removed immediately by consignee if shipment is at destination.

When disposition cannot be made as above, the leaking boxes must be packed in other boxes large enough to permit, and the leaking box must be surrounded by at least 2 inches of dry, fine sawdust, or dry and clean cotton waste, and be stored in station magazine or other safe place until arrival of an inspector of the Bureau of Explosives or other authorized person to superintend the destruction or disposition of the condemned material.

1657. When name and address of consignee or shipper are known, an **astray shipment** must be forwarded to

its destination or returned to the shipper by the most practicable route, provided a careful inspection shows the packages to be in proper condition for safe transportation.

When a package in an astray shipment is not in proper condition for safe transportation (see par. 1655), or when name and address of consignee and shipper are unknown, disposition will be made as prescribed by paragraph 1656.

SELECTION AND PREPARATION OF CARS.

DANGEROUS EXPLOSIVES.

1661. For the transportation of carloads or less-than-carload lots of—

Low explosives,
Black Powder,
High explosives,
Wet fulminate of mercury,
Blasting caps,
Electric blasting caps,
} In quantity exceeding 1,000 blasting caps or 1,000 electric blasting caps.
Ammunition for cannon with explosive projectiles,
Explosive projectiles,
Explosive torpedoes, or
Detonating fuzes,

only certified and placarded box cars may be used .

CERTIFIED CAR PLACARDED "EXPLOSIVES."

1662. Certified cars must be inspected inside and outside and must conform to the following specifications:

(*a*) Box car not less than 60,000 pounds capacity with friction draft gear. Steel underframe cars should be used when available. On narrow-gauge and other railroads, all of whose freight cars are of less than 60,000 pounds capacity, explosives may be transported in car of less than that capacity, provided the available cars of

Exhibit P. 2.

greatest capacity and strength are used for this purpose.

(*b*) Must be equipped with air brakes and hand brakes in condition for service.

(*c*) Must have no loose boards or cracks in the roof, sides, or ends, through which sparks may enter.

(*d*) The doors must shut so closely that no sparks can get in at the joints, and, when necessary, they must be stripped. The stripping for doors should be on the inside and be fastened to the door frame where it will form a shoulder against which the closed door is pressed by means of wedges or cleats in door shoes or keepers. The openings under the doors should be similarly closed. The hasp fastenings must be examined with doors closed and fastened and must be cleated when necessary to prevent door shifting.

(*e*) The journal boxes and trucks must be carefully examined and put in such condition as to reduce to a minimum the danger of hot boxes or other failure necessitating the setting out of the car before reaching destination. The lids or covers of journal boxes must be in place.

(*f*) The car must be carefully swept out before it is loaded. For less-than-carload shipments the space in which the packages are to be loaded must be carefully swept.

Holes in the floor or lining must be repaired and special care taken to have no projecting nails or bolts or exposed pieces of metal which may work loose or produce holes in packages of explosives during transit.

(*g*) When packages of explosives are to be loaded over exposed draft bolts or kingbolts, these bolts must have short pieces of solid, sound wood with beveled ends (2-inch plank) spiked to the floor over them (or empty packages of the same character may be used for this purpose) to prevent possibility of their wearing into the packages of explosives.

Exhibit P. 2.

(*h*) The roof of the car must be carefully inspected from the outside for decayed spots or broken boards, especially under or near the running board, and such spots must be covered or repaired to prevent their holding fire from sparks. A car with a roof generally decayed, even if tight, must not be used.

(*i*) The carrier must have the car examined by a competent employee to see that it is properly prepared, and must have a "Car certificate" signed in triplicate upon the prescribed form (see par. 1665) before permitting the car to be loaded.

(*j*) Cars not in proper condition, as above specified, must not be furnished to the shipper or used for the transportation of explosives.

LESS DANGEROUS EXPLOSIVES IN CAR PLACARDED "INFLAMMABLE."

1663. (*a*) Carloads or less-than-carload lots of
Ammunition for cannon with empty projectiles,
Ammunition for cannon with sand-loaded projectiles,
Ammunition for cannon with solid projectiles,
Ammunition for cannon without projectiles,
Smokeless powder for small arms,
Smokeless powder for cannon, or
Fireworks,

may be loaded in any box car which is in good condition into which sparks cannot enter and whose roof is not in danger of taking fire through unprotected decayed wood. These cars do not require the car certificate but must have attached to both side doors and both ends the "INFLAMMABLE" placard prescribed by paragraph 1667, and the doors if not tight must be stripped to prevent the entrance of sparks.

Exhibit P. 2.

RELATIVELY SAFE EXPLOSIVES IN CAR WITHOUT PLACARDS.

(*b*) Carloads or less-than-carload lots of—
Small-arms ammunition,
Small-arms primers,
Cannon primers,
Empty cartridge shells, primed,
Empty cartridge bags—black powder igniters,
Combination primers,
Percussion caps,
Percussion fuzes,
Time fuzes,
Tracer fuzes,
Combination fuzes,
Safety fuse,
Cordeau detonant,
Safety squibs,
Empty projectiles,
Sand-loaded projectiles,
Solid projectiles,
Empty torpedoes, and not exceeding 1,000 blasting caps, or 1,000 electric blasting caps,
may be loaded in any box car which is in good condition, without car certificate or placards.

(*c*) When specially authorized by the carrier, explosives in quantity not exceeding 150 pounds may be carried in construction or repair cars when the packages of explosives are placed in a "magazine" box made of sound lumber not less than 1 inch thick, covered on the exterior with metal, and provided with strong handles. This box must be plainly stenciled on the top, sides, and ends, in letters not less than 2 inches high "EXPLOSIVES—DANGEROUS—HANDLE CAREFULLY." The box must be provided with strong hinges and with a lock for keeping it securely closed. Vacant space in the box must be filled with a cushioning material such as sawdust or excelsior, and the box must be properly stayed in the car to prevent

movement. The car, when not occupied by a responsible employee, must be placarded "EXPLOSIVES."

PLACARDING OF CARS AND CERTIFICATION OF CONTENTS.

1664. Uniform practice is important and the prescribed forms of car certificates and placards must be used.

1665. (*a*) **Car certificate**—The following certificate (prescribed by par. 1662 (*i*)), printed on strong tagboard measuring 7 by 7 inches, must be duly executed in triplicate by the carrier, and by the shipper if he loads the shipment. The original must be filed by the carrier at the forwarding station on a separate file, and the other two must be attached to the outside of the car doors, one on each side, the lower edge of the certificate not less than 4½ feet above the floor level.

(*b*) At stations where explosives are loaded into a properly certified and placarded car received with other shipments of explosives, or carload shipments are reconsigned, a record must be kept of the car, originating point, carrier's name and date of car certificate.

CAR CERTIFICATE.

No. 1. ————Station,————, 19——

I hereby certify that I have this day personally examined ———— car No. ————, and that the roof and sides have no loose boards, holes, or cracks, or unprotected decayed spots liable to hold sparks and start a fire; that the kingbolts or draft bolts are properly protected and that there are no uncovered irons or nails projecting from the floor or sides of the car which might injure packages of explosives; also that the floor is in good condition and has this day been cleanly swept before the car was loaded; that I have examined all the axle boxes and that they are properly covered, packed,

Exhibit P. 2.

and oiled, and that the air brakes and hand brakes are in condition for service.

_____

Railway employee inspecting car.

_____

No. 2. ————Station, ————, 19—.

I hereby certify that I have this day personally examined the above car; that the floor is in good condition and has been cleanly swept and that the roof and sides have no loose boards, holes, cracks, or unprotected decayed spots liable to hold sparks and start a fire; that the kingbolts and draft bolts are protected, and that there are no uncovered irons or nails projecting from the floor or sides of the car which might injure packages of explosives; that the explosives in this car have been loaded and stayed and that the car has been placarded according to paragraphs 1644 to 1651, inclusive, 1661, and 1666, of the Regulations for the Transportation of Explosives prescribed by the Interstate Commerce Commission; that the doors fit or have been stripped so that sparks can not get in at the joints or bottom.

_____,

Shipper.

_____,

Railway employee inspecting
loading and staying.

Note.—Both certificates must be signed. Certificate No. 1 by the representative of the carrier. For all shipments loaded by the shipper he or his authorized agent must sign certificate No. 2, and the representative of the carrier must certify as to loading and staying and general condition. When the car is not loaded by shipper, certificate No. 2 must be signed only by the representative of the carrier. A shipper should decline to use a car not in proper condition.

Exhibit P. 2.

"EXPLOSIVE" PLACARD.

1666. **Placard.**—A certified car for the dangerous explosives specified in paragraph 1661, must be protected by attaching to each outside end, and side door, the lower edge not less than 4½ feet above the car floor, a standard placard 12 by 14 inches, on which appears in conspicuous red and black printing on strong tag board the following notice:

——————R————Company

EXPLOSIVES

(To be Printed in Red)

Handle Carefully.

KEEP FIRE AWAY

(To be Printed in Red)

——————Station————19—

Condensed Rules for Handling This Car

1. This car must not placed in a passenger train, nor in a mixed train if avoidable.

2. Cars containing explosives must be near center of train and may be together if desired; must be at least 15 cars from engine and 10 cars from caboose when length of train will permit.

3. This car must not be placed next to cars bearing the inflammable or the acid placard or cars containing lighted heaters. Whenever it is possible to avoid so doing it must not be placed next to tank cars or flat cars or next to carloads of lumber, poles, iron, pipe, or other articles liable to break through end of car from rough handling.

4. The air and hand brakes on this car must be in service.

Exhibit P. 2.

5. When shifting have a car between this car and engine whenever possible, and do not cut this car off while in motion.

6. Avoid all shocks to this car and couple carefully.

7. Avoid placing it near a possible source of fire.

8. Engines on parallel track must not be allowed to stand opposite or near this car when it can be avoided.

9. This placard must be removed from car when the explosives are unloaded.

Note.—Carriers will be permitted to use their present supply of placards, but all new supplies must conform to the amended form.

"INFLAMMABLE" PLACARD.

1667. A placard of diamond shape printed on strong tag board measuring 10¾ inches on each side and bearing in red and black letters the inscription prescribed by paragraph 1913 must be placed on each outside end and side door of a car containing any quantity of smokeless powder for cannon, or smokeless powder for small arms, or ammunition for cannon with empty projectiles, or ammunition for cannon with sand-loaded projectiles, or ammunition for cannon with solid projectiles, or ammunition for cannon without projectiles, or fireworks.

HANDLING CARS CONTAINING EXPLOSIVES.

1680. The phrase "cars containing explosives" as used in this and subsequent paragraphs, excepting paragraph 1697, refers to the dangerous explosives specified in paragraph 1661, which require a certified car placarded "EXPLOSIVES."

Exhibit P. 2.

1681. Under no circumstances must a car known to require the "EXPLOSIVE" placard be taken from a station, including transfer stations or interchange points, a siding, or yard, unless it is property placarded as per paragraphs 1665 and 1666, nor unless the car is in proper condition. The carrier must see that its representative in charge of a freight train makes a thorough check of the cars bearing "INFLAMMABLE," "ACID," and "EXPLOSIVE" placards with the billing to see that all placards required are attached and that those not required are removed.

1682. Every possible effort must be made to expedite the movement of cars containing explosives, and no unnecessary delay must occur at initial, interchange, or transfer stations.

1683. When a car containing explosives is in a train, the carrier must make proper provision for notifying its train and engine employees of the presence and location of such car in the train before leaving the initial station.

1684. Such cars must be frequently inspected to see that the placards and car certificates are intact. Whenever any of these become detached or lost in transit, they must be replaced on arrival at the next division terminal yard, if in through freight train, or at first station stop if in local freight train.

1685. On lines where regular trains are operated for freight service only, cars containing explosives must not be hauled in a train that carries passengers. Where only a mixed train service is operated or where passengers are carried in the caboose car of a freight train, a car containing a freight shipment of explosives may be hauled, but it must not be placed next to a car carrying passengers, and whenever it is practicable to do so, such car or cars must be placed between freight cars not bearing "ACID" or "INFLAMMABLE" placards. Cars containing explosives must have air and hand brakes in service.

Exhibit P. 2.

1686. (*a*) In through freight trains they must be placed near the middle of the train, and two or more such cars may be placed together if desired. They must be at least 15 cars from the engine and 10 cars from the caboose when length of train will permit. They must not be placed next to cars bearing the "INFLAMMABLE" or the "ACID" placard, or cars containing lighted heaters. Whenever it is possible to avoid so doing they must not be placed next to tank cars or wooden-frame flat cars or next to carloads of lumber, poles, iron, pipe, or other articles liable to break through end of car from rough handling.

(*b*) These requirements apply also to local freight trains except that to avoid the danger of otherwise unnecessary switching at way stations, cars containing explosives may be placed not closer than the second car from caboose or the second car from engine. They must be placed between cars that do not bear the "INFLAMMABLE" or "ACID" placards, if such cars are in the train.

1687. (*a*) If shipments of explosives are accepted at nonagency stations, provision must be made for the proper certification and placarding of cars, examination of shipments, and loading and staying of packages in cars.

(*b*) Shipments of explosives must not be unloaded at nonagency stations unless the consignee is there to receive them, or unless proper storage facilities are provided at that point for their protection.

1688. When handling cars containing explosives in yards or on sidings, they must, if it is practically possible, be coupled to the engine protected by a car between, and they must never be cut off while in motion.

Cars containing explosives must not be handled in switching or in trains, with doors open.

1689. They must be coupled carefully and all unnecessary shocks must be avoided. Other cars must not be cut off and allowed to strike a car containing explosives.

Exhibit P. 2.

They must be so placed in yards or on sidings that they will be subject to as little handling as possible, and be removed from all danger of fire. They must not be placed on tracks under bridges, and, when avoidable, engines on parallel tracks must not be allowed to stand opposite or near them.

1690. At points where trains stop and time permits, cars containing explosives and adjacent cars must be examined to see that they are in good condition and free from hot boxes or other defects liable to cause damage. If cars containing explosives are set out short of destination for any cause the carrier must arrange that proper notice be given to prevent accident.

1691. Whenever a car containing explosives is opened for any purpose and in every instance after such a car has received rough treatment, inspection must be made of the packages of explosives as soon as practicable without unnecessary disturbance of lading to see that they are properly loaded and stayed and in good condition. Upon the discovery of leaking or broken packages, they must be carefully removed to a safe place. Loose powder or other explosives must be swept up and carefully removed. If the floor is wet with nitroglycerin, the car is unsafe to use and a representative of the Bureau of Explosives should be immediately called to superintend the thorough mopping and washing of the floor with a warm, saturated solution of concentrated lye or sodium carbonate. If necessary, the car must be placed on an isolated siding and proper notice given.

1692. **Removal of Placards.**—The certificates and placards prescribed in paragraphs 1665, 1666 and 1667 must be removed from the car as soon as the explosives are unloaded.

Exhibit P. 3.

IN CASE OF A WRECK.

1697. In case of a wreck involving a car containing explosives, the first and most important precaution is to prevent fire. Before beginning to clear a wreck in which a car containing explosives is involved all unbroken packages should be removed to a place of safety and as much of the broken packages as possible gathered up and likewise removed, and the rest saturated with water. Many explosives are readily fired by a blow or by the spark produced when two pieces of metal or a piece of metal and a stone come violently together. In clearing a wreck, therefore, care must be taken not to strike fire with tools, and in using the crane or locomotive to tear the wreckage in pieces the possibility of producing sparks must be considered. With most explosives thorough wetting with water practically removes all danger of explosion by spark or blow; but with the dynamites wetting does not make them safe from blows. With all explosives mixing with wet earth renders them safer from either fire, spark, or blow. In case fulminate has been scattered by a wreck, after the wreck has been cleared the wet surface of the ground should be removed, and, after saturating the area with oil, be replaced by fresh earth. If this is not done, when the ground and fulminate become dry small explosions may occur when the mixed material is trodden on or struck.

EXHIBIT P. 3.

List of owners of Schooner George E. Walcott.

(NOTE: This is marked Exhibit P. 1 in deposition of witness Clark and is copied in full in the record, pages 396 and 397.)

EXHIBIT P. 4.

(Marked Exhibit P. 2 in deposition of Witness Clark.)

A *Miller & Houghton, Ship Brokers, 16 Beaver Street, New York.*

THIS CHARTER PARTY, made and concluded upon in the City of New York, the 8th day of December 1915 Between J. S. Winslow & Co. Agents of the Schooner "GEORGE E. WALCOTT" of Portland of the burthen of 1388 tons or thereabouts, registered measurement, now lying in the harbor of Philadelphia, Pa. of the first part, And The Central Leather Company of the second part, WITNESSETH, that the said party of the first part, agrees on the freighting and chartering of the whole of the said vessel, (with the exception of the cabin and necessary room for the crew, and storage of provisions, sails and cables), or sufficient room for the cargo hereinafter mentioned, unto said party of the second part, for a voyage from Buenos Ayres to New York, on the terms following: The said vessel shall be tight, staunch, strong and in every way fitted for such a voyage and receive on board during the aforesaid voyage, the merchandise hereinafter mentioned, and no goods or merchandise shall be laden on board otherwise than from the said party of the second part or their agent. The said party of the second part doth agree to provide and furnish to the said vessel a full and complete cargo of Quebrachowood, under and upon deck. Vessel's dead weight capacity about 2,000 tons. Captain to be at liberty to cut long crooked pieces, but not shorter than 1½ meters. and to pay to said party of the first part or agent, for the use of said vessel during the voyage aforesaid $8.50 Eight & 50/100 Dollars per ton of 2240 lbs. delivered, payable at port of discharge in United States Currency free of discount or commission. Cash sufficient for vessel's disbursements at port of loading to be advanced

Exhibit P. 4.

Master there subject to the usual charges for interest, commission, etc. if desired by Master. The Custom of the trade at each port to be observed where not otherwise expressed. Vessel to be free of address commission.

It is agreed that the lay days for loading and discharging shall be as follows: commencing from the time the Captain reports himself ready to receive or discharge cargo, Cargo to be delivered at port of loading and received from vessel at port of discharge as fast as ship can handle same in suitable hours and weather. Sundays and Holidays excepted.

And that for each and every day's detention by default of said party of the second part, or agent $140.00 One Hundred Forty-dollars per day, day by day, shall be paid by said party of the second part, or agent, to said party of the first part or agent. The cargo or cargoes to be received, and delivered alongside, within reach of the vessel's tackles free of lighterage and wharfage to vessel. Vessel to be free of all Boca dues at Buenos Ayres.

It is understood this vessel is at Philadelphia about ready to sail for Buenos Ayres with a cargo of Coal, after discharge of which cargo she will proceed with all possible despatch to enter upon this charter.

Vessel reports for cargo at Buenos Ayres to: Argentine Central Leather Co. Charterers have the option of cancelling this charter if vessel does not report for cargo on or before April 15, 1916.

A commission of five per cent. upon the gross amount of this Charter is due from the vessel to MILLER & HOUGHTON upon the signing hereof.

To the true and faithful performance of all and every of the foregoing agreement, we, the said parties do hereby bind ourselves, our heirs, executors, administrators and assigns, each to the other, in the penal sum of the estimated amount of charter.

Exhibit P. 5.

In Witness Whereof, we hereunto set our hands, the day and year first above written.

Sgd. SCHR. GEORGE E. WALCOTT.
By J. S. Winslow & Co. Agents
By Eleazer W. Clark, Pres.
Signed in the presence of
Sgd. CENTRAL LEATHER CO.
By Walter S. Hoyt, 4 V. P.
Attest Fred Knapp, Secy.

A true copy of the original Charter Party now in our possession.

MILLER & HOUGHTON, INC., BROKERS.
J. H. Houghton, Pres.

EXHIBIT P. 5.

(Marked Exhibit P. 3 in deposition of Witness Jamieson.)

List of personal affects lost by fire on board Schr. Geo. E. Walcott.

3	Suits clothes	$ 30.00 each	$ 90.00
3	" "	25.00 "	75.00
2	Overcoats	25.00 "	50.00
1	Raincoat		20.00
2	long Oilcoats	4.50 "	9.00
4	pair shoes	5.00 "	20.00
2	" "	3.00 "	6.00
2	" rubber boots	5.00 "	10.00
3	Hats	4.00 "	12.00
6	Suits-underwear	2.00 per suit	12.00
6	" wool "	3.00 " "	18.00
15	Shirts	1.50 each	22.50
4	Flannel shirts	2.50 "	10.00
2	pair slippers	2.00 "	4.00
1	" Binocular glasses		25.00

Exhibit P. 5.

1 Barometer		20.00
1 Sextant		90.00
2 Paralel rules	3.00 each	6.00
2 pair dividers	1.00 "	2.00
20 Charts	.75 "	15.00
4 "	1.50	6.00
1 Trunk		15.00
1 Dress suit case		10.00
Toilet articles, razors, etc.		20.00
Epitome of navigation	5.00	5.00
4 Books sailing directions	2.50 each	10.00
6 " sailing directions	.50	3.00
Sundries		20.00
		$ 605.50

MARK. L. JAMIESON,
Master

622 County St.,
New Bedford, Mass.

Exhibit P. 6.

EXHIBIT P. 6.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

NEW YORK PLATE GLASS INSURANCE COMPANY, *Plaintiff,* vs. LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*Action at Law.* *Affidavit.*

STATE OF NEW YORK
COUNTY OF NEW YORK } *ss.*
CITY OF NEW YORK

J. CARROLL FRENCH being duly sworn according to law, upon his oath deposes and says that he is Secretary of the New York Plate Glass Insurance Company; that the statement hereto annexed is a true statement of the names, location and amount of loss sustained by reason of the breakage of plate glass caused by the explosion at Black Tom on July 30th, 1916, which amounts were paid by the said New York Plate Glass Insurance Company for the replacement of said glass, pursuant to its policies of insurance with the parties named in said statement, the total amount of said loss being Sixty Thousand Eight Hundred and Thirty Five Dollars and Sixty Five Cents ($60,835.65), the details of said loss being shown upon vouchers and proofs of loss submitted herewith.

J. CARROLL FRENCH,
Secretary.

Exhibit P. 7.

Subscribed and sworn to before me
this 19th day of June, A. D. 1919.
(L. S.) JAS. K. CLARK,
Notary Public, Westchester County,
Certificate filed in New York County No. 107
New York County Register's No. 1229.

EXHIBIT P. 7.

NEW JERSEY SUPREME COURT.

LLOYDS PLATE GLASS INSURANCE COMPANY, of New York,
Complainant,

against

LEHIGH VALLEY RAILROAD COMPANY and NATIONAL STORAGE COMPANY,
Defendants.

STATE OF NEW YORK,
COUNTY OF NEW YORK. } *ss.*

WILLIAM T. WOODS, being duly sworn, deposes and says: That he is the President of Lloyds Plate Glass Insurance Company, and was and has been the President for many years prior to the 1st day of August, 1917.

That the books and records of the Lloyds Plate Glass Insurance Company disclose and show that all of the losses set forth in the statement of loss annexed to the original complaint in the above entitled action were actually sustained by the persons named in said list, all of whom were at the time of the happening of said loss holders of policies in said Lloyds Plate Glass Insurance Company covering the plate glass in the build-

Exhibit P. 7.

ings mentioned in said schedule, and were insured against loss or damage to said plate glass by said Lloyds Plate Glass Insurance Company. That all of the losses set forth in said schedule are bona fide losses actually sustained by the said persons, and that each of said losses has been actally replaced at the expense of the said Lloyds Plate Glass Insurance Company, and that the amounts set opposite the names of each of the persons mentioned in said schedule are the reasonable and proper amounts and the actual net cost to said Lloyds Plate Glass Insurance Company for the replacement of the losses due its insured, the persons mentioned in said schedule. That the original reports of damage, proofs of loss and subrogations hereto annexed are the original papers relating to the loss sustained by reason of the accident, which is the subject matter of the above entitled action, and that said documents are part of the original files and records of said Lloyds Plate Glass Insurance Company.

WILLIAM T. WOODS.

Sworn to before me this 13th day
of June, 1919.

(L. S.) HAROLD B. ELGAR
Notary Public, New York County No. 42
N. Y. Co. Register No. 10029,
Certificate filed Bronx Co. No. 2
Bronx County Register No. 206

Exhibit P. 8.

EXHIBIT P. 8.

SUPREME COURT, NEW JERSEY.

THE METROPOLITAN CASUALTY INSURANCE COMPANY OF NEW YORK,
Plaintiff,

against

LEHIGH VALLEY RAILROAD COMPANY and NATIONAL STORAGE COMPANY,
Defendants.

S. WM. BURTON deposes and says that he is the Secretary of The Metropolitan Casualty Insurance Company of New York, and that he had charge, in the office of said Company, of the payment of bills in settlement of losses arising out of the Black Tom Explosion, on or about the 30th day of July, 1916;

That annexed to this affidavit are certain lists, one marked "Schedule A" and one marked "Schedule B," and annexed to said Schedules are certain evidences and proofs of loss incurred by the said, The Metropolitan Company, on account of the aforesaid Black Tom Explosion, and assignments and subrogation agreements from the policyholders of the plaintiff who have suffered loss herein and whose loss has been paid by this plaintiff.

Referring to "Schedule A," deponent knows, of his own knowledge, that each of the persons therein named was at the time of the Explosion mentioned in the complaint the person insured against loss of glass, signs and lettering, located upon the premises set opposite his name, and said insured suffered the loss set opposite his name, and that the figures set opposite each name herein represent the actual amount of loss suffered by this plaintiff in compliance with the obligations of the

Exhibit P. 8.

policies which were issued to said insured by the plaintiff.

That said loss occurred to this plaintiff in either of two ways, either the plaintiff paid the insured outright the market value of his loss, or the plaintiff replaced the property for the insured, as required by the terms of his policy; and in the event of each and every replacement, deponent states that the amount set opposite each and every name in said "Schedule A" represents the actual cost to and expenditure by said plaintiff in making the replacement required by the policy;

That deponent further states that "Schedule B" is a supplemental list, for which subrogation agreements have not yet been obtained, but will be obtained later. However, the losses mentioned in "Schedule B" and set opposite to names in "Schedule B" have actually been sustained by the plaintiff and the moneys paid out by it and the plaintiff will obtain the subrogations later and attach to said subrogations the bills and other proofs of indebtedness.

Deponent further states that in every case where the plaintiff has paid the loss directly to the insured, the papers annexed and attached hereto contain the cancelled check which was used in making said payments; that in cases where the property was replaced by plaintiff, the evidence attached to this affidavit contains the bills of the glazier for the glass and setting. And deponent further states that every bill attached hereto was actually paid by the plaintiff for and on account of the expenses incurred by this plaintiff in making the replacement required by it under the terms of its policy. Deponent further states, however, that as these bills to the glazier were promptly paid, one per cent. was allowed to the plaintiff for cash, and on this account, as is shown by the Schedules, this plaintiff has caused a credit to be made herein to the defendant of said one per cent.

S. WM. BURTON.

Exhibit P. 9.

Subscribed and sworn to before me
this 26th day of May, 1919.

(L. S.) ALBERT H. LAHY,
Notary Public, Kings County, No. 41
Certificate filed in New York County No. 120
Commission expires March 30, 1920

EXHIBIT P. 9.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

CHICAGO BONDING AND INSURANCE COMPANY, a corp., *Plaintiff,*	*Action at Law.*
vs.	*Affidavit.*
LEHIGH VALLEY RAILROAD COMPANY, a corp., *Defendant.*	

ALBERT SABATH, being duly sworn according to law, on his oath deposes and says that he is the Vice President of the Chicago Bonding & Insurance Company, the above named plaintiff; that the Chicago Bonding & Insurance Company is a corporation formed by the merger of the Prudential Casualty Company and another corporation, and has succeeded to all of the rights and liabilities of the said Prudential Casualty Company. Attached hereto are true statements and descriptions of the breakage of plate glass insured by the said Prudential Casualty Company which was broken by the explosion at Black Tom in Jersey City on or about July 30th, 1916, together with the original paid checks covering the

Exhibit P. 10.

actual expense of replacing such glass, the total amount of such payments being Five Thousand, Five Hundred and Twenty Nine Dollars and Twenty One Cents ($5,529.21).

ALBERT SABATH.

Subscribed and sworn to before me
this 3rd day of June, A. D. 1919.

A. H. WERTH,
(L. S.) Notary Public,
Cook County, Ill.

EXHIBIT P. 10.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

THE OCEAN ACCIDENT & GUARANTEE CORPORATION, LIMITED, OF LONDON, ENGLAND, *Plaintiff,* vs. LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*Action at Law.* *Affidavit.*

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

HARRY W. HENDRICKSON, of full age, being duly sworn according to law, upon his oath deposes and says that he is the Superintendent of the Plate Glass Department of the above named plaintiff, and that he has personal knowledge of the matters hereinafter stated; that the

Exhibit P. 10.

above named plaintiff, in regular course of its business, insured the persons and corporations whose names are attached to the annexed schedule against loss or damage to plate glass doors and windows; that the plate glass doors and windows of said persons and corporations named in said schedule were broken and destroyed by the explosion which occurred at the Black Tom station of the Lehigh Valley Railroad at Jersey City on the early morning of July 30th, 1916; that the plaintiff, by virtue of its policies of insurance with the said persons and corporations, was obligated to replace said plate glass or pay to the owner the value thereof, and plaintiff thereupon either paid to said persons and corporations the amount of such loss, or at its own expense replaced such plate glass, the loss and expense in each case being truthfully and correctly set opposite the names of each of said parties on the annexed schedule, and that the net loss to the plaintiff by reason of said breakage is Six Thousand, Four Hundred and Forty Three Dollars and Fifty-Two Cents ($6,443.52).

HARRY W. HENDRICKSON.

Subscribed and sworn to before me
this 18 day of June, A. D. 1919.

J. F. RANGES,
Notary Public, Kings County, No. 64
(L. S.) Certificate filed New York County No. 146.
My Commission expires March 30, 1920.

Exhibit P. 11.

EXHIBIT P. 11.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss.*
CITY OF NEW YORK.

CHARLES F. FRIZZELL, being duly sworn, deposes and says: that he is first Vice-President of the Royal Indemnity Company, a corporation duly organized and existing under and by virtue of the laws of the State of New York, with its principal office at #84 William Street, City of New York, State of New York.

Heretofore, the Royal Indemnity Company issued its Policies of Plate Glass Insurance bearing the respective numbers designated upon the statement, hereto annexed and marked "A", to the several insureds setforth, immediately following the said policy numbers, indemnifying the said insureds against certain plate glass losses at the premises mentioned within the said Exhibit.

That on or about the 30th day of July, 1916, the said several insureds sustained plate glass losses, at the places setforth within the said Exhibit, for which the Royal Indemnity Company had so issued those said policies of insurance. That the Royal Indemnity Company paid upon the dates appearing within the said Exhibit, by the drafts bearing the respective numbers immediately succeeding the said dates, the several amounts therein appearing, making in the aggregate, the sum of $4,118.51.*00*

That each and every one of the said losses and payments therefor, by the Royal Indemnity Company, by means of said draft, were bona fide losses and payments.

CHARLES F. FRIZZELL.

Exhibit P. 12.

Sworn to before me this 9th day of June, 1919.

BARNETT COHEN,
Commissioner of Deeds, for the City of New York,
(L. S.) Residing in New York County, New York County
Clerk's No. 84
New York Register's No. 20031
Commission expires April 30, 1920.

EXHIBIT P. 12.

SUPREME COURT,

HUDSON COUNTY.

CHILDS COMPANY, *Plaintiff,*

vs.

LEHIGH VALLEY RAILROAD COMPANY.

STATE OF NEW YORK,
COUNTY OF NEW YORK. } *ss.*

S. WILLARD SMITH, being duly sworn, deposes and says that he is the Treasurer of Childs Company, the plaintiff in the above entitled action, that he has personal knowledge of the affairs of the company through his office as Treasurer and that he is intimate with the payment of the bills incurred through the loss of glass in the Childs Company's restaurants, that the original bills which are hereto attached represent the exact losses which were incurred by Childs Company through the Black Tom explosion on July 30th, 1916, and that the

Exhibit P. 12.

firm of Smith & Rosenfeld, 141-143 Fourth Avenue, New York City, were employed to replace glass in their restaurants, and that the following amounts represent moneys actually paid out by Childs Company to Smith & Rosenfeld for the work done by them for replacement of glass:

3 Beaver St.,	New	York	City,	$522.35
47 Broadway,	"	"	"	845.80
31 Courtlandt St.,	"	"	"	588.90
194 Broadway,	"	"	"	102.60
102 Park Row,	"	"	"	167.60
270–6th Ave.,	"	"	"	103.40
41 W. 33rd St.,	"	"	"	1.50
527–6th Ave.,	"	"	"	36.50
602–6th Ave.,	"	"	"	1.60
366 Fulton St.,	Brooklyn,			58.70

and that the grand total of these items amounts to $2,428.95, that the above items as set forth above are the bonafide losses occurring through the loss of glass due to the Black Tom explosion on July 30th, 1916, and that the said documents attached hereto are the original bills relating thereto, and that the amounts thereupon stated have been actually paid out by the Childs Company.

S. WILLARD SMITH.

Sworn to before me this 13th day of May, 1919.

VAN R. LOGAN,
Commissioner of Deed, N. Y. C.
N. Y. Co. Clk's No. 69, Reg. No. 21043.
Commission expires Apr. 29, 1921.

Exhibit P. 13.

EXHIBIT P. 13.

NEW JERSEY SUPREME COURT.

FIDELITY & CASUALTY COMPANY, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*Action at Law.* *Affidavit.*

CITY, COUNTY AND STATE OF NEW YORK—*ss.*

NELSON D. STERLING, being duly sworn according to law on this oath, saith: that he is a Vice President of the Fidelity & Casualty Company, a corporation, the plaintiff in the foregoing action; that said company is engaged in the business of insuring persons, firms and corporations against loss occasioned by breakage of glass doors, windows, etc.; that in the course of its business, it issued insurance policies to the persons named in the schedule hereto attached insuring them against loss by reason of broken glass windows, doors, etc.; that claim was made upon said company by the persons named in said schedule in the amounts named therein, for broken glass occasioned by the explosion of July 30th, 1916, locally known as the "Black Tom Explosion"; that deponent's said company investigated each claim and found the same well founded, and paid to the said persons named in said schedule, the amounts set opposite their respective names; that no part of said moneys have been returned or paid to deponent's said company.

NELSON D. STERLING.

Exhibit P. 14.

Sworn and subscribed to before me
this 19 day of June, A. D. 1919.

L. Eugene Decker,
Notary Public, Queens Co. #2001.
(L. S.) Cert. filed in N. Y. Co. #215.

EXHIBIT P. 14.

NEW JERSEY SUPREME COURT.

Hudson County.

Commercial Casualty Insurance Company, a Corporation, *Plaintiff,* vs. Lehigh Valley Railroad Company, *Defendant.*	*Action at Law.* *Affidavit.*

George E. Wilkinson of full age being duly sworn upon his oath deposes and says:

That he is the manager of the Plate Glass Department of the Commercial Casualty Insurance Company and that he resides at 108 Vreeland Ave., Nutley, N. J.

Deponent further says that prior to and since the thirtieth day of July 1916, he was employed as manager of the Plate Glass Department of the Commercial Casualty Insurance Company of Newark, New Jersey, and on the date aforesaid the said Commercial Casualty Insurance Company suffered a loss amounting to $22557.54 by reason of damage to plate glass belonging to various persons, firms, and corporations located throughout the following Towns and Cities: Jersey City, Newark, Hoboken, Perth

Amboy, Bayonne and Arlington, New Jersey and New York City and Brooklyn, New York. Deponent further says that attached to the complaint filed in the above-entitled cause is a true statement of the losses sustained by the plaintiff by reason of the explosion which occurred on that day and generally known as the Black Tom explosion.

Deponent further says that the amounts expended for said losses are set forth in Schedule "A" attached to the complaint, and that said amounts were actually expended by the plaintiff herein, and that the Plate Glass replaced was replaced at a reasonable and proper price under the conditions as they existed at that time and that said losses were paid after a proper and reasonable investigation of the same.

GEORGE E. WILKINSON,

Sworn to and subscribed to before
me this 17th day of June, 1919.

CLAUDE E. WHEATLEY,
(L. S.) Notary Public,
State of New Jersey.

(NOTE: There is apparently a mistake in the Record which recites these affidavits are marked P-6 to 15. They should be P-6 to 14).

EXHIBITS P. 16 AND P. 16A.

Two sheets from statement of amount of cargo unloaded from Schooner Walcott.

(NOTE: Printed in full in the Record on pages 713 to 715).

Exhibit D. 1.

EXHIBIT D. 1.

Sixth: State with particularity what fire fighting paraphernalia and apparatus of the defendant was on said "Black Tom" or "National Docks" prior to the fire and explosion on the night of July 29-30, 1916, and give the location thereof.

Answer:

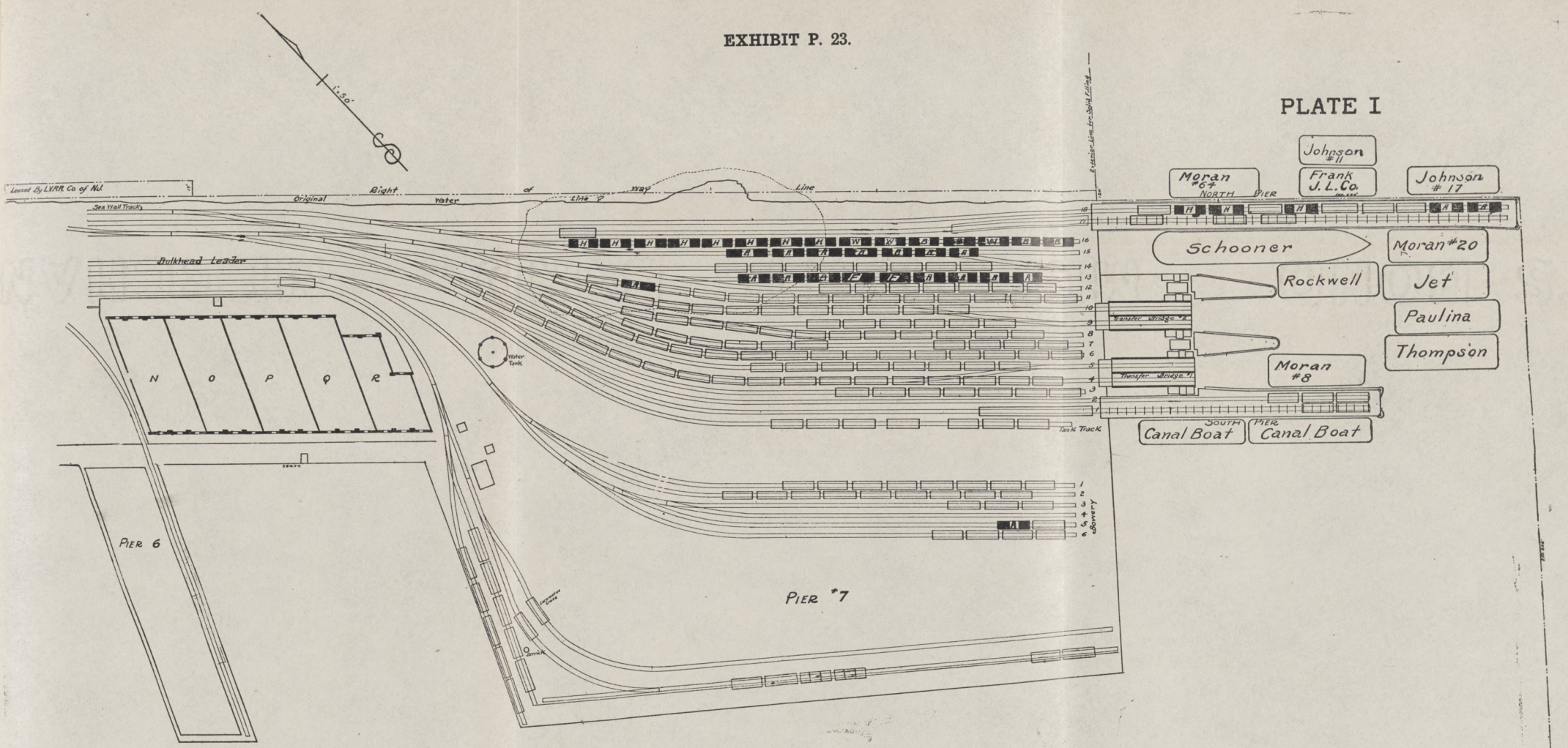
The following is a particular description of the fire fighting paraphernalia and apparatus of the defendant, with a detailed location thereof as the same was prior to and at the time of the fire and explosion of July 29-30, 1916:—

There were three pumps as follows: One electric pump at the tank at the east end of Store R, which would pump 1500 gallons of water per minute; a steam pump at Store F which would pump 1200 gallons of water per minute; a steam pump at the Oil Yard at the west end of the premises, which would pump 1500 gallons per minute. All of the said pumps were connected with a twelve inch fresh water main. All of the said pumps were also equipped so that they would pump salt water into the said twelve inch main in case the same was found to be necessary. The two 1500 gallon pumps were connected with the American District Telegraph Company system in the following manner:

If the electric current supplying the power for the 1500 gallon per minute pump located at the east end of Store R were in any manner interfered with or shut off, a signal to this effect would be recorded at the central office of the American District Telegraph Company at No. 75 Montgomery Street, Jersey City, N. J. Likewise, if the steam pressure which furnished the power for the 1500 gallon per minute pump located at the Oil Yard at the west end of the property dropped below fifty pounds per square inch, a like signal would be recorded at the said

EXHIBIT P. 23.

PLATE I



LEHIGH VALLEY RAILROAD
NEW YORK DIV'N.

PLAN SHOWING TRACKS, BUILDINGS AND CAR LOCATIONS AS OF AUGUST 1, 1916. EAST OF PIER NO. 6, NATIONAL DOCKS
JERSEY CITY, N.J.

OFFICE, DIV. ENG'R. SCALE 1"=50' | III-M | JERSEY CITY, N.J. JAN. 17, 1917

Key:- H = High Explosives (T.N.T.)
A = Ammunition for Cannon — Exp. projectiles
F = Fuzes (Combination)
B = Benzol
W = Wet Nitro Cellulose
▭ = Merchendise Cars

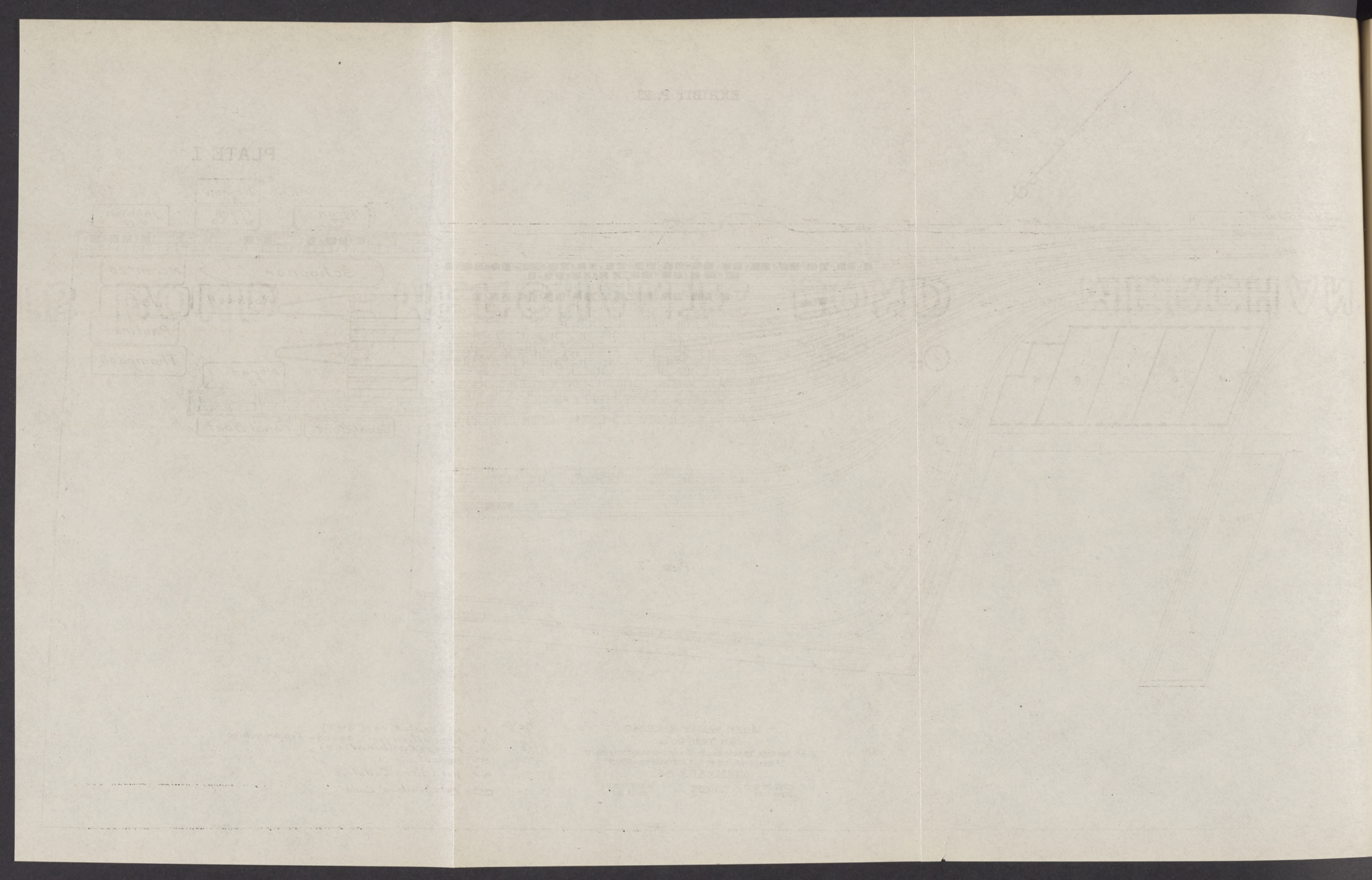


Exhibit D. 1.

central office of the American District Telegraph Company.

Attached to the said 1500 gallon electric pump were six outlet manifolds, each with an outlet of 2½ inches in Diameter, to each of which a standard fire hose also of a diameter of 2½" could be attached. Both of the steam pumps were similarly equipped. With reference to the buildings of the National Storage Company, the said pumps were located as follows:

The 1500 gallon electric pump was located in a brick building near the easterly end of Store R, and about 30 feet easterly therefrom. The 1200 gallon steam pump was located in a steel and corrugated iron building at the easterly side of Store F and immediately adjacent thereto. The 1500 gallon steam pump was located in a brick building, at the west end of the said premises, and about 200 feet west of the westerly side of Warehouse BB.

There were twenty-four 3-way standard Corey hydrants, each outlet having a diameter of 2½ inches, to which could be attached a standard fire hose also of a diameter of 2½ inches. Each hydrant could throw one, two or three streams of water at the same time, according as hose was attached to one, two or three of the outlets. All of these hydrants were connected with a 12 inch water main which was in turn connected with the Jersey City water supply, also with a salt water supply through the pumps hereinbefore described; also with a steel tank located on top of a tower 80 feet high at the easterly end of Store R, the said tank containing 100,000 gallons of fresh water at all times. The said 12 inch water main had also five two-way steam tug boat connections, into which connection salt water could be pumped by either fire boats or tug boats.

Exhibit D. 1.

With reference to said buildings the hydrants were located as follows:

Beginning at the easterly end of the National Storage Company's warehouses the hydrants were located as follows:

The first hydrant was located northeast of Store R and about the middle thereof, about five feet from the wall of the same.

The second was located directly north of the said Store R, and about 80 feet from the wall thereof.

The third wos located in the driveway to the north of Store P, and about 85 feet from the wall thereof.

The fourth was located in the driveway northeast of Store M and northwest of Store N about 85 feet from the northerly walls of the said stores.

The fifth was located east of the north end of Store M, about 20 feet from the northeast corner of said store.

The sixth was located at the southeast corner of Store M, about 10 feet from the corner.

The seventh was located in the driveway, 85 feet from the north wall of Stores K and L, and about midway between the said stores.

The eighth was located in the driveway about 85 feet from the northeast corner of Store F and the northwest corner of Store G, and midway between the said stores.

The ninth was located between the northerly end of Stores F and G, about 20 feet from Store G and 60 feet from Store F.

The tenth was located at the southwest corner of Store G and about 20 feet therefrom.

The eleventh was located in the driveway about 85 feet north of the north wall of Store C.

The twelfth was located in the driveway about 85 feet north of the office of the Lehigh Valley Railroad

Exhibit D. 1.

Company located on the northerly end of covered Pier 4.

The thirteenth was located in the driveway about 25 feet from the northwest corner of Store No. 3.

The fourteenth was located on the open ground to the west of Store 3, about 90 feet from the west wall of the same.

The fifteenth was located in the open space to the south of the driveway, about 90 feet from the same and about 45 feet north of the northwest corner of the Grain Transfer Elevator.

The sixteenth was located in the open space about 45 feet north of the northwest corner of the Grain Transfer Elevator.

The seventeenth was located about 15 feet to the north of the north wall of the New Grain Elevator, and about 60 feet west of the northwest corner of the same.

The eighteenth was located directly west of the carpenter shop, and about 10 feet from the westerly wall thereof.

The nineteenth was located in the driveway, at the north side thereof, about 300 feet southeast of Warehouse BB.

The twentieth was located southeast of the pump located near Warehouse AA, and about 75 feet from said pump.

The twenty-first was located near the southeast corner of Warehouse BB, and about 75 feet therefrom.

The twenty-second was located near the northeast corner of Warehouse BB, and about 100 feet therefrom.

The twenty-third was located southwest of Warehouse AA and west of Warehouse BB, and near the driveway entering the premises. Said hydrant was

located about 100 feet west of Warehouse BB and 25 feet east of the said driveway.

The twenty-fourth was located northwest of the northwest corner of Warehouse AA, and about 60 feet therefrom.

All of the said hydrants described as being located in the said driveway were equidistant, the approximate distance of one from the other being about 160 feet.

There were also nineteen two-way 2½ inch hydrants, each outlet having a diameter of 2½ inches, to which could be attached a standard fire hose also 2½ inches in diameter. All of these two-way hydrants were connected either with a six inch fresh water main (which was connected with the Jersey City water supply) or with a six inch salt water main (which was connected with the steam pump located at Store F as hereinbefore described). The said fresh water main was also connected by means of valves with the said 100,000 gallon tank hereinbefore described. Each hydrant could throw one or two streams of water at the same time, according as hose was attached to one or two of the outlets.

The first two of these hydrants were located at the southerly end of the pump house containing the 1500 gallon electric pump, and about 5 feet from the wall thereof.

The third was located northeast of the northeast corner of Store R, and about 100 feet therefrom.

The fourth was located north of Store P and about 75 feet from the wall thereof.

The fifth was located at the southwest corner of Store N, and about 25 feet therefrom.

The sixth was located at the southeast corner of Store M, and about 5 feet therefrom.

The seventh was located at the northeast corner of Store M, and about 5 feet therefrom.

Exhibit D. 1.

The eighth was located about 15 feet from the driveway, and about 70 feet from the northeast corner of Store M.

The ninth was located about 15 feet from the driveway, and about 70 feet north of the northeast corner of Store I.

The tenth was located southeast of the corner of Store F, and about 5 feet therefrom.

The eleventh was located northeast of the corner of Store F, and about 5 feet therefrom.

The twelfth was located 15 feet from the driveway and about 70 feet north of the northwest corner of Store F.

The thirteenth was located northwest of the corner of Store A, and about 20 feet therefrom.

The fourteenth was located at the northwest corner of Store 3, and about five feet therefrom.

The fifteenth was located west of the southwest corner of Store 3, and about 55 feet therefrom.

The sixteenth was located in the open space north of the Grain Transfer Elevator and about 40 feet from the north wall thereof.

The seventeenth was located near the north wall of the Boiler House of the Grain Transfer Elevator, and about 3 feet therefrom.

The eighteenth was located southwest of Warehouse BB, and about 90 feet therefrom.

The nineteenth was located near the southwest corner of Warehouse AA, and about 15 feet therefrom.

Immediately prior to the said fire on July 30th, 1916, there were eight watchmen on duty at said yard.

There were also fire fighting appliances as follows:

3600 feet of 2½ inch standard fire hose on ten hose carts located as follows:

2 at the easterly end of Store M, each carrying 400 feet of the said standard hose.

Exhibit D. 1.

1 at the northerly end of Pier 6, carrying 300 feet of the said hose.

2 at the easterly end of Store F, each carrying 400 feet of the said hose.

1 at the north end of covered Pier 5, carrying 300 feet of the said hose.

2 at the easterly end of Store 3, each carrying 400 feet of the said hose.

2 at the steam pump located near Warehouse BB, each carrying about 300 feet of the said hose.

The said hose carts were equipped with nozzles, with spanner wrenches and with hydrant wrenches. Each set of hose was equipped with the standard couplings used by the Jersey City Fire Department.

On the roof of the block of warehouses N to R inclusive, there was 100 feet of standard hose equipped with nozzles, wrenches and couplings similar to the hose carried on the said hose carts; there were also 100 feet of hose with similar equipment on the roof of the block of warehouses G to M inclusive; there were also 100 feet of hose similarly equipped on the block of warehouses A to F.

On Pier 6 there were 200 feet of said standard hose equipped with three nozzles, with spanners and with couplings.

On pier 5 there were 200 feet of said standard hose, similarly equipped.

On pier 4 there were 1100 feet of said standard hose, also similarly equipped.

In Store 3 there were 100 feet of said standard hose, similarly equipped.

In the building known as the Grain Transfer Elevator, there was 550 feet of said standard hose, with similar equipment.

There was also a 100 gallon two-wheel chemical engine located east of Store F and at the northerly end of Pier

Exhibit D. 1.

5, equipped with 100 feet of hose and charged with a solution of bicarbonate of soda and sulphuric acid.

In Storehouse AA there were 400 feet of 2½ inch hose, equipped with nozzles, spanners and couplings; in Storehouse BB there were 500 feet of 2½ inch hose similarly equipped.

On the ground floor of each store from A to R inclusive was licated one 3-gallon Child's fire extinguisher. On Pier 4, five of the said fire extinguishers were located. In the building known as the Grain Transfer Elevator, seven of the said fire extinguishers were located, and in the building known as the New Grain Elevator there were five 1-quart Pyrene fire extinguishers. Four of the said Child's fire extinguishers were located in Storehouse AA, and seven of the said extinguishers in Storehouse BB. Two of the said extinguishers were located in the pump room at the westerly side of Warehouse BB.

At the pump house adjacent to Store F there were two poles, each 19 feet long; six hook poles, each 13 feet long; two hooks, with chains and ropes; one length of hose 20 feet long, with three 2½ inch connections at one end and one 3½ inch connection at the other end, with nozzles; two nozzle holders; three hose slings for dragging hose; one hose roller for dragging hose over the edge of roofs of houses and cars; four nozzles to be attached to hose, and three revolving cellar nozzles.

On Pier 6 there were four 50-gallon water barrels filled with water, and eighteen 3-gallon iron pails, all filled with water; one ladder 38 feet long, and one ladder 30 feet long.

On Pier 5 there were four 50-gallon barrels and nine 3-gallon iron pails, all filled with water; one ladder 38 feet long, and one ladder 30 feet long.

On the ground floor of Warehouse R there were two 50-gallon barrels and five 3-gallon iron pails, all filled with water.

On each warehouse known as N, O, P and Q, respectively, there were two 3-inch water pipes, one being at the

Exhibit D. 1.

front and the other at the rear, and extending from the ground to the roof, each pipe being equipped with two 2½-inch hose connections. In each of said warehouses there were twelve 50-gallon water barrels and 36 3-gallon iron pails, all filled with water. The block consisting of these warehouses was equipped with four metropolitan fire ladders, two at the front and two at the rear, extending from the ground to the roof and with platforms connected with each floor.

In the block of warehouses consisting of stores known as G, H, I, K, L and M there were ten 50-gallon water barrels and thirty 3-gallon iron pails, all filled with water, in each store. In said block there were six metropolitan fire ladders, three at the front and three at the rear, extending from the ground to the roof and with platforms connecting with each floor of each of said stores. There were also twelve 3-inch water pipes, six in the front and six in the rear, extending from the ground to the roof, with 2½-inch hose connections.

In the block of warehouses consisting of stores known as A, B, C, D, E and F there were ten 50-gallon water barrels and twenty 3-gallon iron pails, all filled with water, in each store. There were also six Metropolitan fire ladders of the same construction and relative location as set forth above in block consisting of Stores G to M. There were also twelve water pipes of the same construction and relative location as described in the block consisting of Stores G to M.

In the building known as Store 3 there were three 50-gallon water barrels and six 3-gallon iron pails, all filled with water; one ladder 27 feet long; one ladder 22 feet long, and one hook pole 21 feet long.

In the building located on Pier 4 there were twenty-four 50-gallon water barrels and seventy-six 3-gallon iron pails, all filled with water; one ladder 30 feet long, and two ladders each 27 feet long.

Exhibit D. 1.

In the building known as the Grain Transfer Elevator there were thirteen 50-gallon water barrels and fifty-two 3-gallon iron pails, all filled with water; thirty-one hand fire grenades; an open sprinkler system, consisting of a 4-inch water pipe running the entire length of the roof and with sprinklers at regular intervals, and connected at each end by water pipes with the 6-inch water line system hereinafter described. There were also fire escapes at each end of the building, with a platform landing at each floor.

In the warehouse known as BB there were fourteen 50-gallon water barrels and fifty-four 3-gallon iron pails, all filled with water.

In the warehouse known as AA there were eight 50-gallon water barrels, and thirty 3-gallon iron pails, all filled with water.

There was also an electric fire alarm, with 18 stations, connected with the railroad office at Pier 4 and with the two steam pump stations hereinbefore referred to; also two fire alarm stations, Nos. 671 and 672, connected with the Jersey City Fire Department. There was also a watchman's electric time detector with 11 stations connected with the railroad office and Stores A to R, inclusive, and a separate similar detector with several stations connected with Warehouses AA and BB.

All of the Lehigh Valley Railroad Company's tug boats, fifteen in number, were equipped with steam fire pumps, hose and nozzles, and were subject to call in case of fire. All of the Lehigh Valley Railroad Company's steam lighters, five in number, were also equipped with steam fire pumps, hose and nozzles, and were also subject to call by telephone in case of fire. The steam tugs belonging to the Standard Oil Company and serving the Eagle Oil Works immediately adjacent to the premises hereinbefore described were equipped with steam fire pumps, hose and nozzles, and were subject to call by telephone or by fire whistle. The tugs of the Central Railroad Company of

Exhibit D. 1.

New Jersey, whose property is immediately adjacent to the premises hereinbefore described on the northerly side thereof, were also likewise equipped with steam fire pumps, hose and nozzles, and were by arrangement subject to call by telephone or fire whistle. All of the drill engines serving the yards of the Lehigh Valley Railroad Company on the premises referred to and adjacent thereto were equipped with hose and nozzles, and were subject to telephone or telegraph call, or other orders, in case of fire.

The said premises were supplied by the following mains:

A 12-inch main connected with the Jersey City water supply at the pump house at the westerly end of the premises. The said 12-inch main extended from the point mentioned along the southerly line of the driveway north of the said stores to the 100,000-gallon water tank located east of Store R. A 10-inch main connected with the said 12-inch main at a point northwest of Store No. 3, about seventy feet therefrom. The said 10-inch main parallels the 12-inch main to a point about 50 feet from the said 100,000-gallon steel tank, whence it takes a southerly direction and is connected directly with electric pump located east of Store R, as hereinbefore described.

A 6-inch main connected with a 6-inch main of the Jersey City water supply at a point northwest of Store AA, and about 175 feet therefrom. The said main extends in a southerly direction to the southerly side of the said premises, and extends from thence in an easterly direction, parallelling the said 10 and 12-inch mains, to a point directly north of the electric pump located east of Store R; thence in a southerly direction to the said pump. The said main is connected with the said pump and with the 100,000-gallon tank hereinbefore described.

A 6-inch salt water main began at the pump house at the westerly end of the said premises, running south therefrom to a point near the southerly line of the prem-

Exhibit D. 1.

ises; thence in an easterly direction parallelling the 6 inch, 10 inch and 12 inch mains to a point directly north of the pump house east of Store R. The said 6 inch salt water main connected with the steam pump located east of Store F.

The 12 inch main hereinbefore described supplied all of the three way standard Goery hydrants and the 10-inch main, the hose connections on piers, and the open sprinklers on Piers 4, 5 and 6; the 10 inch main supplied the sprinkler system hereinafter described protecting all of the piers and warehouses. The two 6-inch mains supplied all of the standard two-way hydrants.

In addition to the water supply furnished by the water mains and pumps hereinbefore described, a primary water supply was furnished by three steel gravity tanks located as follows:

(1) A 100,000 gallon tank was located on an 80-foot steel tower east of the easterly end of Store R, and about 75 feet therefrom. This tank was filled with water. This tank furnished a primary water supply to the 12-inch main with a pressure of about 45 pounds to the square inch.

(2) A 50,000 gallon steel gravity tank was located on the top of Store P. This tank furnished a part of the primary supply for the automatic sprinkler system in stores and piers hereinafter described. This tank was filled with water.

(3) A 50,000 gallon steel gravity tank was located on top of Store E. This tank furnished a part of the primary water supply for the automatic sprinkler system hereinafter described. This tank was filled with water.

Exhibit D. 1.

AMERICAN DISTRICT TELEGRAPH CO'S FIRE PROTECTION SYSTEM.

The said premises were protected by the American District Telegraph Company's fire protection system. This system was installed in March, 1915. All the stores and piers on the said premises were connected with the central office of the American District Telegraph Company at No. 75 Montgomery Street, Jersey City, New Jersey, by two independent pairs of wires. One pair of these wires was called the water flow circuit, and was connected with the dry alarm valves and the manual fire alarm boxes. The other pair of wires, called the supervisory circuit, was connected with the different supervisory devices at all gate valves, dry air pressure valves, steam pressure valves, tank floats, tank thermometers, and the electric pump.

In addition to these circuits, there was installed on the premises in connection with the water flow circuit a transmitter, which consisted of a clock mechanism and an individual number wheel. Then actuated electrically by any of the devices connected with the sprinkler system, this transmitter sent signals to the central office of the Company located at No. 75 Montgomery Street, Jersey City, N. J.

Also in connection with the supervisory circuit, there was a transmitter containing five different clock mechanisms, each with an individual number for the different classes of devices, and when any of the supervisory devices operated, the transmitter was electrically actuated and also transmitted a signal to the central office designated above from the particular clock mechanism that had been operated by any of the devices. At the central office these circuits were connected to their own individual registers, and when the signals above described were sent in they were automatically recorded on a tape showing the number of the transmitter mechanism that had been

Exhibit D. 1.

operated. The five clock supervisory mechanisms controlling the buildings indicated were as follows:

(a) One 5 clock supervisory transmitter controlled the different devices in the following buildings and at the following places:

One clock signal, No. 34, controlled all gate valves in Warehouses N, O, P, Q, R and on Pier 6; also eight post indicating valves; also one outside stem and yoke valve in the pump house at the east end of Store R.

Signal 43 controlled the dry air pressure on the alarm valves in Buildings N, O, P, Q and R.

Signal 35 controlled the gravity tank floats in the tank located on Storehouse P, and in the 100,000 gallon tank located east of Warehouse R.

Signal 153 controlled thermometers—one in the tank on Storehouse P and one in the steel tank east of Storehouse R.

Signal 521 controlled the electric pump in the pump house east of Storehouse R.

(b) One three-clock supervisory transmitter controlled the different devices in the following buildings and at the following places:

Signal 321 controlled all gate valves in Warehouses G, H, I, K, L and M and on Pier 5; also 9 post indicating valves.

Signal 421 controlled the dry pressure alarm valves in Warehouses G, H, I, K, L and M.

The other clock on this transmitter was not in use.

(c) One 4 clock supervisory transmitter controlled the different devices in the following buildings and at the following places:

Signal 313 controlled all gate valves in Warehouses A, B, C, D, E and F; also in Pier 4; also Warehouse No. 3; also ten post indicating valves.

Exhibit D. 1.

Signal 514 controlled the float in the steel gravity tank located on Storehouse E.

Signal 315 controlled the thermometer in the gravity tank located on Storehouse E.

Signal 322 controlled the air pressure in the dry alarm valves in Buildings A, B, C, D, E and F.

(d) A 2 clock supervisory transmitter controlled the different devices in the following buildings and at the following places:

Signal 133 controlled all gate valves in Warehouse AA, also one gate valve in the pump house located near Warehouse AA, also one post indicating valve.

Signal 233 controlled the dry air pressure valves in Warehouse AA.

(e) A 1 clock supervisory transmitter controlled the following device at the following location:

Signal 433 controlled the steam pressure in the steam pump located near Warehouse AA.

The clock mechanisms and individual number wheels controlling the water flow circuits were as follows:

Signal	Wheel	135	controlled	Warehouse	AA.
"	"	141	"	"	A and B
"	"	45	"	"	C and D
"	"	62	"	"	E and F
"	"	44	"	"	G and H
"	"	43	"	"	I and K
"	"	63	"	"	L and M
"	"	54	"	"	N and O
"	"	312	"	"	P and Q
"	"	134	"	"	R
"	"	142	"	"	Pier 5
"	"	53	"	"	Pier 4 & Ware. 3
"	"	52	"	"	Pier 6

Exhibit D. 1.

In addition to the above automatic signals there were installed the following manual fire alarm boxes:

Five boxes on Pier 4, Signal 453, located as follows:
1 near the office on the north end of the Pier.
1 on the west platform of the Pier, near the center.
1 on the east platform of the Pier, near the center.
1 on the south end of the Pier.
1 on the balcony or 2nd story, west side, center of Pier.

Two boxes on Pier 5, Signal 534, located as follows:
1 on north end of Pier.
1 on south end of Pier.

Two boxes on Pier No. 6, Signal No. 65, located as follows:
1 on the north end of the Pier.
1 on the south end of the Pier.

Four boxes in Warehouse AA, Signal No. 434, located as follows:
1 on east side of the Building.
1 on west side of the Building.
1 on north side of the Building.
1 on south side of the Building.

The sprinkler system upon which the mechanism above described operated was known as the Rockwood Dry Pipe Valve System. This system was installed in all of the Warehouses and on all of the Piers. It consisted of soft steel pipes attached to the ceilings of each floor of the warehouses by wrought iron hangers. The said pipes traversed the entire length of each ceiling, and were located in accordance with the rules of the National Board of Fire Underwriters. The construction of the said sprinkler system was in accordance with the rules of the said Fire Underwriters. Attached to the pipes referred to above were Esty Sprinkler heads, made of fusible metal. These were arranged at regular intervals on said pipes in all the warehouses and piers, and the total number thereof was about fifteen thousand.

Exhibit D. 4.

EXHIBIT D. 3.

Unloaded shrapnel shell.

EXHIBIT D. 4.

(Cover)

DEPARTMENT OF COMMERCE AND LABOR
BUREAU OF NAVIGATION

RULES AND REGULATIONS

RELATING TO THE

ANCHORAGE OF VESSELS IN THE PORT OF NEW YORK

June 15, 1911

Washington
Government Printing Office
1911

An Act Relating to the Anchorage of Vessels in the Port of New York.

Be It Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the Secretary of the Treasury (Commerce and Labor) is authorized, empowered, and directed to define and establish an anchorage ground for vessels in the bay and harbor of New York and in the Hudson and East Rivers, to adopt suitable rules and regulations in relation thereto, and to take all necessary measures for the proper enforcement of such rules and regulations.

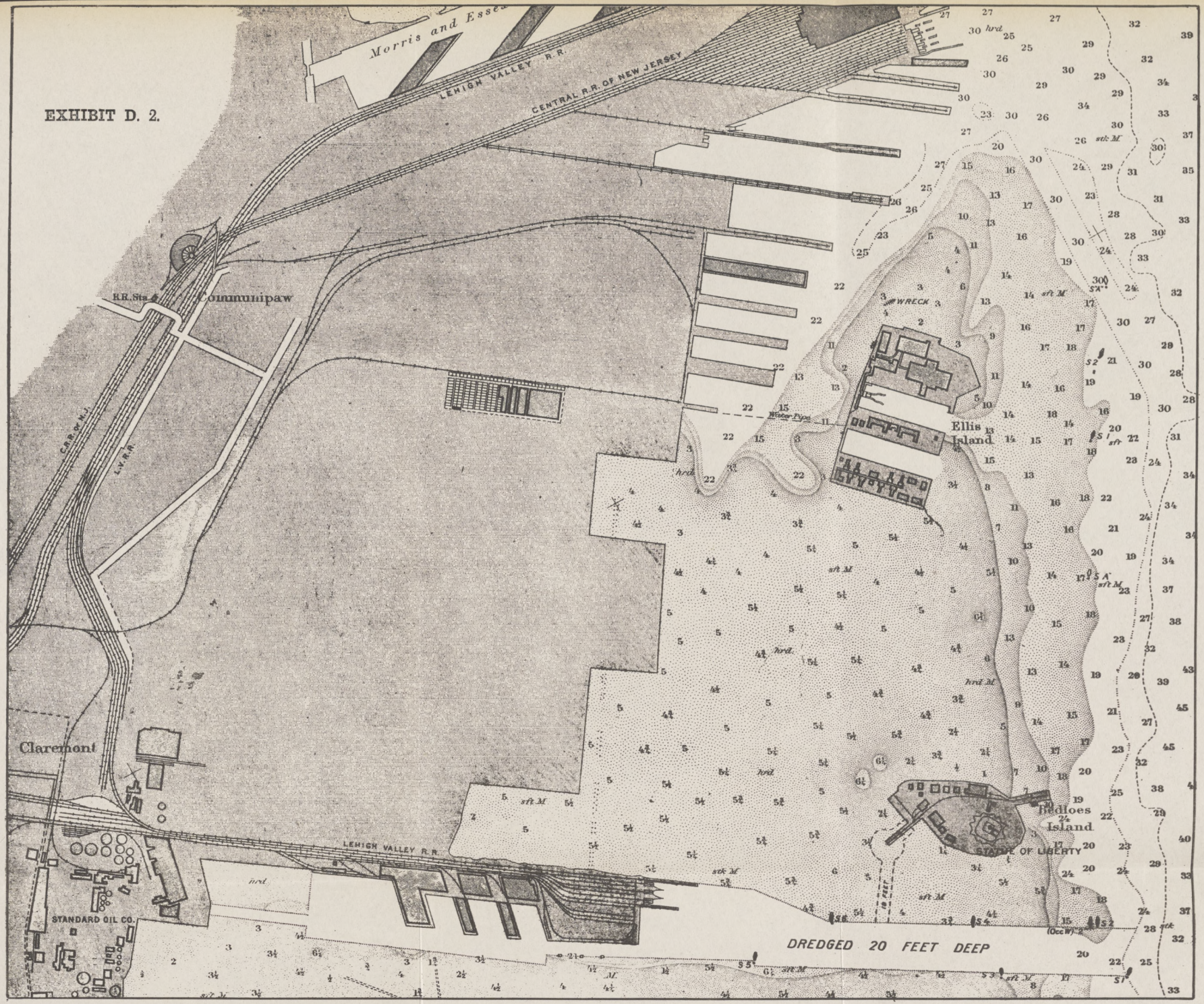
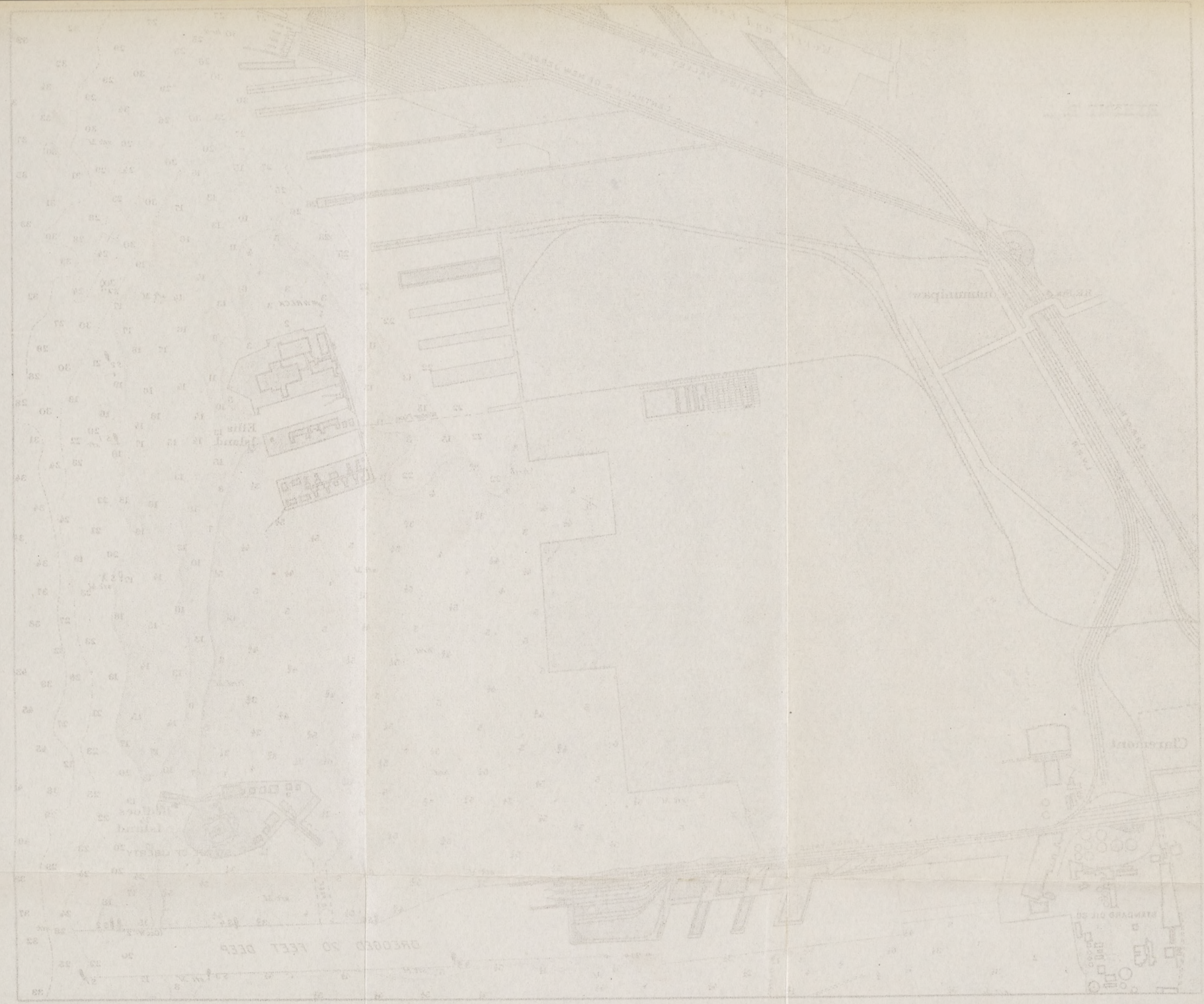
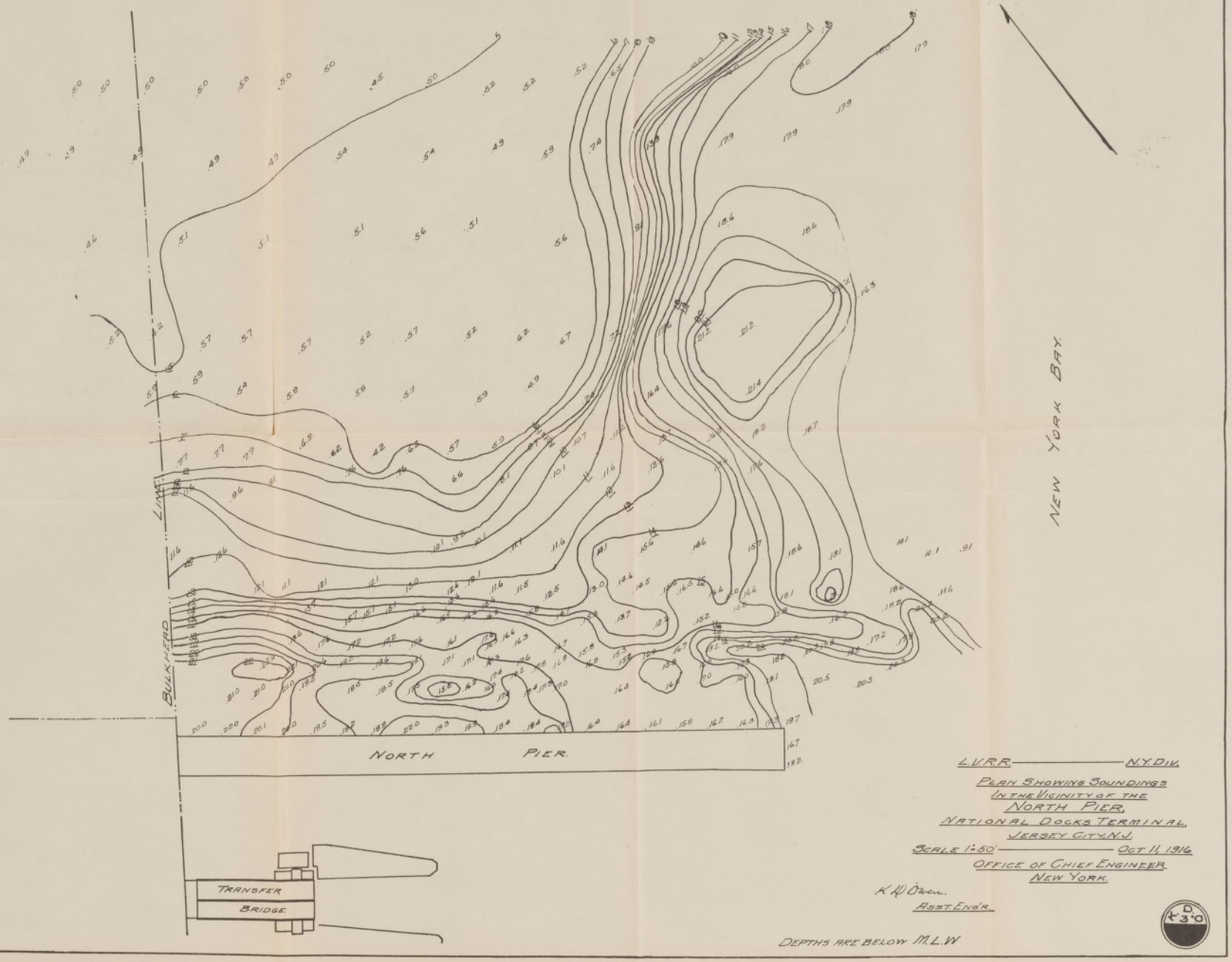


EXHIBIT D. 2.
Morris and Esse
LEHIGH VALLEY R.R.
CENTRAL R.R. OF NEW JERSEY
R.R. Sta.
Communipaw
CAR & N.J.
L.V.R.R.
WRECK
Water Pipe
Ellis Island
Claremont
LEHIGH VALLEY R.R.
STANDARD OIL CO.
Liddloes Island
STATUE OF LIBERTY
DREDGED 20 FEET DEEP





L.V.R.R. ——— N.Y.DIV.

PLAN SHOWING SOUNDINGS IN THE VICINITY OF THE NORTH PIER, NATIONAL DOCKS TERMINAL, JERSEY CITY, N.J.

SCALE 1:50' ——— OCT 11, 1916

OFFICE OF CHIEF ENGINEER. NEW YORK.

K.D. Owen. ASST. ENG'R.

K.D. 3.0

DEPTHS ARE BELOW M.L.W.

Exhibit D. 4.

Sec. 2. That in the event of the violation of any such rules and regulations by the owner, master or person in charge of any vessel, such owner, master or person in charge of such vessel shall be liable to a penalty of one hundred dollars; and the said vessel may be holden for the payment of such penalty and may be seized and proceeded against summarily by libel for the recovery of the same in any United States district court for the district within which such vessel may be, and in the name of the officer designated by the Secretary of the Treasury (Commerce and Labor).

Sec. 3. That this act shall take effect immediately.

Approved May 16, 1888.

RULES AND REGULATIONS GOVERNING THE ANCHORAGE OF VESSELS IN THE PORT OF NEW YORK.

Department of Commerce and Labor,
Office of the Secretary,

Washington, June 15, 1911.

The following described anchorage grounds for vessels in the bay and harbor of New York, and in the Hudson and East Rivers, respectively, are hereby defined and established, and the following revised rules and regulations governing the same are published for the government of the owner, master, pilot, or other persons having charge of a steam vessel towing or otherwise conducting a vessel to an anchorage in the port of New York, pursuant to the act of Congress approved May 16, 1888:

(a) Vessels shall anchor only within the following specified limits, and a vessel anchoring within any of the below described boundaries must anchor entirely within said boundaries, so that no portion of the hull shall ex-

Exhibit D. 4.

tend beyond said boundary after veering chain or when riding to a tideway.

(b) No vessel shall anchor in any of the channels except in cases of great emergency, and then as near the edge of the channel as possible, so as not to impede or interfere with the free navigation of the same, and only until such time as they can procure assistance; and no vessel shall anchor so as to obstruct the approach to any pier or impede the movement of any ferryboat.

(c) All stake boats used for assembling barges, canal boats, and other vessels preparatory to being made up in tows, and vessels used for storing explosives and moored only in the anchorage for explosives, as described in paragraph 2, No. 27, page 7, may be moored under permits granted by the supervisor of anchorages and moored only in such places as he may designate.

(d) A vessel upon being notified to move into the anchorage limits must at once get under way or make a signal for a tug.

(e) Permits may be granted by the supervisor of anchorages to wrecking plants to anchor in the channel for the purpose of recovering sunken property, subject to his supervision. Such wrecking plants must comply with all the navigation laws in regard to lights, fog signals, etc., and in granting such permit the Government assumes no responsibility.

(f) Points where cables and pipes cross the anchorage grounds are marked in red on the accompanying maps, and all vessels are cautioned not to anchor so as to interfere with them.

(g) All ash scows the property of the municipalities bordering on the waters of the port may be anchored in such places as the supervisor of anchorages may designate.

(h) The creation of any obstruction, not affirmatively authorized by law, to the navigable capacity of any waters

Exhibit D. 4.

in respect of which the United States has jurisdiction is hereby prohibited.

(i) No vessels shall occupy permanent berths in the anchorages except as provided for in these anchorage rules and regulations.

(j) The supervisor of anchorages shall assign berths in the respective anchorages to all vessels applying for them.

(k) All officers of revenue vessels at the port of New York are charged with the enforcement of these rules and regulations, and are empowered to remove from her anchorage any vessel not anchoring within the prescribed limits.

EAST RIVER ANCHORAGES.

(See Plate No. 1)

1. To the northward of a line from the south point of Hart Island to Wrights Point.
2. To the westward of a line from Wrights Point to Throgs Neck.
3. To the southward of a line from buoy off Sands Point to buoy off Gangway Rock.
4. To the southward of a line from buoy off Gangway Rock to center of Stepping Stones Lighthouse.
5. To the eastward of a line from the center of Stepping Stones Lighthouse to Willets Point.
6. On Hammond Flats to the northward of a line from Old Ferry Point to the head of Engineers Wharf, Throgs Neck, the said line running about magnetic east and west between said points.
7. To the southward of a line from Willets Point to Whitestone Point.
8. On the north side of the channel, north of a line between Old Ferry Point and Hunts Point.
9. On the south side of the channel, south of a line between Whitestone Point and buoy (No. 1) off

Exhibit D. 4.

College Point, and to the eastward of a line running from said buoy to College Point.

10. In Flushing Bay, to the southward of a line from College Point to the north end of Rikers Island.

11. To the southward of a line from the north end of Rikers Island to the north end of South Brother Island, thence to Lawrences Point.

12. To the westward of a line from Stony Point to northeast end of Wards Island; and between Wards Island and Randalls Island, and between Randalls Island and Port Morris.

13. To the westward of a line from the foot of One hundred and sixteenth Street, New York, to the north end of Avenue B, New York, but no vessels shall anchor on this anchorage within 150 feet of any wharf or pier, or so as to impede the movements of a ferry, or so as to prevent ready access to or from the piers.

14. To the eastward of a line from Hatters Dock to Gibbs Point (Hallets Cove, Astoria)

(See Plate No. 2.)

15. To the southward of Thirty-second Street Pier and the northward of Twenty-fourth Street Pier, and to the westward of a line passing through the horizontal-striped buoy off Nineteenth Street, running thence N. by E. 1/8 E. (cor. mag.). Vessels may anchor anywhere within these limits, provided they do not obstruct the approach to any pier or impede the movements of any ferryboat; and the officer in charge of anchorage grounds may, whenever he deems it advisable, move or cause to move any vessel not, in his opinion, complying with this proviso.

Range for outer boundary of this anchorage: When steering on this range (N. by E. 1/8 E.,

cor. mag.) you should look squarely into the new Forty-second Street Ferry Slip, on the center of the axis of which is a prominent dark chimney.

SOUTH ANCHORAGE, HUDSON RIVER
(See Plate No. 3.)

16. Vessels may anchor in the Hudson River to the westward of a line 100 yards west of the center line of said river; that the northeast boundary of this anchorage shall be a line drawn from the southeast corner of Gokey's dry dock just below the Weehawken terminal of the West Shore ferries to the end of the Thirty-fourth Street Pier, New York; that the southern limit of this anchorage be a line from the end of the Erie Railroad Co.'s Coal Pier, Hoboken, to the end of the Twenty-fifth Street Pier, New York, about SE. 3/8 E.

MIDDLE ANCHORAGE, HUDSON RIVER.
(See Plate No. 4.)

17. Vessels may anchor in the Hudson River within the limits of the port of New York to the westward of the center line of said river running about NE. ½ N. (cor. mag.) from Castle Point, Hoboken, through the white anchorage buoy off Sixtieth Street to the northward of a line running from the southeast corner of West Shore Pier No. 3, Weehawken, to the center of the Fifty-fourth Street Pier, New York, about SE. ½ E. (cor. mag.) and to the southward of a line running from the outer end of the Guttenberg Pier to the outer end of the West Seventieth Street Pier, New York.

In no case shall a vessel anchor within 200 yards of the shore in either of these Hudson River anchorages.

Exhibit D. 4.

UPPER ANCHORAGE, HUDSON RIVER.
(See Plate No. 4)

18. To the northward of a line drawn from the pier on the Guttenberg side directly across the river to Eightieth Street, New York (cor. mag.), to the westward of a line parallel to and 125 yards to the westward of the center line of the river.

Note.—Small vessels may anchor inside the pierhead lines as established by the Board of Engineers, United States Army, along the east bank of the Hudson River between Eighty-first Street and One hundred and twenty-first Street, and between One hundred and thirty-second Street and One hundred and fifty-eighth Street, in the discretion of the supervisor of anchorages, but the officer in charge of anchorage grounds may, whenever he deems it advisable, move or cause to move any vessel not, in his opinion, complying with this proviso.

NAVAL ANCHORAGE, HUDSON RIVER.
(See Plate No. 4.)

19. An anchorage is set aside for naval vessels to moor in a single line on the east side of Hudson River north of Seventy-ninth Street, and thence to Fort Washington Point, and above that point if necessary. Its southernmost limit shall be north of the ——— northernmost cable crossing the river at Seventy-ninth Street, and extending northeastwardly on the east side of the river. Anchors shall be let go to the eastward of a line drawn 250 yards from the end of the pier at Seventy-ninth Street to 250 yards from the end of the pier at the foot of One hundred and twenty-ninth street, thence to a point 330 yards from the pier at the foot of One hundred and fifty-eighth

Exhibit D. 4.

Street; and thence northeasterly, following the general line of the 24-foot curve on the east side of the river and 250 yards distant from the salient point of this curve. No ships shall anchor within a limit of 300 yards of the prolongation of One hundred and thirtieth Street, in order to give free passage for the Fort Lee ferryboats. The destroyers and other light-draft naval vessels may anchor on the west side of the river west of the 18-foot curve as shown on Coast Survey chart No. 369.

WESTERN ANCHORAGE, UPPER BAY.
(See Plate No. 5.)

20. To the southward of a range passing through Wall Street ferry, Brooklyn, and the white buoy to the north and east of Ellis Island; to the westward of a line running SW. by S. (nearly) from the said white buoy to a point one-third of a mile ESE. 7/8 E. from the red bell buoy at the entrance of Greenville Channel. In order to prevent vessels fouling the Ellis Island cable, the buoy marking the northern limit of the channel to Ellis Island and the buoy marking the southern entrance to said channel have been moved so as to leave a space of 800 yards clear water between the anchorage grounds north of the Ellis Island Channel and the anchorage grounds south of said channel, but the ranges otherwise retain their same magnetic bearings.

No vessels shall anchor in the Black Tom or Greenville dredge channels nor near the entrances to said channels so as to obstruct the approaches or interfere in any way with the free navigation of the same.

Note.—Vessels are especially cautioned not to anchor in Ellis Island Channel, thereby en-

dangering the cable in said channel. In addition to the penalty for illegal anchorage, the owners of vessels which foul the above-mentioned cable will be liable for the damage resulting therefrom, including the cost of clearing, which should be done, in order to reduce the injury to a minimum, by signaling for the Western Union Co.'s tug.

½. To the northward of a line from Constables Point to Robbins Reef bell buoy; to the westward of a line from Robbins Reef bell buoy to the bell buoy at entrance to Greenville Channel, and south of said channel.

EASTERN ANCHORAGE, UPPER BAY.

(See Plate No. 6.)

21. To the southward of a line passing through the Statue of Liberty on Bedloes Island, the two white buoys marking the northern limit of anchorage ground and the southern point of the north entrance to the Erie Basin; to the eastward of a range passing through Produce Exchange tower and buoy No. 14 and bell buoy off Owls Head, and thence marked on the eastern and southeastern limits by four white anchorage buoys along the western edge of the widened Bay Ridge and Red Hook Channels. These buoys will eventually be replaced by proper channel buoys marking the edge of the dredged channel. On and after July 1, 1901, vessels will not be allowed to anchor to the eastward and southward of said line of buoys. Small vessels may, in the discretion of the supervisor of anchorages, anchor to the southward and eastward of the Bay Ridge Channel, provided they are inside of the pierhead lines as established by the Board of Engineers, United States Army. Small vessels

Exhibit D. 4.

may, in the discretion of the supervisor of anchorages, anchor at the mouth of Gowanus Bay, to the eastward of a line tangent to the southwestern edge of Erie Basin Bulkhead, and running thence S. by E. (cor mag.), but so as to leave a clear channel of 150 yards along the northern shore. The supervisor of anchorages may, in his discretion, remove any vessel not complying with the provisions hereof.

EASTERN ANCHORAGE, LOWER BAY.
(See Plate No. 7)

22 To the eastward of a line drawn through Fort Lafayette in a S. by E. (mag.) direction, and to the northward of a line drawn from Coney Island Lighthouse, on Norton Point, to Hoffman Island, approximately WNW. ¾ W. (mag.).

STATEN ISLAND ANCHORAGE.
(See Plates Nos. 7 and 8.)

23. To the southward of a line from St. George Ferry Flagstaff to the white buoy off St. George Landing, and to the westward of a line running S. ⅝ W. (nearly) from the white buoy off St. George Landing, through the white buoy off Tompkinsville, and as far south as a point off Clifton, Staten Island. (see Plate No. 8) To the westward of a line running SSE. ¼ E. (nearly) from Fort Tompkins to the buoy on Craven Shoal; thence to buoys Nos. 11, 9 and 7; thence to Conovers Beacon.

The part of anchorage 23 lying between the northern boundary and the white buoy 800 yards south of said boundary is reserved for ships of war of all nations and vessels of the United States Government.

Exhibit D. 4.

QUARANTINE ANCHORAGE.

(See Plate No. 8)

24. To the southward of a line passing through Clifton, Staten Island, and a point off same, and to the westward of a line from the point off Clifton, Staten Island, to the bell at Fort Wadsworth.

Vessels arriving at quarantine and awaiting inspection may anchor temporarily to the westward of a range passing through Craven Shoal Buoy and Robbins Reef Lighthouse, but as soon as cleared by the quarantine officer must vacate this temporary anchorage, and if detained in quarantine, must at once move into the quarantine anchorage.

SANDY HOOK ANCHORAGE.

(See Plate No. 7.)

25. To the southward of a line extending from North Hook Beacon Lighthouse to Point Comfort Beacon Lighthouse.

(See Plate No. 7.)

26. Vessels may anchor on Dry Romer Shoal and Flynns Knoll. Care must be observed not to foul the United States Signal Corps cable (shown in red on the chart), which crosses Flynns Knoll.

ANCHORAGE FOR EXPLOSIVES.

(See Plates Nos. 1 and 5.)

27. Vessels carrying gunpowder or other explosives may anchor only as follows:

First. On the shoal ground to the eastward of Rikers Island, East River, from one-fourth to five-eighths of a mile from this island.

Second. On the New Jersey Flats between a line drawn parallel to and 1500 feet to the south

Exhibit D. 4.

of the Black Tom dredged channel and a line drawn parallel to and 1,500 feet north of the Greenville dredged channel, and to the westward of a line from Bedloes Island to Robbins Reef, provided that they do not anchor within 1,000 yards of Bedloes Island, or within 500 yards of any pier.

Third. Vessels (carrying explosives) of too great draft to use the above anchorages may anchor only in Gravesend Bay, on a line drawn from Fort Hamilton to the western tip of Nortons Point, Coney Island, but not within 1,000 yards of the shore. All vessels laden with explosives while within the port will display at all times a red flag of at least 16 square feet surface at the masthead. Vessels so laden and without masts will display the flag at least 10 feet above the uppermost deck. All such vessels must be at all times in charge of competent persons and must comply with the navigation laws in regard to lights and fog signals.

SHEEPSHEAD BAY.

28. No vessel shall anchor or moor so that under any conditions of wind and tide it will be within 100 feet of the wharves or floats along the north shore of Sheepshead Bay, or within 100 feet of the bulkhead or beach at low tide along the south shore of the bay, or within 200 feet east of the footbridge crossing the bay from the foot of Ocean Avenue to the Manhattan Beach property. This shall not prevent small vessels from mooring, not more than two abreast, to the outside of floats and wharves along the north shore, or the mooring of such vessels, as may have the consent of the property owners, to the bulkhead on the south side of the bay, but in no case shall

Exhibit D. 4A.

vessels so moored extend more than 30 feet from said bulkhead, if moored thereto, or from the beach line at low tide if not moored to bulkhead.

Benj. S. Cable, Acting Secretary.

EXHIBIT D. 4A.

NEW YORK ANCHORAGE REGULATIONS

DEPARTMENT OF COMMERCE
OFFICE OF THE SECRETARY
WASHINGTON

Department Circular No. 254

Bureau of Navigation.

May 18, 1914.

To Whom It May Concern:

The Rules and Regulations Governing the Anchorage of Vessels in the Bay and Harbor of New York, issued June 15, 1911, pursuant to the act approved May 16, 1888, as amended by the act approved February 14, 1903, and the act approved March 4, 1913, are hereby amended as follows.

WESTERN ANCHORAGE, UPPER BAY.
(See Plate V.)

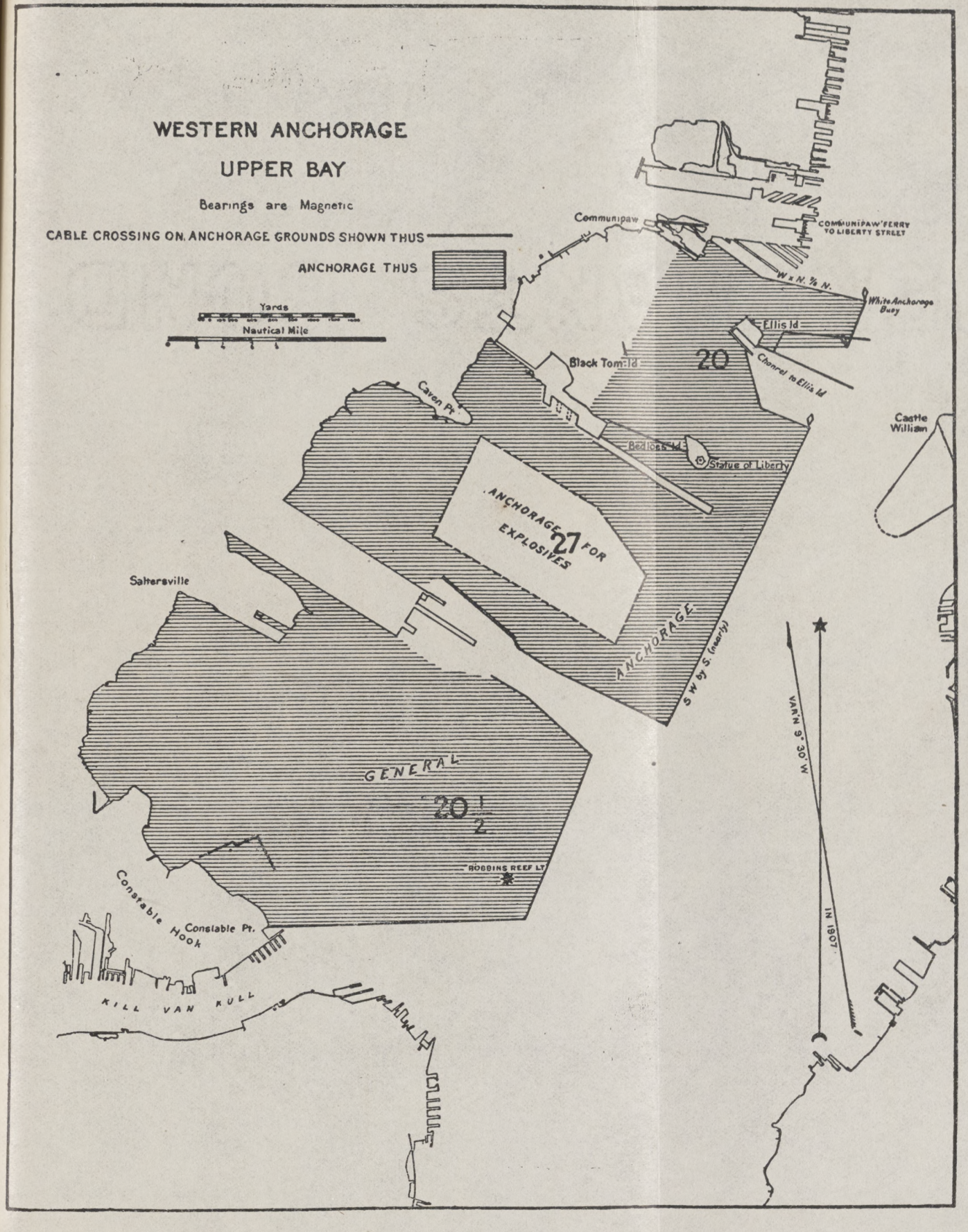
20. At the end of the first paragraph insert:

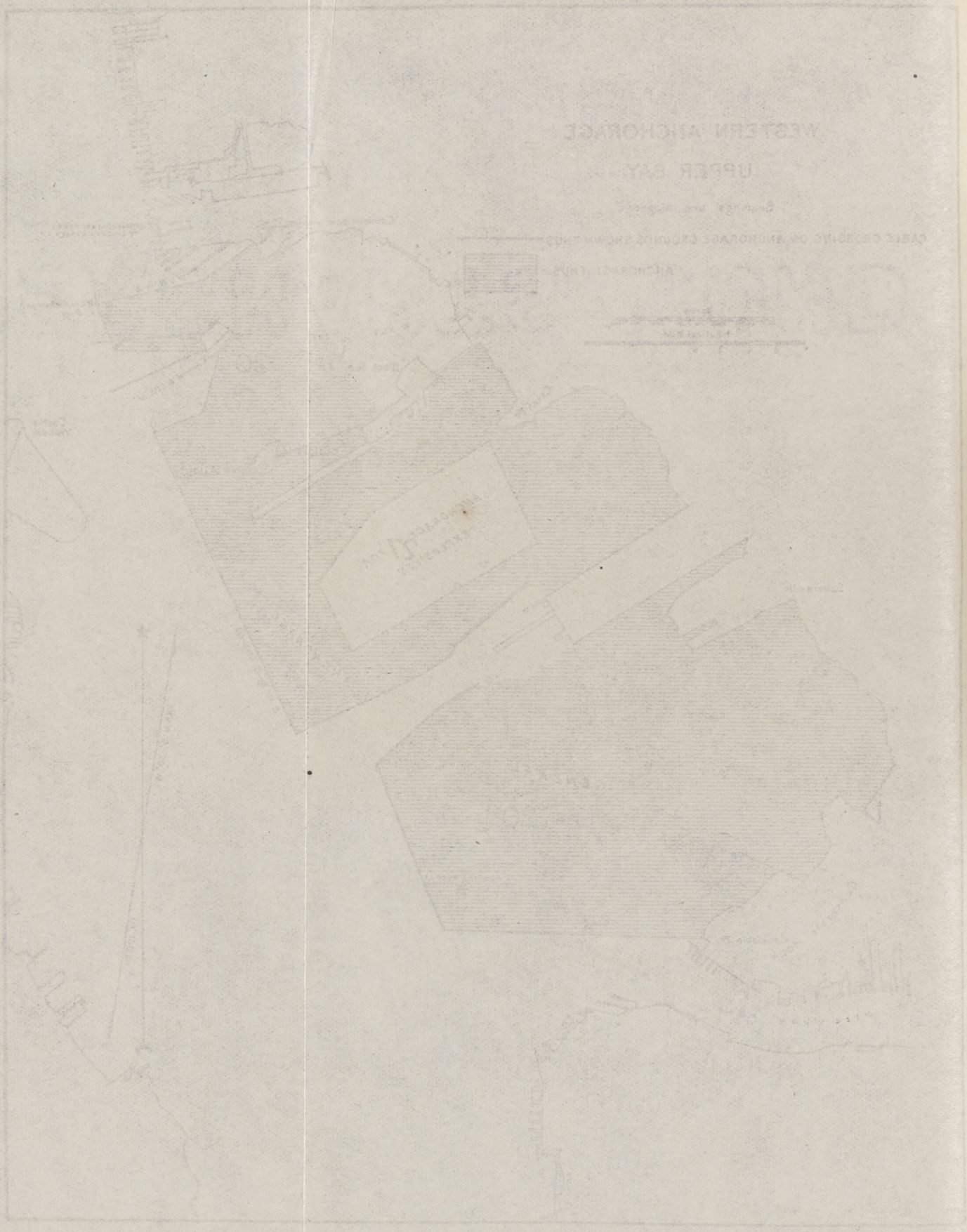
"No vessel shall anchor between Ellis Island and the piers of the Central Railroad of New Jersey, or in the dredged channel approaches to this space."

E. F. SWEET,
Assistant Secretary.

Part of Exhibit D. 4.

PLATE V





2. UNDERWOOD.



EXHIBIT D. 5.

Extreme end of North Pier where man is standing, showing effect of explosion upon box car standing on the track on the end of the pier. Picture taken from the north looking south, showing car thrown southward by explosion. This was car P. & R. 12275.

Exhibit D. 6.

4. UNDERWOOD.



EXHIBIT D. 6.

Car P. & R. 12275, shown on No. 2. This photograph is taken from the extreme east end of the North Pier before they had been destroyed by fire. Taken July 31, 1916.

Exhibit D. 7.

8. UNDERWOOD.

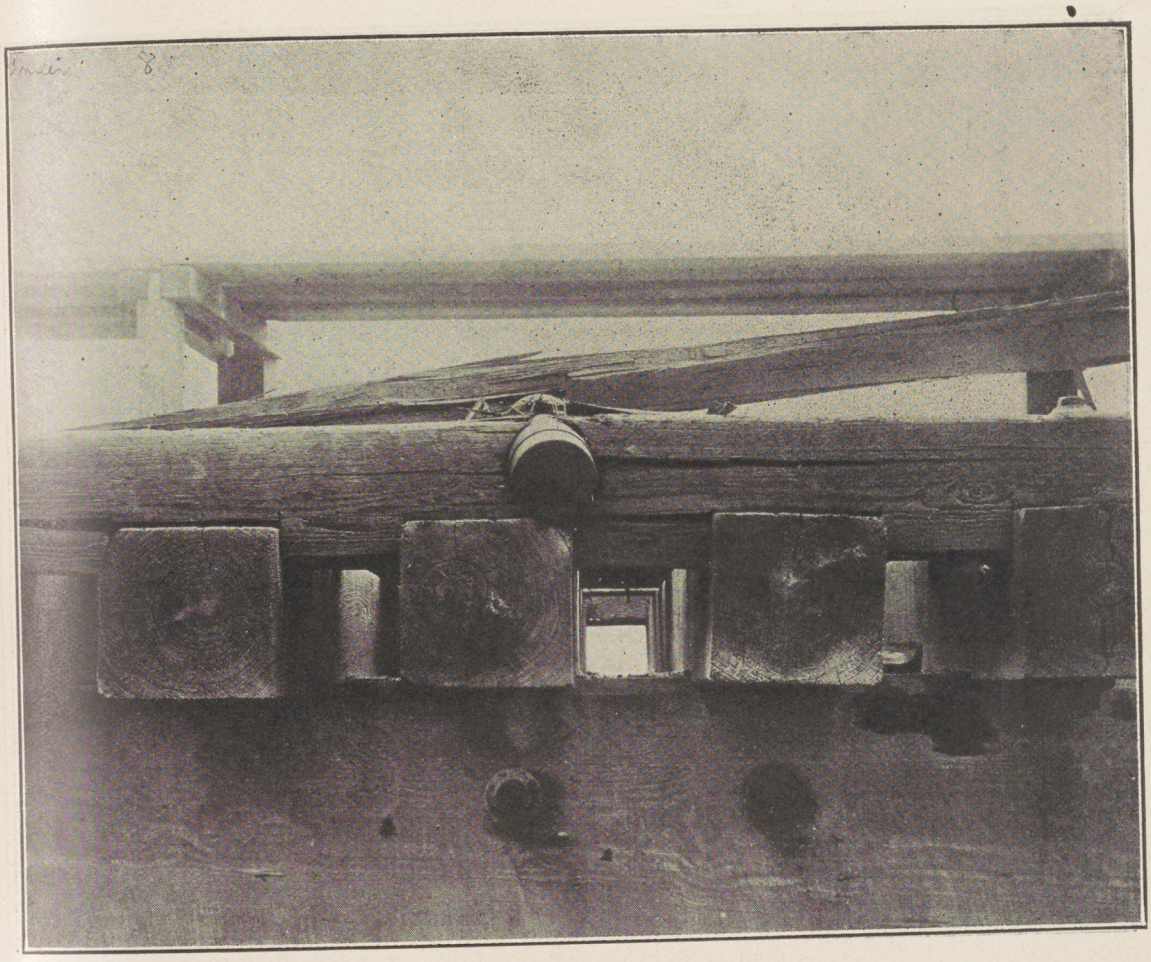


EXHIBIT D. 7.

This photograph shows a 5.11-inch shell imbedded in the superstructure on the north side of the South Pier. The photograph is taken almost directly north and in an almost straight line from the North Pier toward the South Pier.

New Jersey State Library

7. UNDERWOOD.



EXHIBIT D. 8.

Cars on extreme end of South Pier directly opposite the North Pier. These cars were loaded with borax in sacks. The north side of the cars is shown. The south side of these cars is shown in Barth's picture No. 3.

1. UNDERWOOD.



EXHIBIT D. 9.

North Pier looking from east toward west, showing trucks and under-frames of cars, which had been burned. Cars on South Pier can be seen in the distance.

6. BARTH



EXHIBIT D. 10.

This picture shows the south side of warehouses P and Q.

Exhibit D. 11.

9. HARRISON.



EXHIBIT D. 11.

Taken August 4, 1916, from the south side of the east end of the crater near tracks 14 and 15 looking east. Shows the extreme east end of the crater. Shows condition of cars wrecked at the southeast side of the crater.

7. HARRISON.

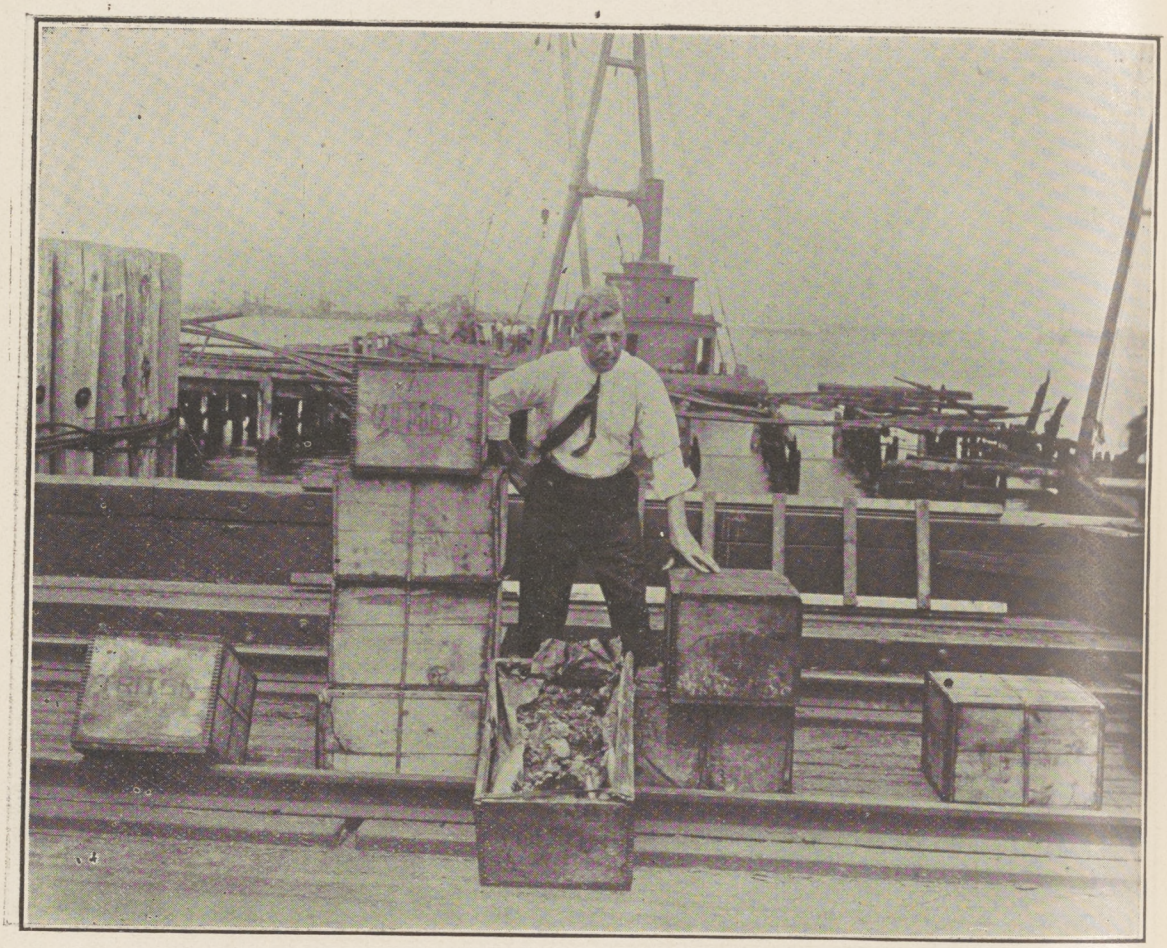


EXHIBIT D. 12.

August 4, 1916. This picture shows some additional packages of T. N. T.

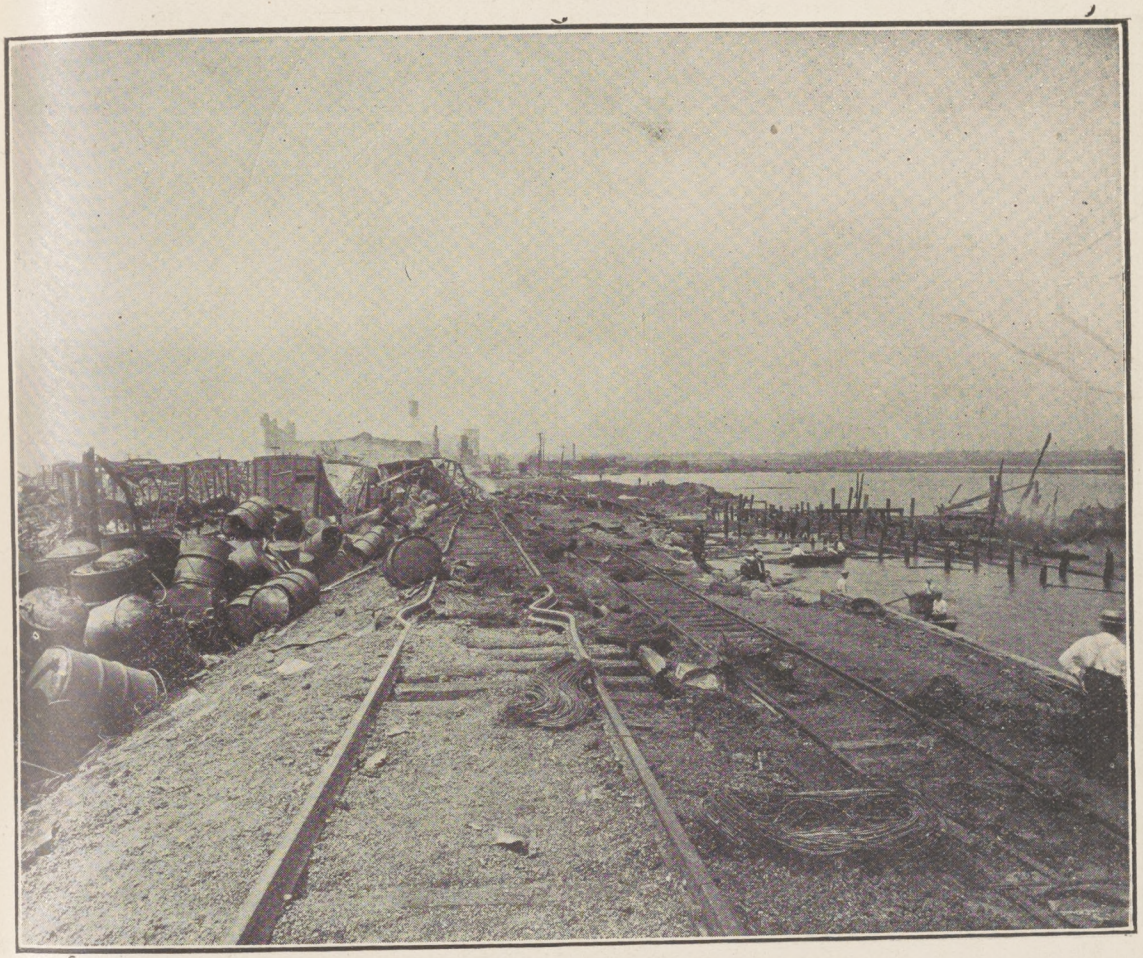


EXHIBIT D. 13.

Taken August 1, 1916, from near land end of North Pier, showing tracks 17 and 18, looking west.

Exhibit D. 14.



EXHIBIT D. 14.

Taken August 1, 1916, from the west end of the crater looking east toward the North Pier.

Exhibit D. 15.

3. HARRISON.



EXHIBIT D. 15.

Taken August 4, 1916, from land end of North Pier looking west, showing track 17 to the right of picture.

12. HARRISON.



EXHIBIT D. 16.

Taken August 1, 1916, from the east end of the crater looking west toward the storage warehouses.

Exhibit D. 17.

6. UNDERWOOD.



EXHIBIT D. 17.

Photograph taken from almost the same point as Exhibit D. 9 with the camera turned toward the southwest, showing the racks protecting the float bridges.

Exhibit D. 18.

19. HARRISON.



EXHIBIT D. 18.

Taken August 1, 1916, from the north side of the east end of the crater looking toward the southeast.

Exhibit D. 19.

2. HARRISON.



EXHIBIT D. 19.

Taken August 4, 1916, from land end of North Pier looking west, showing track 18.

Exhibit D. 20.

10. HARRISON.

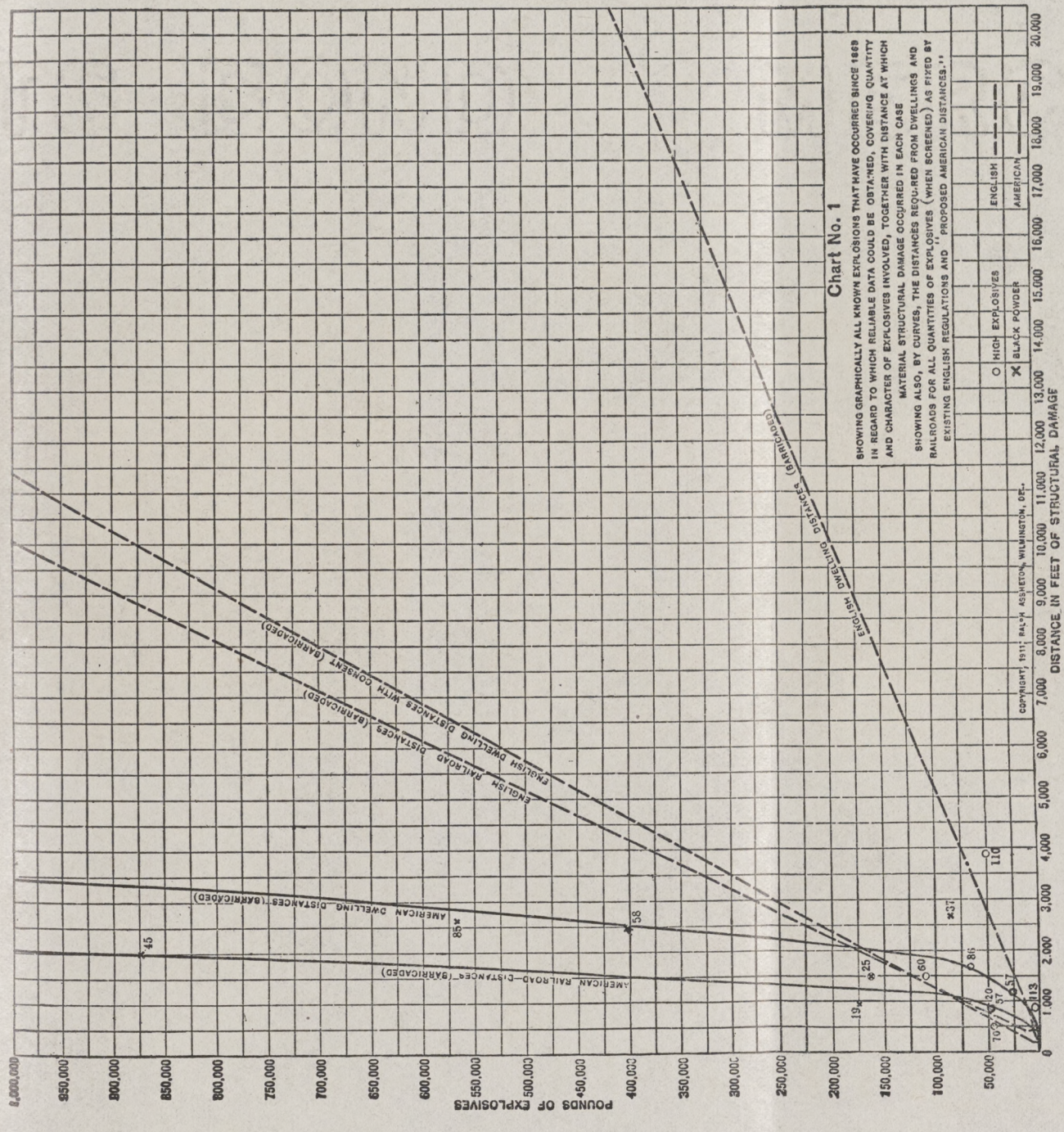


EXHIBIT D. 20.

Taken August 4, 1916, from near the east end of the crater looking east, showing the wreckage of cars near the southeast side of the crater, and looking across the yard toward the bulkhead. The mast of the schooner at the right-hand side of the picture was located at the South Pier.

EXHIBIT D. 21.

CHART No. 1.



Page 6 of pamphlet showing minimum distances for storage of explosives.

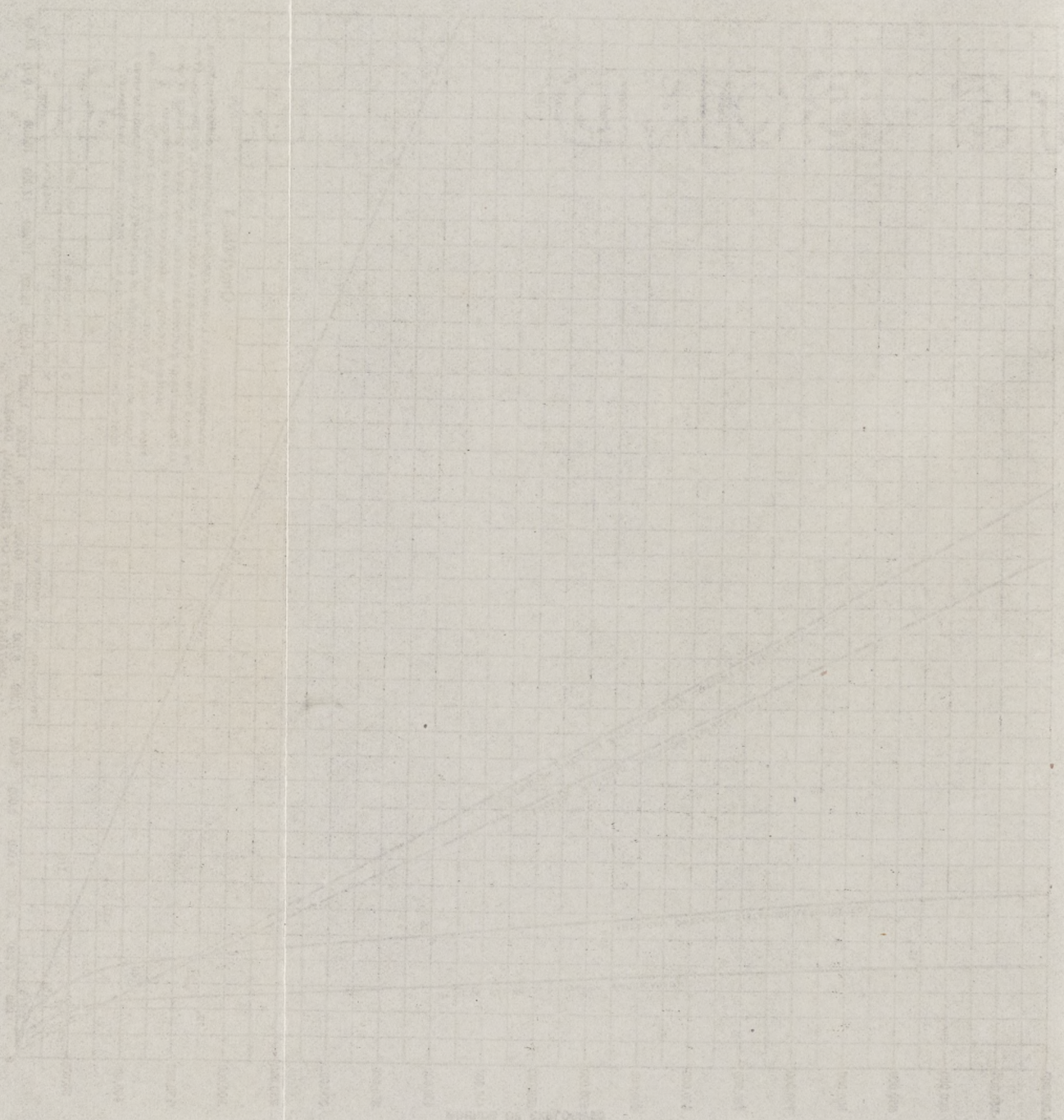
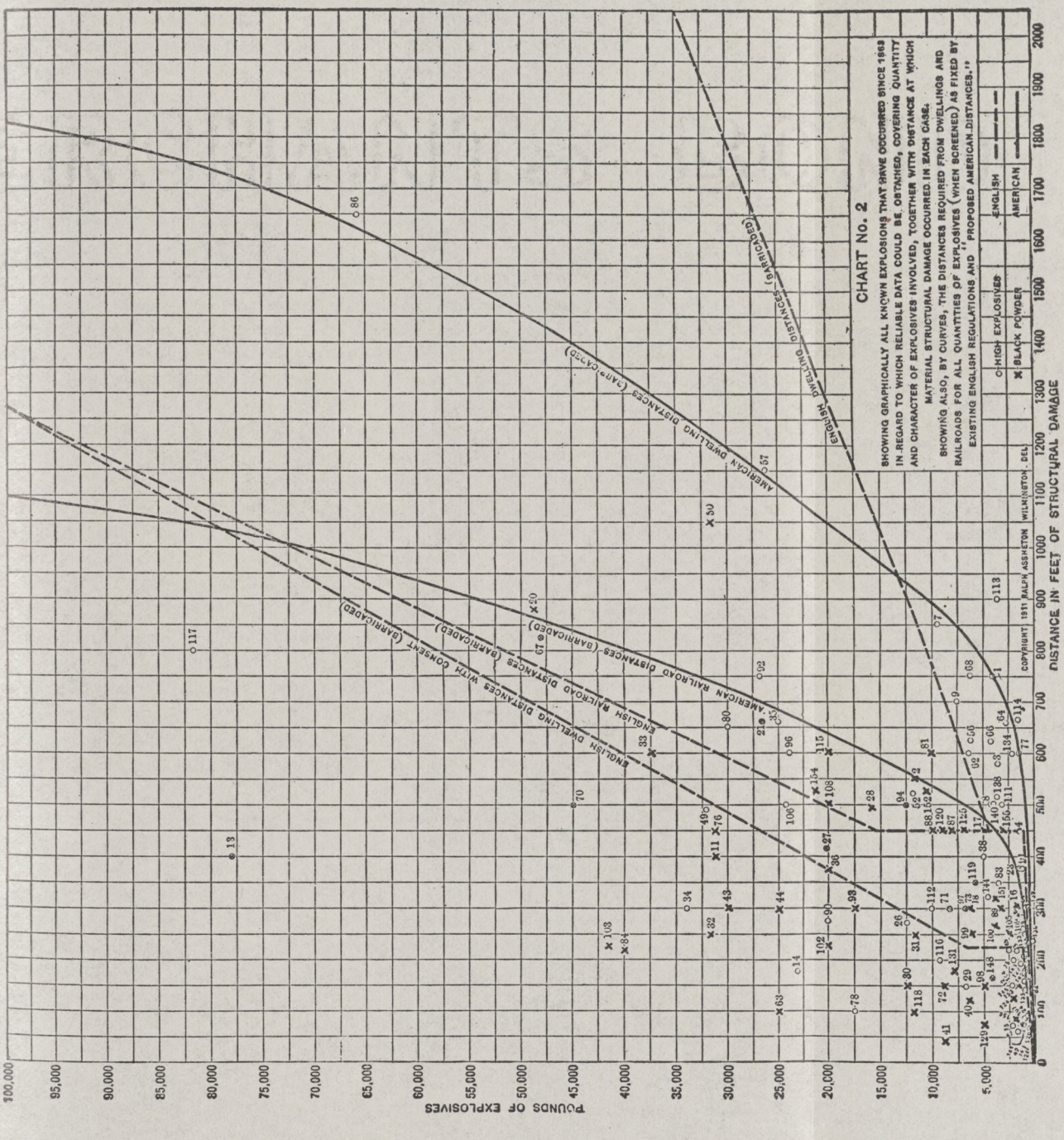
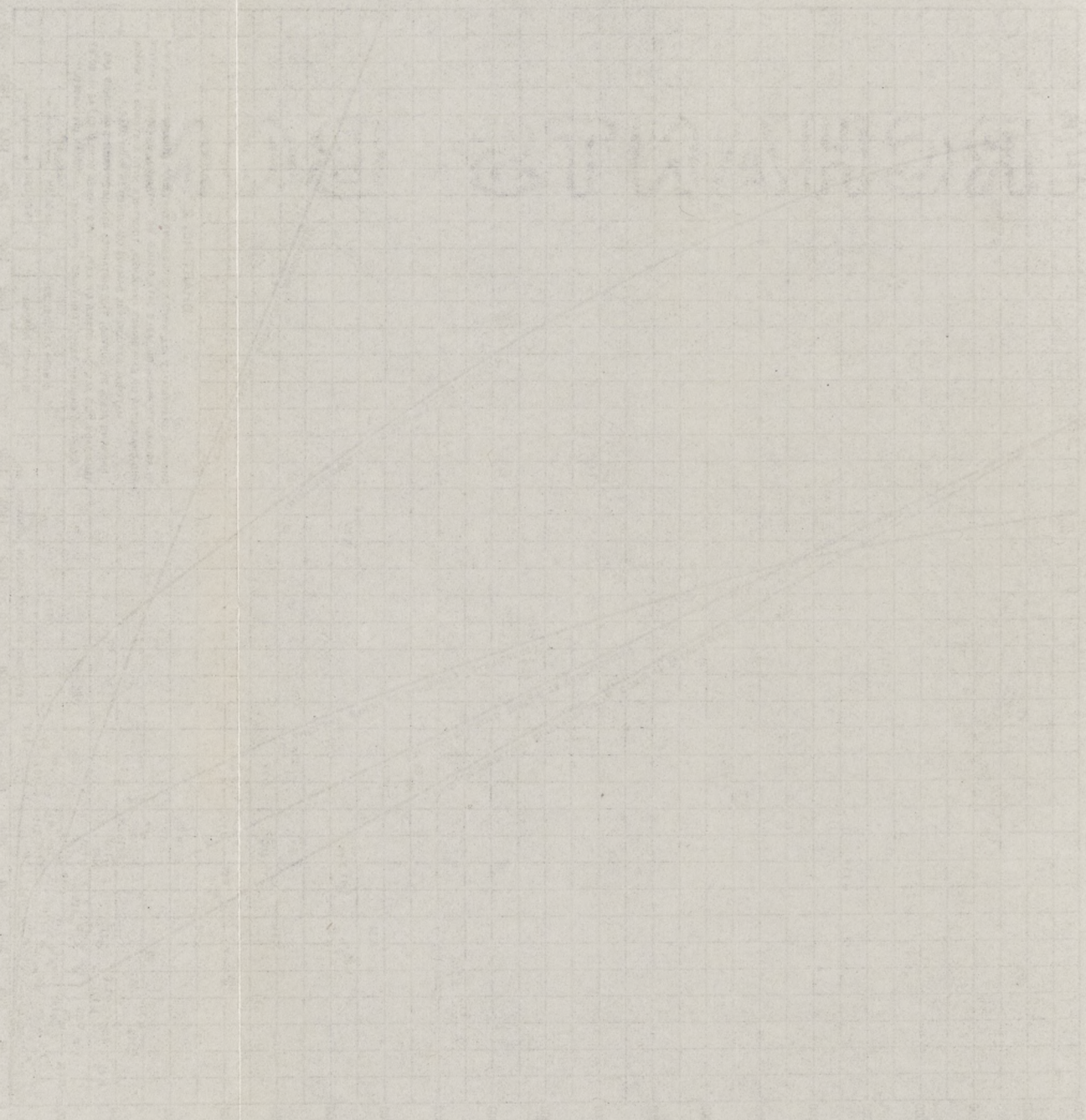


EXHIBIT D. 21.

CHART No. 2.



Page 7 of pamphlet showing minimum distances for storage of explosives.



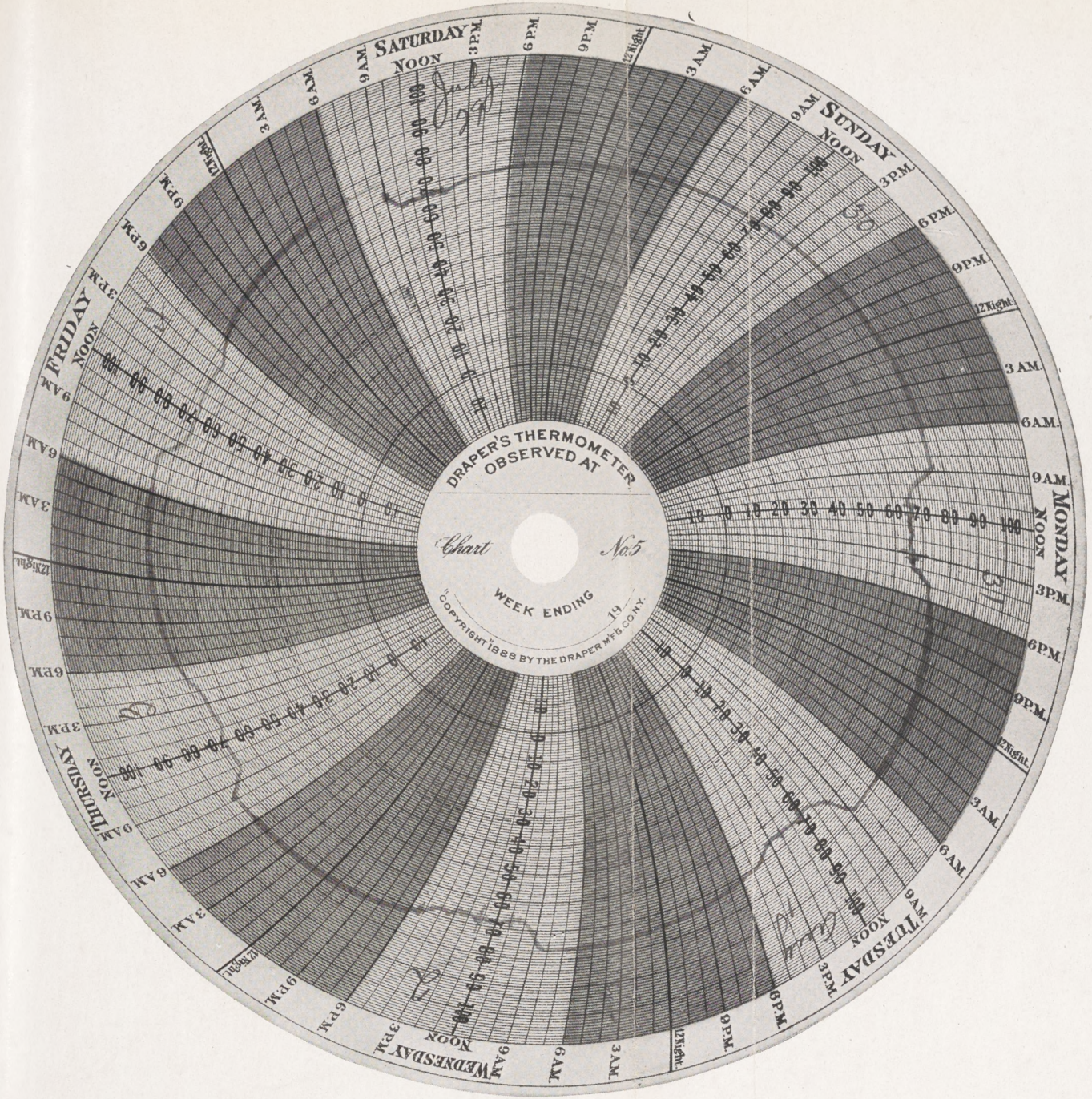


EXHIBIT D. 22.

Record of Automatic Thermometer.

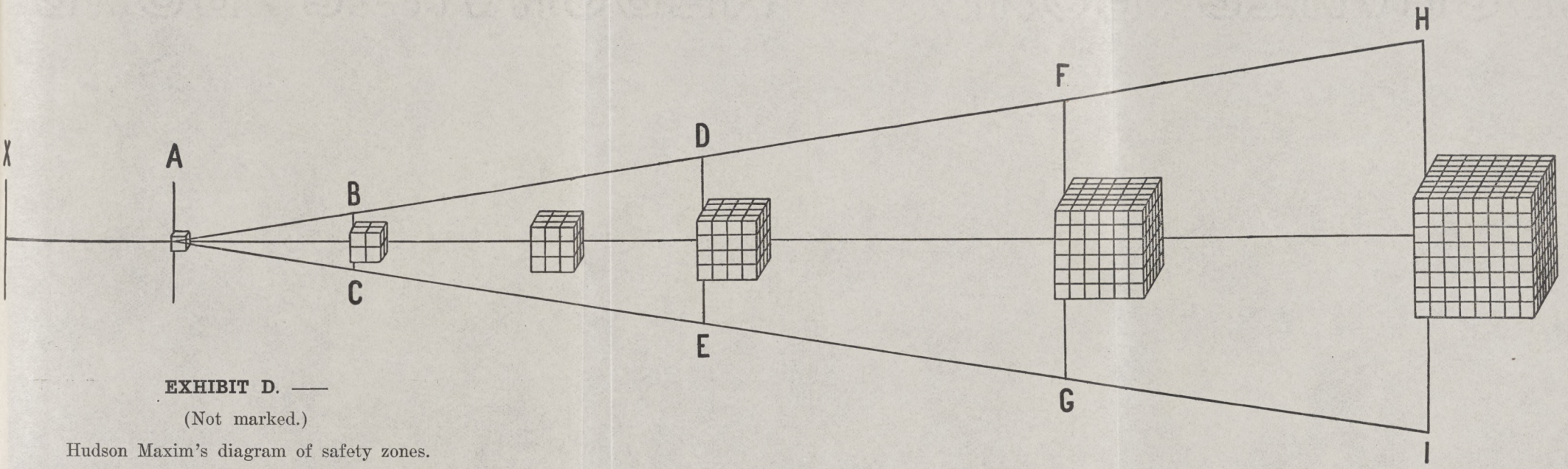
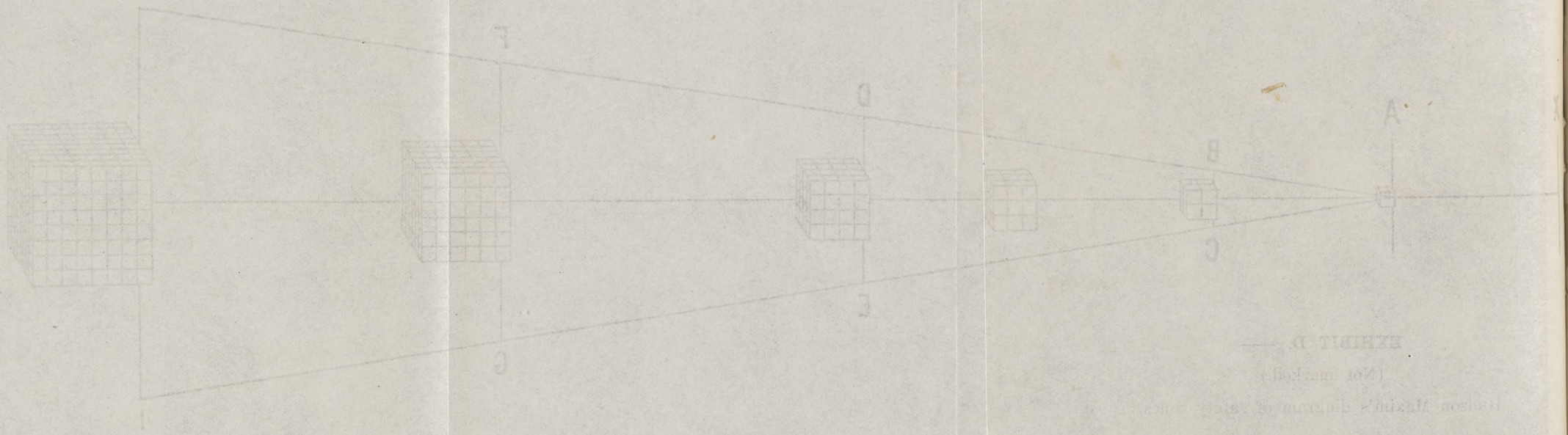


EXHIBIT D. ——

(Not marked.)

Hudson Maxim's diagram of safety zones.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New Jersey Court of Errors and Appeals

1. ROYAL INDEMNITY COMPANY,
2. NEW YORK PLATE GLASS INSURANCE COMPANY,
3. CHICAGO BONDING & INSURANCE COMPANY,
4. OCEAN ACCIDENT & GUARANTEE CORPORATION, LIMITED, OF LONDON, ENGLAND,
5. LLOYDS PLATE GLASS INSURANCE COMPANY OF NEW YORK,
6. METROPOLITAN CASUALTY INSURANCE COMPANY OF NEW YORK,
7. FIDELITY & CASUALTY COMPANY,
8. COMMERCIAL CASUALTY INSURANCE COMPANY OF NEWARK, N. J.,
9. CHILDS COMPANY, a corporation,
10. TRUSTEES OF ST. PAUL'S EVANGELICAL LUTHERAN CHURCH,
11. ELEAZER E. CLARK, et al.,
12. IRA W. ALLEN,

Plaintiffs-Respondents,

vs.

LEHIGH VALLEY RAILROAD COMPANY,

Defendant-Appellant.

On Appeal from Supreme Court.

BRIEF OF PLAINTIFFS-RESPONDENTS.

These twelve cases, which were tried together, all grow out of the "Black Tom" disaster in Jersey City on July 30th, 1916, being cases similar to *New Jersey Fidelity & Plate Glass Ins. Co.* v. *Lehigh Valley Railroad*, 92 N. J. L. 467; writ of certiorari denied (*Lehigh Valley Railroad* v. *New Jersey Fidelity & Plate Glass Ins. Co.*), March 3, 1919, U. S. Adv. Rep., May 1, 1919, 63 L. E. —.

Of the cases under review, one (E. E. Clark, *et al.*) was brought by the owners of the schooner "Walcott," which was burned while tied up at Pier 6, behind the warehouses, to recover for the loss of the vessel and her earnings; another (I. W. Allen) was by the ship's steward for injuries received and personal property destroyed by the fire and explosion, and the other ten suits were for window glass destroyed by the explosion.

With the exception of the Clark and Allen cases, the damages in all other cases were stipulated and agreed to, being shown by schedules and supporting affidavits.

As the losses of all plaintiffs resulted from the same fire and explosion, the same evidence was necessary in all of these cases to prove the facts of those events on the part of the plaintiffs,

and the same evidence introduced by the defendant applied to all of the plaintiffs.

The Facts of the Situation.

The complaints alleged, and the proofs showed (see appendix to this book, and exhibits):

a. That the defendant accumulated a vast amount of explosives and munitions in Jersey City, in the metropolitan district, and held them there from 2 to 11 days.

b. That the munitions were so stored and disposed and bunched, that fire in one car of this dangerous material would soon be communicated to and involve other cars of the same or more dangerous properties.

c. That the yard in question was not policed against persons having no business there.

d. That no provision was made to combat a fire, if one should occur at or near these cars.

e. That the cars were not guarded or watched for the purpose of discovering or extinguishing a fire.

f. That a fire occurred and burned for some period of time before that fact was known to defendant.

g. That after the discovery of the fire no effort was made to extinguish it, or even to ascertain its extent.

h. That as a result of said fire an explosion occurred which caused the damages sued for.

ARGUMENT.

(The point numbers are those on appellant's brief.)

I.

Re defendant's immunity from any duty except that specified by the federal regulations.

The point urged by the defendant under this heading is that as the explosives in question were at the time of the fire and explosion in the course of interstate or foreign commerce,

> "defendant urges that under these circumstances the Interstate Commerce Commission regulations were exclusively controlling, and that the question for the consideration of the jury was—not whether the defendant had exercised the care commensurate with the risk or had performed certain other duties not specified in said regulations, but whether it had complied with the regulations."

Further:

> "the regulations must be considered to have force and effect of a statutory provision, and the defendant therefore claims that when the regulations prescribe that certain precautions must be taken * * * the question of the defendant's liability depended upon whether or not it complied with the regulations, and if it appears that the defendant has obeyed said regulations, that fact is sufficient to meet a charge of negligence."

In view of the repeated assertion on the argument that this case differs from the Fidelity case, in respect of the issue of the measure of care under the federal regulations, upon examining the printed record in the Fidelity case (p. 459) it will be seen that the Court said, in its charge:

> "There is no doubt that the explosives in question in this suit were subject exclusively to the regulations of the Interstate Commerce Commission. * * * The regulations of the Interstate Commerce Commission, as I have said, are controlling, and exclusively controlling upon this subject, and in respect to matters where the regulations have been adopted, I charge you that the duty of the company was in the transportation of explosives to exercise care commensurate with the risk; and that the company will be liable for damages resulting from the failure to exercise such care."

The subject of the foregoing instruction was made the basis of the 2d, 3d and 4th grounds of appeal in that case, and were fully urged in this court as well as in the United States Supreme Court on the application for a writ of certiorari, and there can be no pretence that this question was not squarely raised in all of the stages of the former case.

In view of the arrangement of defendant's brief, asserting alleged errors without reference to grounds of appeal, the following considerations are earnestly urged upon the court's attention:

1. The Court did not instruct the jury that they could find the defendant guilty of negligence in respect of any of the so-called common law duties.

2. The Court charged the jury that the federal regulations were exclusively controlling so far as they have occupied the field.

3. The Court did not charge the jury that the defendant was bound to comply with—or that it could find the defendant guilty of violation of—any federal regulation, as such.

4. The Court charged the jury that the duty of the carrier, under the regulations, was only to use reasonable care commensurate with the risk, to handle these explosives so as to prevent injury to others.

Therefore:

1. The so-called common law duties were not specifically in the case.

2. If the Trial Court was right in instructing the jury that the federal regulations meant only that the defendant should exercise reasonable care, nothing outside the regulations was submitted to the jury.

3. (a) If the federal regulations occupy the whole field, and

(b) If the instruction that it was the duty of defendant to use reasonable care was too broad, or imposed a greater duty or a different duty than can be spelled from the letter and spirit of the regulations, then the Court fell into error.

4. But if the federal regulations do not occupy the entire field, there was no error in charging that the extent of defendant's duty was to use reasonable care.

As to Proposition 3, if the Court shall hold the federal rules occupy the entire field of regulation, so that there is no room for the operation of the local law, the Court must credit Congress and its agent the Interstate Commerce Commission with the purpose of affording to the public at least the same measure of protection as it enjoyed at common law, for the regulations were certainly never formulated and promulgated with the intention of increasing the danger, which is always present in the handling of high explosives.

In *Johnson* v. *So. Pac. Ry. Co.,* 196 U. S. 1, it was urged that as the Safety Appliance Act did not specifically require locomotives to be equipped with automatic couplers, no liability could be predicated upon such an omission; and in *Southern R. R. Co.* v. *Carson,* 194 U. S. 136, it was urged that the statute did not expressly require that couplers should be maintained in good condition, and in each case the court held that the act should not be so narrowly construed, and that the providing of automatic couplers on locomotives and to keep them in repair, were duties inferentially, yet clearly, required by the law.

So we submit that if the federal regulations are exclusive (considered as remedial legislation and not as a criminal code) a reasonable construction absolutely justifies the instruction that the duty thereunder is to exercise the measure of care commensurate with the risk of danger involved in handling explosives. Such a construction is compelled by every consideration and the necessity of avoiding absurdity. We respectfully contend that on the premise stated, there was no error in the construction of the regulations, or in the instruction of the jury accordingly.

As to Proposition 4, it is not difficult, but altogether reasonable, to conclude that the federal regulations do not, *if strictly construed,* regulate all phases and circumstances of a railroad company's custody and handling of explosives. It would be idle to cite authorities for the proposition that reasonable care is a relative and not an absolute term. And this vast land of ours, with its differences and variations of topography, density of population, natural resources, industrial development and transportation facilities, presents so many phases for the application of the doctrine of reasonable care as a rule of relation, and circumstance, that upon a reading of the federal regulations covering the handling of explosives, it will be seen that there are many situations which are not alluded to.

We concede that the regulations do not specify any different rules for the handling of explosives in New York Harbor than for the uninhabited prairies of the Southwest. We concede that the regulations do not specify, by name, the employment of watchmen or the provision of means of extinguishing fires, neither do they expressly require anybody to put out a fire if one should be discovered under or near a carload of gunpowder. We also concede that the regulations are no different for a single car of explosives than they are for a hundred cars congregated in one place. Of course no one would contend that the measure of care required in the handling of a car of wet nitrocellulose at Sage Brush Junction, Arizona, is exactly the same as would be required with reference to 100 carloads of dynamite in New York City, but the distinction is not pointed out in the federal regulations.

And it will also be noticed that the regulations in question were published in July, 1914, and were undoubtedly in the process of revision many months before their publication. At that time the use and transportation of explosives were mainly

in the pursuance of the arts of peace, and the transportation of the unprecedented volume of explosives demanded by the world war was never contemplated. One may search in vain through the red-book for any rule suggesting the possibility of the accumulation of millions of pounds of explosives in densely populated districts, which of itself is a sufficient illustration of our suggestion that it is not difficult but reasonable to find that the regulations, if construed by the letter, did not cover, or purport to cover, the conditions existing at Black Tom.

At common law it was the duty of the carrier or custodian of explosives to exercise a measure of care commensurate with the risk.

Note.—L. R. A., N. S., 1916 B. 725; *Denver, etc., R. R. Co.* v. *Conway,* 5 Pac., 142; 54 Am. Rep., 537; *Hertz* v. *C. I. & S. Ry. Co.,* 154 Ill. App., 80; *Gulf, C. & S. F. Ry. Co.* v. *Fowler* (Tex.), 122 S. W., 593; *Henry* v. *C. C. C. & St. L. Ry. Co.,* 67 Fed., 426; *Wilson* v. *C. & L. Ry. Co.* (Col.), 142 Pac., 174; *Walker* v. *C. R. R. & P. Ry. Co.* (Iowa), 33 N. W. 224; *Ft. Worth, etc., R. R. Co.* v. *Beauchamp* (Tex.), 68 S. W., 502; *Southern Ry. Co.* v. *Adkins,* 133 Ky., 219; 117 S. W., 321; *Kerbaugh* v. *Caldwell,* 151 Fed., 194; *McAndrews* v. *Collerd,* 42 N. J. Law, 189; *Fisher* v. *Western Fuse Co.,* 12 Cal. App., 739; 108 Pac., 659; *Rathbun* v. *White,* 157 Cal., 248; 107 Pac., 309; *Derry Coal Co.* v. *Kerbaugh,* 222 Pa. St., 448; 71 Atl. 915.

Was this salutary and sensible rule, which recognized varying circumstances, abrogated by federal regulations, so that the public is exposed to greater danger than before? Or is the spirit of the common law rules to be found in the regulations?

If the latter question is answered in the affirmative, we may pass to the question of whether the regulations were violated. If it is answered in the negative, we are forced to the adoption of the familiar principle that where Congress has not fully legislated in respect of a matter vital to the health and safety of the people, but constitutionally subject to its jurisdiction, the states may adopt reasonable rules for the protection of its people, so long as such rules do not conflict with the federal regulation.

It is not denied that the regulations of the Interstate Commerce Commission are exclusive, so far as they purport to regulate the subject matter, but assuming, as contended by defendant, that they do not require the employment of watchmen,

or fire protection, or the distribution of cars, or any other precautions in the case of a vast aggregation of dangerous explosives in a metropolitan community, we deny that the failure of the Interstate Commerce Commission to make rules applicable to such circumstances dispensed altogether with the necessity of exercising care.

In support of its contention for the exclusive application of legislative rules, the defendant cites *Hackett* v. *New York, etc., R. R. Co.*, 58 N. J. L. 4, and *New York, etc., R. R. Co.* v. *Leaman*, 54 N. J. L. 202, which hold in effect that where the legislature has prescribed certain audible signals to be given by a locomotive on approaching a highway and the prescribed audible signals are given, the company is absolved from negligence so far as concerns this kind of *audible* warning of the approach of its train. The court, however, in these cases carefully refrained from holding that the giving of the prescribed *audible* signals absolved the railroad company from the consequences of its negligence in the performance of some other duty. And so in the case of *West Jersey R. R. Co.* v. *Abbott*, cited by defendant (Brief, p. 60), the Court said:

> "When the legislature enacts regulations in respect of any precautions to be taken in the use of a dangerous instrumentality * * * those regulations define and limit the measure of duty in respect of *that particular sort of precaution.*"

That, however, is a different thing than holding that *under all circumstances no other sort of precaution* will be required.

The notion that the performance of a statutory duty gave complete absolution from a charge of negligence outside of the statute was effectually disposed of by the United States Supreme Court in *Grand Trunk R. R. Co.* v. *Ives*, 144 U. S. 408. In that case the Trial Court charged the jury as follows:

> "So if you find that because of the special circumstances existing in this case * * * it was reasonable that the railroad company should provide special safeguards to persons using the crossing in a prudent and cautious manner, the law authorizes you to infer negligence on its part for any failure to adopt such safeguards as would have given warning, although you have a statute in Michigan which undertakes by its provisions to secure such safeguards in the way the statute points out. The duty may exist outside the statute to provide flagmen or gates or adequate warnings or appliances if the situation of the crossing reasonably requires that."

Commenting upon this portion of the charge the Supreme Court said:

> "It is also held in many of the states (in fact the rule is well nigh if not quite universal) that a railroad company under certain circumstances will not be held free from negligence even though it may have complied literally with the terms of a statute prescribing certain signals to be given for the safety of the traveling public at crossings." Citing C. B. & Q. R. R. Co. *v.* Perkins, 125 Ill., 127; Thompson *v.* N. Y. Central & Hudson River R. R. Co., 110 N. Y., 636.

Continuing, the Court said:

> "The underlying principle in all cases of this kind which requires a railroad company not only to comply with all statutory requirements in the matter of signals, flagmen and other warnings of danger at public crossings, but many times to do much more than is required by positive enactment, is, that neither the legislature nor railroad commissioners can arbitrarily determine in advance what shall constitute ordinary care or reasonable prudence in a railroad company at a crossing in every particular case which may afterwards arise. For, as already stated, each case must stand upon its merits and be decided on its own facts and circumstances, and these are the features which make the question of negligence primarily one for the jury to determine."

This principle has been recognized and applied by this Court in many cases, of which it will be sufficient to cite two.

In *Pennsylvania R. R. Co.* v. *Matthews,* 36 N. J. L. 531, Chief Justice Beasley said, page 534:

> "They (railroad companies) are not called on to keep flagmen, under ordinary circumstances, at crossings, nor to give any other notice of the approach of their trains than those signals that are prescribed by statute. If greater safeguards are requisite for the safety of the community, and those public agents are to be put under greater restrictions in the exercise of their franchises, such contrivances must proceed from the legislative, and not from the judicial power.
>
> But while I thus say that these additional burthens cannot be imposed by the courts upon these companies, I also say, at the same time, and with quite as much emphasis, that the companies may, by their own conduct impose such burthens on themselves. If one of them chooses to build its track in such a mode as to unnecessarily make the use of a public road which it crosses, greatly dangerous, I think such company, by its own action must be held to have assumed the obligation of

> compensating the public for the increased danger, by the use of additional safeguards. The reasonable and indispensable implication is, that the railway is to be constructed so as not unnecessarily to interfere with the safe use of the public roads; and if a railroad for its own convenience, curves its track so it leaves a deep cut, within a few feet of a highway, and also sees fit to put up buildings close along such track, and by these means, or either of them, heightening the danger in the use of such highway, it seems to me very clear, that such company must be held to have taken upon itself the duty of averting such danger, by the employment of every reasonable precaution within its power. On such occasions as this, or whenever the situation is embraced within the principle stated, the presence of a flagman, or some equivalent safeguard can be demanded of the company. The rule is, as I understand it, that when the company has created extra danger, it is bound to use extra precaucautions. If the track is put in a position where the trains, when close to their transit over a public street or road, cannot be seen, this is an extra danger which calls for more than the ordinary cautionary signals. I can see no difficulty in applying this rule."

See also *D., L. and W. R. R. Co.* v. *Shelton,* 55 N. J. L. 342.

In view of the legislation and regulations referred to, which were formulated for the purpose of securing safety to persons and property, to urge that these provisions must be construed as authority for the omission of those precautionary measures dictated by common prudence, borders upon the frivolous. It is not conceivable that Congress intended to annul the wise requirements of the common law, without providing in its place a rule designed to afford the same measure of protection to the public, *Smith* v. *Alabama,* 124 U. S., 465. No construction should be placed upon a statute or a regulation which renders it frivolous or ineffective or injurious to the public, when the remedial intention is plain. *Bird* v. *United States,* 187 U. S., 118.

It appears that the Federal Pure Food Act forbids the sale of articles unless labels truthfully indicate the contents of certain packages. A state statute provides that the name of the manufacturer should be shown, also the ingredients.

In *Savage* v. *Jones,* 225 U. S., 501; 56 L. Ed., 1182, the Court said (p. 532):

> "Congress has thus limited the scope of its prohibitions. It has not included that at which the Indiana statute aims. Can it be said that Congress, nevertheless, has denied to the state, with respect to the feeding stuffs

coming from another state and sold in the original packages, the power the state otherwise would have to prevent imposition upon the public by making a reasonable and non-discriminatory provision for the disclosure of ingredients, and for inspection and analysis? If there be such denial it is not to be found in any express declaration to that effect. *Undoubtedly, Congress, by virtue of its paramount authority over interstate commerce, might have said that such goods should be free from the incidental effect of a state law enacted for these purposes. But it did not so declare.* * * *

"But the intent to supersede the exercise by state of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress, fairly interpreted, is in actual conflict with the law of the state. This principle has had abundant illustration."

In the foregoing case the Court cited *Reid* v. *Colorado*, 187 U. S., 137; 47 L. Ed., 108, as follows:

(p. 148): "It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police powers of the states, even when it may do so, unless its purpose to effect that result is clearly manifested. This Court has said—and the principle has been often reaffirmed—that 'in the application of this principle of supremacy of an act of Congress in a case where the state law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together.' And in the course of its review of the subjects embraced in the Federal legislation the Court said (pp. 149, 150):

"Still another subject covered by the act is the driving on foot or transporting from one state or territory into another state or territory, or from any state into the District of Columbia, or from the District into any state, of any live stock *known* to be affected with any contagious, infectious or communicable disease. *But this provision does not cover the entire subject of the transporting or shipping of diseased live stock from one state to another.* The owner of such stock, when bringing them into another state may not know them to be diseased; but they may, in fact, be diseased, or *the circumstances may be such as fairly to authorize the state into which they are about to be brought to take such precautionary measures as will reasonably guard its own domestic animals against danger from contagious, infectious, or communicable diseases.* The act of Congress left the state free to cover

> that field by such regulations as it deemed appropriate, and which only incidentally affected the freedom of interstate commerce.
>
> "Our conclusion is that the statute of Colorado, as here involved, does not cover the same ground as the act of Congress, and therefore is not consistent with that act; and its constitutionality is not to be questioned unless it be in violation of the Constitution of the United States, independently of any legislation by Congress."

In the instant case, we are not dealing with a state statute, but the common law rule of the state requiring common carriers (as well as others) to take such precautionary measures as will reasonably guard the property of the citizens of the state against the dangers to be apprehended from the collection of a vast quantity of explosives in close proximity to the homes and field of activity of seven million people.

As nothing is said in the regulations with reference to the particular conditions present in this case, it is another instance of where, to paraphrase the Reid case, "the provisions of the (Federal) law do not cover the entire subject matter of transporting," accumulating, holding and caring for commodities of this kind.

It therefore must necessarily follow, in order to avoid absurdity, that under the given circumstances a duty to exercise reasonable care did exist outside of the limited scope of the Federal regulations.

II.

Defendant's brief, p. 66.

There was ample evidence justifying the submission to the jury of the question of defendant's failure to exercise due care as indicated by the regulations.

The act of Congress authorizing the promulgation of regulations for the transportation of explosives, is a part of the Criminal Code, and does not expressly give any person a right of action for damages sustained because of the non-observance of those regulations, *Lysaght* v. *Lehigh Valley R. R.*, 254 Fed. 351.

Such regulations, however, were binding on the defendant and were properly the subject of consideration in determining whether the defendant had used due care under all the circumstances (N. J. Fid. case, *supra*).

Among the duties prescribed may be cited for illustration Sec. 1643 (Case p. 1144):

> "Suitable provision must be made * * * for the safe storage of explosives."

Sec. 1682 (p. 1158) requires prompt handling and forwarding. Sec. 1689 (p. 1159) provides for removal from all danger of fire. Sec. 1666 (p. 1156) specified the car placards and "condensed rules", headed "HANDLE CAREFULLY—KEEP FIRE AWAY."

The Court did not charge that these duties must be complied with, but that reasonable care was thereby indicated; and it is unnecessary to recount the evidence tending to show that such reasonable care was not exercised.

(a)

The danger of fire in proximity to explosives is pointed out and made the subject of warning in sections 1643, 1666, 1689 and others, with varying phraseology. It is the dominant note of the regulations. In section 1643 the warning is contained in a sentence which covers other subjects which admittedly have no bearing on this case, such as the manner of handling packages while loading cars, the protection from grit of the feet of the men so engaged, etc. However, in reading this regulation to the jury the Trial Judge read the whole paragraph. The Court, and counsel, and jury all understood perfectly that this fire happened at night, and there was no suggestion on the trial that anybody was walking around with gritty shoes carrying packages of explosives in their hands. Nevertheless, at the defendant's request, *the Court charged the jury that the whole section had nothing to do with the case,* adding that there was a duty to take reasonable precaution against fires. In this there is no possible error.

(b)

This section deals with the prevention of access to explosives by unauthorized persons. This provision was clearly not inserted merely for the prevention of theft, but for safety. The evidence shows that Capt. Jamieson, an entire stranger at Black Tom, went through the yard to and from his vessel, without anybody asking him what his business was. He smoked there and saw others smoking. The evidence also shows that numerous scows and lighters, with their captains, mates, etc., were

tied up at Black Tom. Eiseman walked all the way from Communipaw through the length of Black Tom peninsula to the north pier at 12:30 at night without a challenge as to his identity or purpose.

We are willing to admit that the defendant did not give any unauthorized person a written permit to have access to these explosives, but it is clear that the defendant never prevented anybody from going into the yard. The language of Section 1643b is that "unauthorized persons must not have access to explosives at any time while such articles are in the custody of the carrier." We take this to mean that the carrier who has 33 carloads of explosives in an accessible yard ought to adopt some policing plan with a view to prevent unauthorized persons from obtaining access to them. From the evidence we have mentioned, it is manifest that anyone could have gotten at the cars that night without challenge or detection, and therefore that reasonable care to guard these explosives from menace from that source was not exercised.

Outside of this proof, the defendant claimed in its answers (pp. 45, 83, 105, 128, 167, 198, 219, 244, 266, 323, 352) that the origin of the fire was incendiary. Assuming that the defendant's employees did not commit such a crime, the inference remains that some unauthorized person must have obtained access to the explosives through the defendant's loose policing of the yard.

The Court specifically charged the jury that the plaintiffs had the burden of proving their allegations by the preponderance of the evidence, and if they failed to do so, to find a verdict for the defendant (p. 1039, ll. 10 to 20).

(c)

Under this head the defendant complains of the refusal to charge its 4th, 5th and 6th requests, relating to the placard.

The brief contains a misstatement to the effect that the placard was quoted at length in the charge. This is not so (p. 1041, l. 37).

The 4th request, that the placard is not a regulation, is meaningless. The placing of the placard is required by the regulations, and on it are printed some of the regulations in condensed form. The Court said that whether it was a regulation or a warning, it expresses the duty of the railroad company (p. 1042).

The language of the 5th request to the effect that words "Keep fire away" do not constitute an injunction to put out a fire if

one occurs near a car of explosives is an unreasonable construction. A good way to keep fire away from a car is to put it out.

The substance and meaning of the 6th request was charged (p. 1042, l. 35; p. 1050, l. 17).

The statement on p. 81 of defendant's brief that the placard was offered in evidence and was before the jury is an inadvertent mistake. This was not done, and the record does not show it. We offered a placard in the Fidelity case, and lost it, and did not have one to introduce in this case.

It is further stated that the fundamental error in this part of the charge was in recognizing the placard as a regulation. This is not so. (See charge, p. 1041, l. 30.)

(d)

The Court charged in substance exactly what the defendant requested. We find no argument indicating that the law was wrongly stated or that the jury were misled in any way.

(e)

At the request of defendant the Trial Judge charged the first part of Section 1401. At our request he charged the balance of the section. In this there was no error. Whether the manner in which the defendant accumulated and held these explosives without any facilities for protecting them created a hazardous situation was for the jury.

III.

The only issue left to the jury was whether the defendant had exercised due care.

We think the Court should observe the difference between the grounds of appeal and the contentions of the defendant, as summarized in its brief headings. For instance, under Points III (a), III (b), III (c), etc., defendants say it was error to permit the jury to find the defendant liable on the ground

(a) that there was a failure to exercise a high degree of care to prevent fires and explosions, or to watch and guard the explosives, or to employ sufficient watchmen to detect trespassers or incendiaries, and that such failure was the proximate cause of the damage to the plaintiffs.

(b) On the ground that there was a failure to exercise a high degree of care to discover and extinguish fire;

(c) On the ground that there was a failure to provide sufficient fire-fighting devices and apparatus;

(d) On the ground that there was a failure to use a high degree of care in the storing, handling and disposing of the explosives to prevent communication of fire and detonation from one part to the other;

(e) On the ground that there was a failure to provide sufficient means for communication with the fire and the police departments of Jersey City;

(f) On the ground that there was a failure to notify the fire department of Jersey City;

(g) On the allegations of negligence specified in the Clark and Allen complaints.

It is difficult to understand what is meant to be conveyed to the Court by the expression:

> "It was error to permit the jury to find the defendant liable."

What the Trial Judge did, in the trial of these cases, was first to tell the jury just what the plaintiff's allegations were, as set forth in the complaints (p. 1034). He then proceeded to outline to the jury the defenses set up in defendant's answers (p. 1037). The Court then proceeded to explain the effect of the Federal statute and regulations in the following words (p. 1038, l. 35):

> "I charge you that the effect of the regulation * * * was * * * that individuals or companies maintaining agencies dangerous to human life must exercise a high degree of care for the safety of those who may be thereby exposed to danger, and by a high degree of care is meant no more than a degree of care commensurate with the risk of danger * * * the burden therefore rests upon the plaintiff in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by plaintiff * * * If the plaintiff has not made out that manifestly the plaintiff is not entitled to a verdict, but the verdict would have to be for the defendant."

The Court then reverted to the regulations of the Interstate Commerce Commission (p. 1040) and read Section 1643 (a) and (b), and said (p. 1041):

> "Insofar as those provisions have a bearing upon the duty of the defendant company, with respect to handling

> these explosives, it cast upon them the duty to use a high degree of care for the safety of those who might be thereby exposed to danger, and that denotes no more than a degree of care commensurate with the risk of danger."

The Court then read a part of Section 1666—describing the placard—but without reading the placard, and said:

> "Whether this be a regulation or a part of a regulation, or whether it be a warning, it correctly and aptly expresses the duty of a railroad company handling explosives, which duty when properly interpreted means that they shall use care commensurate with the risk of danger to keep fire away from those explosives."

The Court then summarized the provisions of 1689, including the provision that cars should be removed from all danger of fire and said:

> "Now that last clause that they must be removed from all danger of fire does not impose upon the company an absolute duty that they must at all hazards remove them from all danger of fire, but they must use a high degree of care, a degree of care commensurate with the risk of danger involved in the transaction, to remove them from all danger of fire."

The Court then (p. 1043) defined or explained what reasonable care is. He then (p. 1044), as suggested in a request of the defendant, explained the Emergency Doctrine. Next, he proceeded to charge the jury, as requested by the defendant, on the subject of spontaneous combustion, the Barge Seventeen and on certain other points submitted. That is the scope of the charge.

The contentions of the brief, therefore, that the Court "permitted the jury to find" the defendant liable on the numerous grounds specified does not mean, as might be inferred from this statement, that he charged the jury to that effect, and it is apparent:

(a) That after reading the above-mentioned extracts from the regulations, the Court charged the jury that all they meant and all that was required under these regulations, was that the defendant must exercise reasonable care under the circumstances. This was certainly favorable to the defendant.

(b) In his instructions to the jury the Court never mentioned, or even referred to, the so-called common law duties complained of in defendant's brief.

We, therefore, repeat that the contentions of the brief under Point III that the Court permitted the jury to find the defendant liable on various specified grounds, are very much more broad,

vague and indefinite than the particular assignments of error or grounds of appeal on which these contentions are supposed to rest.

Presumably, in support of its contentions that the Court should have directed a verdict, the defendant argues that these cases were submitted to a jury upon different or alternative theories, and that the verdicts cannot be sustained if the evidence fail to support any one of the theories, and in this we think counsel have fallen into confusion and error. The principle is well understood that if a defendant is charged with the commission of a tort on two theories, for one of which the defendant is responsible but not for the other, the plaintiff must fail if the evidence does not show that the injury was the result of the cause for which the defendant was responsible.

Stumpf v. *D., L. & W. R. R.*, 76 N. J. Law 153.

This case, however, was brought on a single theory that the defendant was negligent in the observance and performance of its legal duty to exercise the care demanded by the circumstances. As in the driving or control of an automobile or railroad train, reasonable care involves attention to several details, such as speed, observation of traffic, signals, &c., the legal duty is to exercise reasonable care, and where reasonable care involves two or more particulars of action, the different particulars do not constitute or call for the application of different theories of law. They are but different branches of the same theory. And we submit that the verdicts cannot be disturbed if there was evidence from which the jury was justified in finding that the defendant was negligent in any of the particulars of its duty.

In *Sutton* v. *Bell*, 79 N. J. L. 507, it is said:

> "The existence of negligence, whether of the plaintiff or of the defendant, depended upon the conclusion to be reached from a variety of circumstances, considered not as isolated occurrences, but altogether and in view of their relation to and reaction upon each other. To draw a conclusion as to the conduct of the parties under such circumstances thus connected is of the very essence of the jury function. In proportion as such circumstances multiply and intercalate, it becomes more and more a matter of deciding between conflicting inferences, and less and less a matter of declaring that one inference alone is conclusively compelled by the testimony."

In *Gore* v. *D., L. & W. R. R. Company,* 89 N. J. L., p. 224, this Court says:

> "It may well be that as to no one of the elements that contributed to cause the plaintiff's accident did the defendant violate any direct duty owing to her, and yet it may also be true that the combination of all of these elements created a situation that called for the exercise of some care by the carrier for the safe exit of the plaintiff from its train.
>
> "Such duties by a carrier are often in the alternative, so that while no one duty is specific, it does not follow that they may all be neglected with impunity. Thus, under ordinary conditions, there is no direct duty to assist passengers to alight, or to warn or instruct them, or to furnish additional light, so, also, there may be no direct duty to stop the train opposite the station platform or to avoid disembarking passengers on a paved roadway, but, notwithstanding the absence of direct duty as to each of these isolated elements, an alternate or conditional duty may arise from their fortuitous combination."

And so, in considering whether the defendant was entitled to a directed verdict on the single ground that there was not enough evidence to show that its negligence was the proximate cause of plaintiff's losses, the undisputed facts are that the bulkhead yard had an unguarded shore front of at least two thousand feet; the war was raging in Europe, and German spies were active in the destruction of military supplies. There were thirteen vessels of various descriptions moored in the immediate vicinity of the North and South piers, presumably in charge of such crews as are usually found on such boats, addicted to smoking, and who were not required to stay on their boats. (See testimony of Hanson, Eiseman and Jamieson.) The testimony is clear that persons approached and walked through this yard after midnight, without the slightest challenge, and that the place was not guarded or protected in any way. In other words, the most favorable setting for the intentional or accidental ignition of these munitions was created by the defendant. Spontaneous combustion is entirely eliminated. The fire, however, was started, and, as our own knowledge and experience teaches, fire is usually started intentionally or accidently by human agency. And we submit that under the settled law of this State, as recognized by this Court, it was for the jury to draw the inferences arising from these facts.

In *Wiley* v. *West Jersey Railroad,* 44 N. J. L. 247, a fire was discovered at a distance of one hundred and fifty feet from a

railroad track some time after the passage of a train. The wind was blowing moderately away from the railroad and the fire occurred where the herbage and leaves were dry. The Court said:

> "So far as shown, there was no way of accounting for the fires, except on the supposition that sparks had escaped from one or more of the locomotives. These facts warranted the inference that the fire was communicated by one of the engines. Such was the possible cause of the effect produced. The evidence tended to disprove the presence of any other cause and, therefore, it was, of course, reasonable to believe that this was the real cause."

The Court, therefore, held that it was for the jury to determine whether or not the fire actually did occur by reason of the existent combination of all of the factors which made it possible.

In *Vosler* v. *D., L. & W. R. R. Co.,* 77 N. J. L. 727, a man was found dead with a broken neck in the cellarway of a railroad station. The man was seen in the waiting room just before a train arrived about seven o'clock in the evening, and three o'clock the next morning his dead body was found in the cellar. The plaintiff's action was brought on the theory that the plaintiff left the waiting room to take the train; that the outside of the station was not properly illuminated and that the deceased was killed by falling down the cellar stairs. We argued strenuously in this Court that upon the evidence there was no causal connection between the matter of lights and the death of the decedent. But this Court held that the possibility, under all the circumstances, that the deceased, on his way to the train, turned toward this stairway and did not see it and, therefore, fell into it, was not a conjecture, but, on the contrary, a reasonable inference, which was supported by the fact that his dead body was found at the foot of the stairway, which was a logical sequence of what probably happened under the conditions stated, and the jury were authorized to consider all of the circumstances favoring the plaintiff's theory of the accident.

In *Newark Electric Company* v. *Ruddy,* 62 N. J. L. 505, Judge Collins quoted from the opinion of Baron Channell in

> *Bridges* v. *North London Railway Company,* L. R. 6 Q. B. 377,

as follows:

> "Where it is shown that the accident is such that its real cause may be the negligence of the defendant, and that whether it is so or not, is within the knowledge of the defendant and not within the knowledge of the plaintiff,

> the plaintiff may give the required evidence of negligence without himself explaining the real cause of the accident by proving the circumstances and thus raise a presumption that if the defendant does not choose to give the explanation the real cause was negligence on the part of the defendant."

In this connection it is important to observe that in all of these cases the defendant believe from the facts in its possession and formally pleaded in its answers (see p. 14, *supra*), that,

> "The explosion mentioned in the complaint was due to a fire caused by incendiarism, of which the defendant had no knowledge or suspicion, and said fire occurred notwithstanding due diligence by the defendant to prevent incendiarism."

This plea, while it inferentially alleges that the defendant was diligent in its efforts to prevent incendiarism, which, we assume, means setting fire by some unauthorized person, it is, nevertheless, an admission that some unauthorized person started the fire. And, in view of the issue thus raised by the charges in the complaints and this charge or admission of incendiarism in the answer; and of all of the circumstances affording opportunity for the intentional or accidental setting of the fire, we submit that the Court would not have been justified in taking from the jury the right to consider the weight and effect of this evidence.

What we have said in this connection may, however, seem to be unimportant, in view of the other evidence in the case, because under all of the circumstances of this case, the question of the cause of, or responsibility for, the fire in its inception was not a controlling issue for the reason that the cause was tried on the theory that the most important phase of the defendant's negligence was its failure to provide men and means to combat a fire if one should occur accidentally or otherwise, and its negligence in failing and refusing to make any effort to put out the fire in its incipient state and before it had involved a number of cars. And this was recognized by the Trial Judge in his charge to the jury.

The defendant suggested that there was a possibility, and only a bare possibility, that the origin of the fire was spontaneous combusion, and the Court, at defendant's request, charged the jury that if the fire originated in this manner, the defendant could not be charged with negligence on account of the starting of the fire, which was followed by the instruction that if the fire did start from spontaneous combusion and that the defendant

by exercising reasonable care could have discovered it in time to put it out, and by the exercise of the same degree of care, could have put it out, and failed to do so, then the proximate cause of the loss was the failure of the defendant to act when knowledge of the circumstances was brought to its attention.

Referring to Requests 15 to 21 inclusive, mentioned on p. 90 of the brief, the 20th request was charged. As to the others, in view of the evidence showing the lack of fire protection, the absence of watchmen from the yard, the loose policing, the failure of any of defendant's employes to discover the fire, the massing of the explosives, and the interval of a half an hour from the time the fire was discovered by Burns (pp. 817, 818) about 12:25 or 12:30, until communicated to the Fire Department at 1 o'clock (Gately, p. 497; Closterman, p. 569), we submit that the Court could not justly charge the jury that there was no evidence tending to show lack of care in these respects; and therefore even if the Judge had mentioned these matters in his instructions (which he did not) it would not have been error to do so.

Coming to Subdivision (a), p. 92:

A restatement of the evidence is unnecessary. So far as spontaneous combustion is concerned, it must be remembered that the answers in each case claim that the fire was incendiary.

The effort, if it can be called an effort, to show that the fire was due to spontaneous combustion, does not justify serious consideration. The defendant attempted to show that the fire started in a carload of 3.3-in. shells, containing black powder in the propulsion chamber, and that under certain conditions black powder was subject to spontaneous combustion. Of course it was not shown that the requisite conditions were present (p. 926). Furthermore we assume that if the powder became spontaneously ignited, the result would be that the shell would be discharged and, instead of a conflagration among a lot of steel and brass shells, there would have been a fusillade of artillery ammunition fire going on in that car, which in the stillness of midnight would have been audible to some one. But the evidence is that the fire burned a half to three-quarters of an hour before the explosion of the first shell occurred. The theory of spontaneous combustion was nothing more than a suggestion and did not rise to the dignity of a possibility.

b.

This point raises a question of fact. According to Foreman Kane, after he was informed of the fire, and had watched it a while, he spent three-quarters of on hour in telephoning, and the first shells did not begin to burst until he had nearly finished telephoning (pp. 611, 613, 614).

"Watchman" Kelly testified that after he heard the fire whistle he waited 10 minutes before he became curious and investigated, and then saw that the blaze was a small blaze about four feet high between the cars (p. 647).

"Watchman" Sloan saw the fire, about the size of a barrel, and went back to the pumphouse and never looked at it again until the next morning (pp. 657, 658), and didn't do anything to put it out, because he had no orders to that effect (p. 666).

The defendant argues that its employes were not negligent in failing to combat the fire, because they would thereby be exposed to greater danger than any man could be expected to face. None of the men so testified until it was so told them on cross examination by defendant's counsel. This argument is a confession of negligence. The defendant knew that the explosives were dangerous, especially in the presence of fire—they were so placarded. It was officially warned by the Government that fire must be kept away from them. Manifestly this warning was not given merely in the interest of the preservation of the explosives themselves from loss or damage, but on account of the widespread consequential damage which would ensue from fire and explosion. There was a particular and obvious reason for putting such a placard on explosives and omitting it from grain and lumber, or any other merely combustible material. With this warning and knowledge of danger, we insist that the defendant was under an absolute legal duty to take some precautions against the continuance or spreading of fire among the explosives, by segregation of the cars, to isolate the fire, and further *to instruct its employes what to do in such event and provide or equip them with something* to do it with. It is not disputed that the cars were bunched in such a way that all the explosives were soon involved in the fire (see map). It is admitted that there were no hydrants or any kind of fire apparatus in the yard (p. 874, l. 15); that the cars in the yard were not watched, and that the roundsman, Kane, only walked around the outside boundaries of the yard once or twice during the night, and that when the fire was discovered he was conversing,

and had been conversing with an engineer behind the storehouses for a half hour or more. The roundsman and boiler men were not provided with fire extingiushers, and *as they were not even officially notified of the presence of the explosives,* they had no instructions as to what to do if a fire broke out among the explosives. To make matters worse, Superintendent Mulligan relieved the Lehigh employees from watching these explosives because he thought the detectives would do that work; the detectives, however, swore that they had nothing to do with the cars in the yard—their duties being solely on North Pier. Without training, instructions, or equipment, it is not surprising that the men who heard of the fire refused to go near it, but the defendant cannot hide behind the natural timidity of its men under the circumstances. *Its negligence was antecedent* to that, and nowhere in its brief does the defendant attempt to justify its non-action, except to say that the yard was a dead yard and that it therefore did not anticipate the possibility of a fire.

Under all of the circumstances, therefore, the Court would not have been justified in charging Request 29. As to Request 30, the jury were properly instructed on this subject of emergency (p. 1044).

The emergency cases on defendant's brief are all cases in which the defendants, without any antecedent negligence, were confronted with situations which allowed them about 10 seconds to decide what to do.

All of the witnesses whose testimony is invoked (p. 106) to show the explosion of shells, testify with reference to a time from 30 to 90 minutes after the fire was first discovered.

(c) p. 115

Recalling that the Trial Court did not instruct the jury about fire-fighting devices, and having above referred to the testimony as it affects request 18, we submit as to request 24 that there was no defense alleged or offered that the defendant followed the usual custom of railroads in respect to fire protection; there is no suggestion of standard equipment, standard of conduct or standard of anything else in the case. There certainly was no evidence offered by defendant showing what kinds and quantities of explosives were handled in other yards, or how they were handled, or what protection was afforded such explosives.

The request therefore dealt with a subject foreign to the case and was rightfully refused.

New Brunswick v. *Tiers,* 24 N. J. L. 697;
Fath v. *Thompson,* 58 N. J. L. 180;
Consolidated Tire Co. v. *Haight,* 59 N. J. L. 577;
Excelsior Elec. Co. v. *Smith,* 59 N. J. L. 441

As to requests 25, 26 and 27, the duty of defendant to use reasonable care to provide fire protection for this accumulation of explosives, was, under all the circumstances, a question of fact for the jury.

As to the elaborate fire protection at the warehouses, its availability for use in the yard was likewise a jury question.

Further answering III (c) defendant in its brief under this point says the defendant's requests Nos. 24, 25, 26 and 27 are intended to raise the point that the defendant was under no legal duty to provide fire protection in addition to that which it would ordinarily receive from the municipal authorities, as it was a taxpayer, etc. The evidence, however, i. e. the Map, the Lease from the National Storage Company to the defendant, as well as the pleadings and testimony, show that the Black Tom Terminal is private property and that the place where these munitions were stored is not less than three-quarters of a mile from any public street in which the municipal authorities might be expected to have laid water mains for fire-fighting purposes. The record also clearly shows that the so-called city water pipe running out to the storehouses was put there and was owned by the National Storage Company (p. 878, l. 15) for the sole reason that the National Storage Company, in the operation of their engines and boilers and for the purpose of cleaning the same, required a certain supply of water, and the line was put into that place for this purpose. It follows, therefore, that the defendant had no right or reason to assume that these dangerous commodities would be protected in case of a fire by the municipal water supply.

d.

This point is also on a subject not mentioned in the Court's instructions. As to the defendant's action or non-action, the inferences to be drawn from the evidence were for the jury.

e.

This subject was not mentioned in the charge, except by defendant's request No. 20. Therefore there was nothing to withdraw.

f.

Neither did the Court instruct the jury anything about turning in a fire alarm.

The evidence, however, shows that the fire was discovered not later than 12:30, and Battalion Chief Gately and Police Lieut. Closterman did not hear of it until 1 o'clock or after (p. 497), which is admitted in the brief (p. 127). There was no regular alarm turned in at all (p. 569), so that the Fire Department did not have enough information to send a fire engine (p. 487). The defendant's employes did not turn in any alarm, as they thought a Dougherty man had done so (p. 634).

Whether the alarm was promptly and properly sent in was therefore a jury question.

g.

As to the specific charge of negligence in the Clark and Allen cases, here again the charges were never mentioned by the Court except in stating the nature of the plaintiffs' complaint; nor does the brief indicate the grounds of appeal to which the argument applies.

The facts in the case, however, were sufficient to submit to the jury the question of whether the defendant had used due care toward this schooner, which was lawfully at Black Tom delivering cargo to the defendant.

IV.

Referring to the presence of the barge "Johnson 17," which is the subject of a very extensive discussion in the defendant's brief on several points relating to the Court's charge and refusal to charge certain instructions, the brief assumes without any evidence, first, that this barge was tied up at Black Tom in violation of law, and, second, that the Johnson was blown up. These assumptions are entirely unwarranted in the record.

Mr. Higgins, grain clerk for the Lehigh Valley Railroad at Black Tom, testified (p. 599):

> "Q *Do you know whether the Johnson barges were extensively used in taking explosives away from the North Pier?*
>
> *A I know they were used down there; yes, sir.*"

Mr. Dickman, the agent of the Lehigh Valley at Black Tom, testified (p. 957):

> "*Q During the seven months that you were at that station before this explosion occurred on July 30th and during which period they were handling explosives off the North Pier, the Johnson barges, 11 and 17 among others, were during that time used for transporting explosives from the North Pier, weren't they?*
>
> *A They were.*"

The testimony of Raymond Carrine shows (p. 949) that the Johnson 17 was at Black Tom (p. 951, l. 32) partly loaded, and that there was more to be loaded on it the next day. And it was admitted on the argument that the defendant was to deliver more munitions to it the next day.

It is perfectly obvious from this testimony that all of these barges, particularly the Johnson barges, were down at Black Tom to receive the munitions shipped over the Lehigh Valley Railroad. The barge Frank, with five cars on board (p. 387), and the barge Moran with thirteen cars (pp. 387, 388) were only partly loaded (p. 81, l. 29), and as the Johnson 17 at the time of this explosion had aboard only eight cars of explosives, that fact corroborates the testimony of Mr. Carrine that these barges, including the Johnson 17, had incomplete cargoes, and more munitions were then to be loaded on them at Black Tom (p. 951).

The Anchorage Regulations provide in substance that "vessels carrying explosives" must not be "anchored" in New York Bay, except at certain specified places. This certainly does not mean that barges are prohibited from going around the railroad terminals and collecting these explosives for the purpose of delivering them to sea-going vessels anchored in the Bay; neither do the regulations require a partly loaded barge to "anchor" out in the bay while waiting for the railroad company to deliver munitions.

There is not the slightest evidence or any attempt to prove that the Johnson 17, or any other barge which was at Black Tom that night, was there in violation of law. There is nothing

in the evidence except the anchorage regulations, and without any evidence tending or purporting to show that the Johnson 17 was at Black Tom unlawfully, this Court is asked to assume that this partly laden barge, which was to receive more cargo the next day, was unlawfully at Black Tom merely because the harbor regulations forbid the "anchorage of vessels," except at certain specified places in the harbor.

In this state of the proofs neither the Trial Court nor this Court could possibly find or decide as a matter of law that the presence of the barge Johnson 17 was at Black Tom unlawfully.

Coming then to Point IV of defendant's brief, the defendant complains of the refusal of the Trial Judge to charge:

> "36. The undisputed evidence is that Johnson barge No. 17 * * * was moored at Black Tom on July 30th, * * * and the jury must find under the law as contained in the anchorage regulations * * * that a boat thus loaded should not have been *moored* at Black Tom, * * * and the act of *mooring* her thus loaded was an unlawful act."

It is manifest that as there was no evidence that the Johnson 17 was there unlawfully and that whether she was there lawfully or unlawfully was a question for the jury, if they could find any evidence on the subject one way or another in the record.

As to requests 37, 38, 39, 40 and 41, the substance of these requests and the correct rule of law was duly charged (pp. 1048, 1049).

As to the first explosion, Lieut. Closterman testified that it came right from the burning cars (pp. 575, 576). Captain Andrew Baker saw the explosion come from the burning cars (p. 537, l. 25). It knocked him down. *At the time of the second explosion he was swimming away from his boat* (p. 538), *and while in the water he saw the 17 on fire,* and there is no evidence that the Johnson 17 ever exploded. She may still be somewhere on the bottom of the Bay.

The foregoing is enough to indicate that it was a jury question as to whether the first explosion came from the cars or somewhere else.

V.

The Right of Insurance Companies to Recover.

The contention of this assignment of error was fully answered by the Trial Judge, on the authority of *U. S.* v. *Am. Tobacco Co.*, 166 U. S. 468 (Case, p. 1021). That the plaintiffs were obligated to pay these losses was expressly held as to two of the present plaintiffs by the Supreme Court of Colorado in *Metropolitan Casualty Co.* v. *Bergheim,* and *Fidelity & Casualty Co.* v. *Williams,* 122 Pac. 812, 815, involving the breaking of plate glass by an explosion of dynamite, resulting from a fire in a freight yard. The Court held that the provision in its policy referred to was for the purpose of avoiding a claim for double insurance, and that the fire was not the cause of the plate glass loss within the meaning of the glass policies, and the New York Court of Appeals has held in *Bird* v. *Ins. Co.,* 224 New York 47, that the loss of a boat resulting from the Black Tom explosion was not a fire loss to be recovered under a fire policy.

VI.

Consolidation of Actions.

These cases were not "consolidated" within the meaning of the word as used in rules of practice.

> "The term 'consolidation' has sometimes been applied to a mere trial of several actions together, but properly a consolidation of actions is to be distinguished from the trial of several actions together, for an actual consolidation involves the union of several actions into one which is tried as such, while where several actions are tried together, although there is but one trial, the identity of the actions is preserved and separate verdicts and judgments rendered."
>
> 1 C. J. 1121, Sec. 308.

The practice of trying several actions together where they all grow out of the same facts or transaction, has been uniformly recognized as a proper exercise of discretion by the Trial Court.

In *Burke* v. *Hodge,* 211 Mass. 156; 97 N. E. 920; 27 Ann. Cas. 381, the Court said:

> "All the actions grew out of a single physical incident. The evidence by which they were supported and defended was largely the same. The injury received by each plain-

tiff could not vary with the defendant, although the recovery would differ. * * * Under these circumstances it was proper and within the discretion of the Trial Judge to order all the cases tried together. * * * (It has been) recognized for many years that in the interest of economy of time and expense separate actions depending in great degree upon the same evidence may be tried together in the judicial discretion of the presiding justice."

In *Lumiansky* v. *Tessier,* 213 Mass. 182; 99 N. E. 1051; 30 Ann. Cas. 1049, the Court said:

"Where several causes are pending between the same or different parties which grow out of a single transaction or which involve an inquiry into the same event in its general aspects, although the details of evidence may vary materially in fixing responsibility, the Court may order them tried together. But they continue separate, so far as concerns docket entries, verdicts, judgments and all aspects save only the one of joint trial. This is a frequent practice, and finds many illustrations in our decisions. Burke *v.* Hodge, 211 Mass. 156, and cases collected at 159 Ann. Cas. 1913 B 381, 97 N. E. 920; Commonwealth *v.* Robinson, 1 Gray (Mass.), 555, 560; Commonwealth *v.* Seeley, 167 Mass. 163, 45 N. E. 91."

In *Mutual Life Ins. Co.* v. *Hillmon,* 145 U. S. 285, 36 L. E. 706, Justice Gray said:

"The order of the Circuit Court that the three actions be consolidated for trial, because they appeared to the Court to be of like nature and relative to the same question, because it would avoid unnecessary cost and delay, and because it was reasonable to do so, was within the discretionary power of the Court, under Section 921 of the Revised Statutes, which provides, in substantial accordance with the Act of July 22, 1813, Chap. 14, Sec. 3 (3 Stat. at L., 21), that 'when causes of a like nature, or relative to the same question, are pending before a court of the United States, or of any Territory, the Court may make such orders and rules concerning proceedings therein, as may be conformable to the usages of courts, for avoiding unnecessary costs or delay in the administration of justice, and may consolidate said causes when it appears reasonable to do so.'

The consolidation rule, introduced in England by *Lord* Mansfield, to avoid the expense and delay attending the trial of a multiplicity of actions upon the same question arising under different policies of insurance, enabled the several insurers to have proceedings stayed in all actions except one, upon undertaking to be bound by the verdict in that one, to admit all facts not meant to be seriously

disputed, and not to file a bill in equity or bring a writ of error; and was considered as a favor to the defendants; and insurers under different policies could not obtain such a rule without the plaintiff's consent. 1 Tidd, Pr. (9th ed.), 614, 615; McGregor *v.* Horsfall, 3 Mees. & W. 320. The English practice appears to have been followed in early times in New York. Camman *v.* New York Ins. Co., 1 Cai. 114, Coleman & Cai. 188; Thompson *v.* Shepherd, 9 Johns. 262. The latter cases in New York, cited at the bar, were governed by statute. Brewster v. Stewart, 3 Wend. 441; Mayor *v.* Mayor, 64 How. Pr. 230.

Where the English consolidation rule has not been adopted, the American courts, state and Federal, have exercised the authority of ordering several actions by one plaintiff against different defendants, to be tried together, whenever the defense is the same, and unnecessary delay and expense will thereby be avoided. Den *v.* Kimble, 9 N. J. L. 417; Worley *v.* Glentworth, 10 N. J. L. 286; Witherlee *v.* Ocean Ins. Co., 24 Pick. 67; Wiede *v.* Insurance Cos., 3 Chicago Legal News, 353; Andrews *v.* Spear, 4 Dill. 470; Keep *v.* Indianapolis & St. Louis R. Co., 3 McCrary, 302; 1 Thomp. Trials, Sec. 210. *The learning and research of counsel have produced no instance in this country, in which such an order, made in the exercise of the discretionary power of the Court, unrestricted by statute, has been set aside on bill of exceptions or writ of error.*

But, although the defendants might lawfully be compelled, at the discretion of the court, to try the cases together, the causes of action remained distinct, and required separate verdicts and judgments."

While this joint trial was not technically a consolidation, the object was substantially the same.

"The object of consolidating two or more actions, is to avoid a multiplicity of suits, to guard against oppression or abuse; to prevent delay, and especially save unnecessary costs or expense; in short, the attainment of justice with the least expense and vexation to the parties litigant."

Lee v. *Kearny Township,* 42 N. J. L. 543, 1 C. J. 1121, Sec. 309.

"In some jurisdictions it has been held that under some circumstances there may properly be a consolidation of actions brought by *different plaintiffs against the same defendant,* or actions brought by the same plaintiff against different defendants, involving a joint liability, and some of the statutes expressly authorize a consolidation of actions by the same plaintiff against different defendants, which might have been joined."

Id., Sec. 320.

> "Different actions *ex delicto* may in some cases properly be consolidated, as in the case of *different actions against the same defendant, arising out of the same tort,* whether in such a case they are for different personal injuries, or one is for an injury to the person and the other for an injury to property."
>
> *Id.,* Sec. 332.

In the case of *Defiance Fruit Co.* v. *Fox,* 76 N. J. L. 482, this Court sustained an order consolidating two actions of trespass to lands lying in different counties, notwithstanding the provision of the Practice Act of 1903 that local actions must be tried in the county where the cause of action arose.

It is not denied that the damages suffered or sustained by the several plaintiffs in these actions all resulted at one time and from the same fire and explosion, or, in the language of the Practice Act of 1912, "arose out of the same transaction." The allegations of each complaint are substantially the same, that is, that the defendant was negligent in its custody of the explosives which took fire and exploded, and the defenses pleaded are practically identical in every case, except that in the cases of Clark and Allen, the defendant claims that the plaintiffs were guilty of contributory negligence in not removing their property and persons after the discovery of the fire. And it is manifest that the identical evidence on both sides was necessary to the trial of each and every one of these actions.

Section 164 of the Practice Act of 1903 provides:

> "If several actions between the same parties in which the same or similar matters of controversy are involved, * * * which are triable in the same manner and may be conveniently tried together, are pending in the same court, the Court or Judge may on application of either party or on his own motion, order that such actions be consolidated for the purposes of trial."

This practice has been sanctioned in this state for over one hundred years, for as stated by Chief Justice Elmer in *Den* v. *Kimble,* 4 Halsted 335, 337, the practice was authorized by Sec. 58 of the Revised Laws of 1799.

Section 4 of the Practice Act of 1912 provides:

> "Subject to rules, all persons claiming an interest in the subject of the action and in obtaining the judgment demanded, either jointly, severally or in the alternative, may join as plaintiffs, except as otherwise herein provided. And persons interested in separate causes of action may join if the causes of action have a common

question of law or fact and arose out of the same transaction or series of transactions."

Under these acts, it would have been proper for all of these plaintiffs to have joined in one action, because they all have a common question of law and fact which arose out of the same transaction.

Where the consolidation of actions is authorized by the older practice, and a joinder of plaintiffs interested in the same casualty is authorized by the new practice, for well recognized and laudable purposes, it is difficult to discern any prejudice to the defendant in the order of the Court requiring these actions to be tried together.

No right or prerogative of the defendant was denied by the joint trial of these cases. Each case was explained by the Court to the jury, and the jury was instructed by the Court, as requested by the defendant, with reference to the common defenses in all cases, and the special defence of contributory negligence in the Allen and Clark cases. The situation is no different than it would be in actions arising out of injuries to the driver and other occupants of an automobile, all occuring in one accident, in which the defendant may have pleaded a special defense of contributory negligence against the driver.

To hold that a defendant who has injured one hundred persons by one tort is entitled to have one hundred separate trials by one hundred separate juries on the same evidence to determine his liability for that tort, is a suggestion that refutes itself by its absurdity. The size of the printed record in these cases would not be substantially less if it involved only one plaintiff, and as the trial of the cases took from June 20th to 27th, inclusive, that record and that time would have been uselessly multiplied twelve times in order to have presented these cases separately.

VII.

The "Walcott's" Freight Money.

As to the right of the owners of the schooner to recover her lost freight moneys, attention is called to the fact that this item was a separate verdict, and the amount so separately awarded, $5,874, is admitted to be correct.

The charter party provided that the vessel should be paid freight on this cargo at so much per ton *delivered* at New York Harbor. The schooner was destroyed before it had unloaded or

delivered that portion of the cargo represented by the amount stated. The consignees refused to pay this part of the freight because the vessel had not completed its contract by delivering so much of the cargo, and this claim was, therefore, made on the defendant on the ground that the negligence of the defendant prevented the plaintiff from performing its contract and becoming entitled to its stipulated reward. As this was one of the direct consequences of defendant's negligence, the defendant was liable therefor. 17 Corp. Jur. 750.

We respectfully submit that there is no prejudicial error on the record and the judgments should be affirmed.

CONGLETON, STALLMAN & HOOVER,
(Cases 1, 2, 3, 4, 5, 6, 9, 11 and 12.)

EDWARDS & SMITH (Case 7),

WM. E. HOLMWOOD (Case 8),

FREDERICK C. HENN (Case 10),

Attorneys of Plaintiffs-Respondents.

EDWIN F. SMITH,
JEROME T. CONGLETON,
MAXIMILIAN M. STALLMAN,
Of Counsel.

EXTRACTS FROM TESTIMONY.

MARK L. JAMIESON, master of the Schooner George E. Walcott.

p. 420 When we arrived at the port of New York, we berthed the vessel first at the end of Black Tom Pier.

p. 421 We lay there at the end of the pier two days, then they told us to move around and got a berth for us on the other side at Pier No. 6. We laid there four or five days.

p. 426 After we first tied up at Black Tom I had occasion to leave the vessel and go away from Black Tom and come back again to the place where it was tied up. I did this several times.

p. 427 I had never berthed the vessel at Black Tom before that. On my way from the mainland out to Black Tom going back to the vessel, I had never been challenged by anybody to know what my business was. I was not asked any questions. I have seen persons smoking around Black Tom piers, and smoked myself going down. No one ever said anything to me about it.

JOHN J. HOGAN, captain, Jersey City Fire Department.

p. 467 I arrived at Black Tom about 1:15 or 1:20 A. M. We lined in hose and tried the hydrants to get water. These hydrants were along the main roadway. We got no water. I tried two high pressure hydrants and used one city hydrant.

p. 470 We did not put a hose on this fire, on the freight cars, because we had no water. There was not any water at all in the two high pressure hydrants that we tried. I could not get any from them. We tried to get water out of the high pressure hydrants right after we got there, which was about 1:30.

JOHN GATELY, battalion chief, Jersey City Fire Department.

p. 497 I got word of the fire about one o'clock, and got there about fifteen minutes later.

p. 498 We tried to get water to put out the fire. We tried the hydrants along the roadway, toward the right. We couldn't get any water worth speaking about.

p. 499 We tried two hydrants.

p. 500 I had twenty to twenty-four men. They couldn't get any water worth speaking about, and didn't get any water until afterwards.

LOUIS TREGGER, Jersey City fireman.

p. 520 I didn't see any water in that hose. I did not see anybody there except the Jersey City firemen doing anything towards putting out the fire.

FRANK A. CAMPBELL, Jersey City fireman.

p. 548 As far as I know about it, they tried to get water and couldn't.

p. 549 Of my own knowledge, the pumps were tried, or the hydrants, I saw that myself. They hooked up to the hydrant, stretched in towards the fire. The hydrant, so far as I could see, was tried then and they couldn't get any water.

EDWARD JOSEPH KANE.

p. 600 On July 30th, 1916, I was night roundsman at Black Tom, and had been working at Black Tom seven years. I was working for the Lehigh Valley Railroad. My duties as a roundsman were to see that all the men was placed in their respective places, go over and see there was no fire, everything was in proper condition, every place closed. I was a sort of foreman over the night force there. The men under my charge were Samuel Sloan, James Kelly, William Garrity and James Groat. James Groat was stationed over in the oil yard, at the extreme end of the yard, west end of the yard, about half a mile or over towards the west, west of the grain elevator.

p. 601 Mr. Kelly was stationed at the grain elevators. He worked there all night. He had to punch buttons on the west side of Pier 4, and took care of the boilers in the elevator.

p. 601 Mr. Sloan was stationed in the pump house, opposite
p. 602 Pier 5. His duties were to take care of that pump and to ring buttons on the east side of Pier 4.

p. 602 Mr. Garrity had from store G all east. He punched
p. 603 buttons around the two blocks of stores. I did not have any men under me who were watchmen down there in the yard where munition cars were, only Garrity. He took care of a steam crane. I do not know where Mr.
p. 604 Garrity is. He was a real old man.

Mr. Groat did not have anything to do with watching munition cars down in the yard on Pier 7. Mr. Kelly did not have anything to do of that kind. Mr. Sloan did not have any work of that kind to do. Mr. Garrity was supposed to go down in the yard every hour. My tour of duty was the whole place, all Black Tom.

I was in the boiler room, I guess, about half-past 11, near Sloan's pump house. I ate my supper then and that took me till around 12 o'clock, and then I stood talking to Mr. Sloan for a while, and then walked around towards Pier 6, behind stores G to M.

p. 604 I heard a man holler "fire" and blowing a whistle and
p. 605 I ran back to see what it was. It was around 12:30, and in the half hour from the time that I finished my supper until I heard the alarm, I was talking to Mr. Sloan over at the pump house.

p. 606 These men who said there was a fire on Pier 7 said they were Dougherty's men.

p. 607 It was a very small blaze, about five or six inches high, about five or six inches wide and five or six inches high.

p. 608 When I saw this small blaze off in that direction, I run back and telephoned for tug boats and locomotives, to get the cars out of the way. At that time I couldn't say the fire was in the yard; it was down in that neighborhood. The reason for my anxiety to get the cars out of there was that I knew there was explosives down there. I knew at the time that the yard was being used for handling
p. 609 explosives. That night I guess there was about twenty or twenty-five cars, so far as I can remember.

p. 610 After I saw this small blaze I did some telephoning, and after that it was about three-quarters of an hour before I noticed the fire again. In the meantime I was telephoning. We did not have any portable fire extinguishers there, something that you could carry around.

p. 611 My men were supposed to stretch a hose and put the fire out. I did not see them do that. After I got through telephoning those three-quarters of an hour, I went out on the roadway, and then I saw the fire department coming.

p. 613 The shells first commenced to go off just as the fire department was coming down; that was the first I heard the shells.

p. 614 I heard the shells popping a short while, about ten or fifteen minutes, before the fire apparatus got there.

p. 615 We had under our charge hose carriages and a chemical
p. 616 engine. The hose carts were located down towards the elevator, one at store 3, two on the side of store F, two on the side of store M, one at the head of Pier 6.

p. 617 On the night of this fire I don't know if those hose carts were used in an effort to put it out.

When an alarm would be sent in, why, the men on the grain boats would respond to the call. I would be in charge of directing the men what to do. When I saw this fire down in the yard or heard the alarm of fire given, I did not direct anybody to go and get the hose out and couple it up. From the time I first heard the alarm of fire and saw this blaze up to the time when the Jersey City fire apparatus came, nothing was done toward putting out the fire.

p. 617 There were no fire hydrants or any hose or other ap-
p. 618 paratus capable of being used for fire-fighting located in the yard to the east of the water tank.

p. 621 There were other boats tied up at Black Tom to the east of where the grain boats were; there were boats tied on the east and west side of Pier 4, there was a schooner and the steamship on Pier 6. I couldn't say about the South Pier. There was lighters down around Pier 7 loaded with that ammunition. That is where the ammuni-
p. 622 tion boats were. How many there were I couldn't say, I never counted them. It was three or four down there.

While it was still daylight that evening, I walked around Pier 7 and around to the South Pier and the North Pier,
p. 623 and I saw those boats in there then. I don't know whether there was anybody aboard any of those boats or not; never paid any attention to them.

Cross examination.

p. 639 On one occasion I assisted in putting out a fire down at Pier 7.

p. 640 We had a couple of buckets and we were pulling the water up with buckets and a Standard Oil tug came in and put it out. We didn't get the water out of the yard. We had no fire extinguishers in this structure under the big tank, those things you turn upside down and squirt. There may have been some of those in the storehouses, but the storehouses were all locked. There were none in Sloan's pump house, I am pretty sure of that.

p. 641. I did not go into the storehouse or into Sloan's pump house and get any extinguishers when I learned of the fire.

Re-direct.

p. 642 The ammunition began to come in there about five or six months before the fire. From the time the ammunition began to come in there, I did not have any more men under me than I had before that. We did not have any more apparatus. The grain boat captains had orders to assist in putting out fires.

p. 643 There were no grain boat captains in the crowd that night. There were no grain boat captains down where Leyden and I were that I seen. They were on the dock side. When the whistle blew to call them I saw two of them up at the boiler room. There were fifteen grain boats, and two grain boat captains reported that I saw.

p. 644. These two grain boat men wanted to know where was the rest. They said they were going down to get the hose out. I did not give them an order. I let them go ahead.

p. 645 I didn't tell them what to do with it when they got it out, or where to attach it, or what to attach it to, or what to put it on.

JAMES J. KELLY, stationary fireman at Black Tom.

p. 646 Been working there since 1905. Employed to take care of the boilers and the transfer elevator and punch buttons. Had two boilers to look after.

p. 647 After 12 o'clock I had a boiler to blow down; they were going to wash it Sunday morning; the plant was not going to run Sunday morning—the elevator—so I had to blow this boiler down to get it cold for the day man to wash it. So as I was blowing it down I heard the whistle blow, but I thought it was a tug boat getting some grain boats out of the basin, and I finished the job. It took me maybe ten minutes to finish the job. So I walked out of the door and I couldn't see a boat in the basin, and I said, "That sounds like the pump whistle," so I walked down and Sloan told me there was a fire at the North Pier, "Go over to the crossing at the sea wall and look down and you can see it." So I went over and right at the sea wall I could see a fire, a small fire. I saw a small fire. It didn't look over four or five feet high. It didn't look that

—about four feet high in between the cars; to me it looked to be in between the cars.

p. 648 I continued to watch the fire a couple of minutes, then I went back to the elevator to secure the boiler up there. From the time I first went down to the pump house and saw this small fire until I got back there again, it was a half hour. In the meantime I did not do anything to put the fire out. I did not go down to where the fire was. Nobody went further than Pier 5.

Cross examination.

p. 654 I didn't go down and put out this little fire. It was part of my duty to put a fire out. I knew there was ammunition down there. The reason I didn't go there was I didn't want to get killed.

Re-direct.

I had been down in that part of the yard near the North Pier, but not while that ammunition was there. I might take a stroll all through the yard early in the evening, while they were handling ammunition, but I can't recollect whether I did or not.

SAMUEL J. SLOAN.

p. 655 I was employed on the 30th day of July, 1916, by the Lehigh Valley Railroad, at Black Tom, as engineer, and was stationed at the pump house at the crossing of Pier 5.

p. 656 I had no duties whatever to perform with reference to the yard at the end of Black Tom down by Pier 7. I had been employed there between 21 and 22 years.

I heard some men hollering out on the road, and they ran over to me and told me the North Pier was afire. When they ran over to me and told me the North Pier was afire I thought they were stalling me; I thought they were giving me a game. I said, "the hell you say there is a fire over there," and run over to the crossing, on the extreme end of the track on the north side and I looks down there and I sees a small fire there, between the end of the cars. It looked to me the very end of the North Pier.

p. 657 At the time I looked at the fire it was about the height of a barrel at the distance down between the tracks. It was about a barrel in width.

p. 658 After my first sight of it, I did not look at the fire until way in the morning. I did not do anything whatever toward getting water on the fire; I only done my duty, got pressure up on the line, and so forth.

p. 659 I had instructions as night watchman in case of fire there—call up the different departments and get pressure up and fight the fire as best I could. I did not have any instructions about doing any work myself in the way of fighting the fire. I could not go and leave the boiler and pump and stuff there.

p. 660 The flame that I saw looked like a small bonfire to me, the size of a barrel.

I knew there was ammunition of some kind going down there; what the contents were and that, I could not tell you. I was not going down there to get blown up, I tell you that. I had not been down there among those am-

p. 661 munition cars.

p. 662 There are no fire hydrants or anything of that kind in this part of the yard, east of where that tank was. If the fire was anywhere nearby the pump room or thereabouts, I would always give a hand. If it was not near there I would have enough to attend the pump room and that stuff, you see.

If the fire was out there near where what is called the crater is located, I would have nothing to do with that.

Cross examination.

p. 666 I was part of a committee to put out fires down there, as I understand my work. It was part of my duty to lend a hand to put the fire out in the vicinity of the pump room.

Q Now, who limited you to the vicinity of the pump room? A Well, I always got orders to stand by for phone messages and things like that, and have the boiler and pump under control.

Q Who told you that? A The superintendent there.

p. 717 Albert M. Dickman, freight agent of Lehigh Valley at the Jersey City National Docks (Black Tom).

I held that position seven months prior to the explosion.

p. 719 The particular class of freight that was handled on the north side of the North Pier was explosives and inflammables, including what we call in this case the TNT and the ammuntion for cannon, and fuses and so on. The cars

would arrive and would be placed down on the lower section of the yard. As the consignees ordered them they would be drilled out and placed on the North Pier. Tracks
p. 720 from 13 up to 16 were used for the temporary placing of
p. 723 cars until we got ready to put them on the North Pier. The cars were all placarded.

p. 737 Up to the time of the second explosion I did not see any of the Jersey City firemen doing anything. After the second explosion they played water on the fire.

Cross examination.

p. 739 I was the only official of the Lehigh Valley Railroad Company located at Black Tom in an executive way. My superior officers were located in Jersey City.

The method of bringing cars in the yard from the Claremont yard and placing them in the bulkhead yard and the details regarding the drilling of the cars to the float bridge tracks or the pier tracks were all subject to my orders. The cars were placed at the most available point for delivery according to the judgment of the yard conductor or yardmaster.

p. 740 It was decided we would use that section there, use the North Pier to handle the explosives; to make deliveries. Pending delivery or pending their being placed on the North Pier for delivery they were placed in what we call the bulkhead yard.

Q And it was up to the yardmaster, then, I understand, to instruct the train crews to put them wherever the yardmaster thought was the best place? A The cars had already been handled that way when I went down there. I never changed the situation because, as I looked it over, I thought it was a very good one. That was the method that was carried on—that was the way the cars were handled, and that was done with my sanction.

The night force that were there were there under my direction also. Their work was supervised by me so far as a nightly report was concerned. This man came and left a report for me each morning as to conditions during the night.

p. 741 I had full charge of those grain elevators, and Mr. Sloan was also under my jurisdiction.

p. 746 When I got there I did not see any of the Lehigh Valley employees using any hose or other means of fighting this fire.

p. 748 FRANK DECKENBACK, employed by the National Storage Company to look after the sprinkler equipment and fire pumps.

National Storage Company was the owner and operator of some of these warehouses.

Cross examination.

p. 753 I was superintendent of water service.

p. 754 Q What did the National Storage Company have to do with the yard? A Why, if a car got afire out in the yard the stores would be in danger.

p. 755 After I gave these instructions to these men about three weeks before the fire, I never saw them operate any of this fire apparatus after that. There was no occasion to operate it.

MARTIN T. HENLEY, yardmaster of the Lehigh Valley Railroad.

Cross examination.

p. 768 At the time of the fire I did not know whether there was any fire hose or any fire-fiighting apparatus there.

(*Mr. Garrison.* I object; it is not cross examination. We will concede there were no hydrants there, if that is

p. 769 what you want. You need not ask anything else. The map shows where all the fire hydrants were. There is no use asking were there any anywhere else.)

p. 773 (*Witness.*) We did not pull out any cars on track 16. We started on 12 instead of 16 because 12 stuck out and fouled the other tracks, so we had to start in on 12. No. 12 was the ladder track, but the cars stuck out on 12 and

p. 774 13. There were cars on that ladder track that fouled the approach to 13 and 14 at the time I got there.

p. 800 LUKE J. EISMANN.

I left Newark twelve o'clock midnight; took the 12:01 train from Broad street, Newark. I got off at Communipaw about 12:18 or 20, and walked down to the boat down to Black Tom. I had to walk along this roadway running in front of the storage warehouses. It took me about twenty-five minutes, I should judge. When I got to the end of the roadway, somewhere here near the end of the

p. 801 storage warehouses, I crossed over and outside of the track altogether, along the track marked "sea wall track."

When I got out to the bulkhead I met a man by the name
p. 802 of Mr. Burns. I had seen him around the powder dock; never met him anywheres else. On this occasion Burns was the only man I saw, at that time.

JOSEPH BURNS, Dougherty detective.

p. 816 I had been in the employ of that agency about six months. I had been assigned to duty at Black Tom terminal somewheres about June 15th. I was one of the night men.

p. 817 We had a shanty built there to protect ourselves from the rain.

About midnight I was out in front of the shanty. I went inside of the shanty and looked at my watch, and it was 12:10; then I came out and walked up and down in front of the shanty for a few minutes. The other three
p. 818 men were inside the shanty.

p. 818 I was at this particular time the only one outside of the shanty, and the other three were all inside.

p. 819 There was no one else around there that night that I had seen outside of Mr. Eismann—outside of our own men.

I knew that most of the cars there was explosives in them. I did not know, of course, at the time that there were explosives in this car. My men and I did not have charge of those cars.

Cross examination.

p. 824 My instructions were simply to stay on the pier and watch the pier and the cars on the pier. We had nothing to do with anything off the pier.

p. 845 MICHAEL N. MULLIGAN, superintendent of the Lehigh Valley Railroad, New York Division, including Black Tom.

p. 846 The explosives had been carried on the line about one year prior to July, 1916.

Q Now, have you any knowledge that you can give us with regard to the men who have been called the Dougherty Detective Agency men? When did you first hear of them and what were their duties and what did they do?
A Why, several months prior to July I was notified by a Mr. Healey, who was chief clerk to our superintendent in charge of transportation in New York; he advised me that the Dougherty Agency had taken over the watching and caring for the ammunition stored at Black Tom, and that

there was four of such men in his office who he would send over to me to have made acquainted with our rounds and our fire alarms, pumps, and so forth. Later they came over, presented a card from this gentleman, stating that they were the men he referred to on telephone, and I called our Chief of Police, C. J. Leyden, and advised him to take those men around and show them where the ammunition was stored and to make them acquainted with the necessary alarms and pumps and hydrants, and so forth, in that vicinity.

p. 847 It was about six or seven months before July, 1916, that these men reported to me and gave me these cards as indicating they were Dougherty men.

I know about the shanty. I granted the permission to have the men put up something to keep their luncheon

p. 848 and their wet weather clothes and to warm themselves if the night was cold, or anything like that, and eat their luncheon in there if necessary.

The agent had a force of watchmen down there of a roundsman and five men stationed in our piers and taking in a portion of the outside territory which was not covered by the Dougherty men. Some of these men came over with us when we took the property of the National Stor-

p. 849 age. They apparently had been working there for a number of years prior to that; we had no means of getting their exact record, but they were working for us for over ten years before this happened. In fact, there was one of them, an engineer, who had run an engine for the National Storage about twenty years.

Cross examination.

I never went down at night to look at the Dougherty men. Kane made his rounds there, and I told him to report to the chief of police every morning as to how he found things at each round, and everything that was not regular he would report to the chief of police. He did not say anything in his reports about the Dougherty men

p. 850 that I know of. After the Dougherty men were there I did not say anything to Mr. Kane about having to watch the tracks on which explosives were. Mr. Kane would receive such instructions from Mr. Leyden, who was in charge of that branch of the business. The instructions that I gave to Mr. Leyden was that the Dougherty Agency

was to take over the watching and caring for explosives in that territory. I am speaking of those tracks known as
p. 851 tracks 16, 15, 14 and 13. My instructions to Leyden, which instructions were to be given to Kane, were that the Dougherty men were to take care of the explosives in that territory, which included tracks 16, 15, 14 and 13. I was
p. 852 really under the impression that the Dougherty men were going to take care of that, including any cars that may have been on the North Pier. It was my belief from the conversation I had with Mr. Healey, so I delivered that to Leyden and he carried it to the other men.

p. 852 MARTIN EGAN, member of the staff of the banking house of J. P. Morgan & Company.

p. 854 The instructions I gave to Mr. George Dougherty were verbal. He was directed to get in touch with the shipping agents of the British Government, Messrs. Lunham & Moore, and to effect with them an arrangement whereby he would be advised of the arrival of ships from England that were to carry munitions for the British Government and of munitions destined for those vessels, and there was set up an automatic arrangement by which he was to meet and search and guard these ships, and he was to supervise the loading of this ammunition.

p. 855 JOHN M. JULIAN, fire marshal of the Lehigh Valley Railroad.

Cross examination.

I got there thirty-five minutes or so before the first explosion.

I did not have anybody take a hose down there and start up this 125-pound pressure pump and throw any water toward the fire. I couldn't get near the fire—near enough to get water on it.

p. 874 The general fire-fighting apparatus that may have been available anywhere on Black Tom could have been brought down the lower section. There was sufficient hose to bring it that far, if necessary.

p. 874 Q *It was not possible to deliver any water on these flames while they were drilling across the lead tracks, was it?* A *If there were men enough to entrench the tracks, yes, we could have brought it under the tracks.*

p. 875 I did not see anybody at all, employees of the Lehigh Valley Railroad Company or the National Storage Company, making any effort to put out the fire by direct means.

To attach a hose to one of those high-pressure three-way Corey hydrants and stretch it to a point within 100 or 200 feet from the gravity tank, it would take at least five to six men to handle a hose carriage with that amount of hose and handle the hose properly.

p. 877 If I had five or six men to handle the hose carriage, and so forth, and stretch it easterly of the gravity tank it would possibly take ten minutes by the time the men collected there to get that hose out and down there. That would take five or six men, and if I had a lesser number of men it would have taken longer.

INDEX.

PAGE.

STATEMENT OF THE CASE 1

GROUNDS OF APPEAL 3

Consolidation of Actions 4

Motion to Direct Verdict 5

Requests to Charge 8

Exceptions to Charge 18

BRIEF OF THE ARGUMENT 47

I.

IT APPEARING THAT CONGRESS HAD ENACTED LEGISLATION FOR THE TRANSPORTATION OF EXPLOSIVES IN INTERSTATE COMMERCE, AND THAT REGULATIONS HAD BEEN MADE PURSUANT TO SUCH LEGISLATION, THE DUTY OF THE DEFENDANT IN THE PREMISES MUST BE DETERMINED SOLELY BY REFERENCE TO SUCH LEGISLATION AND REGULATIONS 47

II.

THE EVIDENCE FAILED TO SHOW A VIOLATION OF THE INTERSTATE REGULATIONS OR THAT ANY SUCH ALLEGED VIOLATION WAS THE PROXIMATE CAUSE OF DAMAGE TO THE PLAINTIFFS 66

(a)

There was no violation of Section 1643-a 67

(b)

There was no violation of Section 1643-b 72

(c)

There was no violation of Section 1666 77

(d)

There was no violation of Section 1689 82

(e)

There was no violation of Section 1401 84

PAGE.

III.

ASSUMING THAT THE JURY HAD THE RIGHT TO BASE A VERDICT UPON ANY GROUND OF NEGLIGENCE OTHER THAN A VIOLATION OF THE INTERSTATE REGULATIONS, THERE WAS NO PROOF OF ANY SUCH NEGLIGENCE, OR THAT THE SAME, IF PROVED, WAS THE PROXIMATE CAUSE OF DAMAGE TO THE PLAINTIFFS. EVEN IF THERE WAS PROOF OF NEGLIGENCE IN SOME ONE OR MORE OF THE RESPECTS SUBMITTED TO THE JURY (OTHER THAN A VIOLATION OF THE INTERSTATE REGULATIONS), THE PROOF FAILED TO SHOW NEGLIGENCE IN ALL SUCH RESPECTS, AND IT WAS ERROR TO PERMIT THE JURY TO BASE A VERDICT UPON A FINDING OF NEGLIGENCE IN SOME OF THE RESPECTS THUS SUBMITTED 86

(a)

It was error to permit the Jury to find the defendant liable to the plaintiffs, on the ground that there was a failure to exercise a high degree of care to prevent fires and explosions, or to watch and guard the explosives; or to employ sufficient watchmen to detect trespassers or incendiaries; and that such failure was the proximate cause of the damage to the plaintiffs 92

(b)

It was error to permit the Jury to find negligence on the part of the defendant, on the ground that there was a failure to exercise a high degree of care to discover and extinguish fire, and there was error in the charge on the subject of the alleged negligence of the defendant's employees in failing to extinguish the fire under the existing condition of emergency 95

PAGE.

(c)

It was error to permit the Jury to find negligence on the part of the defendant, on the ground that there was a failure to provide sufficient fire fighting devices and apparatus 115

(d)

It was error to permit the Jury to find negligence on the part of the defendant, on the ground that there was a failure to use a high degree of care in the storing, handling and disposing of the explosives, to prevent communication of fire and detonation from one part to another..... 123

(e)

It was error to permit the Jury to find negligence on the part of the defendant, on the ground that there was a failure to provide sufficient means for communication with the fire and police departments of Jersey City 124

(f)

It was error to permit the Jury to find negligence on the part of the defendant, on the ground that there was a failure to notify the fire department of Jersey City 125

(g)

In the Clark and Allen cases, it was error to permit the Jury to find negligence on the part of the defendant, on certain other grounds (in addition to those specified in the other cases), as follows:..... 128

(1)

On the ground that there was a failure to give the schooner "Walcott" a safe berth, and that there was a failure to warn said schooner of the presence of danger 129

PAGE.

(2)

On the ground that there was a failure to provide competent men for patrolling and guarding the yard 132

(3)

On the ground that it failed to instruct its employees as to their duties in case of fire..... 133

(4)

On the ground that there was a failure to provide facilities for removing or isolating burning cars, or that there was a failure to dispose of the cars so as to prevent communication of fire..... 133

(5)

On the ground that the defendant permitted barges to tie up at the piers..... 139

(6)

On the ground that there was a failure to prevent fire 143

IV.

THERE WAS ERROR IN THE CHARGE TO THE JURY AND IN THE REFUSAL TO CHARGE CERTAIN REQUESTS SUBMITTED BY THE DEFENDANT RELATING TO THE SUBJECT OF THE DEFENDANT'S ALLEGED RESPONSIBILITY FOR THE EXPLOSION ON THE JOHNSON BARGE NUMBER SEVENTEEN..... 144

PAGE.

(a)

The evidence shows that there were two explosions on July 30, 1916, one on land in the Black Tom Yard, and the other on water in Johnson Barge No. 17. There was evidence from which the Jury might infer that the first explosion was on the water in Johnson Barge No. 17, and the Jury should have been charged, as requested, that if this explosion caused damage to the plaintiffs, the Jury could not find the defendant responsible therefor.. 148

(b)

It was error to leave to the Jury the question of whether the defendant was responsible for the explosion on water (even though said explosion was not the first in point of time), as such explosion was the result of an independent, intervening, illegal cause 164

(c)

It was error to leave to the Jury the question of whether the Johnson Barge No. 17 was moored at the North Pier in violation of the Anchorage Regulations of the United States Government, and to refuse to charge the Jury, as requested, that the mooring of the said barge, at said pier, partly laden with explosives, was in violation of said regulations 169

V.

NO ONE OF THE PLAINTIFF INSURANCE COMPANIES WAS UNDER ANY LEGAL DUTY TO PAY ITS INSURED FOR THE DAMAGE ALLEGED TO HAVE RESULTED FROM THE BREAKAGE OF GLASS, SUCH BREAKAGE HAVING RESULTED (DIRECTLY OR INDIRECTLY) EITHER BY OR FROM OR BEING IN CONSEQUENCE OF, A FIRE ON DEFENDANT'S PREMISES, AND THEREFORE COMING WITHIN THE EXCEPTIONS OF THE POLICIES 170

PAGE.

VI.

THE TRIAL JUDGE ERRONEOUSLY ORDERED THE CONSOLIDATION OF TWELVE CASES FOR THE PURPOSES OF THE TRIAL..... 177

VII.

IN THE CLARK CASE, IT WAS ERROR TO ADMIT EVIDENCE AS TO THE AMOUNT OF THE UNCOLLECTED FREIGHT MONEYS, AND TO PERMIT THE JURY TO INCLUDE SUCH AMOUNT AS A PART OF THE VERDICT 185

VIII.

FOR THESE REASONS THE JUDGMENTS AND EACH OF THEM IN THE SEVERAL CASES UNDER REVIEW SHOULD BE REVERSED AND A NEW TRIAL ORDERED 187

New Jersey Court of Errors and Appeals

1. ROYAL INDEMNITY COMPANY,
2. NEW YORK PLATE GLASS INSURANCE COMPANY,
3. CHICAGO BONDING & INSURANCE COMPANY,
4. OCEAN ACCIDENT & GUARANTEE CORPORATION, LIMITED, OF LONDON, ENGLAND,
5. LLOYDS PLATE GLASS INSURANCE COMPANY OF NEW YORK,
6. METROPOLITAN CASUALTY INSURANCE COMPANY OF NEW YORK,
7. FIDELITY & CASUALTY COMPANY,
8. COMMERCIAL CASUALTY INSURANCE COMPANY OF NEWARK, N. J.,
9. CHILDS COMPANY, a corporation,
10. TRUSTEES OF ST. PAUL'S EVANGELICAL LUTHERAN CHURCH,
11. ELEAZER E. CLARK, et al.,
12. IRA W. ALLEN,

Plaintiffs-Respondents,

vs.

LEHIGH VALLEY RAILROAD COMPANY,

Defendant-Appellant.

On Appeal from Supreme Court.

BRIEF IN FAVOR OF THE LEHIGH VALLEY RAILROAD COMPANY, DEFENDANT-APPELLANT.

(1)

Statement of the Case.

The appeals in these cases are taken from judgments entered in the New Jersey Supreme Court, in favor of each of the several respondents (hereinafter called the plaintiffs), and against the appellant (hereinafter called the defendant) upon the verdicts of a single jury, at a trial in the Hudson Circuit wherein the several cases were consolidated for the purpose of trial, against the objection of the defendant. The amounts of the several judgments are as follows:

1. Royal Indemnity Co.	Damages:	$4,118.51	*Total.*
	Costs:	44.60	
			$4,163.11

2.	New York Plate Glass Insurance Company	Damages:	$60,835.65	
		Costs:	50.03	
				$60,885.68
3.	Chicago Bonding & Insurance Company.	Damages:	$5,529.21	
		Costs:	44.60	
				$5,573.81
4.	Ocean Accident & Guarantee Corp. of London, England.	Damages:	$6,443.52	
		Costs:	44.60	
				$6,488.12
5.	Lloyds Plate Glass Insurance Company of New York	Damages:	$48,306.21	
		Costs:	56.69	
				$48,362.90
6.	Metropolitan Casualty Insurance Co. of New York	Damages:	$51,201.51	
		Costs:	56.69	
				$51,258.20
7.	Fidelity & Casualty Company	Damages:	$19,625.95	$19,625.95
		Costs:		
8.	Commercial Casualty Insurance Company of Newark, N. J.	Damages:	$22,557.54	
		Costs:	47.38	
				$22,604.92
9.	Childs Company, a corporation	Damages:	$2,428.95	
		Costs:	44.60	
				$2,473.55
10.	Trustees of St. Paul's Evangelical Lutheran Church.	Damages:	$1,059.49	$1,059.49
		Costs:		
11.	Eleazer E. Clark, *et al.*	Damages:	$100,874.00	
		Costs:	500.00	
				$101,374.00
12.	Ira W. Allen.	Damages:	$7,400.00	
		Costs:	44.60	
				$7,444.60
				$331,814.33

The damages in each case, as above stated (amounting in the entire sum to $330,880.54) were alleged to have been sustained by the several plaintiffs by reason of the destruction, by fire and explosion, of certain plate glass and other property—except that in the case of Ira W. Allen, the damages were allowed for personal injuries, which he said he sustained by the fire and explosion, as well as for the loss of certain personal effects.

The fire and explosion which caused the alleged damages occurred at one of the Jersey City terminals of the defendant, located on the west short of the Hudson River, on the early morning of July 30th, 1916, and is commonly known as the "Black Tom Explosion."

The questions on this appeal, in each case, are:

> Whether there should have been a non-suit or direction of verdict in favor of the defendant, and whether there was legal error in the charge of the Trial Judge, and in the refusal to charge as requested.

(2)

Grounds of Appeal.

All of the cases have certain common Grounds of Appeal, but others vary for the reason that the complaints differ, and the Trial Judge left different issues to the jury on the question of negligence. They may be summarized as follows:

I.

The Trial Judge erroneously ordered that the twelve cases be consolidated and tried before the same jury.

II.

The defendant's motion for a direction of verdict in its favor should have been granted.

III.

There was error on the part of the Trial Judge in refusing to charge one or more of the requests submitted in behalf of the defendant.

IV.

The Trial Judge erroneously charged the jury.

We will first set forth the Grounds of Appeal in case No. 1—Royal Indemnity Company—and will then state which of these grounds are applicable to the other cases and whether there are any additional grounds which are applicable to one or more of the other cases. The Grounds of Appeal in the case of the Royal Indemnity Company are as follows:

I.

(Consolidation of Actions.)

1. The Trial Judge ordered eleven other cases in addition to the above-named case to be consolidated and tried with said case before the same jury, against the objection of the defendant; which ruling was erroneous in so far as it affected the appellant, for the following reasons:

(a) There is no law of the State of New Jersey to justify the order of the Trial Judge requiring the appellant to try in one proceeding by consolidation or otherwise, more than one action before the same jury.

(b) Said order violates the rights of the appellant in that it deprives the appellant of property without due process of law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

(c) Said order is not within the judicial power of the Supreme Court or the State of New Jersey as limited by the Constitution of said State, and

especially Section 1 of Article X, there being no power at common law or under said Constitution to try the issues in two or more actions at the same time before the same jury.

(d) Even if such power exists, it should not be exercised in the present case, in that the issue in said case and the issues in the other cases with which said case was ordered to be consolidated are dissimilar, and such method of procedure is prejudicial to the fundamental right of the appellant to have distinct issues in separate actions separately tried.

(e) Said order prevents the proper adjudication, the adequate protection and the due enforcement of the rights of the appellant; and the trial of dissimilar issues between different parties at the same time, before the same jury, is contrary to the course of the common law and without justification under the laws of the State of New Jersey.

(f) Said order violates the rights of the appellant to trial by jury within the meaning of the provisions of paragraph 7 of Article I of the Constitution of the State of New Jersey (p. 362).

2. Evidence was erroneously admitted in the other cases which were ordered to be consolidated and tried with the above-named case which was not relevant to the issues in said case (p. 447).

II.

(Motion to Direct Verdict.)

Defendant's motion for a direction of verdict should have been granted for one or more of the following reasons:

3. The plaintiff has failed to prove facts sufficient to constitute a cause of action.

4. Congress having taken jurisdiction of the subject matter and having enacted statutes thereon to provide for the safe transportation of explosives in interstate commerce on land, and the Interstate Commerce Commission, in accordance with the directions of said statutes having made rules and regulations governing the subject matter, and the explosives in question in this suit having been in the course of transportation on land in interstate commerce, the plaintiff can only succeed if it has proved a violation of said statutes or the rules and regulations of the Interstate Commerce Commission above referred to. This the plaintiff has failed to do.

5. The plaintiff has failed to prove any negligence on the part of the defendant in respect of the starting of the fire, and the facts in this case do not permit the Court to allow the case to go to the jury upon the doctrine of *res ipsa loquitur.*

6. Assuming that the Court holds that there may have been some other duty to which the defendant was subject which is not covered by the statutes of the U. S. and the rules and regulations of the I. C. C. above referred to, there is no proof of any violation of any such other duty, if any existed.

7. Since there is no proof from which any inference could be drawn of any negligence on the part of the defendant in respect of the starting of the fire, and since the facts do not permit the Court to allow the case to go to the jury upon the doctrine of *res ipsa loquitur,* if it is sought to hold the defendant legally responsible because of the conduct of its employees after the fire started, then plaintiff may not succeed in this case on this theory because the evidence shows that the fire, when discovered, was in a car, and that such car was either a car containing ammunition and explosives, or was in the immediate vicinity of cars

containing ammunition and explosives; and, therefore, the only inference which a jury could be permitted to draw is that anyone going near such fire would be in great danger; and therefore the defendant cannot be held responsible even if its employees under these circumstances of emergency made any error of judgment in their conduct.

8. There is no proof that the omission of any duty set forth in the complaint with which the defendant was legally chargeable was the proximate cause of the injury to the plaintiff.

9. There is no proof that the performance of any duty set forth in the complaint with which the defendant was legally chargeable would have prevented the injury of which the plaintiff complains.

10. The defendant may not be held legally liable upon the assumption that the failure of its employees to procure water and put out the fire was the proximate cause of the injury to the plaintiff, because the proofs show that the Jersey City Fire Department, although promptly notified, came to the scene of the fire without means of pumping water, and any failure in this respect was the failure of the Jersey City Fire Department and of its duties as a public agency and it not attributable to the defendant.

11. Since there is no proof that the fire was started by human agency directly applied at the point of origin of the fire, there is no proper legal inference that the presence of any number of watchmen would have prevented the outbreak of the fire, and there is therefore no proper ground to attribute negligence to the defendant in respect of the number of watchmen furnished by it; and if the plaintiff seeks to hold the defendant responsible with respect to the starting of the fire as the proximate cause of the injury complained of, it may not legally do so under the proofs.

12. Since there is no testimony that the fire was started by human agency at the place where it commenced, and there is testimony that one of the ingredients in the material composing the shells was capable of spontaneous combustion, the jury may not legally infer that the fire was started by human agency applied at the place of the commencement of the fire.

13. The plaintiff may not have a verdict against the defendant upon the assumption that the proximate cause of the injury complained of was the negligence of the defendant in respect of the starting of the fire, because the evidence in this case is consistent with the non-existence of any negligence in that respect.

14. The plaintiff may not have a verdict against the defendant upon the assumption that the proximate cause of the injury complained of was the negligence of the defendant in respect of the spreading or non-extinguishment of the fire, because the evidence in this case is consistent with the non-existence of any negligence in that respect.

15. There is no evidence in this case from which the jury can legally infer that the defendant was bound to anticipate or expect that any negligence on its part in respect of the explosives in its possession or custody would affect the property of the plaintiff, and therefore the defendant cannot be held legally liable in this action (pp. 1014-1030).

III.

(*Requests to Charge.*)

The Trial Judge refused to charge one or more of the following requests submitted in behalf of the defendant. (The numbers in brackets correspond to the numbers of the requests, as submitted.)

16. (2)

The sole duty of the defendant to the plaintiff in respect to the explosives received by it for interstate transportation by land and still in the course thereof was to comply with the statutes of the United States and the regulations of the Interstate Commerce Commission respecting the same; and the plaintiff is not entitled to recover unless the jury shall find that the defendant failed to so comply and that such failure was the proximate cause of the injury complained of by the plaintiff.

17. (4)

The "explosive" placard is not a regulation of the Interstate Commerce Commission.

18. (5)

The proper construction to be placed upon the placard required to be put upon cars containing explosives by Paragraph 1666 of the Interstate Commerce Regulations, is that the words, "Keep Fire Away" mean do not bring fire near. They do not constitute an injunction to put out fire in the neighborhood of cars, and only refer to the voluntary action of a person in regard to the bringing of fire to or near the cars. There is no evidence that the defendant disregarded this injunction.

19. (6)

In the condensed rules on the so-called "explosive" placard, Section 7, which reads: "Avoid placing it near a possible source of fire," means not to put the car near a place where fire might reasonably be expected to be.

There is no evidence that this injunction was disregarded by the defendant.

20. (7)

Since the proofs in this case are uncontradicted that the shipments of explosives involved in this case were from points outside of the State of New Jersey and were in carload lots, and that it was the practice of the consignee or owner thereof to unload the said explosives from the cars, therefore paragraph 1643 (a) of the Interstate Commerce Regulations providing that "careful men must be chosen to handle explosives, the platform and the feet of the men must be as free as possible from grit, and all possible precautions must be taken against fire" applies to the consignee or owner in unloading the explosives from the cars, and does not apply to the defendant herein, and any alleged negligence in this respect is not chargeable to the defendant.

21. (8)

The language of paragraph 1643 (b) of the Interstate Commerce Regulations prescribing that "unauthorized persons must not have access to explosives * * * at any time while such articles are in the custody of the carrier," means that before the cars are sealed and after the cars are unsealed the carrier must not permit unauthorized persons to have access to the explosives in the cars. It does not refer to cars in which explosives are contained while such cars are under seal.

22. (9)

There is no evidence in this case that the defendant permitted any unauthorized persons to have access to the explosives while such articles were in its custody.

23. (10)

If the jury finds that unauthorized persons had access to the explosives on the night of July 29 and 30, 1916, while such articles were in the custody of the defendant, there is no evidence that the access of any such persons was the proximate cause of the injury complained of.

24. (11)

The language in paragraph 1689 of the Interstate Commerce Regulations referring to the handling of cars containing explosives and providing "they must be so placed in yards or on sidings that they will be subject to as little handling as possible and be removed from all danger of fire," means that in the operation of the railroad company's yard or its sidings, the cars containing explosives must be removed from such danger of fire as might reasonably be expected. This regulation does not impose upon the railroad company an absolute duty to remove such cars from all possibility that fire might ever reach them.

25. (12)

There is no evidence from which the jury can legally infer that under paragraph 1689 of the Interstate Commerce Regulations the cars containing explosives in the Black Tom yard at the time of the fire and had not been removed from whatever danger of fire might reasonably have been expected by the defendant.

26. (13)

There is no evidence in this case but that the explosives in defendant's cars were in all respects carried, conveyed, transported, handled and held by the defendant in compliance with the statutes of the United States and the regulations of the Interstate Commerce Commission respecting the

safe transportation of explosives in interstate commerce by land.

27. (14)

There is no proof that the origin of the fire was the result of any failure of duty imposed upon the defendant by the Regulations of the Interstate Commerce Commission relative to the safe transportation of explosives in interstate commerce by land, and therefore the jury cannot infer that the defendant was guilty of any violation of said regulations up to and including the time of the origin of the fire.

28. (15)

There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to prevent the occurrence of fire, detonations or other means whereby the explosives and munitions in question might become exploded; or that any such alleged failure was the proximate cause of the injury complained of.

29. (16)

There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to watch and guard the said explosives and the yard, piers, cars and vessels containing the same or lying in proximity thereto, so as to prevent and to extinguish and control when discovered fires, detonations and other means by which such explosions might be exploded; or that any such alleged failure was the proximate cause of the injury complained of.

30. (17)

There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to employ a sufficient number of watchmen and guards to police the said yard and approaches and the waters adjacent

thereto, to observe and detect the approach or presence of any persons not authorized or licensed to visit said pier and who might by accident or felonious intent set fire to said pier or property thereon; or that any such alleged failure was the proximate cause of the injury complained of.

31. (18)

There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to furnish, provide and install and keep in good order and repair sufficient fire-fighting devices and apparatus on and about its said pier; or that any such alleged failure was the proximate cause of the injury complained of.

32. (19)

There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to store, handle and dispose of said explosives and munitions so as to prevent and control the ignition and communication of fire and detonation from one portion or mass of the same to any other part or mass of the same; or that any such alleged failure was the proximate cause of the injury complained of.

33. (21)

There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law, immediately upon the happening and discovery of a fire on or near its said premises to notify the fire department of Jersey City of the existence and location of said fire; or that any such alleged failure was the proximate cause of the injury complained of.

34. (22)

The defendant can only be held responsible in damages for the failure to exercise reasonable care under the circumstances, and the jury in consider-

ing the circumstances and the degree of care exercised may consider the fact that there were four watchmen on the premises in the immediate vicinity of the cars containing the explosives on the night of the explosion in question, in addition to the watchmen employed by the defendant.

35. (23)

Since there is no proof that the fire on the defendant's premises was started by human agency directly applied at the point of the origin of the fire, the jury cannot conclude that the presence of more Lehigh Valley watchmen in the yard than in fact were there would have prevented the starting of the fire, and therefore the jury cannot find negligence on the part of the defendant in that respect.

36. (24)

There is no evidence from which the jury can legally infer that the defendant did not observe the usual custom of railroads in respect to the fire protection afforded at Black Tom on July 29-30, 1916.

37. (25)

There was no legal duty resting upon the defendant in respect of its terminal at Black Tom, to furnish fire hydrants in addition to those furnished by the City of Jersey City, the said terminal being within the limits of that municipality.

38. (26)

There was no legal duty resting upon the defendant in respect of its terminal at Black Tom, to furnish its own fire protection, in addition to that furnished by the City of Jersey City, the said terminal being within the limits of that municipality.

39. (27)

There was no legal duty resting upon the defendant in respect of its terminal at Black Tom to furnish men and equipment to extinguish fires, in addition to the men and equipment of the municipality of Jersey City, within the limits of which the said Black Tom Terminal is.

40. (28)

The proofs show that the witness Burns was the first person on the premises to discover the fire, and that he was in a position promptly to discover the fire, and therefore the jury may not infer that if there had been more Lehigh Valley watchmen present the fire would have been discovered any earlier than it was.

41. (29)

If the jury finds that the defendant was not negligent in respect of the starting of the fire and that the said fire was either in a car of explosives or ammunition or was immediately adjacent to cars containing explosives or ammunition, then a condition of emergency existed by reason of which the defendant cannot be held responsible for errors of judgment on the part of its employees or any of them in respect of what they did or failed to do concerning the putting out of the fire.

42. (30)

If the jury finds that the defendant was not negligent in respect to the starting of the fire and that the said fire was either in a car of explosives or ammunition or was immediately adjacent to cars containing explosives or ammunition, then the jury should consider whether the situation thus disclosed was not an emergency, and if the jury finds that the situation was that of an emergency then it may not find the defendant legally responsible for the errors of judgment of its employees in

respect of what they did or failed to do concerning the putting out of the fire.

43. (32)

If the jury finds that the fire which was discovered upon the premises of the defendant on July 30th, 1916, was started by spontaneous combustion and that the starting of such fire was the proximate cause of the injury to the plaintiff, then the defendant cannot be held legally responsible for any damage suffered by the plaintiff.

44. (33)

Since there is no testimony that the fire was started by human agency at the place where it commenced, and there is testimony that one of the ingredients in the material composing the shells was capable of spontaneous combustion, the jury cannot find a verdict against the defendant on the ground that the fire was started by human agency applied at the place of the commencement of the fire as the result of defendant's negligence.

45. (34)

If the jury finds that the spreading of the fire caused the injury to the plaintiff and that such spreading could have been prevented in time to have avoided any serious injury to the plaintiff by the throwing of water upon the fire, and that the proximate cause of the spreading was the failure to throw water upon the fire, then the jury must consider that the Jersey City Fire Department, although promptly notified and present at the scene of the fire, came there without their fire engines, and they testified that for the lack of such fire engines they were unable to throw water upon the fire, and the jury may therefore consider whether that was not the proximate cause of the spreading of the fire which caused the injury to the plaintiff, and if it so concludes, should find for the defendant.

46. (36)

The undisputed evidence is that Johnson Barge No. 17, with 1,005 cases of T N T and 417 cases of detonators (all obtained elsewhere) was moored at North Pier at Black Tom on July 30, 1916, and there is no evidence that the defendant had any knowledge whatever of the materials thus loaded on said Johnson 17 at that time; and the jury must find under the law as contained in the Anchorage Regulations of the United States Government that a boat thus loaded should not have been moored at Black Tom Pier, but should have proceeded to the anchorage grounds as designated in the said United States Regulations, and that the act of mooring her thus loaded at the North Pier at Black Tom was an unlawful act.

47. (37)

If the jury finds that the Johnson 17, containing 1,005 cases of T N T and 417 cases of detonators (all obtained elsewhere) was unlawfully moored at Black Tom Pier, and that the T N T thereon subsequently exploded on the night of July 30, 1916, and caused damage complained of by the plaintiff, the jury cannot legally find the defendant responsible for such damage.

48. (38)

There is no evidence in this case from which the jury can legally hold the defendant responsible in respect of the materials on Johnson Barge No. 17, or for the results of any explosion of such materials.

49. (41)

In view of the fact that the regulations concerning the transportation of explosives and other dangerous articles on land in Article 1647 contain a prohibition against the loading of such materials as

detonators and high explosives in the same car or storage place, and of the evidence in this case in respect to the danger of thus loading such articles on the same carrier, the jury may legally find that the presence on Johnson Barge 17 of the detonators and T N T constituted negligence on behalf of the proprietor of such barge, and if it thus finds and also finds that the explosion on the Johnson 17 was the proximate cause of the damage complained of by the plaintiff, then it may not find against the defendant.

50. (42)

The jury is not at liberty to allow the plaintiff any interest in respect of any sum found to be due it (p. 1056).

IV.

(*Exceptions to Charge.*)

The Trial Judge erroneously charged the jury in one or more of the following respects:

51. (a) "First of all, gentlemen, the basis of every one of the actions brought here is what is called in the law negligence. If there is no negligence there can be no recovery. Only if there is negligence and that negligence is the proximate cause of the injuries to the plaintiffs can the plaintiffs recover. That brings us to consider first of all, what is the negligence that (this plaintiff) charges against this defendant company? And upon that subject these are the charges that are made in (this suit):

"In (this) case * * * the first claim is that this material which is alleged to have exploded constituted a nuisance, and the second claim is that there was negligence.

(b) "The grounds of negligence charged are, first, a failure to exercise a high degree of care to prevent fires and explosions." * * *

(c) "So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger; and the burden therefore rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out then the plaintiff is entitled to have a verdict and have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict but the verdict would have to be for the defendant."

52. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 51, the Trial Judge then charged as follows:

"The grounds of negligence charged are: * * * Secondly, failure to exercise a high degree of care to watch and guard said explosives and discover and distinguish fire."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk of danger in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal No. 51.

53. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 51, the Trial Judge then charged as follows:

"The grounds of negligence are: * * * Thirdly, a failure to employ sufficient watchmen to detect trespassers or incendiaries."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk of danger in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal No. 51.

54. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 51, the Trial Judge then charged as follows:

"The grounds of negligence charged are * * * Fourthly, the failure to provide sufficient fire-fighting devices and apparatus."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk of danger in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal No. 51.

55. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 51, the Trial Judge then charged as follows:

"The grounds of negligence charged are: * * * Fifthly, failure to use a high degree of care to store, handle and dispose of said explosives, to prevent communication of fire and detonation from one part to another."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk of danger in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal No. 51.

56. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 51, the Trial Judge then charged as follows:

"The grounds of negligence charged are: * * * next, failure to notify the fire department."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk of danger in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal No. 51.

57. "First of all, gentlemen, the basis of every one of the actions brought here is what is called in the law negligence. If there is no negligence there can be no recovery. Only if there is negligence and that negligence is the proximate cause of the injuries to the plaintiffs can the plaintiffs recover. That brings us to consider first of all, what is the negligence that (this plaintiff) charges against this defendant company? And upon that subject these are the charges that are made in (this suit):

"In (this) case * * * the first claim is that this material which is alleged to have exploded constituted a nuisance, and the second claim is that there was negligence. The grounds of negligence charged are, first, a failure to exercise a high degree of care to prevent fires and explosions; secondly, failure to exercise a high degree of care to watch and guard said explosives and discover and extinguish fire; thirdly, a failure to employ sufficient watchmen to detect trespassers or incediaries; fourthly, the failure to provide sufficient fire-fighting devices and apparatus; fifthly, failure to use a high degree of care to store, handle and dispose of said explosives, to prevent communication

of fire and detonation from one part to another; * * * next, failure to notify the fire department.

* * *

"So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger; and the burden therefore rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out then the plaintiff is entitled to have a verdict and to have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict but the verdict would have to be for the defendant."

58. "I charge you first of all that under the Constitution of the United States, which gives to Congress the right to regulate interstate commerce, that is, commerce with foreign nations and commerce amongst the various states and with the Indian tribes—that that power conferred upon Congress when Congress has acted under it, is exclusive, and the regulations of commerce in so far as they have occupied the field solely govern; in so far as they have not occupied the field if there are at the time of their passage existing State regulations not inconsistent with the regulations of the Interstate Commerce Commission those State regulations are not deposed or abrogated, and if afterwards the States pass laws with respect to the regulation of the transportation of explosives in the exercise on the part of the State of its police power, those regulations if they do not directly and immediately interfere with interstate commerce or if they are not in antagonism

to the regulations of the Interstate Commerce Commission, would be valid regulations and would be effective."

59. "The Supreme Court of the United States has said that through a long series of decisions dealing with the scope and effect of the commerce clause it has come to be well settled that a State possesses power to adopt reasonable measures to promote and protect the health, safety, morals and well-being of its people even though interstate commerce be incidentally or indirectly affected; and I charge you that the effect of the regulations that were in force at the time of the explosions on Black Tom was this, that individuals or companies maintaining agencies dangerous to human life must exercise a high degree of care for the safety of those who may be thereby exposed to danger. And by a degree of care is meant no more than a degree of care commensurate with the risk of danger."

60. "So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger; and the burden therefore rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out then the plaintiff is entitled to have a verdict and to have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict but the verdict would have to be for the defendant."

61. "And I charge you that after engaging in the business the railroad company had the right to

restrict its operations under the following sections of the regulations of the Interstate Commerce Commission: Regulation 1401: When local conditions make the acceptance, transportation or delivery unusually hazardous, local restrictions may be imposed. And Section 1429 provides that all carriers must report to the chief inspector for compilation and publication full information as to restrictions which may be imposed as provided in paragraph 1401-a, to which I have just directed your attention, against the acceptance, delivery or transportation of explosives over any portion of their lines."

62. "Regulation 1643-a provides as follows: Careful men must be chosen to handle explosives. The platform and the feet of the men must be as free as possible from grit, and all possible precautions must be taken against fire. Suitable provision must be made outside of the station when practicable for the safe storage of explosives, and every effort possible must be made to reduce the time of this storage. If a shipment of explosives is not removed within forty-eight hours after notice of arrival at destination it must be disposed of by return to shipper or by storage at the expense of the owner or by sale or, when necessary to safety, by destruction under supervision of a competent person and (b) unauthorized persons must not have access to explosives or other dangerous articles at any time while such articles are in the custody of the carrier.

"And I charge you, gentlemen, that in so far as those provisions have a bearing upon the duty of the defendant company with respect to handling these explosives, it cast upon them, as I told you a moment ago, the duty to use a high degree of care for the safety of those who might be thereby exposed to danger, and that a high degree of care denotes no more than a degree of care commen-

surate with the risk of danger. And you can readily understand that in determining what a degree of care commensurate with the risk of danger is you will take into consideration all the circumstances in which the company found itself placed at the time it was called upon to act and say, what would a reasonably prudent and cautious person have done in a like or similar situation with respect to the transportation of these explosives? If this company did all that a reasonably prudent and cautious person would have done, it did all that it was required to do; if it did not, it might be found to be negligent; and if it were found to be negligent and that negligence was the proximate cause of the injury to the plaintiff, the plaintiff would be entitled to have your verdict under the rules which I have given you and to have you assess the damages."

63. "The next provision of the regulations is this: Placard—section 1666—A certified car of the dangerous explosives specified in paragraph 1661 must be protected by attaching to each outside end and side door, the lower edge not less than four and a half feet above the car floor, a standard placard 12 by 14 inches on which appears in conspicuous red and black printing on strong tag board the following notice—I do not attempt to read the whole notice to you. You will have the whole notice with you and will look at it of course when you come to consider the case—but in large lettered type appears the word: 'EXPLOSIVES'; and underneath that, 'Handle carefully'; and underneath that, 'Keep fire away.' Now, whether this be a regulation of the Interstate Commerce Commission or a part of a regulation of the Interstate Commerce Commission, or whether it be a warning, it correctly and aptly expresses the duty of a railroad company handling explosives, which duty when properly interpreted means that they

shall use a high degree of care, that is, care commensurate with the risk of danger, to keep fire away from those explosives; and it also correctly and aptly expresses the duty resting upon the defendant when it says that they shall handle the explosives carefully; because a high degree of care involves the notion that anybody in the course of his business dealing with explosives where dealing with them and handling them may subject others to danger comes under the duty to use a high degree of care to so handle them as to minimize the danger resultant from not handling them with care. In other words, their duty is to use a high degree of care to handle them carefully. If they do not use that degree of care and injury results from a neglect to use it and that neglect is a proximate cause of that injury, manifestly the person thus injured would have a right to recover damages because of that injury."

64. "Now then you might ask yourselves when we are talking about reasonable care and a high degree of care and care commensurate with the risk, What is this reasonable care, this high degree of care or care commensurate with the risk which it is the duty of the defendant company to use? I charge you, gentlemen, that reasonable care is first of all a relative term. It is a term which has reference to the situation in which the defendant finds itself when it is called upon to act. A high degree of care in some circumstances might be a low degree of care with respect to the same act in other circumstances."

65. "In this case a most interesting situation arises right on this phase of the case. Here the claim is made that these things that were on fire or in proximity to which a fire had started were explosive things, they were dangerous things; and you might ask yourselves, Well, how much courage

is a reasonably prudent man expected to exhibit? You might phrase that inquiry in these words: How bold would a prudent man be expected to be? and how prudent must a bold man be in acting in such a conjuncture of circumstances? Now you will have observed that I said to you that the duty of the defendant company is to use reasonable care, and that that care is such care as a reasonably prudent and cautious person would use under the circumstances. You will observe that the person prudent and cautious; and that means that the party is called upon to use such care in the light of all the circumstances that confront him and such boldness in the light of his knowledge of existing conditions as a reasonably prudent and cautious man would use under the circumstances. When a man uses that much it is all he is called upon to use. So that you ask yourselves in the last analysis with respect to this matter of boldness or its absence: How would a reasonably prudent and cautious man act, circumstanced as the employees of this defendant company found themselves circumstanced on the night in question? If these men acted as a reasonably prudent and cautious man would have acted they did all that was required of them. If they did not act as a reasonably prudent and cautious man would have acted under the circumstances, why then such neglect on their part would constitute negligence, and if that negligence was the proximate cause of the injury manifestly there might be a recovery, and should be a recovery. If it was not, there should not be a recovery under the circumstances.

"And then we have had a great deal of talk here on both sides by counsel in summing up—we must all admit, I think, very eloquent talk on both sides—with respect to what has been called the emergency doctrine; that when men are called upon to act in an emergency, as one of the counsel ex-

pressed it that when emergency flies into the window judgment goes out of the door. Well, we have got to be a little careful in defining terms, and we must not allow ourselves in the disposition and decision of a law suit to fall too readily into the ruling tendency of the American people generally to be governed too much by epigrams and by catch phrases and by headlines. First of all, what is an emergency? And secondly, how great must the exigency be to absolve a person from responsibility if he exercises no judgment whatever but simply acts upon what I think more accurately might be called instinct; if you please, the instinct of self-preservation. Now then you can readily see that many situations in life are emergencies which are not crises. Many situations in life are emergencies which are not exigencies; and therefore you ask yourselves this: What were the precise facts which were present to the apprehension of the person when he was called upon to act? Was the condition so overwhelming and overpowering on the instant as to leave him no time for deliberation, no time for thought, no time for calm judgment? If they were that would be indubitably a pure emergency. I think it might be more accurately called a pure exigency. And under such circumstances a man would not be responsible even if he did not use any judgment, for the very obvious reason that a man under such circumstances uniformly acts from instinct. The crisis comes, the act is done, and it is all over in an instant. Then there are other things that are popularly called emergencies which furnish time for thought and for deliberation and for judgment, and when they do furnish time then the jury, called to pass upon a question of this kind, asks itself, How much time did he have? How much excitement, how much fear was engendered by the circumstances which confronted him? How calmly could he consider,

determine and act? Now, upon that subject one of our cases has some rather illuminating language. The case says: 'The rule is well settled that where the sole basis of liability is the omission to perform a certain duty suddenly and unexpectedly arising, there ought to be at least a consciousness of the facts which raise the duty on the part of the person who is charged with its performance, and a reasonable opportunity to discharge it.'

"Now, to analyze that thing for just a moment, you see inherent in it the very things that I have been talking about to you for the last three or four moments. There ought to be at least a consciousness of the facts which raise the duty on the part of the person who is charged with its performance and a reasonable opportunity to discharge it. And therefore you ask yourselves very properly what did these men see down there that night? What in the exercise of reasonable care on their part ought they to have seen that night? And in the light of the facts that were known to them, or should have been known to them, could a reasonably prudent and cautious man have acted, and acted effectively, with respect to the condition that existed there in an effort to prevent the catastrophe that subsequently occurred? If a reasonably prudent and cautious man could have discovered the condition and have remedied it by the exercise of reasonable care and prudence on his part he was bound to do it. If he could not he was not. And then again we find the rule which I have been endeavoring to elucidate to you stated in the same case in these words:

" 'Parties are not liable for a mistaken exercise of judgment on the part of their employees in an emergency or for a failure to act with the utmost promptitude and in the right direction when circumstances are such as to afford no time for de-

liberation. Where an employee of the railroad company is confronted with a sudden emergency, failure on his part to exercise the best judgment the case renders possible does not establish lack of care or skill upon his part which renders the company liable. It is not responsible in such circumstances even for his error of judgment.'

"And, therefore, to make a resume of all that I have been trying to say to you upon this subject you ask yourselves, What was the situation that confronted the employees of this company on that night? Did it amount to an emergency of such a character, so overpowering in its nature as not to give time to a reasonably prudent and cautious man in the exercise of reasonable prudence and caution, for deliberation and decision? Why, if that condition existed, it was an emergency, and if a man on the instinct of self-preservation ran away, that is what a reasonably prudent and cautious man would do; but if, on the other hand, there was time for thought and deliberation and the condition of affairs down there was such that a reasonably prudent and cautious man in the light of what confronted him would have made an effort to put the fire out, then you might naturally say that the neglect on the part of the servants and agents of the defendant company to put it out under the circumstances was negligence; and if their neglect to make the effort to put it out was negligence under the rules which I have given you and it proximately caused the injury to the plaintiffs, the plaintiffs would have a right to recover.

"So that, you see, reduces itself again to just this proposition, and that is that in any given set of circumstances you erect your reasonably prudent and cautious man there and ask yourselves the question, What would he have done? If the defendants' servants did what he would have done under the circumstances they were not negligent.

If they did not do what this reasonably prudent and cautious man would have done under the circumstances, then they were negligent, and if that negligence proximately caused the injury then there might be a recovery in that particular."

66. "Now, there is another claim made, that the first explosion did not take place on the land at all, that it took place on a barge, the Johnson 17, which was in the water and moored to the pier in violation of the anchorage regulations of the United States, and that it was what first exploded and that it exploded without fault on the part of the defendant company, and that it, being the first explosion, caused the injury. Of course, if the Johnson 17 was moored there in violation of the anchorage regulations of the United States, and the first explosion was the explosion that took place on that barge, why it would follow as a matter of law that the defendant would not be responsible for the injury wrought by the explosion on the Johnson 17 to these plaintiffs for the obvious reason that it would not have been their fault at all. If a third person sees fit to, in violation of law, tie up his barge to my pier and then because of some fault on his part, or even without fault on his part, an explosion takes place on that barge, of course I am not responsible for his act in violating the law and putting the barge there and causing the damage that ensues from its presence there, the point being that you can only assess damages where you have ascertained the fault to lie."

67. "But I charge you again, as I have previously charged you in the case, that there does exist a duty with respect to the matter of taking precautions against fire, to use care commensurate with the risk of danger involved, against fire."

68. "Section 1689 provides that they must be—speaking of handling cars containing explosives—

they must be coupled carefully and all unnecessary shocks must be avoided. Other cars must not be cut off and allowed to strike a car containing explosives. They must be so placed in yards or on sidings that they will be subject to as little handling as possible, and be removed from all danger of fire. Now, that last clause, that they must be removed from all danger of fire, does not impose upon the company an absolute duty that they must at all hazards remove them from all danger of fire; but they must use a high degree of care, a degree of care commensurate with the risk of danger involved in the transaction, to remove them from all danger of fire.

* * *

"I charge you that the language in paragraph 1689 of the Interstate Commerce Regulations referring to the handling of cars containing explosives and providing they must be so placed in yards or on sidings that they will be subject to as little handling as possible and be removed from all danger of fire, means that in the operation of the railroad company's yard or its sidings the cars containing explosives must be removed from such danger of fire as might reasonably be expected. This regulation does not impose upon the railroad company an absolute duty to remove such cars from all possibility that fire might ever reach them. They must simply use, as I have told you before, care commensurate with the risk of the danger involved."

69. "And I charge you furthermore that even if the Jersey City Fire Department did get there and was insufficiently equipped to put the fire out, and even if that was a proximate cause of the spread of the fire, that if also you find that the defendant company was negligent in not using care commensurate with the risk to prevent the spread of the fire, that that also might be found to be a

proximate cause of the fire; and if both the Jersey City Fire Department and the defendant were negligent in not using care commensurate with the risk to prevent the spread of the fire, that the mere fact that the Jersey City Fire Department might also be responsible for it would not discharge the defendant company from its responsibility, because there can be concurring proximate causes, and if two parties by their joint negligence or by the separate concurring negligence of each concur in bringing about the destruction of property, either or both may be responsible and may be called upon to respond in damages."

70. "I might say this, gentlemen, before you go out: That is, by anything I said I did not mean to have you think that the Court meant to hold as a matter of fact and charge you as a matter of fact either that there were enough men there or that there was enough apparatus there or enough facilities to meet an emergency. Whether there was or not is for you to determine; and how the men acted in the light of the circumstances that confronted them depends upon what they had to act with, and whether the defendant company was negligent or not in respect of the facilities and the men depends upon what you say reasonable care, or care commensurate with the risk, would require with respect to the number of men required and the facilities required to be furnished and had by the defendant in the exercise of reasonable care in the transportation of explosives."

71. "Defendant's motion for a direction of verdict should have been granted for the reason that under the terms of the policy, the insurance company was not under any legal duty to pay its insured for the damage alleged to have resulted from the breakage of glass, because the plaintiff alleges that the breakage of glass resulted (directly or indi-

rectly) either by or from or was in consequence of, a fire on defendant's premises, or that the loss or damage was caused by or resulted from fire."

In case No. 2—New York Plate Glass Insurance Company, all the grounds of appeal are the same as in case No. 1.

In case No. 3—Chicago Bonding & Insurance Company, all the grounds of appeal are the same as in case No. 1.

In case No. 4—Ocean Accident & Guarantee Corporation, Limited, of London, England, all the grounds of appeal are the same as in case No. 1.

In case No. 5—Lloyds Plate Glass Insurance Company of New York—all the grounds of appeal are the same as in case No. 1, except that grounds 51 to 57, inclusive (on account of a difference in the allegations of the complaint) do not apply; and, in lieu thereof, the grounds which are numbered in the record in that case as 72, 73, 74 and 75, are stated. These are as follows:

72. (a) "First of all, gentlemen, the basis of every one of the actions brought here is what is called in the law negligence. If there is no negligence there can be no recovery. Only if there is negligence and that negligence is the proximate cause of the injuries to the plaintiffs can the plaintiffs recover. That brings us to consider first of all, what is the negligence that (this plaintiff) charges against this defendant company? And upon that subject these are the charges that are made in (this suit): * * *

(b) "The Lloyds Plate Glass Insurance Company charges, first, negligence in keeping and maintaining large quantities of explosives." * * *

(c) "So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with

the risk of danger, and the burden therefore rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out then the plaintiff is entitled to have a verdict and have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict but the verdict would have to be for the defendant."

73. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 72, the Trial Judge then charged as follows:

"The Lloyds Plate Glass Insurance Company charged * * * negligently keeping, managing and controlling the same" (*i. e.*, large quantities of explosives).

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk of danger in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal No. 72.

74. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 72, the Trial Judge then charged as follows:

"The Lloyds Plate Glass Insurance Company charged * * * negligently and carelessly failing to provide proper and adequate means of protection against explosion and fire."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk of danger in the respect above quoted,

using the language set forth in sub-head (c) of Ground of Appeal No. 72.

75. "First of all, gentlemen, the basis of every one of the actions brought here is what is called in the law negligence. If there is no negligence there can be no recovery. Only if there is negligence and that negligence is the proximate cause of the injuries to the plaintiffs can the plaintiffs recover. That brings us to consider first of all, what is the negligence that (this plaintiff) charges against this defendant company? And upon that subject these are the charges that are made in (this suit): * * *

"The Lloyds Plate Glass Insurance Company charged, first, negligence in keeping and maintaining large quantities of explosives, negligently keeping, managing and controlling the same, negligently and carelessly failing to provide proper and adequate means of protection against explosion and fire." * * *

"So that so far as charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger; and the burden therefore rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out then the plaintiff is entitled to have a verdict and have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict but the verdict would have to be for the defendant."

In case No. 6—Metropolitan Casualty Insurance Company of New York—all the Grounds of Appeal are the

same as in case No. 1, except that Grounds Nos. 51 to 57 (on account of a difference in the allegations of the complaint), do not apply, and, in lieu thereof, the grounds which are numbered in the record in that case as 72, 73 and 74, are stated. These are as follows:

72. (a) "First of all, gentlemen, the basis of every one of the actions brought here is what is called in the law negligence. If there is no negligence there can be no recovery. Only if there is negligence and that negligence is the proximate cause of the injuries to the plaintiffs can the plaintiffs recover. That brings us to consider first of all, what is the negligence that (this plaintiff) charges against this defendant company? And upon that subject there are the charges that are made in (this suit): * * *

(b) "The Metropolitan Casualty Company charges, first, negligence in caring for the explosives."

(c) "So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger; and the burden therefore rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out then the plaintiff is entitled to have a verdict and have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict but the verdict would have to be for the defendant."

73. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 72, the Trial Judge then charged as follows:

"The Metropolitan Casualty Company charges * * * failing to provide a proper and adequate means of protection against explosion and fire."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk of danger in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal No. 72.

74. "First of all, gentlemen, the basis of every one of the actions brought here is what is called in the law negligence. If there is no negligence there can be no recovery. Only if there is negligence and that negligence is the proximate cause of the injuries to the plaintiffs can the plaintiffs recover. That brings us to consider first of all, what is the negligence that (this plaintiff) charges against this defendant company? And upon that subject these are the charges that are made in (this suit):

"The Metropolitan Casualty Company charges, first, negligence in caring for the explosives, failing to provide a proper and adequate means of protection against explosion and fire." * * *

"So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger; and the burden therefore rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company

was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out then the plaintiff is entitled to have a verdict and have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict but the verdict would have to be for the defendant."

In case No. 7, Fidelity & Casualty Company, all the Grounds of Appeal are the same as in case No. 1.

In case No. 8, Commercial Casualty Insurance Company of Newark, N. J., all the Grounds of Appeal are the same as in case No. 1.

In case No. 9, Childs Company, a corporation, all the Grounds of Appeal are the same as in case No. 1, except that ground No. 71 does not apply, for the reason that that particular ground is limited to the plaintiffs, which are insurance companies.

In case No. 10, Trustees of St. Paul's Evangelical Lutheran Church, all the Grounds of Appeal are the same as in case No. 1, except that ground No. 71 does not apply for the reason that that particular ground is limited to the plaintiffs, which are insurance companies. In addition to the grounds stated in case No. 1, however, there are certain other grounds, which in the record in this case, are numbered 72, 72 and 73. These are as follows:

Defendant's motion for a direction of verdict should have been granted for one or more of the following additional reasons:

71. There is n proof that the defendant was guilty of the acts alleged in the complaint to be negligent.

72. There is no proof that the negligence alleged in the complaint was the proximate cause of the damage suffered by said plaintiff.

73. There is no proof that the defendant created or maintained a public nuisance as alleged in the complaint.

In case No. 11, Eleazer E. Clark, *et al,* Grounds of Appeal Nos. 1 to 70, are the same as in case No. 1, but ground No. 71 in that case does not apply for the reason that that particular ground is limited to plaintiffs, which are insurance companies. There are, however, certain additional grounds which are applicable only to this case, and which are numbered in the record in this case as 71 to 86, inclusive. These are as follows:

(*Freight Moneys*)

71. (a) The following questions were admitted to the witness Eleazer E. Clark:

(1) "Do you know whether or not the vessel had collected the freight moneys on her entire cargo at this time?"

(2) "None had been?"

(3) "Had some freight accrued and was owing by the consignees at that time?"

(4) "Now, Mr. Clark, about the cargo of this boat. What part, if you know, of the cargo has not been discharged?"

(5) "Will you answer the question, Mr. Clark?"

(6) "When you say that you mean the vessel's bill of lading?"

(7) "The Wolcott's bill of lading?"

(8) "And that part that you say you collected the amount on, what was done with that wood?"

(9) "Delivered where?"

Defendant's motion for a direction of verdict should have been granted for one or more of the following additional reasons:

71. (b) The proofs show that after the outbreak of the fire the plaintiffs could have removed the schooner Wolcott from the proximity of danger therefrom, and the failure on the part of the plain-

tiffs to take reasonable precautions in caring for their property in this respect was the proximate cause of the damage to the property of the plaintiffs for the loss of which they sue.

71. (c) The proofs show that the proximate cause of the damage to the plaintiffs' schooner was the failure on the part of the employees of the plaintiffs to use reasonable care in respect to extinguishing any fire communicated to said schooner, and therefore the plaintiffs cannot recover from the defendant for such damage.

The Trial Judge refused to charge the following further request submitted in behalf of the defendant (said request being No. 43):

71. (d) If the jury finds that after the outbreak of the fire the plaintiffs or their agents or employees could have removed the schooner Wolcott from the proximity of danger therefrom and that the failure on the part of the plaintiffs or their agents or employees to take reasonable precautions in caring for their property in this respect was the proximate cause of the damage to the property of the plaintiffs for the loss of which they sue, then the jury must find for the defendant in this case.

The Trial Judge further erroneously charged the jury in one or more of the following respects:

72. (a) "The negligence charged is in failing to give the schooner safe berth; in collecting explosive cars to such an extent that the combustion and detonation thereof would result in great damage to property." * * *

72. (b) "So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger; and the burden therefore rests upon

the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out then the plaintiff is entitled to have a verdict and have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict but the verdict would have to be for the defendant."

73. "The negligence charged is * * * in permitting the accumulation of inflammable material." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

74. "The negligence charged is * * * in failing to provide competent men and sufficient facilities for patroling and guarding the yard." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

75. "The negligence charged is * * * in neglecting to exclude trespassers or incendiaries." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language

set forth in sub-head (b) of Ground of Appeal No. 72.

76. "The negligence charged is * * * in failing to provide hydrants and water." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

77. "The negligence charged is * * * in failing to provide firemen." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

78. "The negligence charged is * * * in failing to instruct employees as to duties in case of fire." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

79. "The negligence charged is * * * in failing to provide facilities for removing or isolating burning cars." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the

risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

80. "The negligence charged is * * * in failing to dispose of the cars so as to control communication of fire, etc." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

81. "The negligence charged is * * * in permitting barges to tie up at the piers." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

82. "The negligence charged is * * * in failing to give alarm." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

83. "The negligence charged is * * * in failing to prevent fire." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language

set forth in sub-head (b) of Ground of Appeal No. 72.

84. "The negligence charged is * * * in failing to discover and extinguish the fire." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

85. "The negligence charged is * * * in failing to warn the schooner of the presence of danger." * * *

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff by reason of the failure of the defendant to use a degree of care commensurate with the risk in the respect above quoted, using the language set forth in sub-head (b) of Ground of Appeal No. 72.

86. "The negligence charged is in failing to give the schooner safe berth; in collecting explosive cars to such an extent that the combustion and detonation thereof would result in great damage to property; in permitting the accumulation of inflammable material; in failing to provide competent men and sufficient facilities for patrolling and guarding the yard; in neglecting to exclude trespassers or incendiaries; in failing to provide hydrants and water; in failing to provide firemen; in failing to instruct employees as to duties in case of fire; in failing to provide facilities for removing or isolating burning cars; in failing to dispose of cars so as to control communication of fires, etc.; in permitting barges to tie up at the piers; in failing to give alarm; in failing to prevent fire; in fail-

ing to discover and extinguish the fire; in failing to warn the schooner of the presence of danger."

"So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger; and the burden therefore rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out then the plaintiff is entitled to have a verdict and have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict but the verdict would have to be for the defendant."

In case No. 12, Ira W. Allen, Grounds of Appeal Nos. 1 to 70, are the same as in case No. 1, but ground No. 71 in that case does not apply, for the reason that that particular ground is limited to plaintiffs which are insurance companies. In lieu thereof, another ground, also known as 71 is as follows:

"71. The proofs show that the said plaintiff could have removed himself from the proximity to danger if he had exercised reasonable care for his own safety, and since he did not exercise reasonable care in this respect he may not recover against the defendant."

The other grounds in this case are numbered in the record as 72 to 86 and these are substantially the same as grounds 72 to 86 in the Clark case, No. 11. (For exceptions to charge see pages 1056-1069. For exceptions to evidence in Clark case, see pages 398-401.)

Brief of the Argument.

I.

It appearing that Congress had enacted legislation for the transportation of explosives in Interstate Commerce, and that regulations had been made pursuant to such legislation, the duty of the defendant in the premises must be determined solely by reference to such legislation and regulations.

The complaints in most of the cases charge that "by authority of certain acts of Congress approved March 4th, 1909, and June 18th, 1910, the Interstate Commerce Commission in October, 1914, promulgated, and on July 30th, 1916, there remained in force and effect, certain regulations for the handling and transportation by freight of carloads of explosives by carriers and interstate commerce, which regulations were then and there binding upon the defendant and applicable to the explosives * * *, to which regulations the plaintiff refers as fully as if here set forth;" and then alleged that the defendant "negligently failed and refused to comply with the 'requirements' of said regulations and that on July 30th, 1916, a fire occurred on the defendant's premises and by reason of the negligence of the defendant in failing to perform its several duties in the premises the defendant suffered a part of said explosives and the cars and containers thereof become ignited, whereby the same exploded." See Third Count, case No. 1, p. 37; Third Count, case No. 3, p. 97; Third Count, case, No. 4, p. 119; amendment of complaint, case No. 5, p. 162; amendment of complaint, case No. 6, p. 194; Third Count of complaint, case No. 8, p. 230; par. 20 of complaint, case No. 11, p. 308; par. 14 of complaint, case No. 12, p. 340.

In case No. 7 (Fidelity and Casualty Company) the complaint made no reference to the interstate commerce laws and regulations but relied entirely upon certain allegations of negligence irrespective of any statutes or regulations on the subject matter (pp. 203-7).

In case No. 10 (St. Paul's Church) the original complaint relied entirely upon the theory of a public nuisance. At the close of the testimony the plaintiff in this case was allowed to amend (p. 1012) and on July 8th, 1919, ten days after the trial had been finished and the verdicts returned the amendment was filed, including a count setting up the interstate laws and regulations (pp. 278-284). No amendment was requested or made in the case of the Fidelity and Casualty Company.

The defendant in its answers set up as a special defense to the first count (which charged a nuisance) that as a common carrier engaged in interstate commerce it was compelled by law to receive, carry and convey and transport the explosives, providing the same were packed, marked, loaded and handled, in accordance with the interstate statutes and regulations, and it then alleged that the said explosives were packed, etc., and when offered for transportation were, and until and at the time of the explosion continued to be in proper conditions to transport, in accordance with said statutes and regulations and were carried, conveyed, transported and held by it lawfully and strictly in accordance therewith.

The same defense was set up in answer to the second count which alleged certain common law grounds of negligence, irrespective of the interstate statutes and regulations. The answer to the third count admitted the statutes and regulations which were therein mentioned and admitted that the same were binding upon the defendant but as to whether they or any of them were applicable to the explosives, it prayed reference to the original of the regulations; and denied that any of the said explosives became ignited or exploded by reason of any negligence on its part in failing to perform its several alleged duties. (See p. 44, l. 20, to p. 45, l. 20; p. 48, l. 10; p. 48, l. 20, to p. 49, l. 10.)

Motion for direction of verdict in favor of the defendant was made on the ground, among others, that as the explosives were in the course of transportation on land, in

interstate commerce, the plaintiffs could not succeed unless they proved a violation of the interstate statutes or regulations; and this the plaintiffs had failed to do (p. 1014, l. 30, to p. 1015, l. 5).

The same point was raised by appropriate requests to charge, which were submitted as applicable to each of the 12 cases. Requests Nos. 2 and 3 read as follows:

> "2. The sole duty of the defendant to the plaintiff in respect to the explosives, received by it for interstate transportation by land and still in the course thereof was to comply with the statutes of the United States and the regulations of the Interstate Commerce Commission respecting the same, and the plaintiff is not entitled to recover unless the jury shall find that the defendant failed to so comply and that such failure was the proximate cause of the injury complained of by the plaintiff."
>
> If the Court refuses to charge No. 2 then we respectively request the Court to charge No. 3 as follows:
>
> "3. The sole duty of the defendant to the plaintiff in regard to the explosives received by it for interstate transportation by land and still in the course thereof in respect of all matters within the scope of the statutes of the United States and the regulations of the Interstate Commerce Commission concerning the same, was to comply with such statutes and regulations; and the plaintiff is not entitled to recover in respect of any such subject matter unless it proves a failure on the part of the defendant to so comply and that such failure was the proximate cause of the injury complained of by the plaintiff" (p. 1069, l. 35, to p. 1070, l. 20).

The Trial Judge refused to charge request No. 2, but did charge request No. 3 (p. 1049, ll. 15-25).

As this request was in the alternative, the defendant is entitled to raise the point that it was error to charge request No. 2.

> *Kosher Dairy Co.* v. *N. Y. S. & W. R. R.*, 86 N. J. L. 161.

The same point was raised by certain exceptions to the charge. In the course of his charge, the Trial Judge,

in announcing the rules of law which he said were applicable to the case, first recited to the jury the various grounds of negligence as they were alleged in the several complaints, including all of the allegations respecting common law negligence, as well as the allegations relating to the subject of the interstate regulations (pp. 1035-6). He then referred to the interstate regulations and said (italics ours):

> "I charge you first of all that under the Constitution of the United States, which gives to Congress the right to regulate interstate commerce, that is, commerce with foreign nations and commerce amongst the various states and with the Indian tribes, that that power conferred upon Congress, when Congress has acted under it, is exclusive, and the regulations of commerce *insofar as they have occupied the field*, solely govern; insofar as they have not occupied the field, if there are at the time of their passage existing State regulations not inconsistent with the regulations of the Interstate Commerce Commission, those State regulations are not deposed or abrogated, and if afterward the states pass laws with respect to the regulation of the transportation of explosives in the exercise on the part of the State of its police power, those regulations, if they do not directly and immediately interfere with interstate commerce or if they are not in antagonism to the regulations of the Interstate Commerce Commission, would be valid regulations and would be effective. The Supreme Court of the United States has said that through a long series of decisions dealing with the scope and effect of the commerce clause it has come to be well settled that a State possesses power to adopt reasonable measures to promote and protect the health, safety, morals and well-being of its people, even though interstate commerce be incidentally or indirectly affected; and *I charge you that the effect of the regulations* that were in force at the time of the explosions on Black Tom was this, that individuals or companies maintaining agencies dangerous to human life *must exercise a high degree of care for the safety of those who may be thereby exposed to danger. And by a high degree of care*

is meant no more than a degree of care commensurate with the risk of danger. So that so far as the charges against this defendant are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger; and the burden, therefore, rests upon the plaintiffs in these cases to show that the defendant company did not use a degree of care commensurate with the risk of danger and that such neglect on the part of the defendant company was the proximate cause of the injury complained of by the plaintiff. If the plaintiff has made that out, then the plaintiff is entitled to have a verdict and to have you assess damages. If the plaintiff has not made that out, manifestly the plaintiff is not entitled to a verdict, but the verdict would have to be for the defendant" (p. 1038, l. 5 to p. 1039, l. 18; Grounds of Appeal, Nos. 58, 59 and 60, pp. 19 and 20).

He then quoted certain of the regulations and said (italics ours):

"And I charge you, gentlemen, that insofar as those provisions have a bearing upon the duty of the defendant company with respect to handling these explosives, it cast upon them, as I told you a moment ago, *the duty to use a high degree of care for the safety of those who might be thereby exposed to danger, and that a high degree of care denotes no more than a degree of care commensurate with the risk of danger.* And you can readily understand that in determining what a degree of care commensurate with the risk of danger is you will take into consideration all the circumstances in which the company found itself placed at the time it was called upon to act and say what would a reasonably prudent and cautious person have done if in a like or similar situation with respect to the transportation of these explosives? *If this company did all that a reasonably prudent and cautious person would have done, it did all that it was required to do; if it did not, it might be found to be negligent;* and if it were found to be negligent and that negligence was the proximate cause of the injury to the plaintiff, the plaintiff would

be entitled to have your verdict under the rules which I have given you and to have you assess the damages" (p. 1041, ll. 4-30; Ground of Appeal No. 62, p. 22, ll. 1-28).

Referring to a statement on what is known in the case as the "explosive placard," he said:

"Now, whether this be a regulation of the Interstate Commerce Commission or a part of a regulation of the Interstate Commerce Commission or whether it be a warning, it correctly and aptly expresses the duty of a railroad company handling explosives, which duty when propertly interpreted means that they shall use a high degree of care; that is, care commensurate with the risk of danger, to keep fire away from those explosives; and it also correctly and aptly expresses the duty resting upon the defendant when it says that they shall handle the explosives carefully; because a high degree of care involves the notion that anybody in the course of his business dealing with explosives, where dealing with them and handling them may subject others to danger comes under the duty to use a high degree of care to so handle them as to minimize the danger resultant from not handling them with care. In other words, their duty is to use a high degree of care to handle them carefully. If they do not use that degree of care and injury results from a neglect to use it and that neglect is a proximate cause of that injury, manifestly, the persons thus injured would have a right to recover damages because of that injury" (p. 1042, ll. 3-28; Ground of Appeal, No. 63, p. 23, ll. 1-28).

Referring to a provision of the regulations known as "Section 1643-a" (which related to the "handling" of explosives) he said that this section applied to the consignee or owner in unloading the explosives from the cars and did not apply to the defendant, and then he continued:

"But I charge you again, as I have previously charged you in the case, that there does exist a duty with respect to the matter of taking precautions against fire, to use care commensurate with the risk of danger involved, against fire" (p. 1050, ll. 1-5; Ground of Appeal No. 67, p. 28, l. 40).

Referring to a provision of the regulations known as "Section 1689," he said (italics ours):

> "Section 1689 provides that they must be—speaking of handling cars containing explosives they must be coupled carefully and all unnecessary shocks must be avoided. Other cars must not be cut off and allowed to strike a car containing explosives. They must be so placed in yards or on sidings that they will be subject to as little handling as possible, and be removed from all danger of fire. Now that last clause, that they must be removed from all danger of fire, does not impose upon the company an absolute duty that they must at all hazards remove them from all danger of fire; but they must use a high degree of care, *a degree of care commensurate with the risk of danger involved* in the transaction, to remove them from all danger of fire.
>
> * * * * * * *
>
> "I charge you that the language in paragraph 1689 of the Interstate Commerce regulations referring to the handling of cars containing explosives and providing they must be so placed in yards or on sidings that they will be subject to as little handling as possible and be removed from all danger of fire, means that in the operation of the railroad company's yard or its sidings the cars containing explosives must be removed from such danger of fire as might reasonably be expected. This regulation does not impose upon the railroad company an absolute duty to remove such cars from all possibility that fire might ever reach them. *They must simply use, as I have told you before, care commensurate with the risk of the danger involved*" (p. 1042, l. 30 to p. 1043, l. 2; p. 1050, ll. 10-23; Ground of Appeal No. 68, p. 29).
>
> "I might say this, gentlemen, before you go out: That is, by anything I said I did not mean to have you think that the Court meant to hold as a matter of fact and charge you as a matter of fact either that there were enough men there or that there was enough apparatus there or enough facilities to meet an emergency. Whether there was or not is for you to determine; and how the men acted in the light of the circumstances that confronted them depends upon what they had to act with, and

whether the defendant company was negligent or not in respect of the facilities and the men *depends upon what you say reasonable care, or care commensurate with the risk, would require* with repect to the number of men required and the facilities required to be furnished and had by the defendant in the exercise of reasonable care in the transportation of explosives'' (p. 1053, ll. 23-40; Ground of Appeal, No. 70, p. 30).

It appeared without dispute that the explosives which were in the defendant's yard at Black Tom were all in the course of interstate commerce at the time of the fire and explosion and the Trial Judge expressly so charged (p. 1040, ll. 10-14). These explosives were in 33 cars which had come from various points outside of the State of New Jersey, and had been taken to the Black Tom Yard for the purpose of having their contents transferred to lighters which in turn would carry them to steamers for export. The defendant urges that under these circumstances, the Interstate Commerce Commission regulations were exclusively controlling, and that the question for the consideration of the jury was not whether the defendant had exercised care commensurate with the risk or had performed certain other duties not specified in said regulations, *but whether it had complied with the regulations,* and whether any alleged failure so to do was the proximate cause of the damage to the plaintiffs.

The Court will remember that in the *New Jersey Fidelity & Plate Glass Company* v. *Lehigh Valley R. R.,* 92 N. J. L. 467, the Court rules adversely to our present contention. We are not, however, barred from reasserting the point then made, and it is proper to say that this case differs from the one cited, in that in the former case the regulations were not pleaded or relied on by the plaintiffs, whereas, in the present case, they were pleaded and relied on. Furthermore, in said case, the defendant offered no evidence, whereas in the trial of the present case, all the facts that applied to the regulations were fully developed.

If it be urged by counsel for plaintiffs that the case of New Jersey Fidelity & Plate Glass Company, *supra*, is controlling on the point that, as stated in the opinion therein, "no greater burden was imposed upon the defendant in respect to the measure of care to be exercised by it in the handling and care of the high explosives than if the regulations were entirely out of the case" (92 N. J. L., p. 474), the answer is that in the present case, as will be hereinafter shown, the Trial Judge, in his charge, permitted the jury to impose upon the defendant certain "burdens," by way of alleged duties, which were entirely different from the duties fixed by the interstate regulations, and in no way related to them; and, therefore, so far as relates to the "measure of care to be exercised," a greater burden was imposed upon the defendant than would have been the case if the jury had been limited to the consideration of the regulations alone.

The regulations must be considered to have the force and effect of a statutory provision, and the defendant therefore, claims that when the regulations prescribed that certain precautions be taken in the transportation and handling of explosives, the question of the defendant's liability depended upon whether or not it complied with the regulations; and if it appears that the defendant has obeyed said regulations, that fact is sufficient to meet a charge of negligence. As the explosives in question were all in the course of interstate transportation, the duty of the defendant, we submit, must be determined solely by reference to the regulations prescribed by the Commission pursuant to the direction and authority of the Federal Congress; and all local ordinances or laws are immaterial.

> Actiesselskabet Ingrid *v.* Central R. R. Co. of N. J., 216 Fed. 72 (affirming 195 Fed. 596, rehearing denied, 216 Fed. 991. Petition for writ of certiorari to U. S. Supreme Court denied, 238 U. S., 615; 59 L. Ed. 149; also reported in L. R. A. 1916 (b) 716).

It is settled that a compliance with statutory regulations is sufficient to meet a charge of negligence, when the statute has undertaken to prescribe a specific duty.

An example of this principle is *Hackett* v. *N. Y., etc., R. R. Co.*, 58 N. J. L. 4, where the Court held that all that could be required of a railroad company with respect to giving signals of the approach of its trains to the public highway was a compliance with the statute with respect to the giving of signals by bell or whistle, following the decision of the Court of Errors and Appeals in the case of *New York, etc., R. Co.* v. *Leaman*, 54 N. J. L. 202, where the Court said:

> "When the prescribed audible signals are given in conformity with the statute, whether they are heard or heeded by a traveller crossing the track or not, the company is absolved from negligence so far as concerns this kind of audible warning of the approach of its trains."

Another analogy is found in the statutes relative to liability on the part of railroad companies for damages resulting from fire escaping from locomotive smokestacks. The leading example of such cases in this State is *West Jersey, &c., R. Co.* v. *Abbott*, 60 N. J. L. 150, from which we quote:

> "When the Legislature enacts regulations in respect to any precaution to be taken in the use of a dangerous instrumentality by those whom it has authorized to use it, those regulations define and limit the measure of duty in respect to that particular sort of precaution. The statute which we have had under consideration also enacts that railroad companies shall give certain specified audible signals of the approach of its trains to the crossing of a public highway. It was settled in this court that the regulations in respect to audible signals were exclusive, and if obeyed, would exonerate a railroad company from liability for a collision at a crossing arising from a failure to hear such signals, and that it was erroneous to permit a jury to determine whether or not, on account of the prevalence of a dense fog or other impediment

to sign and sound, other audible signals ought not to have been given.

* * * * * * *

"In the case before us the Legislature has prescribed what duty a railroad company must perform in respect to the escape of sparks from the smokestacks of its engines. The prescribed duty does not require the company, at any time, to absolutely prevent the escape of such sparks, but only to take and use all practicable means to that end. Proof that they have taken and used such means furnishes a defense in that respect. It is obvious that to permit a jury to find that a railroad company was, at any time, under a duty to take sufficient care to prevent the escape of any fire at all, is incongruous with the regulations of the Legislature and at variance with the doctrine of the case last cited."

Other cases in this State in which this principle has been applied to railroad fire cases are:

Hoff v. *West Jersey R. Co.,* 45 N. J. L. 201;
Ballister v. *Atlantic City R. Co.,* 72 N. J. L. 334;
Goodman v. *Lehigh Valley R. Co.,* 75 N. J. L. 277.

Other classes of cases in which this principle has been applied are actions brought to recover for personal injuries under the "Federal Safety Appliance Act" or under the "Federal Employers' Liability Act." In such cases it has been decided that the injured employees of common carriers engaged in interstate commerce must seek their remedy exclusively in accordance with the provisions of those statutes.

Texas & Pac. Ry. Co. v. *Rigsby,* 241 U. S. 33;
N. Y. Central R. Co. v. *White,* 243 U. S. 188;
N. Y. Central R. Co. v. *Winfield,* 244 U. S. 147;
Erie R. R. Co. v. *Winfield,* 244 U. S. 170.

The general rule as to the supremacy of Federal law over any local or state statutes has been declared in a number of cases by the United States Supreme Court. The following are illustrations:

In *Gulf, etc., Ry. Co.* v. *Hefley,* 158 U. S. 98; 39 L. Ed. 910, it was held that a statute of Texas imposing a penalty for failure to deliver goods on tender of the rate named in the bill of lading did not apply to interstate shipments, for the reason that Congress had legislated upon the same "subject matter" in the Interstate Commission Act, whereby the published tariff rate was prescribed as the rule of compensation in such cases.

In *Northern Pacific Ry. Co.* v. *Washington,* 222 U. S. 370; 56 L. Ed. 237, it was held that legislation by Congress as to hours of service of railroad employees occupied the field to such an extent as to prevent state legislation on that subject. It was said by Chief Justice White:

> "In view of the unity and indivisibility of the service of the train crew and the paramount character of the authority of Congress to regulate commerce, *the act of Congress was exclusively controlling.*" (Citing *Southern Railway Co.* v. *United States,* 222 U. S. 20.)

This case was peculiar in its facts, in that the act of Congress, which was thus held to be exclusively controlling, contained a provision (p. 376) "That this act shall take effect and be in force one year after its passage," and the year had not expired. Meanwhile the State of Washington had passed a law regulating the hours of service of railway employees which resembled the act of Congress, and the suit was a suit by the Attorney General of the state to recover penalties for the violation of the state law. The railroad admitted the acts complained of, but denied any liability for the penalties imposed by the state law. The Trial Court granted a motion for judgment on the pleadings and imposed the penalty. The Supreme Court of Washington affirmed, but the Supreme Court of the United States reversed. The affirmance in the State Supreme Court was based upon the ground that the act of Congress provided that it should not take effect until one year after its passage, and, secondly, that the act was to be treated as not existing until the ex-

piration of a year from its passage. The opinion of the Supreme Court of the United States, White, *C. J.*, contains the following:

> "But we are of opinion that this view is not compatible with the paramount authority of Congress over interstate commerce. It is elementary, and such is the doctrine announced by the cases to which the Court below referred, *that the right of a state to apply its police power* for the purpose of regulating interstate commerce, in a case like this, exists only from the silence of Congress on the subject, and ceases when Congress acts on the subject or *manifests its purpose* to call into play its exclusive power. This being the conceded premise upon which alone the State law could have been made applicable, it results that as the enactment by Congress of the law in question was an assertion of its power, by the fact alone of such manifestation *that subject was at once removed from the sphere of the operation of the authority of the State*" (p. 378 of 22 U. S.).

In *Southern Ry. Co.* v. *Reid,* 222 U. S. 424; 56 L. Ed. 257, a statute of North Carolina requiring common carriers to transport freight as soon as received to interstate points under certain penalty for failing to do so, was held to be invalid because in conflict with the requirement of the Hepburn Act forbidding such transportation until rates had been fixed and published.

In *Chicago, etc., R. Co.* v. *Hardwick Elevator Co.,* 226 U. S. 426; 57 L. Ed. 284, a reciprocal demurrage law of Minnesota was held invalid because Congress, by the passage of the Hepburn Act has "exerted its paramount and all-embracing authority over the subject."

In *Adams Express Co.* v. *Croninger,* 226 U. S. 491; 57 L. E. 314, it was held that the Carmack Amendment to the Hepburn Act superseded all state laws upon the subject of the limitation of the carrier's liability for loss of and damage to interstate shipments.

In the cases of *St. Louis, etc., Ry. Co.* v. *Edwards,* 227 U. S. 265; 57 L. Ed. 506, and *Hampton* v. *St. Louis, etc.,*

R. Co., 227 U. S. 456; 57 L. Ed. 596, a statute of Arkansas, imposing a penalty for delay in delivering cars to the consignee was held invalid on the ground that it had been superseded by the provisions of the Hepburn Act.

In *Adams Express Co.* v. *City of New York*, 232 U. S. 14, 58 L. Ed. 483, held that the provision of a municipal ordinance requiring every owner of a public express to give a bond for each vehicle licensed under the ordinance, to be conditioned for the safe and prompt delivery of all baggage and packages entrusted to the owner or driver of such "express," was invalid for the reason, among others, that Congress, by the Act of June 29, 1916 (U. S. Comp. Stat. Supp, 1911, p. 1288), had exercised its authority and had provided its own scheme of regulation in order to secure the discharge of public obligations that the business involved.

In *Erie R. R. Co.* v. *New York*, 233 U. S. 671; 58 L. Ed. 1149; 52 L. R. A. (N. S.) 266, the provisions in the labor law of the State of New York relating to the hours of service of telegraph operators engaged in interstate commerce were held to be void, as Congress had covered the same "Field" by the Hours of Service Act of 1907.

In *Southern Ry. Co.* v. *R. R. Commissioners of Indiana*, 236 U. S. 439; 59 L. Ed. 661, held that the State law of Indiana was superseded by the Federal Safety Appliance Act, although the requirements of the latter differed in certain details from those of the State law.

In *Charleston & W. C. Ry. Co.* v. *Varnville Furniture Co.*, 237 U. S. 597; 59 L. Ed. 1137, a State statute providing for a penalty against the carrier for failure to pay, within forty days, a claim for damages to an interstate shipment, was held to be superseded by the Carmack Amendment.

In *Atchison, etc., Ry. Co.* v. *Harold*, 241 U. S. 371; 60 L. Ed. 1050, held that the Carmack Amendment ex-

cluded State action in regard to the duty of carriers in interstate shipments to issue bills of lading and the responsibilities thereunder, and that therefore all questions in regard thereto must be determined by reference to said statute rather than by reference to the local law of the State if such local law is in conflict with the said statute.

In determining the question of whether or not the legislation of Congress has covered the entire field of any particular subject, it is not necessary that the statute shall expressly declare its intention to occupy the whole field; neither is it necessary for Congress to expressly prohibit any State action on the same subject.

In the case of *Savage* v. *Jones,* 225 U. S. 501, at p. 533; 56 L. Ed. 1182, the Court said (italics ours):

> "When the question is whether a Federal Act overrides a State law, the entire scheme of the statute must of course be considered and that *which needs must be implied is of no less force than that which is expressed.* If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the State law must yield to the regulation of Congress within the sphere of its delegated power (citing cases).
>
> "But the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the Act of Congress fairly interpreted is in actual conflict with the law of the State" (citing cases).

In the case of *McDermott* v. *Wisconsin,* 228 U. S., 115; 57 L. Ed. 754, it was held that certain provisions of a statute of Wisconsin, requiring syrup and certain similar articles to be labeled, was void in so far as it interfered with the Federal Pure Food and Drugs Act.

In *Houston & Texas Ry.* v. *United States,* 234 U. S. 342; 58 L. Ed. 1341 (Shreveport Rate Case), the Court said:

"The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter or preclude the Federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to Federal care. Wherever the interstate and intrastate transactions of carriers are so related that the government of one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field. * * * We are not unmindful of the gravity of the question that is presented when State and Federal views conflict. But it was recognized at the beginning that the Nation could not prosper if the interstate and foreign trade were governed by many masters, and, where the interest of the freedom of interstate commerce are involved, the judgment of Congress and of the agencies it lawfully establishes must control."

In *Illinois Central R. Co.* v. *De Fuentes,* 236 U. S. 157; 59 L. Ed. 517, an order of a State Railroad Commission requiring empty cars to be switched to side tracks was held to be invalid as an unlawful regulation of interstate commerce, on the ground that such a switching movement was a part of interstate commerce, the regulation of which Congress had undertaken.

In *Southern Ry.* v. *Railroad Commission of Indiana,* 236 U. S. 439; 59 L. Ed. 661, held that the provisions of the State law, as applied to interstate traffic, requiring railroads to place certain equipment on the sides or ends of cars, was invalid because Congress had occupied the field of legislation relating to the equipment with safety appliances of cars moving in interstate traffic. The Court said:

"The test, however, is not whether the State legislation is in conflict with the details of the

> Federal law or supplements it, but whether the State had any jurisdiction of a subject over which Congress had exerted its exclusive control."

In *Atchison, etc., Ry. Co.* v. *Harold,* 241 U. S. 371; 60 L. Ed. 1050, it was held that Congress, by the Carmack Amendment of June 29th, 1906, had so asserted its power over the subject matter of interstate shipments, including the duty to issue bills of lading and the responsibilities thereunder, as to preclude the application of a local rule of law of a State which invested the innocent holder of a bill of lading with certain rights which were not available to the shipper.

In *Spokane, etc., R. Co.* v. *Campbell,* 241 U. S. 497; 60 L. Ed. 1125, held that a State law which rendered a wilful violation or omission of duty on the part of a railroad employee whereby human life or safety is in danger and punishable as a misdemeanor, had no bearing on the right of an employee of an interstate railway to recover damages for injuries sustained in a collision because of defective brakes, since the right to recover depended exclusively upon the Federal Employers' Liability Act of April 22nd, 1908.

In *New York Central R. R. Co.* v. *Winfield,* 244 U. S. 147; 61 L. Ed. 1045, and *Erie R. R. Co.* v. *Winfield,* 244 U. S. 170, 61 L. Ed. 1057, held that the right of employes who were engaged in interstate commerce at the time of an accident to receive compensation for injuries sustained therein depended solely upon the Federal staute of 1908, so as to exclude any right of compensation under State laws, even though the injuries were caused by an accident which arose without negligence on the part of the employer or any of the fellow-employees.

The decision was affirmed in 216 Fed. 72. We quote from the opinion of Judge Rogers as follows:

> "It is claimed that the respondent failed to comply with the requirement of the laws of the State of New Jersey and with the municipal regulations of Jersey City in respect to the storage of explo-

> sives. It is sufficient to say that the dynamite which exploded was addressed to Carlisle, Crocker & Co., Montevideo. It was a foreign shipment and as such was subject exclusively to the Act of Congress approved March 4, 1909 (35 Stat. 1135, c. 21; U. S. Comp. St. Supp. 1911, 1, 1660). That Act (Section 233) authorized the Interstate Commerce Commission to formulate regulations for the safe transportation of explosives which should be binding upon all common carriers engaged in interstate and foreign commerce which transport explosives by land. The Interstate Commerce Commission accordingly formulated and issued regulations governing the transportation of explosives in interstate and foreign commerce. We have no doubt that the dynamite in question was subject exclusively to the regulations of the Interstate Commerce Commission. When Congress has legislated upon a subject within its constitutional control and has manifested its intention to deal therewith in full, the authority of local jurisdiction is necessarily excluded. See Northern Pacific Railway Co. *v.* State of Washington, 222 U. S. 370'' (216 Fed. 82).

An application was made to the United States Supreme Court to review this case by certiorari, but the same was denied (238 U. S. 615; 59 L. Ed. 149), and hence the question of the construction or application of the Explosives Act was not directly under consideration by that Court.

In *Northern Pacific R. Co.* v. *North Dakota,* 63 L. Ed. (advance opinions, p. 533), it was held that under the recent statute, by virtue of which the President was authorized to take over and operate the railroad systems, as a war measure, the Director General had authority to make and enforce intrastate rates without regard to state action. In the course of the opinion, the Court said:

> ''The elementary principle that, under the constitution, the authority of the government of the United States is paramount when exerted as to subjects concerning which it has the power to con-

> trol, is indisputable. This being true, it results that although authority to regulate within a given sphere may exist in both the United States and in the states, when the former calls into play constitutional authority within such general sphere, the necessary effect of doing so is, that to the extent that any conflict arises, the State power is limited, since in case of conflict that which is paramount necessarily controls that which is subordinate."

The principles laid down in the foregoing cases have not yet been applied by the U. S. Supreme Court to a case arising under the Transportation of Explosives Act, but they have been applied by the Circuit Court of Appeals for the Second Circuit in the case of The Ingrid, *supra,* which arose out of an explosion of dynamite on February 1st, 1911, at the terminal of the Central Railroad of New Jersey, known as Communipaw, in the City of Jersey City, New Jersey. We quote from the opinion of Judge Holt, in the District Court, as follows:

> "The libellant claims that the railroad company violated the law of New Jersey, and the ordinances of Jersey City, in respect to the storage of explosives. In the first place, in my opinion, the liability of the railroad company, while transporting this dynamite, was governed *exclusively* by the Act of Congress of March 4, 1909, which provides that the Interstate Commerce Commission shall formulate regulations for the safe transportation of explosives which shall be *binding* on all common carriers engaged in interstate or foreign commerce which transport explosives by land. Under this act the Interstate Commerce Commission has formulated and issued regulations for the transportation of explosives, and it is not claimed that those regulations have not been complied with by the defendants. Congress having passed such a law, it clearly governs in my opinion all common carriers who come within its provisions, *and takes the place of all local laws and ordinances on the subject"* (Citing Southern Ry. Co. *v.* U. S., 222 U. S. 20; Northern Pacific Ry. Co. *v.* State of Washington, 222 U. S. 370; Southern Ry. Co. *v.* Reid, 222 U. S. 424). "If it did not, a railway company trans-

porting dynamite over a long railroad system, passing in the trip through various villages, cities and states, would be subject at every stage of the journey to varying local regulations which probably it could not observe. It is pre-eminently just that in such cases there should be a central authority, prescribing what the railroad company, in the transportation of such explosives, should do'' (195 Fed. at p. 602).

II.

The evidence failed to show a violation of the Interstate Regulations or that any such alleged violation was the proximate cause of the damage to the plaintiff.

The Trial Judge, in his charge to the jury, referred specifically to certain of the regulations of the Interstate Commerce Commission, namely, Sections 1401-a, 1429, 1643-a, 1643-b, 1666 and 1689; and charged the jury, that insofar as these provisions had a bearing upon the duty of the defendant, they cast upon it the duty to use a high degree of care for the safety of those who might thereby be exposed to danger, that is, a degree of care commensurate with the risk of danger (p. 1040, l. 15 to p. 1043, l. 30).

The defendant claims that, with respect to these provisions, the question of its liability depends, not upon whether or not it used a degree of care commensurate with the risk of danger, but whether or not it complied with the regulations (see Point I). The defendant further claims that even if the legal rule be as stated by the Trial Judge, namely, that the regulations in question cast upon the defendant the duty of using a high degree of care, that is, ''a degree of care commensurate with the risk of danger,'' nevertheless, the evidence was insufficient as to some one or more of said regulations to justify the Trial Judge in submitting said regulations to the jury at all as one of the elements to be considered in determining the question of the defendant's liability.

as there was no proof of any violation of said regulations, or, if there was any such proof, still, it did not go far enough to show that such violation was the proximate cause of the damage to the plaintiffs. As to some of the said regulations, the defendant further claims that they clearly do not apply to the circumstances of the case, and should not have been presented to the jury for consideration, as one of the elements from which they were to determine whether or not the defendant had complied with its legal duty.

(a)

Section 1643-*a*.

This reads as follows:

> "Careful men must be chosen to handle explosives, the platform and the feet of the men must be as free as possible from grit, and all possible precautions must be taken against fire. Suitable provision must be made, outside of the station when practicable, for the safe storage of explosives, and every effort possible must be made to reduce the time of this storage. If a shipment of explosives is not removed within 48 hours after notice of arrival at destination, it must be disposed of by return to the shipper or by storage at the expense of the owner, or by sale, or when necessary to safety by destruction under supervision of a competent person."

The complaints in nearly all of the cases allege in the third count thereof that "certain regulations" for the handling and transportation by freight of carloads of explosives by carriers, in interstate commerce, were in force and effect, and were binding upon the defendant on July 30th, 1916; and then charged that the defendant failed to perform its "several duties" in the premises (p. 37, ll. 10-40). The Clark and Allen cases, in fact, refer specifically to these sections and charge a violation thereof (pp. 308-341).

The defendant moved for a direction of verdict in its favor, on the ground, among others, that the plaintiffs had failed to prove any violation of the interstate regulations (p. 1014, ll. 30-40). The defendant submitted a request to charge on this point, as follows:

> "7. Since the proofs in this case are uncontradicted that the shipments of explosives involved in this case came from points outside of the State of New Jersey and were in carload lots, and that it was the practice of the consignee or owner thereof to unload the said explosives from the cars thereof, paragraph 1643 (2) of the Interstate Commerce Regulations, providing that 'careful men must be chosen to handle explosives, the platform and the feet of the men must be as free as possible from grit, and all possible precaution must be taken against fire,' applies to the consignee or owner in unloading the explosives from the cars, and does not apply to the defendant herein, and any alleged negligence in this respect is not chargeable to the defendant."

This regulation appears in the pamphlet issued by the Interstate Commerce Commission, under the general title of "Rules for Handling." The first subdivision under this title is Number 1642, and refers to the handling of packages of explosives at stations, and the transferring thereof to and from cars, and directs that certain specific apparatus be employed for such handling and transfer; then follows the direction in Section 1643-a, that "careful men must be chosen to handle explosives," etc. This section, obviously, refers to the loading and unloading of explosives at stations and the transfer thereof to and from cars, and hence, the direction that all "possible precautions must be taken against fire," relates to a like situation, and has nothing to do with the duty of the carrier on an occasion where the explosives are not actually being handled or transferred. It is admitted that in this case the explosion did not occur while the explosives were being handled or transferred. All of them were on cars or barges and no one was handling or even touching them at the time of the explosion. Further-

more, the directions in Section 1643-a (in the same way as the direction in 1642) refer to the duty of the persons who are, in fact, handling or transferring the explosives. In the present case, this duty was performed by the shippers or the consignees and the defendant had nothing whatever to do with it, as the evidence shows without dispute that the shippers or the consignees had sole charge of all the handling of the explosives, both the loading and unloading; the carrier had nothing whatever to do with the handling of the explosives nor with the selection of men for that purpose; all it did was to transport them from one point to another and on the arrival of the cars at the terminal, to place them at a convenient point for unloading by the consignees.

It probably will not be seriously claimed that the provisions in this section for the storage or removal of explosives, has any application to the present case. No one can possibly tell whether the original fire or the first explosion was in a shipment that had not been removed within forty-eight hours after notice of arrival. Of course, it may be stated that if the explosives had been returned, or sold, or destroyed, the explosion would never have happened; but it might equally be said that if the explosives had never been transported, or had never been shipped at all, the explosion would never have happened. Indeed, we may go a step further back and say that if certain chemical compounds had never been combined to make these explosives, that then the explosion would never have happened—in other words, there is no possible causal connection between the explosion and the fact that some of the explosives were on hand forty-eight hours after notice of arrival, or the fact that they were not stored at the expense of the owner, or the fact that they were not void, of the fact that they were not destroyed before the explosion. But even if this regulation should be considered to comply to a carrier while explosives are in its possession, in the course of transportation, although not being actually handled or transferred at

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the moment of an explosion, still, the fact remains that there is no proof that the defendant had failed to select careful men to "handle" explosives; neither was there any proof that the platform and feet of the men were not free from grit.

But the important point in regard to this regulation is—that it does not apply at all to a situation such as existed in the present case, and hence, we submit that it was error for the Trial Judge to permit the jury to consider that this provision had any bearing upon the duty of the defendant with respect to the handling of the explosives, as stated in the charge (p. 1041, ll. 5-10).

It may be urged by counsel for plaintiffs that the request above stated was charged in substance. It is quite true that the Trial Judge included such request in his charge, but it is also true that, after reading this request, he added this important modification:

> "But I charge you again, as I have previously charged you in the case, that there does exist a duty with respect to the matter of taking precautions against fire, to use care commensurate with the risk of danger involved against fire" (p. 1050, ll. 1-10; Ground of Appeal 67, p. 28).

The part of the charge which we have quoted, followed immediately after that part wherein said Request No. 7 was charged, and it is quite impossible to say that under this charge, the jury were directed that they must not consider Section 1643-a as applicable to the case. In one breath, the Trial Judge charged as requested—that any alleged negligence in this respect was not chargeable to the defendant (p. 1049, l. 40); and in the next breath, he charged that "there does exist a duty with respect to the matter of taking precautions against fire, and to use care commensurate with the risk of danger involved against fire" (p. 1050, ll. 1-5). As Section 1643-a included in its subject a statement that "all possible precautions must be taken against fire" it is obvious that the jury must have been mislead by that part of the charge immediately following the request wherein the

very subject matter (which is mentioned in the section), to wit, taking all possible precautions against fire, is reiterated.

A further answer to such argument, if urged by counsel for plaintiffs, is that in the charge the Trial Judge did not direct the jury to disregard what he had previously said on the same subject. In an earlier part of the charge, he quoted this same section and then stated:

> "* * * Insofar as those provisions have a bearing upon the duty of the defendant company with respect to handling these explosives, it cast upon them the duty to use a high degree of care for the safety of those who might be thereby exposed to danger, and that a high degree of care denotes no more than a degree of care commensurate with the risk of danger" (p. 1041, ll. 3-15).

If the part of the charge last quoted erroneously permitted the jury to consider Section 1643-a as applicable to the case, such error was not corrected merely by reading said request No. 7, especially when the reading thereof was immediately followed by a reiteration of what the Trial Judge had previously charged on the same subject. The decision in the case of *State* v. *Erie R. R. Co.*, 84 N. J. L. 661, is conclusive on this point. We quote therefrom as follows:

> "If a Judge makes a mistake in charging the jury, he may undoubtedly cure it by calling attention to it as a mistake and directing the jury to disregard it, or to substitute for it a later statement of the law. Nothing of that sort was done in the present case, where the most that can be said is that two statements of the law were made to the jury, one of which was erroneous. Unless we conceive of our trial system as one in which the jury is clothed with the capacity to decide upon two judicial statements of the law and unerringly to select the correct statement and to disregard the incorrect, the error of the charge in the present case was not cured or rendered noninjurious to the defendant, who excepted to it."

(b)

Section 1643-*b*.

This reads as follows:

> "Unauthorized persons must not have access to explosives or other dangerous articles at any time while such articles are in the custody of the carrier."

As we have pointed out under point II-(a), the complaints in all of the cases but those of Clark and Allen, set up "certain regulations", and the other two cases specifically mentioned Section 1643, including the part thereof which appears in the regulations under sub-head "b". The complaints further alleged a supposed common law duty on the part of the defendant, independent of the regulations, to exercise due care to employ a sufficient number of watchmen and guards to observe and detect the approach or presence of any persons not authorized or licensed to visit the pier, and who might set fire to the pier or property thereon (par. 6, Second Count, case No. 1. p. 35 ll. 15-20).

This point was left to the jury in two forms. It was first referred to in the charge as one of the parts of the complaint which the jury were entitled to consider (p. 1035 l. 15 to p. 1036 l. 23); and it was afterward recited in the charge and included as one of the regulations which the jury were entitled to consider as having a bearing upon the defendant's duty with respect to the handling of explosives (p. 1040 l. 40 to p. 1041 l. 10).

The defendant moved for a direction of verdict on the grounds, among others, that the plaintiffs had failed to prove any violation of the regulations, and that they had failed to prove a violation of any other duty, not covered by the regulations (p. 1015).

The defendant submitted certain specific requests on this subject, as follows:

> "8. The language of paragraph 1643 (b) of the Interstate Commerce Regulation prescribing that 'unauthorized persons must not have access to

explosives * * * at any time while such articles are in the custody of the carrier' means that before the cars are sealed and after the cars are unsealed, the carrier must not permit unauthorized persons to have access to the explosives in the cars. It does not refer to cars in which explosives are contained while such cars are under seal.

9. There is no evidence in this case that the defendant permitted any unauthorized persons to have access to the explosives while such articles were in its custody.

If the Court refuses to charge No. 9, then the defendant requests the Court to charge No. 10, as follows:

10. If the jury finds that unauthorized persons had access to the explosives on the night of July 29, 30, 1916, while such articles were in the custody of the defendant, there is no evidence that the access of any such person was the proximate cause of the injury complained of'' (p. 1071 ll. 18 to 38).

All of these requests were refused, and the Trial Judge, as above stated, permitted the jury to consider the defendant's possible liability from the standpoint both of its supposed common law duty to exercise due care to keep unauthorized persons from the premises, and the duty imposed by the regulations.

The defendant now urges that it was error to leave this point to the jury at all, whether it be considered as a common law duty or as a duty imposed by the regulations, because there was no evidence to show that there were, in fact, any unauthorized persons on the premises at the time of the fire, or to show that the presence of any such persons was the proximate cause of the damage to the plaintiffs.

The testimony on this point is clear and undisputed.

Hanson, Captain of Moran Barge No. 20. This was tied on the south side of the North Pier. He heard of the fire about 12:45 A. M. (p. 525, ll. 20-40). Some one told him about it and he turned out and saw a fire on the car (p. 526, l. 15). As soon as he saw it he ran off

his boat and got to the watchman's shanty; * * * "there was no shots and no sound and *not a soul could be seen* (p. 528, ll. 15-20). He saw the four watchmen, and also the Lehigh Valley watchmen that evening, but did not see them at the moment of the fire (p. 531, ll. 10-20).

Kane, Night Roundsman at the Yard, acted as foreman over Sloan, Kelly, Garrity and Groat, the four night watchmen (p. 600, ll. 10-30). Groat was stationed at the oil yard which was at the west end, and about a half a mile from pier 7 (p. 600, ll. 30-40). Kelly, was stationed at the grain transfer elevator and on the west side of pier. Sloan was at the pump house opposite pier 5 and on the east side of pier 4. Garrity was in charge of the premises east of store G, including the blocks of warehouses known as G to N, and M to R; and also pier 6 (p. 601, 602). Garrity also watched that part of the yard known as tracks 13, 14, 15 and 16, and was supposed to go there every hour. Kane was in general charge of the entire yard (p. 604, ll. 1-20). He followed the track around the whole yard, including the lower end of pier 7 and the bulkhead, and the sea wall track, and thence back to the pump house (p. 609, ll. 10-30). Did not see anybody in the yard (p. 618, l. 10). There were boatmen going through the yard, but they came only as far as the grain elevator, as they belonged to the grain boats (p. 620, ll. 30-40). There were also boats at pier 7, and three or four boats at the North Pier. On the night of the fire he went on duty at five o'clock; walked around pier 7 and the South Pier, and the North Pier; did not see anybody around these boats (p. 622, ll. 20-40). He gave instructions to Garrity to go among the ammunition cars to see if there were any broken seals, and also instructed him to go through them three or four times every night. On the night of July 29th, Garrity reported to Kane about ten o'clock that everything was all right (p. 624, ll. 1-30).

Garrity also had instructions to see that nobody was to be allowed about the yard except the men that belonged on the boats (p. 627, ll. 30-40).

Kane made a round of the yard that night, before the fire, getting back to the pump house about 11:30. This included pier 7, the bulkhead, the float bridges and the North and South Piers (p. 630, ll. 20-40). In making this tour he stopped near the shanty of Zeke Townes; also passed by the shanty of the Dougherty detectives and walked around the sea wall track some time between eleven and eleven-thirty. At that time there was no evidence of any fire (p. 631, ll. 20-40).

Kelly, watchman; was in charge of the boilers, the grain transfer elevator, and the west side of pier 4 (p. 646, ll. 1-10). Was on duty on the night of the fire but was not asked whether he saw any strangers in the yard, before the fire.

Sloan, was watchman at piers 4 and 5 and store A (p. 655). Was on duty on the night of the fire but was not asked if he saw any strangers before the fire.

Eisman, Captain of Ackerman Barge "Paulina". On the night of the fire this barge was on the south side of the North Pier and near the end thereof (p. 799, ll. 20-30). Left his boat at about five o'clock in the afternoon and went to Newark to see a friend and returned on the Jersey Central train leaving the Broad Street station at midnight and reaching Communipaw station about 12:18 or 12:30. This is a little over a mile from the Black Tom Yard. Walked to his boat along the roadway in front of the warehouses, taking about 25 minutes. After getting to the end of the roadway, he crossed over to the track next to the water and then walked along same towards the North Pier and got as far as the bulkhead, where he met Detective Burns (pp. 799, 801). *As he walked through the yard, he did not see any one else* (p. 802, l. 10; l. 25). Talked with Burns about five minutes and then he said "there is a fire" (p. 802, l. 35). Burns went

up to see it and the witness ran after him. At that time, there was a blaze about three feet high over a car, and it looked as if it were coming from the center of the car. There was no flame on the ground at that time (p. 804, ll. 1-30). On the way up to the North Pier, before he reached the bulkhead and saw Burns, he did not see any fire anywhere (p. 806, ll. 1-10). While talking with Burns near the bulkhead, he did not see any one else around (p. 810, l. 15). When he started to see the fire, saw three other Dougherty men, who had come from the shanty, and they all started up the track together after Burns (p. 812, l. 30; p. 813, l. 10; p. 814, ll. 20-30).

Burns, one of the Dougherty detectives, had been on duty at night in the Black Tom Yard since June 15th, 1916, with three other men (p. 816, ll. 20-40). On the night of July 29th, went on duty at six o'clock in the evening. A shanty had been built as a protection against rain at a point fifty or seventy-five feet west of the bulkhead at the north side of the yard (p. 817, ll. 10-20). He was standing in front of this shanty at 12:10 A. M.; walked up and down a few minutes and then saw Eisman (p. 817, l. 35 to p. 818, l. 5). Eisman was coming up the north track and he started to meet him.

> Q. Was there any one else around there that night that you had seen outside of Mr. Eisman, and outside of your own men, of course? A. No sir, there was not.

(p. 819, ll. 10-12). It was a clear, starlight night, and one could see objects "quite a size". Had not seen anybody else around before Eisman came (p. 825, ll. 1-15).

There is nothing in any of this testimony to show that any "unauthorized person" was in the yard on the night of the fire, and still less is there anything to show that any unauthorized person had "access" to the explosives. The testimony of the watchman, Kelly, and Captain Eisman and Detective Burns, shows that there were no strangers in the yard at all. There was no direct evidence as to the cause of the fire, but there was evidence

from which the jury might well have inferred that it started inside of a car by spontaneous combustion. It may be that the jury were not bound as a matter of law to find that spontaneous combusion started the fire, but whether that be so or not, there is nothing in the record to show that it was started by any "unauthorized person"; hence, even if said Section 1643-b applied to the circumstances of the case, still, the proof fails to show any violation thereof, or that any violation was the proximate cause of the fire, and, therefore, we submit, that the jury were erroneously permitted to consider this regulation as one of the provisions which had a bearing upon the defendant's duty (p. 1041, l. 5); and the defendant was entitled to have the jury charged in accordance with requests Nos. 8, 9 and 10, above quoted.

(c)

Section 1666.

This section is headed "Explosive Placard", and reads as follows:

> "A certified car for the dangerous explosives specified in paragraph 1661, must be protected by attaching to each outside end, and side door, the lower edge not less than 4½ feet above the car floor, a standard placard 12 by 14 inches, in conspicuous red and black printing on strong tag board the following notice:

..... 14 inches .....

.....R.....Company.

EXPLOSIVES
(To be printed in Red)

HANDLE CAREFULLY

KEEP FIRE AWAY
(To be printed in Red)

.....Station.....19....

CONDENSED RULES FOR HANDLING THIS CAR.

1. This car must not be placed in a passenger train, nor in a mixed train, if avoidable.

2. Cars containing explosives must be near center of train and may be together if desired; must be at least 15 cars from engine and 10 cars from caboose when length of train will permit.

3. This car must not be placed next to cars bearing the inflammable or the acid placard or cars containing lighted heaters. Whenever it is possible to avoid so doing, it must not be placed next to tank cars or flat cars or next to carloads of lumber, poles, iron pipe, or other articles liable to break through end of car from rough handling.

4. The air and hand brakes on this car must be in service.

5. In shifting have a car between this car and engine whenever possible, and do not cut this car off while in motion.

6. Avoid all shocks to this car and couple carefully.

7. Avoid placing it near a possible source of fire.

8. Engines on parallel track must not be allowed to stand opposite or near this car when it can be avoided.

9. This placard must be removed from the car when the explosives are unloaded.

This was quoted at length in the charge as if it were to be considered as a regulation, in the light of which the defendant's duty might be determined.

The defendant submitted certain specific requests, as follows:

> "4. The 'explosive' placard is not a regulation of the Interstate Commerce Commission.
>
> 5. The proper construction to be placed upon the placard required to be put upon cars containing explosives by paragraph 166 of the Interstate Commerce Regulations, is that the words 'Keep fire away' mean do not bring fire near. They do not constitute an injunction to put out fire in the neighborhood of the cars, and only refer to the voluntary

action of a person in regard to the bringing of fire to or near the cars. There is no evidence that the defendant disregarded this injunction.

6. In the condensed rules on the so-called 'explosive' placard, Section 7, which reads: 'Avoid placing it near a possible source of fire,' means not to put the car near a place where fire might reasonably be expected to be.

There is no evidence that this injunction was disregarded by the defendant'' (p. 1070, ll. 23-40).

The Trial Judge said:

''The next provision of the regulations is this: Placard—Section 1666—A certified car of the dangerous explosives specified in paragraph 1661 must be protected by attaching to each outside end and side door, the lower edge not less than four and a half feet above the car floor, a standard placard, 12 by 14 inches, on which appears in conspicuous red and black printing on strong tag board the following notice—I do not attempt to read the whole notice to you; you will have the whole notice with you and will look at it, of course, when you come to consider the case—but in large lettered type appears the word 'Explosives'; and underneath that 'Handle Carefully'; and underneath that 'Keep Fire Away.' Now, whether this be a regulation of the Interstate Commerce Commission or a part of a regulation of the Interstate Commerce Commission, or whether it be a warning, it correctly and aptly expresses the duty of a railroad company handling explosives, which duty, when properly interpreted, means that they shall use a high degree of care; that is, care commensurate with the risk of danger, to keep fire away from these explosives; and it also correctly and aptly expresses the duty resting upon the defendant when it says that they shall handle the explosives carefully; because a high degree of care involves the notion that anybody in the course of his business dealing with explosives, where dealing with them and handling them may subject others to danger, comes under the duty to use a high degree of care to so handle them as to minimize the danger resultant from not handling them with care. In other words, their duty is to use a high

> degree of care to handle them carefully. If they do not use that degree of care and injury results from a neglect to use it and that neglect is a proximate cause of that injury, manifestly, the persons thus injured would have a right to recover damages because of that injury" (p. 1041, l. 30 to p. 1042, l. 30).

We submit, in the first place, that it is not to be considered as a regulation at all, and, hence, it was improper to permit the jury to consider it as such. This was nothing more or less than a warning to employees that the car on which the placard was placed contained explosives. To say that this warning amounted to a statutory rule, by force of which a carrier would be bound "to keep fire away" at all hazards, under penalty of damages—in the event that it did not keep fire away, is to transform a warning into a prohibition. The obvious purpose of the warning was that all persons who had anything to do with the handling of explosives, whether they were employed by the carrier, or by the shipper, or by the consignee, should, as far as practicable, keep fire away from cars on which said signs were placed; for example, it amounts to a warning to keep lighted lanterns or cigarettes away from such cars, but it clearly does not place upon the carrier the burden of insuring against fire; neither does it apply to a case where a fire has been started by some third party and continues to burn in the vicinity of the car or cars containing explosives.

That this legend on the placard was never intended by the Commission to be a regulation is further shown by the fact that on this very same placard there appear what are called on the placard "Condensed rules for handling this car" (p. 342); then follow nine paragraphs of directions as to the placing and handling of cars containing explosives; but the direction "Keep fire away" does not appear on the placard as one of these rules. It is printed in red and the letters are of a size corresponding to the word "Explosives" (See Sec. 166 at p. 27 of Regulations).

If it be said that this statement on the placard was practically equivalent to that part of section 1689 of the Regulations which directed that cars containing explosives should be removed from all danger of fire, and that, therefore, the remarks of the Trial Judge in his charge wherein the placard is referred to, did not prejudice the defendant, the answer is that this placard was offered in evidence and was before the jury at the time they were considering their verdict; it is a large card and the words under consideration are printed in large capitals of a fiery red color. With such a card before them the jury might well be impressed with the idea that the defendant was liable, merely because it failed to "keep fire away" from the explosives.

The fundamental error in this part of the charge was in recognizing the warning placard as a regulation, when, in fact, it was not a regulation at all. All that this regulation requires is that placards of a certain size be atached to certain parts of every car containing certain kinds of explosives. Of course, if there was any evidence from which the jury might find that the defendant had failed to exercise reasonable care with respect to fire or any other dangers, and that such failure was the proximate cause of the resulting damage, then a verdict might be justified against the defendant, by reason of its failure to exercise such care under the circumstances of any particular case, but that is entirely different from holding a defendant liable for a violation of a regulation when, in fact, the supposed regulation in question is merely a warning of the danger of fire, and is not a statement of the duty imposed upon the defendant, with respect to the care of such explosives.

In the present case, there is no dispute about the fact that these warning placards were attached to all the cars, as required by the regulation; and even if they had not been so attached, it would be difficult to discover any theory by which the failure to so attach them might be held to be the proximate cause of the fire and ex-

plosion—particularly in the absence of any direct evidence as to the cause of the fire.

(d)

Section 1689.

This reads as follows:

> "They must be coupled carefully and all unnecessary shocks must be avoided. Other cars must not be cut off and allowed to strike a car containing explosives. They must be so placed in yards or on sidings that they will be subject to as little handling as possible and be removed from all danger of fire. They must not be placed on tracks under bridges, and when avoidable, engines on parallel tracks must not be allowed to stand opposite or near them."

The defendant submitted certain specific requests on this point, as follows:

> "11. The language in paragraph 1689 of the Interstate Commerce Regulations referring to the handling of cars containing explosives and providing 'they must be so placed in yards or on sidings that they will be subject to as little handling as possible and be removed from all danger of fire,' means that in the operation of the Railroad Company's yard, or its sidings, the cars containing explosives must be removed from such danger of fire as might reasonably be expected. This regulation does not impose upon the Railroad Company an absolute duty to remove such cars from all possibility that fire might ever reach them" (p. 1071, l. 37 to p. 1072, l. 14).

In his charge to the jury, the Trial Judge stated:

> "Section 1689 provides that they must be—speaking of handling cars containing explosives—they must be coupled carefully and all necessary shocks must be avoided. Other cars must not be cut off and allowed to strike a car containing explosives. They must be so placed in yards or on sidings that they will be subject to as little handling as possible,

> and removed from all danger of fire. Now that last clause, that they must be removed from all danger of fire, does not impose upon the company an absolute duty that they must at all hazards remove them from all danger of fire; but they must use a high degree of care commensurate with the risk of danger involved in the transaction, to remove them from all danger of fire."

Here, again, it will be seen that the Trial Judge declared that this section meant that the defendant must use a degree of care commensurate with the risk of danger.

This clearly applies to the locating or placing of cars in yards or sidings, and does not impose upon the carrier the duty of insuring against fire, for example, it might be construed as requiring a carrier to place cars a reasonably safe distance from shops or buildings whence sparks might escape from fires. It amounts to nothing more or less than that the cars should be put in as safe a place as possible under the circumstances. In the present case, the cars containing explosives were placed at the extreme easterly end of the yard, where there was no shifting of cars, and, indeed, at night, there was no shifting of cars at any point in the yard. It was, of course, necessary to move the cars to a convenient point for unloading, and when that had been done, the practice was to leave them on the North Pier until they had been unloaded by the consignees, and they were certainly removed as far as possible from all danger of fire. Moreover, there is no proof that any violation of this regulation was the cause of the fire or the explosion. The accident happened late at night when none of the cars were being shifted. They were all standing in the yard, there were no "shocks"; no car was cut off and no car was allowed to strike another car; none of the cars were placed on tracks under bridges, and no engines were standing beside or near them. In other words, there is not a scintilla of proof of any violation of this regulation, unless the expression that the cars "must be removed

from all danger of fire'' be construed as equivalent to a positive statement that the duty rests upon the defendant to eliminate entirely the danger of fire.

If it be urged by counsel for plaintiffs that requests No. 11 and 12 were charged in substance (p. 1050, ll. 1-22), the answer is that—while it is true that the Trial Judge did recite this request in the charge, but he modified the same by adding the words ''they must simply use, as I have told you before, care commensurate with the risk of danger involved'' (p. 1051, l. 20). Hence, although he charged the request, he reiterated the which had previously been stated by him. But, even if the request, as modified, might be said to lay down a different rule from that stated in the early part of the charge, we again have the same situation as we have already pointed out in dealing with Section 1643-a, namely, an erroneous statement of the law in one part of the charge, and a correct statement in another, and, as pointed out in the case of *State* v. *Erie R. R. supra,* the jury cannot be expected to decide which of the two statements are correct.

Section 1401.

This reads as follows:

> ''As the use of explosives is essential to various business activities throughout the country, it is the duty of interstate railroad carriers to accept and transport such explosives under these regulations. When local conditions make the acceptance, transportation, or delivery unusually hazardous, local restrictions, as provided by paragraph 1429 herein, may be imposed.
>
> It is also the duty of carriers and shippers to make these regulations effective and to thoroughly instruct their employees in relation thereto.''

The Trial Judge, after stating that the defendant was a common carrier of freight and that the law imposed upon in the duty of transporting the explosives, and that

at the time of the explosion they were still in the course of interstate transportation, used the following language:

> "And I charge you that after engaging in the business, the railroad company had the right to restrict its operations under the following sections of the regulations of the Interstate Commerce Commission: Regulation 1401. When location conditions make the acceptance, transportation or delivery unusually hazardous, local restrictions may be imposed. And Section 1429 provides that all carriers must report to the chief inspector for compilation and publication full information as to restrictions which may be imposed as provided in paragraph 1401-a, to which I have just directed your attention, against the acceptance, delivery or transportation of explosives over any portion of their lines" (p. 1040, l. 13 to l. 25; ground of appeal No. 61, p. 21).

Exception was taken to this part of the charge, on the ground that this section had no application to the circumstances of the case (p. 1068, ll. 10-20). The section of the regulations to which No. 1401 refers, reads as follows:

> "All carriers must report to the chief inspector of the Bureau of Explosives for compilation and publication, full information as to restrictions which may be imposed as provided in paragraph 1401-a against the acceptance, delivery, or transportation of explosives over any portion of their lines."

It is obvious that the purpose of these regulations was to place an embargo against the transportation of explosives, under the conditions specified, namely, when they were "unusually hazardous". But there is nothing in the proof to show that on the night of July 29-30, 1916, the local conditions at the Black Tom Yard were ~~not~~ unusually hazardous; the same class of explosives and munitions of war, in substantially the same quantities, had been transported and delivered in the same way for about a year prior to that date without fire and explosion, and without accident of any kind. There is no evidence that the conditions on that night were different

from the conditions that had existed on the three hundred and sixty-four other nights of the preceding year. Granting that there may have been some hazard in the transportation and delivery of explosives, the section is applicable only when the hazard is "unusual". This part of the charge was clearly prejudicial to the defendant, as it must have lead the jury to believe that the defendant had the right to refuse to accept the explosives in question, for transportation, or that it might have placed an embargo against them, and its failure to do this caused the explosion. We submit that it was error to permit the jury to take these sections of the regulations into consideration in determinig the question of whether or not the defendant had performed its legal duty.

III.

Assuming that the jury had the right to base a verdict upon any ground of negligence other than a violation of the Interstate Regulations, there was no proof of any such negligence, or that the same, if proved, was the proximate cause of damage to the plaintiffs. Even if there was proof of negligence in some one or more of the respects submitted to the jury (other than a violation of the Interstate Regulations) the proof failed to show negligence in all of such respects, and it was error to permit the jury to base a verdict upon a finding of negligence in some of the respects thus submitted.

If the Court concludes that the defendant was chargeable with some duty other than such as were specifically named in the regulations, then the question arises as to what these duties were and whether there was any evidence from which the jury would be justified in finding that there had been a violation of such duties.

The verdict on the part of the jury was a general one, as there was a general finding of negligence without any specific statement as to the particular ground or grounds of negligence. Hence, if it was error on the part of the

Trial Judge to leave any one of several alleged grounds of negligence to the jury, the verdict must be set aside—as it is not possible to determine upon which one of the several grounds the verdict was based.

The rule is well settled that a verdict which cannot be supported upon the theory of law on which the case was submitted to the jury must be set aside.

Fritz v. *Sayre & Fisher Co.*, 77 N. J. L. 236.

The same rule should apply when a case is submitted to the jury on several theories of law and there is a general verdict, but the record shows that as to some one or more of the theories, either the theory itself is erroneous or there is no evidence in support thereof.

Spencer v. *Haines*, 73 N. J. L. 325.

Carroll v. *Stark*, 85 N. J. L. 438.

Thompson on Trials, Vol. 2, Section 2640, p. 1922 (Second Edition).

The Trial Judge, in his charge, permitted the jury to base their verdict upon any one of several possible grounds of negligence, other than a violation of the interstate regulations. He first recited the several allegations in each complaint, charging that the material which exploded constituted a nuisance (p. 1035, ll. 1-10). At the request of the defendant this point was expressly eliminated, and the question of nuisance is, therefore, not involved on this appeal (p. 1052, ll. 1-10).

He also referred to the counts in the complaints which alleged failure to comply with the regulations of the Interstate Commerce Commission (p. 1035, ll. 20-25, ll. 30 to 32, ll. 38-40; p. 1036, ll. 28-30). These have been discussed under Point II.

This leaves for consideration the general allegations of negligence based upon supposed common law duties, independent of the charge of nuisance and independent of the interstate statutes and regulations. On this point, the Trial Judge referred to the six cases of Royal Indemnity Co. (No. 1), New York Plate Glass Insurance Company (No. 2), Chicago Bonding & Insurance Company

(No. 3), Ocean Accident & Guarantee Corporation, Limited, of London, England (No. 4), Commercial Casualty Insurance Company of Newark, N. J. (No. 8), and Childs Company (No. 9), and said, with reference to these plaintiffs:

> "* * * The second claim is that there was negligence. The grounds of negligence charged are, first, a failure to exercise a high degree of care to prevent fire and explosions; secondly, failure to exercise a high degree of care to watch and guard said explosives and discover and extinguish fire; thirdly, a failure to employ sufficient watchmen to detect trespassers or incendiaries; fourthly, the failure to provide sufficient fire-fighting devices and apparatus; fifthly, failure to use a high degree of care to store, handle and dispose of said explosives, to prevent communication of fire, and detonation from one part to another; sixthly, failure to provide sufficient means for communication with fire and police departments of Jersey City; next, failure to notify the fire department" (p. 1035, ll. 10-25).

Referring to the case of Metropolitan Casualty Company (No. 6), he said:

> "That company charges, first, negligence in caring for the explosives, failing to provide a proper and adequate means of protection against explosion and fire" (p. 1035, ll. 25-30).

Referring to the case of Lloyd's Plate Glass Insurance Company of New York (No. 5), he said:

> "The Lloyd's Plate Glass Insurance Company charged, first, negligence in keeping and maintaining large quantities of explosives, negligently keeping, managing and controlling the same, negligently and carelessly failing to provide proper and adequate means of protection against explosion and fire" (p. 1035, ll. 32-40).

Referring to the case of Fidelity & Casualty Company (No. 7), he said that the charges of negligence were the same as in the case of Childs Company and others, which were first recited.

In the case of Clark (No. 11) and Allen (No. 12) he said:

> "The negligence charged is in failing to give the schooner safe berth; in collecting explosive cars to such an extent that the combustion and detonation thereof would result in great damage to property, in permitting the accumulation of inflammable material; in failing to provide competent men and sufficient facilities for patrolling and guarding the yard; in neglecting to exclude trespassers or incendiaries; in failing to provide hydrants and water; in failing to provide firemen; in failing to instruct employees as to duties in case of fire; in failing to provide facilities for removing or insulating burning cars; in failing to dispose of the cars so as to control communication of fire, etc.; in permitting barges to tie up at the piers; in failing to provide means of communicating alarms; in failing to give alarms; in failing to prevent fire; in failing to discover and extinguish the fire; in failing to warn the schooner of the presence of danger" (p. 1036, l. 30, to p. 1037, l. 10).

After reciting these various claims of negligence, the Trial Judge concluded this part of the charge by stating:

> "Those are the charges that are made in the respective cases brought by the plaintiffs against the defendant" (p. 1037, l. 15).

Then he again referred to the charges and stated that the duty upon the defendant was to use a degree of care commensurate with the risk of danger, using the following language:

> "So that so far as the charges against the defendan are concerned, the duty which rested upon the defendant company, the Lehigh Valley Railroad Company, was to use a degree of care in transporting these explosives commensurate with the risk of danger" (p. 1039, ll. 1 to 9).

It will, therefore, be seen that the jury were permitted to find a verdict for the plaintiffs by reason of the failure of the defendant to use a degree of care commensurate with the risk of danger, in respect to each of the claims of common law negligence made in the several complaints.

The defendant submitted requests to charge based upon the several claims in the complaints, as follows:

"15. There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to prevent the occurrence of fires, detonations or other means whereby the explosives and munitions in question might become exploded; or that any such alleged failure was the proximate cause of the injury complained of.

16. There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to watch and guard the said explosives and the yard, piers, cars and vessels containing the same or lying in proximity thereto, so as to prevent and to extinguish and control when discovered fires, detonations and other means by which such explosives might be exploded; or that any such alleged failure was the proximate cause of the injury complained of.

17. There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to employ a sufficient number of watchmen and guards to police the said yard and approaches and the waters adjacent thereto, to observe and detect the approach or presence of any persons not authorized or licensed to visit said pier and who might by accident or felonious intent set fire to said pier or property thereon; or that any such alleged failure was the proximate cause of the injury complained of.

18. There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to furnish, provide and install and keep in good order and repair sufficient fire-fighting devices and apparatus on and about its said pier; or that any such alleged failure was the proximate cause of the injury complained of.

19. There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to store, handle and dispose of said explosives and munitions so as to prevent and control the ignition and communication

of fire and detonation from one portion or mass of the same to any other part or mass of the same; or that any such alleged failure was the proximate cause of the injury complained of.

20. There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law to install and provide and keep in good order and repair sufficient means of communication whereby the occurrence of any fire or other agency capable of igniting said explosives could be immediately communicated from said pier to the fire and police departments of the City of Jersey City; or that any such alleged failure was the proximate cause of the injury complained of.

21. There is no proof that the defendant failed to exercise the degree of care stated in the complaint or required of it by law, immediately upon the happening and discovery of a fire on or near its said premises, to notify the fire department of Jersey City of the existence and location of said fire; or that any such alleged failure was the proximate cause of the injury complained of" (pp. 1072, 1073 and 1074).

These requests were refused (except No. 20) and it will, therefore, be seen that the jury were permitted to base their verdict upon any one of several grounds of negligence, notwithstanding the specific requests on the part of the defendant as to each of said grounds that the same should be withdrawn from the consideration of the jury.

The verdict being a general one, and the defendant is now entitled to urge that, if there was error in submitting any one of these grounds to the jury, or in refusing to charge any one of these requests (with the possible exception of No. 20), it is entitled to a reversal.

These several points will now be taken up in order.

(a)

It was error to permit the jury to find the defendant liable to the plaintiffs, on the ground that there was a failure to exercise a high degree of care to prevent fires and explosions or to watch and guard the explosives, or to employ sufficient watchmen to detect trespassers or incendiaries; and that such failure was the proximate cause of the damage to the plaintiffs.

We do not question the general principle as stated in the charge, that the measure of the defendant's care was "a high degree of care," as this means nothing more nor less than *reasonable* care under the circumstances of the particular case.

Gallaty v. *Central R. R. Co.*, 86 N. J. L. 116.
Blumenfeld v. *H. & M. R. R. Co.*, 89 N. J. L. 581.

But the question on this phase of the case is whether there was evidence to go to the jury as to whether the defendant failed to exercise a high degree of care to prevent fires and explosions or to watch and guard the explosives, or to employ sufficient watchmen to detect trespassers or incendiaries, and whether such failure was the proximate cause of the damage to the plaintiffs. The recital in the charge of the alleged negligence that there was "a failure to exercise a high degree of care to prevent fires and explosions" (p. 1035, l. 12) is nothing more than a general statement of the defendant's duty *in so far as it had any control over the explosives,* and in the absence of any further specication of negligence, would afford little or no light to the jury in determining the question of liability, the first specifications of negligence to which the Trial Judge directed the attention of the jury were the alleged failure to exercise a high degree of care to watch and guard the explosives, and the failure to employ sufficient watchmen to detect trespassers or incendiaries (p. 1035, l. 13). This statement might well have been understood by the jury to apply to the explosives in the barges on water, as well as to the explosives in the cars

on land. But the defendant had no control over the explosives when they had once been transferred by the consignees from the cars to the barges, as it did not own the barges and had nothing whatever to do with them—and, indeed, the barges were there at night without its knowledge or consent and in violation of law (see Point IV.).

In so far as there may have been a duty on the part of the defendant to exercise care to watch and guard the explosives on land, the evidence shows without dispute that there were five watchmen stationed at the Black Tom yard; one of these was the captain or supervisor, who had general oversight of the yard at night; the other four men were assigned to regular tours in the yard, including what is known as Pier 7 and the North Pier and vicinity, where the cars containing the explosives were placed pending the delivery thereof to the consignees. There were also four detectives specially engaged by the owners of the explosives to watch the North Pier (p. 818, ll. 10-20). All of these men were on duty on the night of July 29-30, and Watchman Garrity had made a tour of that part of the yard where the cars containing the explosives were standing only a few minutes before the fire was discovered.

There was no proof that it was the custom to have other or different watchmen, and the same number of watchmen had been on duty in the same yard ever since the explosives first began to be transported thereto about a year prior to the fire (p. 846, l. 10); and special detectives had been on duty there about six or seven months prior to the fire (p. 847, l. 35). We therefore urge that there was no question of fact for the jury on this point.

But an even more important question arises in the consideration of this feature of the case. In order to hold the defendant responsible it must appear not only that there was negligence, but that such negligence was the proximate cause of the damage to the plaintiffs. Even if there were no watchmen at all in the yard at the time of the fire, or even if those who were in the yard

were not effectively guarding the explosives, the defendant could not be held responsible unless there was some causal relation between their absence or neglect and the fire. As we have shown under Point II. (b), there was no evidence whatever that there was any trespasser in the yard that night; neither was there any evidence that the fire was started either carelessly by a trespasser or maliciously by an incendiary. The record is absolutely barren of any proof as to the cause of the starting of the fire, except for the testimony of Mr. Beisteile, which indicated that it was probably the result of spontaneous combustion.

Mr. Beisteile was the chief chemist of the Bureau of Explosives for twelve years and had formerly been employed as chemist in the Ordnance Department of the United States War Department; he described the construction and contents (including smokeless powder) of the shrapnel shells that were in the ammunition cars (p. 922, ll. 10-15) and said that this kind of powder was capable of spontaneous combustion (p. 924, l. 25); that is a fire would start at ordinary temperature, much below the temperature of ignition (p. 924, ll. 1-30).

On this phase of the case (and the same principle applies to all the other specifications under Point IV), we submit that the plaintiffs were not entitled to go to the jury, because the proofs of negligence were circumstantial rather than direct, and, therefore, the evidence must be such as to *exclude* all theories of accounting for the accident, which would be inconsistent with the defendant's negligence. Where the evidence for the plaintiffs is equally consistent with the absence, as with the existence of negligence, there is no question for the jury.

Cass v. *Sanger,* 77 N. J. L. 412, at p. 414.

"Mere conjecture" is not sufficient to justify the submission of the question of negligence to the jury.

Baker v. *North Jersey Street R. Co.,* 77 N. J. L. 336.

So, here, it was at least as probable that the starting of the fire was caused by spontaneous combustion as it was by some trespasser or incendiary, particularly when we bear in mind that all the witnesses who described the discovery of the fire fixed it as being *in* or on top of the closed box car—which contained shrapnel shells, and no witness saw any fire on the ground at the time of the first discovery thereof.

(b)

It was error to permit the jury to find negligence on the part of the defendant, on the ground that there was a failure to exercise a high degree of care to discover and extinguish fire; and there was error in the charge on the subject of the alleged negligence of the defendant's employees in failing to extinguish the fire under the existing condition of emergency.

The Trial Judge permitted the jury to consider the defendant's responsibility not merely because it might have failed to exercise a high degree of care to watch and guard the explosives, or to employ sufficient watchmen to detect trespassers or incendiaries, but also because it might have failed to exercise a high degree of care to *discover and extinguish the fire* (p. 1035, l. 16). Even if there may have been a jury question as to some one or more of the other grounds of negligence mentioned in the charge of the Trial Judge, nevertheless the defendant urges that so far as this point is concerned, there was no question for the jury, and that therefore it was error to permit the jury to consider it as one of the possible grounds of negligence. Here again the testimony is practically without dispute. We will first deal with the evidence that relates to the discovery of the fire.

Kane was at the pump house talking with Sloan until about 12:30 A. M. (p. 605, ll. 1-20). He heard an alarm of fire. Some man was hollering and was blowing a whistle. He then met Sloan and two men and they said there was a fire on Pier 7. He got on the platform in

front of store "G" and over the tops of the cars saw a "very small blaze" in a northeasterly direction "as far down the yard" as he could see. At that time it was about five or six inches high and about the same width. At that time he only saw a blaze over the top of the cars (p. 605, ll. 30-40; p. 607, l. 10, l. 35; p. 608, l. 10; p. 634, l. 35). He then ran back to the pump house and telephoned for tug boats and locomotives (p. 608, l. 30).

Kelly was at Pier 4; saw a fire between the tracks (p. 647, l. 23). It looked about four or five feet high (p. 647, l. 35). "It looked as if it was *on* to the cars (p. 653, l. 18).

> Q Coming from the bottom of the car? A Yes; looked to be.
>
> Q It illuminated some cars? A Only the car and the one next to it.
>
> Q One side? A Two sides" (p. 653, ll. 20-40).

Sloan was at the pump house and heard some men hollering and they ran over and told him the North Pier was on fire. He said he thought at first that they were "giving me a game," but he ran over to the track on the north side and saw a small fire at the very end of the North Pier (p. 656, ll. 25-36); the time was about 12:45 A. M. (p. 661, l 20). Could not say what was burning (p. 661, l. 35). It looked like a barrel; it was about two feet high; it looked to be *off* the ground (p. 667, ll. 10-12).

Burns, detective, was on duty with three other men; was walking up and down in front of the shanty which they had built at the north side of the yard and a few minutes thereafter saw Mr. Eismann, who was on his way to the barge "Paulina," which was tied to the south side of the North Pier. He met Eismann as the latter was walking along the north track; talked with him a few minutes and he started to go to his boat and then he heard a "crackling noise" and looked to the southwest and saw the reflection of a "small flame"; he called to

the men who were inside the shanty and told them there was a fire and to notify the men on the lighters to get away, because he knew that most of the cars contained explosives (p. 819, ll. 10-30). Then he walked up the north track and saw the fire very plainly. It was *then* in a box car; there was no fire on the ground; it was coming out of the side door on the north side and the door was closed (p. 820, ll. 10-30). He kept on to Pier 6 and turned in a fire alarm. This was about 12:30, as near as he could judge (p. 822, ll. 1-30).

Eismann was on his way to his boat at the North Pier and walked along the roadway in front of the warehouses and reached the bulkhead about 12:45 A. M., where he met Burns, and after talking with him about five minutes Burns called his attention to the fire (p. 802, l. 30); the other detectives then started to go with Burns and the latter said: "Don't go over near that car; that is a car of ammunition" (p. 803, ll. 20-30). When Burns spoke of the fire witness saw a blaze about three feet "over a car"; it seemed to be coming from the center (p. 804, ll. 10-30). He had passed this car on his way to the North Pier but did not see any fire at that time (p. 806, ll. 1-15).

It is obvious from this testimony that the fire was discovered within a very few minutes after it started, as the witnesses all agree that what they were able to see of it was very small and that it was apparently coming out of the sides or top of a box car which was loaded with ammunition. Unless it can be said that there was some duty on the part of the defendant to have an employee stationed at every car, it is difficult to see how any of the employees could have discovered the fire more quickly than in fact it was discovered. Kane, one of the night watchmen, had been through the yard that evening (p. 622, ll. 20-40), and at about 10 o'clock Garrity, whose tour covered that part of the yard where the explosive cars were placed, reported to him that everything was all right (p. 624, ll. 1-30). Kane's own round of the yard had been made shortly before midnight; he covered Pier 7, the bulkhead

and the North and South Piers, passing the shanty of the detectives and walking along the sea wall track and reached the pump house about 11:30. At that time there was no evidence of any fire (p. 630, ll. 20-40; p. 631, ll. 20-40).

So far as relates to the discovery of the fire, there was nothing to justify the jury in concluding that there was negligence on the part of the defendant's employees in failing to discover it sooner. The defendant was not bound to *insure* against fire or to guarantee that it would be discovered the moment it broke out.

The further question on this phase of the case is whether there was any negligence on the part of the defendant's employees in failing to extinguish the fire after it was discovered. The question of the defendant's liability in this respect was left to the jury in connection with the question of the alleged lack of care in discovering the fire (p. 1035, l. 15). So far as this point is concerned, the present cases differ entirely from the case of Howell against the same defendant, arising out of the same fire and explosion, as in the latter case the question of the negligence of the defendant's employees *after* the fire was discovered was not submitted to the jury as one of the grounds upon which the defendant might be found responsible.

But in the present case a large part of the charge of the Trial Judge was taken up with the discussion of this question. The defendant submitted two requests, Nos. 29 and 30, which read as follows:

> "29. If the jury finds that the defendant was not negligent in respect of the starting of the fire and that the said fire was either in a car of explosives or ammunition or was immediately adjacent to cars containing explosives or ammunition, then a condition of emergency existed by reason of which the defendant cannot be held responsible for errors of judgment on the part of its employees or any of them in respect of what they did or failed to do concerning the putting out of the fire.

"If the Court refuses to charge No. 29, then we respectfully request the Court to charge No. 30 as follows:

"30. If the jury finds that the defendant was not negligent in respect of the starting of the fire and that the said fire was either in a car of explosives or ammunition, or was immediately adjacent to cars containing explosives or ammunition, then the jury should consider whether the situation thus disclosed was not an emergency, and if the jury finds that the situation was that of emergency then it may not find the defendant legally responsible for the errors of judgment of its employees in respect of what they did or failed to do concerning the putting out of the fire" (p. 1075, l. 30, to p. 1076, l. 20).

It will be observed that the first of these requests (No. 29), amounted to a direction to the jury that as a matter of law an emergency condition existed (if the jury found certain facts as set forth in the request) and that therefore the defendant could not be held responsible for errors of judgment on the part of its employees. The second request (No. 30) was in the alternative and amounted to a direction that the jury consider whether the situation thus disclosed was an emergency, and *if it was* that then the defendant was not responsible for the errors of judgment of its employees.

Both of these requests were refused, but the Trial Judge discussed the subject at length and said in substance that the question was whether the defendant's employees, under the dangerous circumstances, had acted as a reasonably prudent and cautious man would have acted (p. 1044, ll. 20-30; see Ground of Appeal, No. 65, pp. 24-28); and he then left to the jury to consider whether the situation was such as to amount to an emergency "of such a character, so overpowering in its nature as not to give time to a reasonably prudent and cautious man in the exercise of reasonable prudence and caution, for deliberation and decision" (p. 1047, ll. 1-10).

The defendant now urges that as the facts showing the circumstances immediately following the discovery of

the fire were without dispute, the jury should have been charged as a matter of law, in accordance with request No. 29, that the condition was one of emergency and that even if the defendant's employees erred in judgment, the defendant could not be held responsible therefor. The defendant further submits that if the question of whether the situation was an emergency was one of fact for the jury, still there was error in the charge in that the Trial Judge did not correctly state the rule of law applicable to such a condition. What he said in effect was that if the situation that confronted the employees were "overpowering" as not to give time to a reasonably prudent man for deliberation, then it was an emergency, but that if the condition was such that the reasonably prudent man would have made an effort to put out the fire that then the neglect of the servants of the defendant to put it out was negligence (p. 1047, ll. 1-20). Exception is taken to the entire charge on this subject (p. 1065, l. 40) and particular attention was called to the part of the charge above mentioned (p. 1065, ll. 10-20).

The questions, therefore, are squarely presented on this appeal, first, as to whether, as a matter of law, there was a condition of emergency on the undisputed facts, and, secondly, whether the rule as announced by the Trial Judge was correct.

The following are illustrations of cases where acts in sudden emergencies have been held not to constitute negligence.

> In *Floyd* v. *Philadelphia &c., R. Co.,* 162 Pa. 29; 29 Atl. 396; it was held that a flagman was not negligent in frightening a horse, when he attempted to stop the horse in order to prevent accident from an approaching train, although he might have avoided frightening the horse if he had exercised cooler judgment in the manner in which he tried to stop him.
>
> In *Donohue* v. *Kelly,* 181 Pa. 93, 37 Atl. 186, an employee in a restaurant picked up a gasolene lamp which had become improperly ignited, and while attempting to carry it to the door he was

severely burned and threw the lamp away from him, causing an explosion. Held that his employer was not liable to a third person injured by such explosion.

In *Philips* v. *People's Pass. R. Co.,* 190 Pa. 22, 42 Atl. 686, the Court, in reversing a judgment for the plaintiff, while not satisfied that there was any lack of wisdom in the course pursued by the motorman, said: "It cannot be said that he was bound, upon being confronted by so sudden and immediate a danger, to do what after mature deliberation would have seemed to a prudent man to be the wisest thing under the circumstances. Where the sole basis of liability is the omission to perform a certain duty suddenly and unexpectedly arising, there must be not only a consciousness of the facts which raise the duty on the part of the person who is charged with its performance, but also a reasonable opportunity to perform it."

In *Ackerman* v. *Union Traction Co.,* 205 Pa. 477, 55 Atl. 16, where the motorman of an electric car saw a boy riding on the steps of a car of a steam railroad approaching him on a parallel track, and there being not sufficient space between the two tracks to enable the cars to pass without injuring the boy in his then position, the Court in affirming a non-suit, said: "With a clear understanding that the boy would be injured unless he got out of the way of the electric car, the motorman called and motioned to him to jump off or climb on the bumper. Possibly, under the circumstances it would have been better to stop the car, and thus lessen the injury, than to attempt to avert it altogether; but since he was confronted by a sudden and unexpected danger, and had but a moment in which to act, the motorman cannot be held liable for failure to see and follow what might appear on reflection to have been the wiser course."

In *Owen* v. *Cook,* 81 N. W. 285; 9 N. D. 134; 47 L. R. A. 646, held that a person whose property was threatened with destruction by fire may take such steps for its protection by backfiring as are reasonable, and he will not be liable for the negligent destruction of the property of another.

In *Hughes* v. *Oregon Imprv. Co.,* 20 Wash. 294, 55 Pac. 119, where a fire had broken out in a mine, and the plaintiff's intestate, who was killed, might have been saved if the fan of the mine had not been stopped, the Court in holding that the defendant was not liable for the stopping of the fan, said: "The evidence disclosed that, at the time the fire was discovered by the men upon the outside of the mine, they were suddenly placed in a situation demanding immediate action, and that in the excitement and confusion occasioned by the discovery of the fire, and peril of the men below, and not knowing the precise location of the fire, they decided to do and did do, what seemed to them best at the time. If what was done was not the best thing that could have been done, it nevertheless cannot be deemed an act of negligence, but must be considered a mere error of judgment, for which the company cannot be held responsible."

In *Gunz* v. *St. P. & M. R. Co.,* 52 Wis. 672, 10 N. W. 11, where one of a hand car crew was killed and the question was as to the negligence of the defendant's foreman when he saw a train approaching, the Court said: "It may be that the section foreman had the option of a safer course than the one he adopted; but, even then, we should not impute negligence to such mere error of judgment. Such mere error of judgment does not have within it the elements of negligence. We conclude, therefore, that where there are two or more different lines of action, any one which may be taken, and a person with ordinary skill, in the presence of imminent danger, is compelled immediately to choose one of them, and does so in good faith, the mere fact that it is afterwards ascertained by the result that his choice was not the best means of escape cannot be imputed to him as negligence."

In *Pond* v. *Norfolk & W. R. Co.,* 111 Va. 735, 69 S. E. 949, it was held that the defendant's servant could not be required to adopt the wisest possible action to avert an accident.

In Bishop v. *Belle City Street R. Co.,* 92 Wis. 139, 65 N. W. 733, it was held that the defendant's motorman was not liable merely for failing to choose that course, which after the result was ascertained, might seem to have been the best.

In *New York, Q & St. L. R. Co.* v. *Kistler,* 66 Ohio St. 326, 64 N. E. 130, the Court said: "While engineers of locomotives are expected from their training, experience and the nature of their duties, to be equal to almost any emergency in the management of their trains, yet it must be remembered in their favor that they have mind and nerves the same as other people, and that, when they are suddenly and unexpectedly confronted with imminent peril or danger to themselves or to the persons and property in their charge, by obstructions on the track or about to go thereon, they cannot be held to a strict course of conduct to prevent injury to persons or property not connected with the train, so that the action taken is in good faith, and at the time believed to be the best."

In *Ransom* v. *Union Depot Co.,* 176 S. W. 785; 142 Mo. App. Div. 361, held that an employee in charge of an express truck was not guilty of negligence in attempting to move his truck quickly out of the way to avoid a collision with an approaching train, although in doing so he caused his truck to collide with another truck and forced the latter to roll so close to the track that it was struck by the train and thrown against the plaintiff.

In *Quill* v. *New York, C. & H. R. R. R. Co.,* 16 Daly 313, 11 N. Y. Supp. 80, affirmed in 126 N. Y. 629, 27 N E. 410, where the plaintiff was injured by a coal cart being thrown against him by a collision of the cart with one of the defendant's trains, it was held that if the accident was due to a sudden and instinctive effort on the part of the coal-cart driver to escape impending danger after receiving warning thereof, there not being sufficient time to form an intelligent and deliberate judgment as to the best means of escape, negligence was not imputable to him.

In *Fillippone* v. *Reisenburger,* 135 App. Div. 707, 119 N. Y. Supp. 632, where the defendant, in order to get upon a runway where the plaintiff stood, stepped upon a barrel which turned over or fell over, and the defendant, in order to save himself from falling, caught hold of the plaintiff's feet and caused him to fall, injuring him. It was held that no actionable negligence was shown. The Court

said the case "must be disposed of as governed by the principle of pressing danger, as applied in Laidlaw *v.* Sage, 158 N. Y. 73, 44 L. R. A. 216, 52 N. E. 679," and in this way expressed in Moak's Underhill on Torts, p. 14: "The law presumes that an act or omission done or neglected under the influence of pressing danger was done or neglected involuntarily."

In *Bittner* v. *Crosstown Street R. Co.*, 153 N. Y. 76, 60 Am. St. Rep. 588, 46 N. E. 1044, the Court in reversing a judgment for the plaintiff, said that if the jury "could believe the evidence of the witness Toms, that the car had passed so far beyond the boy, and then, while he was still alive, was backed down upon him, and again was sent over him, they could, perhaps, say that the motorman was careless in the management of his car at the time and that, through such carelessness the boy was in fact killed. But if they believed that the motorman was endeavoring in the exercise of his judgment to prevent injury to the boy, then there was no carelessness on his part, but merely an error of judgment, for which the defendant could not be held responsible. Upon the evidence it appears that the motorman was confronted with a sudden emergency, and it should have been distinctly stated to the jury that if, in what he did, he used his judgment, the defendant was not responsible, even if it was an error which brought about the lamentable results claimed. Even the failure to exercise the best judgment would not be evidence of negligence."

In *Stabenau* v. *Atlantic Ave. R. Co.*, 155 N. Y. 511, 63 Am. St. Rep., 608, 50 N. E. 277, reversing 89 Hun. 609, it was held that there was no negligence in the motorman of the defendant choosing one of the two methods of stopping his car. The Court said: "Whether the one or the other means provided for stopping the car should have been adopted was a matter for the exercise of the motorman's judgment, and, though newly employed, he was not shown to be incompetent. For an error in its exercise, the defendant could not be held responsible. Even the failure to have exercised the best judgment would not have been evidence of negligence."

In *Wynn* v. *Central Park, N. & E. River R. Co.*, 133 N. Y. 575, 30 N. E. 721, the Court in reversing a judgment for the plaintiff on the ground that there was not any evidence of want of skill on the part of the driver of a car which was running downhill with a broken brake, said that while they did not see any evidence that there was any failure to exercise the best judgment which the case rendered possible, a failure to exercise the best judgment which the case rendered possible cannot clearly be claimed as evidence of a lack of care or skill."

In *Lewis* v. *Long Island R. Co.*, 162 N. Y., 52, 56 N. E. 548, the following instruction was held to be error: "If you find that the engineer of the defendant's train, after seeing the horses attached to the tallyho in which the plaintiff was seated, omitted to do any act which might have prevented the collision or might have lessened the danger to plaintiff, defendant was guilty of negligence." The Court said: "Where an employee of a railroad company is confronted with a sudden emergency, the failure on his part to exercise the best judgment the case renders possible does not establish lack of care and skill upon his part, which renders the company liable. * * * The short period of time in which he was obliged to act, the impending danger to his train, to himself, to his passengers, and to others, with the consequent excitement attending such a situation, the various acts required to stop or lessen the speed of the train, and all the other circumstances surrounding him at the time, should have been presented to the jury and considered by it before it could properly find the defendant negligent by reason of the acts of its engineer. By the portion of the charge under consideration, the jury was permitted to find the defendant negligent without regard to these facts and circumstances, and to hold it liable for any mistaken exercise of judgment upon the part of the engineer."

The rule has been laid down by this Court in the case of *Hummer* v. *L. V. R. R. Co.*, 75 N. J. L. 703, as follows:

> "The Court of Appeals of New York, in a well-rendered opinion, said that railroads are not liable for a mistaken exercise of judgment on the part of their employees in an emergency, or for a failure to act with the utmost promptitude and in the right direction when circumstances are such as to afford no time for deliberation. Where an employee of a railroad company is confronted with a sudden emergency, the failure on his part to exercise the best judgment the case renders possible, does not establish lack of care or skill upon his part which renders the company liable. It is not responsible in such circumstances, even for his error of judgment (Lewis *v.* Long Island Railroad Co., 162 N. Y. 52, at p. 62)."

If the record of the present case be examined it will be seen that the evidence shows that an extraordinarily dangerous condition arose almost immediately after the fire started.

Allen, steward of the schooner "Walcott," which was at Pier 6. At about 1:30 A. M. there was a fire in the cars and there was a lot of noise from "shrapnel exploding" (p. 410, l. 35). He came out on the deck, saw the shells going up in the air and thought he had better get out or he would be struck (p. 411, ll. 20-40). Was hit by a shell and knocked to the floor and then came the "heaviest" explosion (p. 412, ll. 1-10). In about half an hour the second explosion came and "scared the wits out of us." The shipkeeper left, and the witness crawled around on his hands and knees on the dock until an ambulance driver found him and took him to the hospital (p. 412, ll. 28-40). Before he was hit, he saw the cars burning and the explosives were on fire. The cars were "along the North Pier" (p. 418, ll. 1-20).

Hogan, Jersey City fireman. Reached Black Tom at about 1:20 A. M. with a hose wagon and was the first officer of the Fire Department to arrive there (p. 469, ll. 1-30). He stopped in the roadway at the opening leading into Pier 5, near the pump house, next to store F (p. 467, ll. 20-40). Saw a number of cars on fire

about five hundred feet to the east (p. 469, ll. 10-20). He then telephoned to headquarters to inform them of the extent of the fire (p. 468, ll. 35-40). He tried to get water from a hydrant which was west of the pump house, and could not do so (p. 469, l. 20). He and the other firemen stood by the pump house until the explosion (p. 471, ll. 30-40). "We all stood there watching the shells flying around" (p. 472, l. 8); * * * "A very high fire all went up in the air, or went by my head, and it seemed to push along the road, and knocked me down; then I tried to get up, and I could hear a rumbling, a roaring, as though there was a roof or something flying overhead * * * it sounded like a tin roof rattling" (p. 472, l. 40 to p. 473, l. 10). When he arrived at the yard there were seven or eight cars burning (p. 475, ll. 1-10). Soon after he telephoned, Chief Gately arrived and told him to "get a line in." There were no fire engines there at the time and none arrived until after the second explosion (p. 481, ll. 10-30). First heard the shells while he was driving to the yard. He noticed the reports, as if somebody were shooting when he was coming "over the hill"; could see the shells as they were driving along through the yard.

> Q When you got down there, it was a right lively battle going on, wasn't there? A They were going off pretty lively.
>
> Q And any man that went down any nearer than you went at the risk of his life, didn't he? A He was taking a big chance, yes" (p. 490, ll. 10-30).

Lottie Townes lived at Black Tom at the time of the fire. The house was on the pile stockade (p. 492, ll. 20-40). Heard shots, like reports of a gun and then it got larger. Waked up her husband and came out on the porch and saw "a car all afire" (p. 493, ll. 1-30). The fire was shooting out of the four corners of the car. There was no light on the ground (p. 494, ll. 1-15). The fire was "all in the car, going up from through the top of the car (p. 494, l. 35).

Gately, Battalion Chief in the Jersey City Fire Department, received a telephone message about one o'clock and got to the fire about fifteen minutes later (p. 497, ll. 10-20; 503, ll. 20-30). Went within four or five hundred feet of the blaze and saw some cars burning (p. 498, l. 1). Was there at the time of the explosion. Did not see it, but felt it and was "carried" about ten or fifteen feet (p. 502, ll. 1-20). At the time of the first explosion, shells were going up (p. 502, l. 33). No fire engines arrived until after *both* explosions (p. 505, ll. 20-35).

First heard the shells as he drove along the roadway (p. 508, l. 15). Five or six cars were on fire when he first arrived and the shells were going up in the air.

> "Q And those that went up came down? A I believe so.
>
> Q And they hit a lot of things—and made a lot of noise? A I believe so.
>
> Q You know so? A I know they did not hit me.
>
> Q And it was like a battle? A It certainly was.
>
> Q And many that went down where those shells were going off did so at the risk of his life? A You said it" (p. 509, ll. 20-35).

Treger, Jersey City fireman, drove a tender and arrived at the yard at about 1:20. Went as far as store N, and saw the fire; it seemed to be cars (517, ll. 10-15). Was there at the time of the explosion. Was stunned for the time being and the horses ran wild (p. 518, ll. 1-10). No engines arrived until an hour after the largest explosion (p. 520, l. 40). Had a thousand feet of hose in the tender.

Hanson, Captain of Moran Barge No. 22. First heard of the fire about 12:45 or one o'clock (p. 525, l. 40). Saw the fire "in the car" (p. 526, l. 18). At that time the shells were not coming out of the car. He ran off his boat, and went up to the watchman's shanty. The fire was then about three feet above the car (p. 528, ll. 10-20). Saw no shells go off before the big explosion

(p. 531, l. 30). He tried to save the stores on his boat and was looking for a tug (p. 528, l. 30 to p. 533, l. 30).

> "Q What were you afraid of? The fire was a way off from your boat then? A Well, it was all ammunition all around me. * * *
>
> Q Your boat had ammunition on it? A Yes.
>
> Q So you knew that was a very dangerous place, didn't you? A I was quite sure it was" (p. 533, ll. 30-40; 534, ll. 1-5).

He did not hear any shooting after the big explosion, and never heard any shooting at all (p. 534, ll. 30-40). He is slightly deaf (p. 535, l. 2).

Baker, Captain of the Barge "Frank," lying on the north side of the North Pier. The Captain of the Johnson 17 told him there was a fire and he got up to see and noticed a fire near Zeke's shanty. It was a small flame in a car about eight or ten feet long and the same distance wide (p. 536). Did not see any shells exploding, but heard them; they were small shots cracking off in succession (p. 538, l. 32).

Casterson, Captain of Johnson Barge No. 11, which was at the north side of the North Pier. Captain of Johnson 17 waked him up at about one o'clock. He saw the fire burning about 800 feet from his boat. The flames "blew up" six or eight feet and the shells started to go off then and continued to do so "right along" (p. 543, ll. 10-20; p. 547, l. 15).

Campbell, Jersey City Fireman with No. 10 Company (p. 552, ll. 1-10). Went to the crossing between stores M and N (p. 555, l. 20). Arrived before Chief Gately. The shells were going off; it was pretty much like a battle" (p. 561, ll. 10-20). The Chief ordered them back and said "we would only burn if we stood there" (p. 567, ll. 30-40).

Closterman, Lieutenant, Jersey City Police Department, reached Black Tom about 1:35 A. M. (p. 568, l. 38). His wagon stopped at Pier 5 and he went about 100 feet

further (p. 569, l. 30 to 570, l. 5). About fifty cars were burning (p. 570, l. 25).

> "Q At that time was there any explosion of munitions? A Well, shells were flying in the air —shells—in fact it looked to me what I consider like a naval battle. Each car seemed to be shooting shells at all the others, and all the others, apparently were shooting at them. That is the impression I got of it."

Heard the shells going off as he came to the yard on the way, and saw them before he heard them (p. 598, ll. 1-20).

Kane, watchman. At about 12:30 A. M. heard a man hollering "fire" and blowing a whistle (p. 605, ll. 1-25). Got on the platform in front of store G and saw a small blaze coming through the tops of the cars (p. 605, l. 35 to p. 607, l. 12). Was anxious to get the cars out as he knew there were explosives there (p. 608, ll. 30-40). Went to the pump house and telephoned (p. 609, l. 28; 610, ll. 10-20). Saw the fire again about 1:15 after some fire apparatus had arrived (p. 611, ll. 10-20). Saw a box car burning on the top and went towards the fire with Chief Leyden as far as store M, and the chief ordered him to run back and tell the locomotive to come to the sea wall track, and he did so (p. 612, ll. 10-40). The fire was spreading and the shells were going off. Heard the shells just as the fire department was coming (p. 613, ll. 30-40). This was while he was telephoning and about ten or fifteen minutes after he had been notified of the fire (p. 614, ll. 1-12). Heard the shells going off "very shortly" after he began to telephone (p. 645, ll. 15-25). When the first explosion came it was as if someone hit him in the face and he was carried about two hundred feet (p. 615, ll. 20-30). While in the pump room, he telephoned to the Lehigh Valley despatcher for fire tugs and locomotives, called up the New York fire tugs, the Standard Oil fire tugs, and also the freight agent who was in charge of the property (p. 635, ll. 10-30). This took about three-quarters of an hour. The reason he

did not go to the fire and try to put it out when he saw it, was that he thought he had better call help, and then after he called help, the shells were going off and he did not think it was a "safe place" (p. 706, ll. 30-40). He believed the fire was in the direction of the ammunition cars, and did not want to go down, if he could "get out of it" (p. 707, l. 30 to 708, l. 15).

Sloan, watchman at pump house near Pier 5. Some men told him the North Pier was on fire. He walked to the crossing and saw a small fire beyond the end of the cars, near the North Pier. At that time the fire seemed to be about the height and width of a barrel. He blew the whistle and started his pump and then answered the 'phone (p. 657, ll. 1-30). First discovered the fire about 12:45 A. M. Heard the reports of the popping of the shells at about ten or fifteen minutes past one (p. 661, ll. 20-30).

Dickman received telephone message at about 12:50 A. M. that North Pier was afire; reached there in 12 or 15 minutes or less (p. 725, l. 40 to p. 727, l. 10). As he drove along the roadway from Claremont yard, he saw the "spouts of flame" in the air, and when his taxi stopped, heard the shells. "They were all going off quite rapidly" (p. 729, ll. 1-30). At the time of the first explosion was standing on the sea wall track a little east of store R and about opposite a gravity tank (p. 732, ll. 1-10). After the first explosion, went to store R near Pier 4 and was there at the time of the second explosion. Between the first and second explosions the shells were going "off like rapid-fire guns" (p. 732, ll. 1-10; 736, ll. 25-30; 737, ll. 10-15).

Henley, yardmaster. Went to the yard on engine 3428 and started to pull out the cars. Heard the shells popping when he left Jersey City (p. 757, ll. 30-40). When he arrived some cars were on fire and the shells were still popping (p. 758, l. 28). One of the shells hit him and knocked him down. There were many of them—

every second—like a bunch of fire crackers (p. 759, ll. 30-40).

Thomas Walsh, conductor with engine 3456. The shrapnel, bullets and everything were flying around and made it disagreeable.

> "Q What were these things that seemed to you to be flying around? A The big ones would whistle past, make a big noise like these propellers do. The little ones was just like rain hitting a tin roof" (p. 776, l. 15).

John Walsh. Went on top of the cars at the request of his brother Thomas, while they were trying to pull the cars out. There was a lot of noise; the shells looked like sky-rockets shooting up in the air, some were dropping on the tin roofs of the cars; they sounded like pebbles and you could see them in the water, "like raining" (p. 791, l. 35 to 792, l. 10).

Eismann. His attention was called to the fire by Detective Burns, and the latter started to see what it was. Some of the other detectives started after him and he said "don't go near the car, it is a car of ammunition" (p. 803, ll. 20-30). There was a blaze about three feet high over the car, coming from the centre (p. 804, l. 20). never stopped to look at it; thought the best thing to do was to get out of the way and keep right on going (p. 806, l. 20 to 807, l. 10).

Burns. As soon as he saw the reflection of the flame, told the other detectives to notify the men on the boats and lighters to get away as there were explosives in the cars (p. 819, ll. 20-40). Turned in the fire alarm about 12:30 A. M. (p. 822, l. 28). The shells started to pop directly after he turned in the alarm. Could hear them and see the flames and flashes. The shells came from the burning car and were going in different directions (p. 823, ll. 1-20; 836, l. 30 to p. 837, l. 15). Warned Eismann and the others not to go near the cars (p. 831, ll. 20-30).

Julian. Got word of the fire by telephone and he arrived at the terminal, met Mr. Dickman, and went along the roadway. This was shortly after one o'clock. Saw and heard exploding shells as soon as he got there (p. 857, ll. 30-40). F

This evidence shows that the shells began to explode within a very few minutes after the fire started and continued to explode with increasing frequency up to the time of the second heavy explosion. The only man who did not hear the shooting was Captain Hanson of Moran Barge No. 22, and he was deaf. Even Hanson, however, was "quite sure" that the situation was dangerous, as he started to look for a tug the moment he saw the fire. The watchman and the detectives knew as soon as they saw the fire that it was in or near the cars containing ammunition. What might reasonably be expected of them, under the circumstances? Were they bound to go directly to the scene of the fire and attempt to put it out, when they knew or had every reason to expect, that there would be serious danger. Could they be expected to assume, under these extraordinary conditions, that none of the shells would begin to explode for ten or fifteen or twenty minutes? How can it be fairly said that the watchmen were negligent when they undertook to telephone for help at once, rather than to attempt to put out the fire themselves, immediately on its discovery? With the exception of Yardmaster Henley and his yard crews, particularly the brothers Walsh, every one else who reached the yard while the fire was going on kept a respectful distance away from it. Henley and the Walsh boys took their lives in their hands, and did the best they could in pulling the cars out of the yard, but, can it fairly be said that Kane and the other watchmen were negligent because they were not as brave (or, perhaps as foolhardy) as Henley and his crews? Even the Jersey City firemen, whose business it was to fight fire, kept as far out of the danger zone as possible. That their apprehensions were well justified, is shown by the

fact that one of the Walsh boys received a serious injury. Chief Leyden of the railroad police was killed, and the captain of Johnson Barge No. 17 was blown to pieces in one of the heavy explosions. Obviously, no one could foresee whether there would be such a tremendous blast, but the employees all knew that there were explosives in the cars, even though they may not have been familiar with their exact nature.

To permit a jury to find the employees negligent, under such circumstances, would be to impose upon the employees a far more strenuous obligation than has ever been imposed in any other case in the books. The most that could be said might be that the employees erred in judgment when they telephoned for help, instead of running hose or the fire extinguishers to the scene of the fire immediately on its discovery. But a mere error of judgment is not negligence. Likewise, it was error for the Trial Judge to submit to the jury as the test of negligence under such circumstances, whether a reasonably prudent man would have made an effort to put out the fire, and to say that this, in turn, would depend on whether the situation was such as to amount to an emergency of such a character, so overpowering in its nature as not to give time for deliberation. If that be the rule of liability, the defense of sudden emergency cannot be successfully made in any case, unless the accident or catastrophe is practically simultaneous with the discovery of the emergency.

The real question for the jury (assuming there was any question at all) was whether the situation was such as to render the conduct of the defendant's employees nothing more nor less than an error of judgment. If it was an error of judgment, then, as defendant pointed out in request No. 30, the defendant could not be responsible therefor; if it was not an error of judgment, but was an act of negligence, then the defendant might be responsible. The defendant also urges that, as the testimony on this subject is practically without dispute, this question should have been removed entirely from the consideration of

the jury, in accordance with request No. 29, as, at the worst, what the employees did was merely an error of judgment and not negligence.

(c)

It was error to permit the jury to find negligence on the part of the defendant, on the ground that there was a failure to provide sufficient fire-fighting devices and apparatus.

The Trial Judge included in the last of possible grounds of negligence upon which a verdict for the plaintiffs might be based, the claim that there was a failure to provide sufficient fire fighting devices and apparatus (p. 1035, l. 19). He refused to charge defendant's request No. 18, above quoted, to the effect that there was no proof of failure in this regard or that such failure was the proximate cause of the damages.

The defendant urges that there was no question of fact for the jury on this point and that, therefore, it was error to leave this ground of negligence to the jury and to refuse to charge said request No. 18.

In addition to these requests the defendant submitted certain other requests which bore on the same subject matter, all of which were denied. These were as follows:

> 24. There is no evidence from which the jury can legally infer that the defendant did not observe the usual custom of railroads in respect to the fire protection afforded at Black Tom on July 29-30, 1916.
>
> 25. There is no legal duty resting upon the defendant in respect of its terminal at Black Tom to furnish fire hydrants in addition to those furnished by the City of Jersey City, the said terminal being within the limits of that municipality.
>
> 26. There was no legal duty resting upon the defendant in respect of its terminal at Black Tom to furnish its own fire protection in addition to that furnished by the City of Jersey City, the said terminal being within the limits of that municipality.

27. There was no legal duty resting upon the defendant in respect of its terminal at Black Tom to furnish men and equipment to extinguish fires, in addition to the men and equipment of the municipality of Jersey City, within the limits of which the said Black Tom Terminal is (pp. 1074 and 1075).

It should first be noted that the railroad terminal at Black Tom was within the limits of the municipality of Jersey City. This defendant pays taxes, like other citizens, and, like them, is entitled to fire protection from the municipality. The defendant's requests Nos. 24, 25, 26 and 27 are intended to raise the point that the defendant was under no legal duty to provide fire protection in addition to that which it would ordinarily receive from the municipal authorities. There is no reason why a railroad company, any more than any other citizen, should be required to furnish fire apparatus, or be required to equip its property with fire extinguishers. If, as a matter of extra precaution, a citizen undertakes to furnish some protection in addition to that which is provided by the municipality, that fact cannot impose upon him a legal duty greater than that which rests upon his neighbor who fails to furnish fire extinguishers. If a house begins to burn, the owner is not required, at his peril, to have on hand fire extinguishers by which it can be put out, but he has the right to rely upon the protection of the municipal fire department, and, hence, we submit that if a railroad company, or any other citizen, voluntarily undertakes to furnish fire fighting apparatus in addition to that which is provided by the municipality, such fact does not impose upon them any greater duty with respect to third persons, than if the additional apparatus had not been furnished at all. If we are right in this contention, then it is immaterial what the apparatus was on the defendant's premises, or whether there was any there at all, or whether it was in proper condition, or whether it was properly used by its employees.

But, in view of the allegation in the complaint, the defendant deemed it proper to submit to the Court all the facts respecting the additional fire protection which it did in fact furnish. The details of this are shown on the large map known as Exhibit P. 1. In addition to the apparatus described thereon the warehouses were equipped with an automatic sprinkling system, connected with the American District Telegraph Company. Part of the water supply was furnished by the municipality, and, in addition thereto, the defendant had its own independent system, besides two large tanks and numerous hydrants stationed at various points along the railroad tracks. The location of the water mains, tanks, hydrants, hose connections, fire alarm stations, pumps, hose, hose carts, etc., are all indicated on Exhibit P. 1.

A complete description of the fire apparatus, together with the means for communicating the discovery or alarm of fires, was given in Defendant's Exhibit D. 1 (see p. 876, ll. 1-30; pp. 1180-1195). This elaborate description may be condensed as follows:

1. *Pumps.*

There were three pumps. One, an electric pump, at the east end of store R, with a capacity of 1,500 gallons per minute.

Two, a steam pump at store F, with a capacity of 1,200 gallons per minute.

Three, a steam pump at the oil yard, at the west end, with a capacity of 1,500 gallons per minute.

All of the pumps were connected with a 12-inch fresh water main. Said pumps were also equipped so that they could pump salt water into the 12-inch main. The two first named pumps were connected with the A. D. T. system, by means of which an alarm would be given in the event that the electric current was shut off, or if the steam pressure dropped below a certain point. All the pumps were also equipped with outlets to which hose could be attached.

2. *Hydrants.*

There were twenty-four standard Corey hydrants, with an outlet of 2½ inches, so constructed as to

throw one or two or three streams of water at the same time. They were all connected with the 12-inch water main, which was in turn connected with the municipal water supply. They were also connected with the salt water supply by means of the pumps. These hydrants were located at various points, beginning near the northeast corner of store R and extending westerly at regular intervals to storehouse AA. There were also nineteen two-way 2½-inch hydrants which were connected with a 6-inch fresh water main, which in turn was connected with the city water supply, or with a 6-inch salt water main. These hydrants were placed at various points, beginning at the pump house and extending westerly to warehouse AA.

3. *Fire Hose and Hose Carts.*

There were 3,600 feet of 2½-inch standard fire hose. This was kept on two hose carts, which were located at the points described in the answers, beginning at the easterly end of store M, and extending to the steam pump near the warehouse BB, each hose cart having about 300 feet of hose. The hose carts were also equipped with nozzles, wrenches, etc. Standard hose was also placed on the roofs of warehouses; likewise, there were 200 feet on pier 6, 200 feet on pier 5, 1,100 feet on pier 4, 100 feet in store 3, 550 feet in the grain elevator, and 400 feet in storehouse AA.

4. *Chemical Engine.*

There was a 100-gallon chemical engine at the northerly end of pier 5 and on the two grain elevators; also in storehouses AA and BB.

6. *Water Barrels.*

Fifty-gallon water barrels, with pails, ladders, poles, etc., were placed on each pier and in the warehouses.

7. *Fire Alarms.*

The company had its own fire alarm system, with eighteen stations, and there were also two fire alarms, Nos. 671 and 672, which were connected with the Jersey City Fire Department.

8. *Fire Boats.*

There were fifteen tug boats of the defendant which were equipped with steam pumps and hose; five lighters similarly equipped; and there was also an arrangement with the Standard Oil Company and the Central Railroad of New Jersey by which the fire tugs of those companies were subject to call by telephone or whistle.

9. *Water Mains and Water Supply.*

A 12-inch main was connected with the Jersey City water supply at the pump house at the westerly end of the premises. The said 12-inch main extended from the point mentioned along the southerly line of the driveway north of the said stores to the 100,000-gallon water tank located east of store R. A 10-inch main connected with the said 12-inch main at a point northwest of store No. 3, about seventy feet therefrom. The said 10-inch main parallels the 12-inch main to a point about fifty feet from the said 100,000-gallon steel tank, whence it takes a southerly direction and is connected directly with electric pump located east of store R, as hereinbefore described.

A 6-inch main connected with a 6-inch main of the Jersey City water supply at a point northwest of store AA and about 175 feet therefrom. The said main extends in a southerly direction to the southerly side of the said premises, and extends from thence in an easterly direction, paralleling the said 10 and 12-inch mains to a point directly north to the electric pump located east of store E; thence in a northerly direction to the said pump. The said main is connected with the said pump and with the 100,000-gallon tank hereinbefore described.

A 6-inch salt water main began at the pump house at the westerly end of the said premises, running south therefrom to a point near the southerly line of the premises; thence in an easterly direction paralleling the 6-inch, 10-inch and 12-inch mains to a point directly north of the pump house east of store R. The said 6-inch salt water main connects with the steam pump located east of store F.

The 12-inch main hereinbefore described supplied all of the three-way standard Corey hydrants and

the 10-inch main the hose connections on piers, and the open sprinklers on piers 4, 5 and 6, the 10-inch main supplied the sprinkler system hereinbefore described, protecting all of the piers and warehouses. The two 6-inch mains supplied all of the standard two-way hydrants.

10. *Gravity Tanks.*

In addition to the water supply furnished by the water mains and pumps hereinbefore described, a primary water supply was furnished by three steel gravity tanks located as follows:

(1) A 100,000-gallon tank was located on an 80-foot steel tower east of the easterly end of store N and about seventy-five feet therefrom. This tank was filled with water. This tank furnished a primary water supply to the 12-inch main with a pressure of about forty-five pounds to the square inch.

(2) A 50,000-gallon steel gravity tank was located on the top of store P. This tank furnished a part of the primary supply for the automatic sprinkler system in stores and piers hereinafter described. This tank was filled with water.

(3) A 50,000-gallon gravity tank was located on top of store F. This tank furnished a part of the primary water supply for the automatic sprinkler system hereinafter described. This tank was filled with water.

11. *American District Telegraph Co.'s Fire Protection System.*

All the storehouses and piers were connected with the central office of the A. D. T. Co. by wire and an automatic sprinkler system, together with numerous signals, had been installed in March, 1915, and was in operation at the time of the fire. A full description of same and the location of each of the signals is given in the answers to interrogatories (pp. 105-108).

It would be difficult to conceive a more elaborate system of protection against fire. The yard itself was as far removed as practicable from the inhabited section of Jersey City; ample water pipes, including some of the

defendant's, were located throughout the yard, except in the easterly end thereof, and that part of the yard could readily be reached by the hose which the company had placed at convenient points. The defendant had constructed its own water pipes in addition to the city pipes, and it also provided three water tanks and supplied the necessary power, by way of pumps, to make use of the water. Even assuming that there was any such duty resting upon the defendant to furnish its own apparatus and water supply, instead of relying upon the protection of the municipality, the proof does not show that there was any lack of reasonable care in the furnishing of fire apparatus.

It will, no doubt, be urged by counsel for the plaintiffs (as it was at the trial) that there were no hydrants and no water mains east of storehouse R, but so far as concerns any claim of negligence in that respect, the answer is that the evidence shows *without dispute* that it was not the custom to place hydrants or mains in a railroad yard. The defendant sought to have this point presented to the jury by the above request No. 24, but this was denied. The evidence of defendant's fire marshal, Julian, is that the supply of hose was sufficient to take care of the bulkhead, or any fire in the vicinity, including pier 7 and the North Pier (p. 880, ll. 1-10; p. 881, ll. 20-30; p. 884, ll. 1-10). His evidence also shows that at the time of this fire it was not the custom to have hydrants throughout a railroad yard, especially a yard that was "dead," that is, one where no engines were operated at night (p. 838, ll. 10-40). The plaintiffs did not attempt to contradict or qualify his testimony on this subject, and hence we have the undisputed fact that at the time of this fire it was not the practice to place hydrants in railroad yards. The test of whether the defendant had exercised reasonable care, in this particular respect, therefore, is whether it violated the usual practice. The question is not whether the defendant adopted the best practice, or whether some better practice may have been developed

after the fire, but whether it conformed to the existing practice.

As was stated by this Court in the case of *Traphagen* v. *Erie R. R.*, 73 N. J. L. 759:

> "When there is a failure to prove any departure from the usage of other railroads, we think there is no proof which would justify a jury in finding the defendant negligent."

Other similar cases are:

Feil v. *West Jersey R. R.*, 77 N. J. L. 502.
Halm v. *Hudson County*, 78 N. J. L., 712.
Kingsley v. *Delaware, etc., R. R.*, 81 N. J. L. 536.
Raub v. *Lehigh Valley R. R.*, 87 N. J. L. 603.

In the last cited case, the Court said:

> "The test in cases of this class is not whether a particular safeguard would have been better, but whether similar safeguards were practicable and useful and according to the ordinary usage of railroads."

It was, therefore, error for the Trial Judge to permit the jury to find any negligence on the part of the defendant by reason of any alleged insufficiency in the fire apparatus. The defendant was, at least, entitled to have the jury charged in accordance with the request that there was no evidence from which the jury could legally infer that the defendant did not observe the usual custom of railroads in respect to the fire protection afforded at Black Tom on July 29-30, 1916.

(d)

It was error to permit the jury to find negligence on the part of the defendant, on the ground that there was a failure to use a high degree of care in the storing, handling and disposing of the explosives, to prevent communication of fire and detonation from one part to another.

The Trial Judge permitted the jury to consider, as an element of negligence, the alleged failure of the defendant to use a high degree of care to store, handle and dispose of the explosives to prevent communication of fire and detonation from one part to another (p. 1035, ll. 18-20). The part of the complaint to which this charge referred is paragraph 10 of the Second Count, which reads as follows:

> "It was also the duty of the defendant in the premises to exercise a high degree of care to store, handle and dispose of said explosives and munitions so as to prevent and control the ignition and communication of fire and detonation from one portion or mass of the same to any other part or mass of the same."

The defendant submitted a request to withdraw this ground of negligence from the jury. (See request No. 19, above quoted.) This was denied.

None of the explosives were being stored at the time of the fire. They were still in the course of interstate transportation, and the Trial Judge in one part of the charge, so directed the jury (p. 1040, l. 14). As there was no storage, either in fact or in law, it is difficult to see on what theory the defendant could be charged with negligence in failing to use a high degree of care in this respect.

So far as relates to the handling and disposing of the explosives, the evidence is undisputed that the defendant did not handle them, unless the mere fact that its engines pulled carload lots of explosives over its lines can be said to be a handling of the explosives. All the work of

both loading the explosives in the cars at the point of origin and of unloading them from the cars to barges or lighters at the point of destination was done by the owners or consignees, and the defendant had nothing whatever to do with it, directly or indirectly, other than to place cars on the North Pier at such times as might be convenient to the consignees, so that the contents might be unloaded by them to the barges or lighters, by which they were transferred to steamers for further transportation to Europe. Furthermore, the defendant had no control over the disposition of the explosives, except to transport the cars containing same, and to place said cars for unloading when so requested by the consignees. The defendant might be able to charge demurrage after the expiration of a certain time after notice of arrival had been given to the consignees, but that does not change the fact that the handling and disposing of the explosives rested exclusively with the consignees.

The charge of negligence in this respect, therefore, cannot be sustained, as the defendant did not, in fact, store the explosives, and there was no handling of same, except by the consignees.

(e)

It was error to permit the jury to find negligence on the part of the defendant, on the ground that there was a failure to provide sufficient means for communication with the fire and police departments of Jersey City.

The Trial Judge also included in the list of grounds of negligence, the alleged failure of the defendant to provide sufficient means of communication with the Fire and Police Departments of Jersey City (p. 1035, l. 21).

The question of this phase of the case is not whether an alarm was turned in promptly, or whether the defendant's employees were negligent after the fire was discovered; the inquiry is—whether the defendant had furnished sufficient means of communication.

The testimony on this subject is undisputed. The property was equipped with a private electric fire alarm system with eighteen stations, and there were also two fire alarm stations connected with the Jersey City Fire Department. There was also a series of manual fire alarm boxes installed at various points on pier 4, pier 6 and the storehouse AA. (See Exhibit D. 1, p. 1189, ll. 20-30; p. 1195, ll. 1-25.)

There was no evidence that the fire alarm system was defective or insufficient, and, as we point out under subhead "f", the system was in proper working order and the alarm was promptly sent in.

It may, however, be claimed that the Trial Judge cured this error in the charge by subsequently charging defendant's request No. 20 above quoted (p. 1050, ll. 25-30). This would be so, were it not for the fact that he did not withdraw from the consideration of the jury the previous part of the charge by which he permitted them to find negligence on this ground, and, hence, we have the same situation as arose in the case of *State* v. *Erie R. R.*, 84 N. J. L. 661, previously cited under Point II-a, where this Court pointed out that when two statements of the law are made to the jury, and one of them is erroneous, the jury cannot be expected "unerringly" to select the correct one, and disregard the wrong one.

(f)

It was error to permit the jury to find negligence on the part of the defendant, on the ground that there was a failure to notify the Fire Department of Jersey City.

The Trial Judge also permitted the jury to find negligence on the part of the defendant on the ground that there may have been a failure to notify the Fire Department (p. 1035, l. 25).

The defendant requested that this point be withdrawn from the consideration of the jury. (See Request No. 21, above quoted, p. 1074, ll. 15-20.)

No one actually saw the fire when it first started, but there was considerable evidence as to the location and appearance of the fire when it was first observed by various witnesses and as to the time when the fire alarm was sent in. The evidence on this subject may be summarized as follows:

Allen, steward on schooner "Walcott," at pier 6, first saw the fire at about 1:30 A. M. The cars along the North Pier were burning and the explosives in them were on fire (p. 418, ll. 30-40).

Hogan, got to the yard with a hose wagon about 1:20 A. M., in response to a telephone call giving the alarm (p. 467, ll. 10-20). When he arrived saw a number of cars on fire (p. 468, l. 5).

Lottie Townes, saw a car on fire—going up through the car and shooting out of the four corners (pp. 493-4).

Gately, Battalion Chief. Got word of the fire around one o'clock by telephone and reached the yard about 1:15 or 1:20 A. M. When he arrived, saw some cars burning (p. 497, l. 15; p. 503, ll. 20-30).

Treger, fireman. Reached the yard about 1:20 A. M. Cars looked to be burning (p. 516, l. 30 to p. 517, l. 15).

Hanson, Captain of Moran Barge No. 20, heard of the fire about 12:45 or one A. M. (p. 525, l. 35 to p. 536, l. 10). Saw the fire *on* a car about three or four hundred feet from his boat (p. 526, ll. 10-20).

Casperson, of Johnson 11. The captain of Johnson 17 woke him up at about one o'clock. Saw a fire on the car track about eight hundred feet away. The flames "blew up" six or eight feet (p. 542, l. 20 to p. 543, l. 15).

Closterman, Lieutenant of Police. Went to the yard in response to a still alarm and arrived about 1:35 A. M. (p. 569, l. 30 to p. 570, l. 10). About fifty cars were burning (p. 570).

Kane, heard a man holler fire and blew a whistle around 12:30 A. M. (p. 605, ll. 1-10). Went to the pump house

and saw the "Dougherty men" and one of them said he had sent in the alarm (p. 633, l. 20 to p. 634, l. 20).

Sloan, watchman. Some one told him about 12:45 A. M. there was a fire (p. 661, l. 20). He left his pump house to see where it was and when he came back one of the Dougherty men said they had already turned in the alarm (p. 666, ll. 30-40).

Dickman, freight agent. Got word of the fire by telephone from Sloan at about 12:50 (p. 735, ll. 30-40). Reached the terminal in 12 or 15 minutes and noticed a fire between the North Pier and the lower section of the bulkhead yard (p. 735, l. 35 to p. 728, l. 15).

Eismann, reached Communipaw station about 12:18 or 12:20 and walked to the North Pier, a distance a little over a mile, in about twenty-five minutes (p. 800, ll. 20-40). Stopped to talk to Detective Burns at the bulkhead for about five minutes and he called his attention to the fire (p. 802, l. 30).

Burns, detective. Came out of his shanty at about 12:10 and saw Eismann ten or fifteen minutes later (p. 818, l. 5). Talked with him a few minutes, then heard a crackling noise and saw the reflection of a flame on one of the warehouses (p. 819, l. 20). Went to the entrance of pier 6 where there was a fire alarm just inside of the door. Saw Garrity there but did not talk with him. "I walked right on in and turned it on; that is, broke the glass and pulled down the lever" (p. 833, l. 30 to p. 834, l. 15).

Maxwell, Superintendent of the American District Telegraph Co. The record on the tape indicating signals, shows an alarm at 12.54 A. M. (p. 841, l. 15; p. 843, l. 20).

Julian, received word of the fire by telephone about 12:10 or 12:20 (p. 867, l. 20 to p. 884, l. 30).

There is no doubt about the fact that the Fire Department received the alarm at about one o'clock, and they responded promptly with hose carts and tenders, but, unfortunately, did not bring any fire engines until after

the second explosion. The fire alarm was turned in as promptly as possible, by Detective Burns.

It makes no difference whether the defendant's own employees sent in the alarm, if, in fact, it was sent in. There is no room for a question of fact on this point, and it was, therefore, error to permit the jury to find negligence on the part of the defendant by reason of any failure to notify the fire department or to give the alarm.

(g)

In the Clark and Allen cases, it was error to permit the jury to find negligence on the part of the defendant, on certain other grounds (in addition to those specified in the other cases) as follows:

(1)

On the ground that there was a failure to give the Schooner "Walcott" a safe berth, and that there was a failure to warn said schooner of the presence of danger.

(2)

On the ground that there was a failure to provide competent men for patrolling and guarding the yard.

(3)

On the ground that it failed to instruct its employees as to their duties in case of fire.

(4)

On the ground that there was a failure to provide facilities for removing or isolating burning cars, or that there was a failure to dispose of the cars so as to prevent communication of fire.

(5)

On the ground that the defendant permitted barges to tie up at the piers.

(6)

On the ground that there was a failure to prevent fire.

The owners of the Schooner "Walcott", in the case wherein Eleazer E. Clark, *et al,* were plaintiffs, recovered a judgment for $101,374.00, including an item of $500.00 which was allowed to the captain of the schooner for loss of personal property.

The plaintiff, Ira W. Allen, recovered a judgment for $7,400.00 for personal injuries and property damage sustained by him, while on the said schooner, as a result of the fire and explosion. In both of these cases, certain charges of negligence were made in addition to those made in the other cases.

The defendant urges that the judgments in these two cases should be reversed, for each and all the reasons set forth in the argument relating to the other cases; and it further urges that whatever may be the decision as to the other cases, these judgments should be reversed, for the reasons above specified, because in dealing with these two cases, the Trial Judge permitted the jury to consider additional grounds of negligence which the defendant claims were without support in the evidence. These grounds, insofar as they differ from those specified in the other cases, are set forth under the above subheads—Nos. (1) to (6). (For charge on this point see p. 1036, l. 30 to p. 1037, l. 12; p. 1039, ll. 1-18).

(1)

That it failed to give the schooner a safe berth and failed to warn it of danger.

This schooner had arrived at the North Pier about a week or ten days prior to the fire (p. 420, l. 20) and after lying there for two days, discharging her cargo, it was found necessary to put the schooner in a new berth, as it was found that the water was not deep enough to enable the vessel to be unloaded, except at high tide. She was, accordingly, moved to the east side of pier 6,

where she continued to discharge cargo up to July 29th (p. 421, ll. 20-40). The captain went away on Friday evening (the day before the fire) and did not see the schooner again until the following Tuesday, when he saw her burning. She was still at the east side of pier 6, except that the stern had swung off (p. 422, ll. 20-40). The schooner had been docked at Black Tom, in accordance with orders from the ship's brokers (p. 428, l. 1). After the schooner docked, all of the crew were discharged except Allen, the steward, and afterwards the captain engaged a man as shipkeeper, (p. 429, l. 30 to p. 430, l. 10). The shipkeeper was on duty night and day and was expected to be on board the ship all of the time, and was responsible for it, under the orders of the captain (p. 430, ll. 20-30). The change in berth was made by the consignee and the vessel was moved to pier 6 about the Wednesday prior to the fire (p. 431, ll. 1-20). No effort was made to save the boat or any part thereof, or any of the cargo that was on board at the time of the fire (p. 437, l. 30 to p. 438, l. 5).

The plaintiff, Allen, said that he was on board the boat when the fire started and that when the shells began to explode he came up on deck; he was on his way to the cabin when he was hit by a shell and thrown to the floor, and afterwards the heavy explosion came (p. 412, ll. 1-10). He first saw the fire about 1:30 in the morning. Cars were burning and the explosives in them were on fire (p. 418, ll. 1-30).

Although no evidence was offered to show by what authority the schooner was docked either at the North Pier or at pier 6, the defendant does not seriously question the right of the schooner to go to these piers for the purpose of unloading; presumably, some arrangement was made by the ship's brokers with the representatives of the railroad company. But, assuming that there was some arrangement, that clearly would not impose upon the defendant the obligation of giving the schooner a safe berth—indeed, the places at the North Pier and at pier 6,

where she was docked, were perfectly safe and would have remained so until the schooner had finished unloading, had it not been for the fire. It cannot be seriously claimed that there was any duty to warn the owners or brokers, or attendants of the ship, of the presence of explosives and munitions, in the yard, or on the barges that from time to time were loaded at the North Pier. The schooner had been at Black Tom for a week or ten days prior to July 29, and if there was any danger to be apprehended, by reason of the presence of cars containing explosives and munitions, that danger was as apparent to the owners of the schooner, or their representatives, as it was to the railroad company, or its representatives. There was no change in the method of transporting and unloading explosives at the Black Tom Yard during the period of the week or ten days that the schooner remained there prior to the fire. What was the danger of which the defendant is supposed to have failed to give warning? Should the defendant have notified the owners or their brokers that cars containing explosives were moved into the yard and placed on the North Pier for unloading? Based upon its past experience in carrying on this work, there was no danger to be apprehended therefrom. It is evident that the captain of the schooner did not consider that there was any danger, as he deliberately left the boat a Friday to go to his home, and paid no further attention to her until the following Tuesday, leaving her in charge of the shipkeeper and the steward. The brokers evidently had no thought of danger, also, as they themselves selected the North Pier as the point where the schooner was to be unloaded, and afterwards changed her to the east side of pier 6—not because of any supposed danger, but in order that she may be more conveniently unloaded. If the danger was so apparent that the defendant was under some duty to warn the owners or their representatives, it was equally apparent to the owners or their representatives, but no one made any objection or protest.

(2)

Failure to provide competent men.

The question of whether there was negligence on the part of the defendant by reason of failing to provide competent employees, as watchmen, is entirely different from the question of whether the employees themselves were negligent. The Trial Judge, however, permitted the jury to find the defendant liable in these two cases because the defendant had failed to engage competent employees.

The legal question on this phase of the case is not whether the employees were, in fact, competent, but whether the defendant had exercised reasonable care to engage competent employees. The five watchmen who were on duty in the yard on the night of the fire, had all worked for the company for several years. Kane had been in the yard for seven years (p. 600, ll. 10-15); Kelly had been there for eleven years (p. 645, l. 40), and Sloan had worked there for twenty-one years (p. 656, l. 12). The other watchmen, Garrity and Groat, were not called as witnesses and it does not appear how long they had been working in the yard, but there is no evidence that they were incompetent, unless that is to be inferred from the mere fact of the fire and explosion. Even if the watchmen were negligent (which we do not for a moment admit), in what they did after the fire was discovered, that does not prove any negligence on the part of the defendant in employing them, or in continuing them in its employ. Before the master can be held liable for damages resulting from the negligence of his employees, it must be shown that the master knew, or by the exercise of due care should have known that the servant was incompetent.

Wing v. *Bradstreet*, 99 Atl. 36.

Igoe v. *Boston Elevated R. R. Co.*, 204 Mass. 202, 90 N. E. 574.

Baulec v. *New York & Harlem R. R. Co.*, 59 N. Y. 356.

First National Bank of Montgomery v. *Chandler*, 141 Ala. 286; 39 So. 822.

(3)

Failure to instruct employees.

Here again the question is not whether the employees carried out their instructions, or whether they were negligent in what they did after the fire was discovered, but is whether there was any proof on the part of the plaintiffs, to show that the defendant had failed to use reasonable care in giving instructions to its employees as to their duties in case of fire.

There is no proof whatever offered to show that there was a failure to give such instructions; on the contrary, the only witness who testified on the subject, Sloan, said that he did have instructions in case such a contingency arose, namely, to call up the different departments, get up the pressure in his pump and fight the fire (p. 689, ll. 10-20).

(4)

Failure to provide facilities for removing or isolating cars.

Here again the defendant claims that there was no question of fact before the jury as to whether or not there was negligence in this respect; neither was there any evidence that such negligence, if any, was the proximate cause of the damage to the plaintiffs.

At the time of the fire and explosion, there were in the Black Tom Yard, the following:

11 cars which were billed as containing "high explosives" (afterwards found to be TNT).

3 cars containing wet nitrocellulose.

17 cars containing ammunition for cannon.

2 cars containing combination fuses.
5 cars containing Benzol, and
1 car containing Toluol.

The location of each of these cars is shown in detail on Exhibit P. 1, opposite page 1080. Of the 11 cars of TNT (marked on Ex. P. 1 with the letter "H"), three were on the North Pier near the shore end thereof and the other eight were on the track in the northerly part of the yard known as track 16.

The three cars of wet nitrocellulose (marked "W" on the map) were on track 16 and to the east of the eight cars of TNT, with a car containing wire rods separating them.

Of the 17 cars containing amunition for cannon (marked "A" on the map) two were located at the extreme easterly end of the North Pier; 7 were located on track 15 in the northerly part of the yard and eight were on track 13.

The two cars containing combination fuses (marked "F" on the map) were on track 13.

The five cars of benzol (marked "B" on the map) were located 4 on track 16 and 1 on track 13, and the 1 car of toluol was on track 6 of what was known as the "Bowery" subdivision of the Black Tom Yard.

The testimony of Superintendent Milligan shows that the Black Tom terminal was the most isolated of any terminal in the New York harbor (p. 845, ll. 30-40). The testimony also shows that it was the practice to place the cars containing explosives on the tracks near the North Pier. The reasons for this were, to bring the cars close together so that the detectives might take proper care of them, and to have the cars at a convenient point near the North Pier, where they could be shifted to the boats when wanted (p. 847, ll. 10-30).

The testimony of freight agent Dickman shows that the North Pier was used for the purpose of placing cars, in order that the explosives might be unloaded therefrom to the barges or lighter.

Tracks 13, 14, 15 and 16 were used for storing, and track 18 was used as a running track to the North Pier. Other kinds of freight were handled in the same yard, deliveries thereof being made at the South Pier or by the transfer of the cars themselves direct to the lighters by means of floating bridges.

On the arrival of the cars containing explosives at the yard known as "Claremount", about a mile and a half from Black Tom, tickets for the cars would be delivered at the agent's office, and notices of arrival sent to the consignees. The cars would then be pulled to the bulkhead yard, and on the receipt of orders for delivery, would be placed on the North Pier, and transferred by the consignees to the barges or lighters (pp. 718-721).

We challenge counsel for plaintiffs to point out on what theory there was any negligence on the part of the defendant in this system of shifting and unloading cars containing explosives. There is nothing in the regulations which requires the isolation of one car of explosives from another car and there was no proof that it was either customary or proper to separate the cars. On the contrary, the common-sense view would seem to be that the cars should be placed (just as Superintendent Mulligan stated) in a part of the yard where they could be moved most quickly when the orders for such movement were given by the consignee. So far as concerns isolation in case of fire, we do not know whether counsel will take the position that there was some duty to have an engine with steam up attached to every car or to every string of cars in the yard. That would render the situation more dangerous on account of sparks flying from the engine; and, in the case of this particular yard, the defendant took an extra precaution in that regard by forbidding the use of the yard at night, so as to reduce the danger that might be caused by the escape of sparks.

If it be claimed that it was dangerous to have eight cars of TNT on the same track, the answer is that on the plaintiffs' own evidence, the defendant was under no

obligation to reasonably anticipate the explosion of TNT merely by reason of combustion. Dr. McKenna, the expert witness for plaintiff stated that prior to 1916, it was conceded that a large quantity of TNT could not be exploded merely by combustion, and that it would burn without explosion; that it is only since that time that we now know that it might be exploded by fire (p. 686, ll. 10-30). The common opinion was—that it was dangerous from detonation (p. 688, l. 28).

Mr. Maxim, an expert called for the defendant, said that TNT would not explode from ignition, unless it was confined but will burn like oil or pitch (p. 961, ll. 30-40); and that it would not make any difference how much TNT was on fire, as the intensity of the heat would be constant, and that this heat would not cause detonation (p. 962, l. 30, to p. 963, l. 10). He also said that if there were eight cars of TNT in a string, on a railroad track, this judgment was that they would burn and that the contents would not explode, except by some detonator (p. 965, ll. 1-15). He explained that for many years it had been known that TNT would burn in large quantities if there was no detonation, and he gave an illustration of the burning of 250,000 lbs. at the plant of the Hercules Powder Company in August, 1918 (p. 970, ll. 30-40).

The Trial Judge charged that the defendant could only be held liable for such as results from common experience and in the usual course of events might reasonably have been expected (p. 1053, ll. 5-15).

We find no fault with this language—as, in substance, it was in accord with the defendant's request. (See request No. 47, p. 1080.) But, our claim is that it was error to permit the jury to find negligence on the theory that there may have been a failure to provide facilities for the removal or isolation of burning cars, as the defendant was not bound to anticipate that the combustion of a large quantity of TNT would cause an explosion.

The defendant's duty depends upon what might reasonably be expected.

Sutphen v. *Headen,* 67 N. J. L. 324.
Guinn v. *Del., &c. Tel. Co.,* 72 N. J. L. 276.
Meyer v. *Benton,* 74 N. J. L. 533.

Under these circumstances, we submit that it cannot be successfully claimed that there was any lack of reasonable care on the part of the defendant simply because it permitted eight cars to stand alongside of each other on one track, and several cars of shells on an adjacent track. The defendant's conduct must be determined in the light of scientific knowledge as it existed at the time of the explosion. It is possible that since this tremendous explosion the scientific views may have changed, but that does not affect the responsibility of the defendant. The defendant's conduct must be judged in accordance with the then existing state of scientific knowledge on the subject.

It must also be remembered that for nearly a year prior to July 29th, 1916, the defendant had been handling explosives of the same kind in the same way, without fire or explosion. The following table shows the total number of cars containing ammunition for cannons, etc., handled each month for a year prior to the fire.

1915	August	57
	September	104
	October	186
	November	96
	December	233
1916—	January	269
	February	259
	March	334
	April	281
	May	301
	June	265

In the month of July, prior to the explosion, cars were handled at the rate of 5, 6, 10, 12 and 17 per day. There certainly was nothing either in the defendant's past ex-

perience or observation, or in the knowledge of scientists up to the time of this explosion, which would tend to show that there was any danger in handling cars containing these kinds of explosives in exactly the same way as they were, in fact, handled on July 29th and 30th, 1916.

The defendant's duty must be measured with reference to the scientific knowledge on the subject at the time of the fire and explosion. The test is—what it should have known of the danger at that time, not what it might have learned as a result of the catastrophe. The situation is analogous to actions against physicians and surgeons for malpractice, wherein the liability depends upon the state of the science at the time the damages were sustained. *Coleman* v. *Wilson,* 85 N. J. L. 203, citing 30 Cyc. 1571. In such a case, the question of whether the defendant is negligent depends, in the first instance, upon the state of scientific knowledge. 5 Thompson on Negligence, Section 6714.

The same principle was applied in the recent case of *Mayor and Aldermen of Jersey City* v. *Jersey City Water Supply Co.,* 105 Atl. 494, affirmed by this court on the opinion below, 106 Atl. 892. In that case, application was made to file a bill of review, on the ground that since the original decree had been made in the case, the advance of science showed that certain opinions of experts, relating to the purity of the water supply, were erroneous. The application was denied. The Court pointed out that it was not pretended that "any witness, speaking only with reference to the then scientific knowledge on the subject, could have testified in such a way as to have changed the result."

An interesting discussion of this rule is found in *Water Supply & Storage Company* v. *Larimer & Weld Irrigation Company,* 24 Colo. 322, 46 L. R. A. 322, holding that the use of an inaccurate formula in computing the capacity of an irrigation ditch is not ground for a review of the decree after the discovery of a more accurate formula, which was not known at the time of the decision.

The test of care is—whether what the defendant did was in accordance with the usual custom and has been approved by experience.

Hoff v. *West Jersey R. R. Co.*, 45 N. J. L. 201;
Vallaster v. *Atlantic City R. R. Co.*, 71 N. J. L. 334;
Traphagen v. *Erie R. R. Co.*, 73 N. J. L. 759;
Whilt v. *P. S. Ry. Co.*, 74 N. J. L. 141;
Bobbink v. *Erie R. R. Co.*, 75 N. J. L. 913;
Feil v. *West Jersey & Seashore R. R. Co.*, 77 N. J. L. 502.

(5)

Tying up of barges.

The Trial Judge further permitted the jury to find the defendant liable in these two cases, on the theory that it permitted barges to tie up at its piers.

It was admitted that at the time of the fire there were certain barges at and near the North Pier. The location of same, so far as was disclosed by subsequent investigation is indicated on the map marked Exhibit P. 23 (otherwise known as Plate 1, Colonel Dunn's report; see pp. 419 and 1030; for copy of map see p. 1180). By reference to this map it will be seen that the several barges were located as follows:

Moran Barge No. 64 on north side of North Pier, near the bulkhead.

Moran Barge No. 20, on south side of North Pier, near the easterly end thereof.

Johnson Barge "Frank" on north side of North Pier, about in the center thereof.

Ackerman Barge "Paulina" on south side of North Pier, alongside and to the south of Barge "Jet."

Ackerman Barge "Jet" on south side of North Pier, alongside and to the south of Barge No. 20.

Ackerman Barge "Thompson" on south side of North Pier, alongside and to the south of Barge "Paulina."

Ackerman Barge "Rockwell," on the south side of the North Pier, alongside and to the south of the Schooner "Elsey."

Johnson Barge No. 11, on the north side of the North Pier, about in the center thereof, and alongside and to the north of the Barge "Frank."

Johnson Barge No. 17 on the north side of the North Pier and near the easterly end thereof.

The defendant, in its answer, admitted that the North Pier was used for the tying up of barges and lighters "carrying or to carry explosives," but only while the same were being loaded; and denied that it permitted tugs or other vessels to be tied up to that pier and said that at the time of the explosion there were two barges there with its permission, partly loaded, one with shrapnel, and the other with T N T (p. 343, ll. 12-30). In answer to the plaintiffs' interrogatories, the defendant stated that these two barges were the "Frank" of the Johnson Company, and Moran Barge No. 64. On the former there were five cars of T N T, and on the latter four cars of combination fuses and nine cars of ammunition for cannon (pp. 387, 388). There was no evidence that the contents of these barges had anything to do with the explosion that caused damage to the plaintiffs—the explosion on the water, which will hereinafter be referred to, having occurred on Johnson Barge No. 17. In the absence of evidence to show that the burning or explosion of the contents of the barge "Frank," or the Moran Barge No. 64, had something to do with the damage to the plaintiffs, it is, of course, immaterial whether the defendant permitted these barges to be tied there or not.

It was the practice to unload the explosives from the cars, directly to the barges or lighters, and, of course, while this process was going on, the defendant permitted the barges or lighters to be moored at the North Pier, as that was the part of the yard where the cars containing the explosives were placed for the purpose of unloading. There is no evidence to show that the defendant's employees gave any barges permission to stay at the

North Pier after working hours; on the contrary, the testimony is undisputed that no such permission was given.

Higgins, the chief clerk in the office of the freight agent, stated that there was no arrangement made on Saturday, July 29th, whereby any of the Johnson barges should remain there until the next day, or at any time after working hours on Saturday (pp. 953, 954 and 955).

The freight agent, Mr. Dickman, also said that there was no such arrangement, and that he had not given permission to any barges to stay after working hours. He also said that the Johnson barges were not "habitually" at the dock after 5:30 P. M., and that he did not know whether they were ever there after that time, during the seven months that he had been in charge (pp. 956-7). He further said that he had given instructions to them to take their lighters away after closing hours (p. 958, ll. 1-20).

Inspector Campbell, of the Bureau of Explosives, said that he had general supervision of the unloading of explosives in and around New York Harbor, and in the course of his duties visited the various railroad terminals; that it was part of his duty to see the representatives of the different lighterage companies, including a man by the name of "Aleck," who was in charge for the Johnson Company (p. 911, ll. 30-40). There were government regulations in respect to anchorage areas, and it was part of his duty to warn people about having loaded barges at other places, and he said that he issued a warning of that character to Aleck (p. 913, l. 30, to p. 914, l. 10).

This anchorage area was about a mile and a half to two miles from the Black Tom terminal (p. 914, l. 20).

The anchorage regulations to which the witness referred were issued by the Bureau of Navigation of the United States Department of Commerce and Labor, pursuant to the Act of Congress of May 16, 1888.

Section 27 relates to the anchorage for explosives and provides as follows:

> "Vessels carrying gunpowder or other explosives may anchor only as follows:
>
> First. On the shoal ground to the eastward of Riker's Island, East River, from one-fourth to five-eighths of a mile from this island.
>
> Second. On the New Jersey Flats between a line drawn parallel to and 1,500 feet to the south of the Black Tom dredged channel and a line drawn parallel to and 1,500 feet north of the Greenville dredged channel, and to the westward of a line from Bedloes Island to Robbins Reef, provided that they do not anchor within 1,000 yards of Bedloes Island, or within 500 yards of any pier.
>
> Third. Vessels (carrying explosives) of too great draft to use the above anchorages may anchor only in Gravesend Bay, on a line drawn from Fort Hamilton to the western tip of Norton's Point, Coney Island, but not within 1,000 yards of the shore. All vessels laden with explosives while within the port will display at all times a red flag of at least 16 square feet surface at the masthead. Vessels so laden and without masts will display the flag at least 10 feet above the uppermost deck. All such vessels must be at all times in charge of competent persons and must comply with the navigation laws in regard to lights and fog signals."
>
> (Ex. D. 4, p. 1196.)

The anchorage in the Hudson River, as described in the second paragraph of Section 27, is indicated on the map known as Plate V, entitled "Western Anchorage, Upper Bay," the particular place where vessels carrying explosives were to be anchored being indicated on the same map under the legend "Anchorage for Explosives" (for copy, see reproduction of map as printed in Vol. II, opposite p. 1208).

The Johnson 17 was loaded with 1,005 cases of TNT, which had been placed on board at the West Shore R. R. terminal, on an order from the Russian Government. This was to be delivered to the S. S. "Novgorod" at Gravesend Bay (p. 949, ll. 20-30). It also had on board 417

cases of detonators, which had been loaded at the Erie Railroad terminal at Weehawken, which we are advised were also for the Russian Government (p. 950, ll. 1-30).

The situation, as developed under these proofs, was that the Johnson 17 came to the Black Tom Pier, without the knowledge of the defendant or any of its employees. No permission was given to it to remain on the night of July 29th, and it was a clear violation of law for it to lie there, partly laden with explosives, instead of proceeding to the anchorage ground.

The record in the case is, therefore, barren of proof to show that the defendant permitted barges to tie up at its piers, except for the purpose of loading explosives during the working hours of the day. If the Johnson 17, or any other barge tied up there at night, it was a violation of law, and any permission that the defendant's employees *might* have given could not, of course, change the legal situation.

(6)

Failure to prevent fire.

In these cases, the Trial Judge further permitted the jury to find the defendant responsible because it failed to "prevent fire" (p. 1037, ll. 1-4).

The charge on this point made the defendant an insurer against fire. This was error, as at most, the duty was to use reasonable care to prevent fire. *Mason* v. *Erie,* 75 N. J. L. 531.

This part of the charge is not cured by the subsequent statement that it must use care commensurate with the risk, as the earlier statement was not removed from the jury's consideration. *State* v. *Erie R. R., supra.*

IV.

There was error in the charge to the jury and in the refusal to charge certain requests submitted by the defendant relating to the subject of the defendant's alleged responsibility for the explosion on the Johnson Barge Number Seventeen.

On the early morning of July 30th there were two heavy explosions at or near the Black Tom yard, the first being at about 2:08 o'clock, and the second at about 2:30 o'clock. One of these explosions, admittedly, was on the land, at and near the point where eight cars were loaded with TNT had been standing in the yard, on Track 15. This was demonstrated by the existence of a crater which was found in this vicinity on the morning following the explosion. The location and size thereof is indicated by the dotted line on the map known as Exhibit P. 1, said line being indicated as "outside line of crater." This crater was about 375 feet long, 175 feet wide, and from 7.7 to 10.5 deep (p. 389, ll. 1-10).

The other of the heavy explosions was, admittedly, on the water, as was demonstrated by the existence of a crater on the bottom of the bay, at a point about 250 feet north of the east end of the North Pier. This crater was pear shaped, with a width of about 75 feet and a length of about 125 feet. (See Map Exhibit D. 3, opposite page 1196.) The testimony of Mr. Owen is that he prepared this map from notes which he made at the time of taking soundings at that point (p. 908). The figures on the map indicate the depth of the water—the dot in front of each figure indicating the point where the depth was measured (p. 908). The same datum line, that is mesne low water, was taken for these measurements as was taken for the measurements indicated on the Government map (Exhibit D. 3, opposite p. 1196). The variation in the depth of the water at the point where this crater was discovered, at the bottom of the bay, is clearly shown by the two maps, Exhibit D. 2, indicating that at or near the point in ques-

tion the depth was five and a half feet at the time the U. S. Government soundings were taken in 1915, and the map, Exhibit D. 3, showing that the depth at the time the soundings were taken after the explosion was twenty-one or twenty-two feet.

It was admitted that the damage to the plaintiffs was caused by the first explosion (p. 1003).

The plaintiffs proved, without contradiction, that on the night of the explosion a barge of the Johnson Lighterage Company, known as Johnson No. 17, was tied at the north side of the North Pier, near the easterly end thereof, and that at some time during the night of July 29-30, after the fire had been burning in the Black Tom Yard for some time, this barge was seen to be on fire, and thereafter completely disappeared off the face of the water, together with her captain (p. 450, l. 30, to p. 541, l. 10).

It was shown that this barge had on board 1,006 cases of TNT and 417 cases of detonators, which had been loaded from railroads other than the defendant (p. 949, 950). The cases of TNT contained 100 pounds each (p. 716, l. 30), hence there were over 100,000 pounds of TNT on board this barge.

The defendant claimed that the damage to the plaintiffs was caused by the explosion of the contents of this barge and that it could not be held responsible therefor, because it was lying at the North Pier, partly loaded with explosives, in violation of the anchorage regulations of the United States Department of Commerce and Labor; that its presence at the pier was not known to the defendant, and, even if it had been known, said barge was at such pier in violation of the law, and, therefore, the damage to the plaintiffs was the result of an illegal, intervening cause which was in no way chargeable to the defendant.

On this subject the defendant requested the Trial Judge to charge as follows:

> "36. The undisputed evidence is that Johnson Barge No. 17, with ten hundred and five cases of TNT and four hundred and seventeen cases of detonators (all obtained elsewhere) was moored at

the North Pier at Black Tom on July 30, 1916, and there is no evidence that the defendant had any knowledge whatever of the material thus loaded on said Johnson 17 at that time, and the jury must find under the law as contained in the Anchorage Regulation of the United States Government that a boat thus loaded should not have been moored at Black Tom, but should have proceeded to the Anchorage Grounds, as designated in the said United States Regulations, and that the act of mooring her thus loaded at the North Pier at Black Tom was an unlawful act.

37. If the jury finds that the Johnson 17 containing 1,005 cases of TNT and 417 cases of detonators (all obtained elsewhere) was unlawfully moored at Black Tom Pier, and that the TNT thereon subsequently exploded on the night of July 30th, 1916, and caused the damage complained of by the plaintiff, the jury cannot legally find the defendant responsible for such damage.

38. There is no evidence in this case from which the jury can legally hold the defendant responsible in respect of materials on Johnson Barge No. 17, or of the result from any explosion of such materials.

39. If the jury finds that the TNT on the Johnson Barge No. 17 exploded and caused the damage of which the plaintiff complains, the jury cannot legally find the defendant responsible.

40. The plaintiff in this case having shown that the damage of which it complains was occasioned by the first of the two explosions, which the proofs show occurred at or near Black Tom on July 30th, 1916, the jury cannot legally hold the defendant responsible for such damage unless it finds the explosion on the premises of the defendant was the first of the two such explosions.

41. In view of the fact that the regulations concerning the transportations of explosives and other dangerous articles on land in Article 1647 contained a prohibition against the loading of such materials as detonators and high explosives in the same car or storage place, and of the evidence in this case in respect to the danger of thus loading such ar-

ticles in the same carrier, the jury may legally find that the presence on Johnson Barge No. 17 of the detonators and TNT constituted negligence on behalf of the proprietor of such barge, and if it thus finds and also finds that the explosion on the Johnson 17 was the proximate cause of the damage complained of by the plaintiff, then it may not find against the defendant'' (1077, 1078 and 1079).

On this subject the Trial Judge charged as follows:

> ''Now there is another claim made, that the first explosion did not take place on the land at all; that it took place on a barge, the Johnson 17, which was in the water and moored to the pier in violation of the anchorage regulations of the United States, and that it was what first exploded, and that it exploded without fault on the part of the defendant company, and that it, being the first explosion, caused the injury. Of course, if the Johnson 17 was moored there in violation of the anchorage regulations of the United States, and the first explosion was the explosion that took place on that barge, why it would follow, as a matter of law, that the defendant would not be responsible for the injury wrought by the explosion on the Johnson 17 to these plaintiffs, for the obvious reason that it would not have been their fault at all. If a third person sees fit to, in violation of law, tie up his barge to my pier and then, because of some fault on his part, or even without fault on his part, an explosion takes place on that barge, of course I am not responsible for his act in violating the law and putting the barge there and causing the damage that ensues from its presence there, the point being that you can only assess damages where you have ascertained fault to lie'' (pp. 1048, 1049).

The defendant now urges that there was error in this charge and in the refusal to charge certain of the defendant's requests.

(a)

The evidence shows that there were two explosions on July 30, 1916, one on land in the Black Tom Yard, and the other on water in Johnson Barge No. 17. There was evidence from which the jury might infer that the first explosion was on the water in Johnson Barge No. 17, and the jury should have been charged, as requested, that if this explosion caused damage to the plaintiffs, the jury could not find the defendant responsible therefor.

The evidence leaves it uncertain as to which of the two explosions, the one on the land or the one on water, was first in point of time. There was evidence from which the jury might infer that the first explosion was on water. The various witnesses described these explosions as follows:

Bouchard, captain of the tug "C. Gallagher." Was in Brooklyn, about three-quarters of a mile away. Attention was directed to Black Tom by the first explosion, which was about 2 o'clock (p. 454, ll. 20-30). Went across to Black Tom in about 16 or 18 minutes and headed for the schooner "Walcott" at Pier 6, but did not go in until after the second explosion. At the time of the second explosion was three or four hundred feet from the end of pier 7; it knocked him out for about five minutes (pp. 456, 7). He did not attempt to fix the location of either of the two explosions, and his testimony is important only as fixing the interval of time between the two explosions.

Hogan, fireman. When he reached Black Tom, stopped on the road by the pump house next to store "F" (p. 467, ll. 30-40) and remained there until the first explosion. He stood watching the shells fly around and saw a different "glare" from the others and then felt the explosion. The glare was right in among the freight cars, southeast of the pile stockade (p. 472, ll. 1-30). A very high fire went up in the air and seemed to push along the road and knocked him down, and there was a rumbling and a roar-

ing (p. 472, l. 35, to p. 473, l. 10). Was knocked down, but did not become unconscious (p. 473, ll. 10-20). He said that the first explosion seemed to be below the place where he had first seen the fire, as it had been spreading to the east, but he could not say how far (p. 476, ll. 30-40). About twenty minutes later there was another explosion. He heard this, but did not see it. At that time was standing at the hose wagon (p. 474, ll. 20-40). The second explosion was nothing like the first one (p. 475, l. 1).

Gately, fireman. Went within about four hundred feet of the burning cars (p. 498); did not see the first explosion, but felt it. It made him feel "dumb" and carried him ten or fifteen feet, but did not hurt him much. At the time of the second explosion was further away—about eight hundred feet (p. 502, ll. 10-40).

Treger, fireman. At the time of the first explosion was on the driveway about opposite store "N"; saw a fire and heard the explosion, but did not see it (p. 517, ll. 20-40). The explosion "stunned" him for the time being and his horse ran away. Was facing towards the bay, but did not see anything of a flare or flash (p. 518, ll. 20-40). After the first explosion went to the last block of warehouses; that is, the first one on the way coming in (p. 524). He was not asked what, if anything, he saw of the second explosion.

Captain Hanson, of Moran Barge No. 20. This was lying on the south side of the North Pier, near the end (p. 525, ll. 20-40). Heard an explosion and at that time was on his boat, six feet from the tug, having cast off about ten minutes before that (p. 534, ll. 10-30). Also heard the second big explosion and was "close" to it (p. 535, ll. 10-15).

Captain Baker of the Barge "Frank." This was on the north side of the North Pier about in the middle. The captain of Johnson 17 told him there was a fire in the

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yard and he better get out (p. 536, ll. 10-20). The fire seemed to be a little way from Zeke's shanty (p. 536, l. 30). At the time of the first explosion was standing on the north side of his boat looking at the fire, which seemed to come from where the fire started or near it.

"Q Did the explosion do anything to you? A Yes.

"Q What? A I got kicked up in the air from one side of the boat to the other.

"Q Well, you finally landed down on your boat again, didn't you? A Yes, just on the other side.

"Q On the other side of your boat? A Yes.

"Q Were you hurt? A No."

(P. 537, ll. 30-35.)

At the time of the second explosion was overboard in the water, about 150 feet from the boat. He had jumped in and was swimming away. Heard the second explosion; it was not any different from the first (p. 538, ll. 10-30; p. 542, l. 15). The "Frank" and the Johnson 17 both got loose from the pier before the first explosion. Never saw the Johnson 17 after that night, but saw her on fire while he was in the water (p. 540, l. 30, to p. 541, l. 1).

At the time of the first explosion was standing on the outside or northerly corner and was blown from the north side to the south side (p. 541, ll. 20-30).

Christ Casterson, captain of Johnson 11. Was at the north side of the North Pier near the easterly end; was on his boat at the time of the explosion; cannot tell where it came from, but looked to be up at the dock by the pier in line with the fire (p. 543, ll. 20-30). Cannot tell how far it was from the boat. The explosion blew him overboard right off the boat from the west to the east and he swam to another boat at the end of the pier. All the lines parted in the explosion. At the time of the second explosion had been picked up by another boat and does not know anything about this second explosion (p. 544, l. 30, to p. 545, l. 10; p. 548, ll. 10-15).

Campbell, fireman. Was at the pump house. The first explosion was a quick flare-up and a loud report and he

was knocked down. The flare-up came directly in front forty or fifty feet beyond the first warehouse (p. 550, ll. 10-20). It was pretty much the spot where the cars were on fire. The first explosion was larger; the second about half as strong (p. 550, ll. 30-40). Could not say where the second explosion came from (p. 557, l. 20; p. 558, l. 5).

Closterman, lieutenant of police, went about 100 feet below the driveway; saw fifty freight cars burning on four or five tracks (p. 570). At the time of the first explosion was about fifty or seventy-five feet east of the driveway leading to Pier 5 (p. 574, ll. 20-30). Was watching a train that was backing towards the fire and the brakeman on top of the train expecting to see him blown off with the shells (p. 575, ll. 20-30).

> "Q Yes; and what did you see? A Well, as I say, there was a disturbance in the fire as if somebody was poking at it and stirring it up. Then there was a ball of fire left the fire; a large ball of fire of unusual brilliancy, and this went up on a column of smoke. This smoke seemed to push it up about 150 feet, when the ball left the smoke and went up about fifty feet further, and it opened up; it did not burst to pieces, you know; it just slowly opened up, causing the—causing a very great light. It seemed to grasp ahold of everything—well, even drew the life out of the air; I knew I could not breathe. I could not move there for about ten seconds. Then I heard the report. This report seemed to loosen things up, because everything seemed to get life into it and move. I seen the warehouse crumble up and slide away from me" (p. 575, l. 34, to p. 576, l. 12).

The ball of fire seemed to leave the scene of the fire (p. 577, l. 35). At the time of the second explosion was digging in the ruins for one of his men who was missing and cannot tell much about it (p. 578, ll. 30-40). There was a mass of flame and smoke to the east and could not tell what was going on beyond it (pp. 585, 6).

Kane. When he heard of the fire, he got on the platform in front of store G (p. 605, l. 35); and saw a small blaze "far down the yard" (p. 607, l. 12); went to the pump room and telephoned (p. 610, l. 10). At the time of the explosion was on the roadway towards the sea wall track, on front of store G. His side was turned toward the explosion and did not see it (p. 615, ll. 20-30).

Kelly, watchman. At the time of the first explosion was at the crossing between store 3 and the grain elevator. It seemed to get dark for a second—then it lit up—and "then was like a lot of dust flowed into me and hit me in the face." *The explsion came from the lower end of pier 7—North Pier—tower end of the island* (p. 651, ll. 20-30). Was not in the yard at the time of the second explosion, as he took a walk in the meantime and was a mile away (p. 651, l. 40).

Sloan, watchman. Was near the pump house at the time of the first explosion and had been speaking to the superintendent when he saw a flare in the sky; everything went black and he was "rolled through the space" (p. 659, ll. 1-10).

Dickman, freight agent. Went to the yard in response to a telephone call about 1 A. M.; walked along pier 7 to the south side of stores N to R, and out to the road again, and there met Fire Marshal Julian and walked to the east as far as the gravity tank and remained there for a few minutes (p. 727). Went with Julian and with Watchman Kane to the sea wall track and remained there up to the time of the first explosion (p. 731, ll. 1-10). Was at the yard until 2 o'clock on Sunday afternoon. About 4 or 5 o'clock, the same morning, he observed a crater three hundred and seventy-five feet long and took particular notice where it was located, because he was standing so close to it. By actual measurement, the following Monday, he was twenty-five feet from the westerly end of the edge of the crater at the time of the first

explosion (p. 731, ll. 20-40; 747, l. 10). He was then standing a little to the east of store R. He was thrown down by the first explsion, but not injured, except that he was slightly stunned. He fixed his position by reference to a telegraph pole and a pile of ties alongside of it (p. 732, ll. 10-40). The first explosion came directly in front —that is a straight line in front. It looked like a big blast furnace of flame and was opposite about the middle of the North Pier, which appeared to be on fire (p. 733, ll. 20-40). When he was standing by the pole, he saw one man on a box car just above him and another man on the ground giving signals, the latter being just across the track and about ten feet distant. They were both at that point when the first explosion took place (p. 738, ll. 20-35). After the first explosion, he felt his way alongside a train of cars, through the dark and got himself out along the roadway to the grain elevator (p. 734, ll. 20-40). Then he came back as far as pier 4, where there were about one hundred and fifty grain boats, with families on them, and he was helping to get them out when the second explosion happened (p. 735, l. 30, to p. 736, l. 30). When this came he was facing south. Saw the reflection of the flame and heard the sound. The reflection seemed to come from the same "section" as the first explosion (p. 737, l. 15).

Henley, yardmaster. Reached the yard shortly after 1 A. M. on engine 3428. Pulled cars out of several tracks and the engine was fastened to a train of 23 cars on track 15. The first explosion occurred just as the engine was starting (p. 758, ll. 20-40). Was standing near the rear end of the train, on the south side, that is, toward the warehouses, about 100 feet east of the gravity tank. "The air became very dead, and there was a flare for just a fraction of a second; and then everything got dark;" * * * it seemed to be "some distance away."

Q Where did this appearance of flame or flare appear to be, in which direction? A Off towards the river.

Q Well, in which direction from you? A West, I should think—the left side of me north.

Q To the north of you and towards the river? A Towards the river.

He was thrown against the side of a car and shaken up and knocked out for three or four minutes. He started to go in the direction of the elevator but did not have to climb out of a hole or a crater. He reached the end of the string of cars where the engine was fastened. The engine was not damaged and was used afterwards to pull cars (p. 726, ll. 10-30). Saw the crater about two weeks later and fixed the place where he was at the time of the first explosion as about one hundred feet east of the west end of the crater (p. 763). After the explosion sent some injured men to the hospital and then went back and continued pulling out cars. At the time of the second explosion was at the new grain elevator. This seemed to come from "down those tracks," that they had been pulling. There was no flare, but a very loud report (p. 764, l. 20, to p. 765, l. 20).

Thomas Walsh, conductor. Was in charge of engine 3456 which reached the yard about 1:30; the fire seemed to be at the "back end" of the island, toward the North Pier (p. 775, ll. 30-35). He backed in on track 14 with eight or ten cars, so as to couple on to more cars. "Everything was flying around there and made it disagreeable" (p. 776, l. 15). The brakeman on the car was his brother and he asked him if he would get on top of the car to pass the signals, as the conductor wanted to get on the other side of the train to protect himself from the "small stuff that was flying around" (p. 776, l. 30). He backed into track 15 and coupled on to more cars, and started to pull ahead. The car at the rear end was then blazing. Somebody cut it off and the car was kicked down the track; then he coupled on to cars that were on track 16 and gave the engineer the signal to go ahead. At that time there were thirty or thirty-five cars coupled on (p. 778, l. 18). There was a brake on, on one of the rear cars and nobody could get there to knock it off. The

engineer could not pull the train and Sloan said he would get another engine, about that time the "thing" let go (p. 778, l. 33). When it let go he was around switch 14 or 15 on the side of the train nearest to the storehouses. He indicated the place where he was located as the switch in the "middle float track, in the vicinity of the big tank" (pp. 778, 780). He was knocked down by the first explosion and was picked up in a few minutes by Conductor Voorhees and was taken to the hospital. He was not in the yard when the second explosion occurred (p. 782). At the time of the first explosion, his brother was on top of the car where witness was standing. The other people around were: Dickman, Henley and Mr. Leyden (p. 783, ll. 25-30). He walked out around the train to which his engine was fastened, and then some distance beyond that, until he reached the ambulance (p. 784, ll. 1-20).

John Walsh, brakeman. Went on top of the cars to pass signals to the engineer. There was a lot of noise and the shells were shooting up in the air like skyrockets (p. 791, ll. 30-40). Was on the last car and stood there waiting to get a signal from his brother who was four or five car lengths away in the direction of the North Pier (p. 792, ll. 20-40). The last car was about seven car lengths west of the water tank. Was about to knock off the brakes, as they could not pull the cars, when his brother told him not to go any further as Henley was going to get another engine. He then started to go ahead and had gone about a half a car length when the first explosion happened (p. 793). He was blown off the car and injured in the face. As soon as he got his senses, he tried to walk, but fell down and was helped out by Julian and taken to the hospital (p. 794, ll. 10-20). When he arrived at the yard, the fire appeared to be towards the "back" of the yard and it seemed to spread towards the part of the yard where they were working (p. 794, l. 30, to p. 795, l. 10).

Voorhees. At the time of the first explosion was near the road crossing at the entrance to the yard. Walked

back to see if he could find anyone down around there and met Tommie Walsh staggering along the roadway, a little west of pier 4, and then found Johnnie Walsh sitting on a tie along the track, a little further east. Saw the first explosion go up in the air; the flame seemed to come from the North Pier. Did not notice anything about the second explosion except the big noise (pp. 795, 6).

Julian. Arrived at the yard a little after 1 A. M. and went to the pump house to see about the pressure and found it all right. Went to the north side of the store house and met Kane and Dickman. Kane went with him to store R and was still with him at the time of the first explosion; Dickman was also there (pp. 856-857). The fire seemed to be among the cars at the extreme end of the yards toward the North Pier. He was facing the North Pier and there was an "intense black flash" some distance from where they stood and directly east (p. 858, ll. 30-40). Saw the location of the crater the next morning. At the time of the first explosion they stood very close to the west edge; the location is fixed by a pole which was the last to stand and a pile of ties against which he was leaning at the time with his hand on it. Did not measure the distance from the edge of the crater, but estimates it to be about thirty feet (p. 859, ll. 1-30). Was knocked down, turned away from the intense heat and lay there for half a minute. The heat seemed to come from the neighborhood of the North Pier (p. 859, ll. 30-40). After the explosion started toward pier 4 and met Brakeman Walsh; found he was dazed and helped him to the grain elevator to a patrol wagon; had seen him before the explosion standing on top of a box car with a lantern, and when he picked him up the brakeman was walking on the ground (p. 861, ll. 10-40). At the time of the second explosion was at the grain elevator. This seemed to come from the yard proper, more to the right of the first explosion, and seemed to take in a greater area (p. 863, ll. 30-40). Fixed the place where he stood at the

time of the first explosion by reference to the pole, the pile of ties and the position of the gravity tank, which was about fifty or seventy-five feet from him (p. 871, ll. 1-30).

Davidson, Superintendent of National Storage Company, was on Fulton avenue, Jersey City, about a mile and a half from the terminal; saw three big balls of fire high in the heavens, but could not tell where they came from; it was clear as the sun''; not a sign of dirt (p. 886, ll. 1-10; p. 887, ll. 1-10). Also saw the second explosion from a distance; there was no flare or flame; "there was an awful lot of dirt thrown up in that explosion'' (p. 887, l. 22).

The foregoing evidence shows conclusively that the first explosion could not have been on the land, as otherwise Dickman, Julian, Henley, Kane and Thomas and John Walsh would have been blown to pieces, as they were all within a few feet of the point where the crater caused by the land explosion was afterward found—Henley, indeed, being practically in the center of it.

In addition to this testimony there was evidence of an expert character which likewise tended to show that the first explosion was on the water.

Gamble, employed at the New York Sugar Trade Laboratory, 80 South street, New York City, where a recording thermometer was kept for the purpose of a temperature record. The record was made by a pen which is enclosed, on a sheet of paper on which the temperature is marked from hour to hour. This sheet was offered in evidence (pp. 936, 1012) and a photographic copy has been included in the record as Exhibit D. 22 (see Volume II, opposite p. 1224). This sheet shows two thick lines crossing the irregular circular line at right angles. The first mark was made at about 2:15 and the second at about 2:45 A. M. These would not be caused by the normal operation of the machine, but would be caused by a very severe shock or jar which might shake the building (p. 930).

These marks were made on the morning of July 30 (p. 930, l. 40). The room was locked at night and there was nothing to cause a jar (p. 931, ll. 1-20). The two lines which indicate the disturbance are close together. They do not show the time of the disturbance exactly, but approximately (p. 933, ll. 1-30).

Hudson Maxim. TNT is a high explosive, but will not explode from ignition unless it is confined; it will simply burn like oil or pitch. To cause an explosion of it a strong detonator is necessary (p. 961, ll. 30-40). The reason for this is that the heat is absorbed by the melting of the TNT and by volatilizing and the zone of the intense heat is removed further away. It would not make any difference how much TNT was on fire, as the actual intensity of the heat on the surface would be a constant (p. 962). If there were eight cars of TNT, each containing about 57,000 pounds in 100-pound boxes, and fire was communicated to the cars, the contents would not explode, but would burn as though it were pitch. An explosion could only be caused by a detonator brought in contact with it (p. 965, ll. 1-15). A projectile out of a shell shot into a mass of TNT, if the projectile itself contained TNT, would detonate in the shell under pressure and then detonate the surrounding TNT (p. 965, l. 20).

The explosion of 100,000 pounds of TNT on a barge in the Bay would produce a greater intensity of force than eight cars containing 57,000 pounds each, on account of the greater concentration of the cases (p. 968, ll. 1-20). If in addition to the 100,000 pounds of TNT on the barge, there were 417 cases of detonators, there would be present all the conditions necessary for detonation (p. 970, ll. 20-30).

Witness was then asked to answer the following hypothetical question:

> "Q Yes, Mr. Maxim, I want you to assume that there were eight cars of substantially fifty-seven thousand pounds each located on this map at the place indicated by the cars marked "H," and that

there were one hundred thousand pounds of TNT in one hundred pound cases, and four hundred and seventeen cases of detonators on a barge to the north of the North Pier; that after the 30th of July, 1916, there was a crater appearing on the face of the earth, three hundred and seventy-five feet long, one hundred and seventy-five feet wide, and at the deepest point ten feet; and another crater in the bottom of the river here, about one hundred and twenty-five feet one way and seventy-five feet at its widest point, and narrower at other points, and about fifteen and a half feet deep below the previous floor or level of the bay or river; I want you to assume that an explosion takes place at the site of the eight cars, and an explosion takes place on the barge; the top two stories of the block of storehouses shown on the map N to Q and all or some of the same stories or storehouses G to M were blown off; that the wall of storehouse Q was blown to the north and the one hundred feet steel structure, which had theretofore supported a water tank, as shown on the map, laid on top of the wall of it; that the first explosion was very much more severe than the second explosion, and indicated on a thermometer record in an office building in New York that it was three or four or more times as severe as the second; that the crater in the water was somewhere between two hundred and three hundred feet north of the north side of the North Pier; that the floor of the railroad yard was cinders; that there was a man on a freight car, standing upon a freight car, within one hundred and fifty or one hundred and seventy-five feet of the west end of the crater, and other men within anywheres from, we will say to be safe, one hundred to one hundred and fifty feet. From those facts would you be able to draw a scientific conclusion as to which of those explosions was first in point of time? A Yes, sir."

(P. 971, l. 12, to p. 972, l. 15.)

After discussion of an objection to the question, the examination proceeded as follows:

"Q All right; will you please give us your opinion on that assumed state of facts as to which one of those two explosions was prior in point of time? A The explosion of the barge.

Q Why do you say that? A On account of the result mentioned and the sequence of the results mentioned.

Q Proceed. A The blowing down of the wall of the warehouse outward in the direction of the explosion in one mass, or bodily, could not have been effected or produced by the explosion of the eight cars, and it is the unroofing of the warehouses and the prostration of that wall that would naturally be expected from the explosion of the barge containing that quantity of TNT at that distance and in that position. The position of the barge being low in the water would bring a greater intensity of action upon the roofs of the warehouses than it would lower down on the warehouses, and the warehouse wall, having been blown out in the direction of the explosion, must have been blown out by a vibratory wave of atmospheric compression, instead of by air, compressed air, propelled forward in the nature of a projectile such as obtains near to a large blast or explosion. Again, the location of the support of the water tank on top of the prostrated wall of the warehouse, it seems to me, is absolute proof that it could not have been placed there by the first explosion, if the first explosion was what located the wall of the warehouse; and it is absolutely certain that if the eight cars had been the first explosion, the warehouse walls would not only have been destroyed, but they would have been disintegrated, propelled forward in a separate mass of bricks, each brick being impelled by the pressure of gas behind it. So that it seems to me that it would be utterly impossible for the first explosion to have occurred on land. The character of the support was such that it could not have been thrown forward except by a strong blast. An atmospheric vibration, of however great an amplitude, would not have produced that effect, because reaction follows action too quickly to carry a support like that to that distance and then drop it, because the wave of compression at that distance would be travelling at the speed of sound and vibrating back and forth exactly as a sound wave.

Q When you state support, you mean the support of the tank? A I do, of the water tank.

Q What, in your judgment, has the presence of the human beings at the points I have indicated upon this question of which explosion was first. A The fact that the men mentioned survived the explosion is absolute proof that the cars could not have been the first explosion.

Q Now, you spoke of the unroofing of these storehouses as having an effect upon your judgment. Why would they be more likely, in your judgment, to be unroofed by the explosion of the hundred thousand pounds of TNT on the barge than from an explosion proceeding from the eight cars? A Because of the location of the mass of explosives, the distance and the quantity, and the fact that the unroofing of the warehouse and the falling of the wall bodily is a phenomenon which would be very likely to be produced by an explosion of that quantity of high explosive at that distance and in that position, whereas the explosion of the cars, had the cars exploded first, would not have merely unroofed the buildings, but it would have blown them right over in a mess of disordered, disintegrated material.

Q Would that have occurred, in your judgment, from the shaking of the earth or from the compression of the air? A From the blast of air."

* * * * * * *

Q "Now, then, would it be scientifically possible for an explosion at this point where the eight cars were to hurl itself around and produce a shattering effect on the north side of objects standing on the east end of the North Pier? A It would be absolutely impossible."

(P. 977, l. 3, to p. 978, l. 38; p. 982, ll. 5-11.)

The attention of the witness was then called to the records of the automatic thermometer, and said that it registered in the same way as a seismograph—an instrument used to measure earthquake. He then testified as follows:

"Q Now, if this thermometer needle registered on a chart a line which to the eye is at least four or five or six times as great as a shorter one, twenty minutes thereafter, what would you say as to the intensity of those two explosions on the earth? A The first one, I should say, was correspondingly more intense.

Q Yes, and that that registration came from the earth shock? A Exactly.

Q Now, what do you think would produce the greater earth shock in the Borough of Manhattan, being indicated on such a chart by such a needle, the explosion of the 100,000 pounds of TNT and the detonators, or the explosion at the site of the eight cars on land? A The explosion of the TNT in the barge most certainly.

Q Why do you say that? A On account of the fact that the barge, due to its low position and its position in the water, would be able to transmit a much severer shock than would the explosion of the TNT in the cars. Furthermore, the 100,000 pounds of TNT in the barge would exert upon the walls of the crater formed by it a much greater intensity of action, an action or shock energy of longer duration; whereas, on the shore, explosion at the position of the cars, they being some three or four feet above the ground, and the earth underneath being composed of cinder and gravel and so forth, and the surface of the earth being some eight feet above average high water, an explosion there would not and could not transmit the shock downwards into the water, and therefore, underlying that position and through the earth and water to Manhattan Island with anything like the same intensity as would the explosion of the 100,000 pounds in the barge."

(P. 983, l. 15, to p. 984, l. 10.)

There was no serious dispute as to this testimony of Mr. Maxim, the only substantial point of difference between him and plaintiff's expert, Dr. McKenna, being that the latter was of the opinion that the detonation of the TNT on land was brought about by the heating and combustion of same (p. 673, ll. 10-20). He admitted, however, that the normal way of exploding TNT was by detonation and not by burning (p. 683, ll. 20-30); and that up to July, 1916, it was the scientific belief that TNT could be burned in large quantities without exploding (p. 686, ll. 10-30).

We do not claim that under the evidence the defendant was entitled to a charge that, as a *matter of law,* the jury

were required to find that the first explosion was on the Johnson 17, for there is sufficient dispute in the evidence to make that a question of fact for the jury. The purpose of summarizing the evidence on this subject is to show that the jury might well have found that the first explosion was on the water in Johnson 17; and under that state of the record, we submit that the jury should have been charged as requested in Nos. 37, 38 and 41, above quoted. The substance of these requests was that the defendant was not responsible for the explosion on the Johnson 17, and that if the jury found that the damage to the plaintiffs was caused by such explosion, then the defendant was not liable. But, instead of charging these requests, or the substance thereof, the Trial Judge limited the consideration of the jury on this subject to the questions of whether the Johnson 17 was moored there in violation of the anchorage regulations, and whether the first explosion took place on the barge (p. 1048, ll. 30-40). We shall show hereinafter that it was error to leave these questions to the jury, as we shall claim that the defendant was not responsible at all for the explosion on the water (even though it was not the first in point of time). We shall further claim that there was no question of fact for the jury as to whether the Johnson 17 was moored at the North Pier in violation of anchorage regulations. Our present claim is that on this phase of the case the only proper question for the jury to consider was whether the damage to the plaintiffs was caused by the explosion on land or by the explosion on water; in the former event the defendant might be liable (provided the explosion on land was due to its negligence), but in the latter event, the defendant would not be liable, and this question in turn *might* depend upon which explosion was first in point of time, but the question of which was first and which was second was not conclusive of the defendant's liability, although under the charge the jury were informed that the sole question was which explosion was first in point of time. If the explosion on the Johnson 17 was first,

the defendant, we claim, would not be liable; but even if the explosion on the Johnson 17 was second in point of time, the defendant would not be liable for the effect of that explosion, because that was the result of an intervening cause beyond the original negligence of the defendant.

(b)

It was error to leave to the jury the question of whether the defendant was responsible for the explosion on water (even though said explosion was not the first in point of time) as such explosion was the result of an independent, intervening, illegal cause.

Whether the explosion on the Johnson 17 was first or second in point of time, the defendant, we submit, was not responsible therefor, as in either event such explosion was the result of an independent intervening cause and hence the jury should have been charged as requested in No. 38, above quoted, to the effect that there was no evidence from which the jury could legally hold the defendant responsible for the result of such explosion. On this point, the test for the jury was not whether the first explosion took place on the Johnson 17; but whether that explosion caused the damage to the plaintiffs; if it did, then the defendant, we submit, was not responsible no matter whether it was first or second.

At the time of the fire there were certain barges near the North Pier, the location being shown on map marked Exhibit P. 23 (p. 1180). At the time of the fire there were only two barges at the North Pier so far as the defendant was informed, namely, the "Frank" and the Moran 64. Both of those were partly loaded with explosives and ammunition (pp. 387, 8), but these barges did not explode.

The explosion on water evidently was in the Johnson 17 as that barge was never heard of again. There was no evidence to show that that barge had any permission to remain at the North Pier over night partly loaded with

explosives. Mr. Dickman said that he had not given permission to any barges to stay after working hours (pp. 956, 7); on the contrary, had given instructions to have them removed (p. 958, ll. 1-20).

Inspector Campbell had warned the representative of the Johnson Company to take loaded barges to the anchorage grounds, as fixed by the United States Government regulations, about a mile and a half or two miles from the Black Tom Terminal (pp. 913, 14). The regulations have been quoted above under Point III (g-5) and need not be again quoted. It is sufficient to say that there was no authority given to the Johnson 17 to be at the North Pier; it had been partly loaded at other points than the Black Tom Terminal and had on board 100,000 lbs. of T N T and 417 cases of detonators (pp. 949, 950).

The mooring of Johnson 17 at the North Pier was a violation of law which was in no way chargeable to the defendant. If, therefore, the damage to the plaintiffs was caused by the explosion on the Johnson 17, such damage was the result of an independent, intervening cause and hence the jury should have been charged as requested in No. 38.

The rule is clear that the damages which are chargeable to a wrongdoer must be the natural and proximate result of the tort. The term "natural" imports such damages as might reasonably have been foreseen or such as would accrue in the ordinary state of things. The term "proximate" indicates that there must be no other culpable and efficient agency intervening between the defendant's wrong and the resulting loss. The New Jersey Supreme Court recently had occasion to declare the rule as above stated in the case of *Justesen* v. *Pennsylvania R. Co.*, 106 Atl. 137, citing:

> *Cuff* v. *Newark & N. Y. R. R. Co.*, 35 N. J. L. 17;
> *Wiley* v. *West Jersey R. R.*, 44 N. J. L. 247.

In the case of *Bird* v. *St. Paul Fire & Marine Insurance Company*, 224 N. Y. 47, 120 N. E. 86, the New York Court of Appeals refused to allow a recovery against an insur-

ance company in a suit brought on a policy of marine insurance covering one of the canal boats that was injured by the very explosion which we have under consideration in this case. The Court came to its conclusion on the ground that a catastrophe of this kind was not within the contemplation of the parties at the time of the execution of the contract of insurance. The Court also had occasion to discuss the question of proximate causes, and with reference to same said:

> "General definitions of proximate causes give little aid. Our guide is the reasonable expectation and purpose of the ordinary business man when making an ordinary business contract."

The Court further said:

> "The wrongdoer who negligently sets fire to a building is not liable, without limit for the spreading of the flames. In our state there is a fixed and somewhat arbitrary restriction. (Citing Hoffman *v.* Kind, 116 N. Y. 618, 55 N. E. 481.) But even in jurisdictions where the liability is broader, *its bounds are the reasonable and the probable. The wrongdoer may be charged with those consequences and those only within the range of prudent foresight.*

Substantially the same rule is given in 29 Cyc. 499, as follows:

> "The test is not to be found in the number of intervening events or agencies, but in their character and in the natural connection between the wrong done and the injurious consequences, and if such result is attributable to the original negligence as a result *which might reasonably have been foreseen as probable,* the liability continues. But an intervening cause will be regarded as the proximate cause, and the first cause as too remote where the chain of events is so broken that they become independent and the result cannot be said to be the natural and probable consequence of the primary cause."

The author cites numerous cases which illustrate the point, but they have arisen in so many different forms

that it is quite useless to attempt to examine the same in detail.

A recent case in Massachusetts is *Horan* v. *Watertown*, 217 Mass. 185, 104 N. E. 464. In that case, the defendant was constructing a sewer, and its workmen had left several sticks of dynamite in an old tool box in the street. Some boys, of whom the plaintiff was not one, took several sticks out of the box and threw them upon a fire in an adjacent field, and the plaintiff was burned by an explosion of one of the sticks. In sustaining the directed verdict for the defendant, the Supreme Court of Massachusetts held that although there was evidence of negligence on the part of the defendant in leaving the dynamite within the limits of a public street, such negligence was not the proximate cause of the accident. The Court said:

> "The rule applicable to such cases is well settled by our decisions. Where as here the original negligence of the defendant is followed by the independent act of third persons which directly results in injurious consequences to the plaintiff, the defendant's earlier negligence may be found to be the direct and proximate cause of those injurious consequences, if according to human experience and in the natural and ordinary course of events the defendant ought to have seen that the intervening act was likely to happen. But if this is not the case, if the intervening act which was the immediate cause of the injury complained of was one which it was not incumbent upon the defendant to have anticipated as reasonably likely to happen, even though a high degree of caution would have shown him that it was possible, then he owed no duty to the plaintiff to anticipate such further acts, the chain of causation is broken and the original negligence cannot be said to have been the proximate cause of the final injury." (Citing cases.)
>
> * * * * * * * * * * *
>
> "Tested by this rule, the plaintiff's case fails. While the dynamite and the other contents of the box were left in such a way that a thief might not find it very difficult to steal them, it cannot be said that the defendant was bound to anticipate that

> this might be done and to guard against the consequences that might follow if a thief should steal the dynamite and so use it as to do injury to others. The general presumption of innocence would be inconsistent with this. Still less was there reason to anticipate a series of thefts under the circumstances shown here, or to believe that such thefts would be committed in daylight, upon what seems to have been a pleasant Saturday afternoon, in so public a place. There is nothing to indicate that anything of the kind had ever been done before. We see no reason why the defendant should be held bound to have anticipated that at such a place and at such a time a gathering of boys, after some of them had stolen the dynamite, should engage in the dangerous sport which is shown by the testimony."

So, in the present case, even if there may have been evidence for the jury as to whether or not the defendant was negligent, there was no reason why "in the natural and ordinary course of events" the defendant should have anticipated that a barge loaded with 100,000 lbs. of T N T and 417 cases of detonators (all procured from other companies) should anchor at one of its piers without its knowledge or consent, and still less was it bound to anticipate that such barge would be so anchored in direct violation of the law.

Thus, in the Horan case, *supra,* the defendant was not required to anticipate that somebody would violate the law by stealing dynamite, so here the defendant had no reason to anticipate that the Johnson 17 would violate the law by anchoring at the docks of the defendant, when, under the regulations of the United States Government, it should have been taken to the anchorage grounds in the lower bay.

Even though the mooring of the Johnson 17 at the North Pier was not a direct violation of the Anchorage Rules, still, the defendant was not chargeable with notice that this barge would trespass on its property, as was

stated by this Court in the case of *Quinn* v. *Del., &c. Tel. Co.*, 72 N. J. L. 276.

> "A landowner may, in fact reasonably anticipate an invasion of his property, but, in law, he is entitled to assume that he will not be interfered with. His right to protect his possession and to use his property is paramount. * * The general rule is that a person is liable for those results of his negligence which are reasonably to be anticipated.

To the same effect is the case of *Meyer* v. *Benton*, 74 N. J. L. 533.

Under the circumstances in the present case, we may even go a step further; not only was the defendant not bound to anticipate that the Johnson 17 would trespass on its property, but, less less, was it bound to anticipate that while thus trespassing it would have on board large quantities of explosives. These were all procured from other companies, and the defendant had not knowledge or reason to believe there were such explosives on board the barge.

(c)

It was error to leave to the jury the question of whether the Johnson Barge No. 17 was moored at the North Pier in violation of the Anchorage Regulations of the United States Government, and to refuse to charge the jury, as requested, that the mooring of the said barge, at said pier, partly laden with explosives, was in violation of said regulations.

The Trial Judge stated to the jury that *if* the Johnson 17 was moored at the North Pier in violation of the Anchorage Regulations of the United States, etc., then the defendant would not be responsible (p. 1048, l. 35). The defendant had requested a charge on this point to the effect that the jury *must* find, under the law, that the Johnson 17 should not have been moored at that point, but should have proceeded to the anchorage grounds (see request No. 36 above quoted).

There was no dispute as to the terms of the regulations, neither was there any dispute that when the Johnson 17 came to the North Pier, it was partly laden with explosives, to wit, T N T and detonators. This mooring was clearly in violation of the Federal regulations, and the jury should have been charged, as requested, that it was such violation. Instead of complying with this request, the Trial Judge left it to the jury to say whether or not the Johnson 17 had violated the regulations.

The evidence being undisputed, there was no question of the fact for the jury on this subject and, hence, this part of the charge was error, and, for the same reason, it was error to refuse to charge request No. 36.

V.

No one of the plaintiff insurance companies was under any legal duty to pay its insured for the damage alleged to have resulted from the breakage of glass, such breakage having resulted (directly or indirectly) either by or from, or being in consequence of, a fire on defendant's premises, and, therefore, coming within the exception of the policies.

On the motion for direction of verdict, counsel for the defendant urged that the insurance companies were not entitled to recover because under the express provision contained in each policy there was no liability on the part of any one of the insurance companies to pay to its assured the alleged loss (p. 1117, ll. 20-30).

The policy provision with regard to excepted risks in each of the eight policies involved, differs, and therefore, it was necessary to include each policy in the state of case (p. VIII). This also explains the rather involved phraseology of the heading of this point. The only excepted risk necessary to be considered is that of fire. The pro-

vision in the Royal Indemnity Company policy was as follows:

"This policy does not cover:

"Breakage resulting directly or indirectly from fire, * * *" (p. 1083, l. 20).

In the New York Plate Glass Insurance Company policy it was:

"The Company shall not be liable for:

"Any loss or damage resulting directly or indirectly by or in consequence of any fire (whether on the premises above described or elsewhere)" (p. 1086, ll. 35-40).

In the Chicago Bonding Company policy it was:

"The Company shall not be liable for:

"Any loss or damage caused by or resulting in any manner from fire, whether in the premises described in the schedule or elsewhere" (p. 1090, ll. 35-40).

In the Ocean Accident Company policy it was:

"The Corporation shall not be liable for any loss or damage caused by or resulting in any manner from fire whether in the premises described in the schedule or elsewhere" (p. 1094, ll. 35-40).

In the Lloyds Plate Glass Insurance Company policy it was:

"The Company shall not be liable for:

"Any loss or damage resulting directly or indirectly by or in consequence of any fire (whether on the premises above described or elsewhere)" (p. 1099, ll. 35-40).

In the Metropolitan Casualty Company it was:

"The Company shall not be liable for:

"Any loss or damage resulting directly or indirectly from fire, whether on the premises above described or elsewhere" (p. 1104, ll. 30-35).

In the Fidelity & Casualty Company policy it was:

"The Company shall not be liable for:

"Any loss or damage caused by or resulting in any manner from fire whether in the premises described in the schedule or elsewhere" (p. 1108, ll. 15-20).

In the Commercial Casualty Company policy it was:

> "That this Company is not liable for any loss or damage resulting directly or indirectly from fire (whether on the premises above described or not)" (p. 1113, ll. 20-25).

An examination of these various provisions which are substantially the same, the phraseology in each instance differing but slightly, demonstrates that it was the purpose and intention of the provision to except from the risk insured any loss or damage resulting directly or indirectly from fire, whether on the premises insured or elsewhere. In other words, if the loss or damage is caused *indirectly* and not *proximately* by fire, nevertheless such a loss is excluded. The obvious reason for inserting a provision that the insurance company should not be liable for any loss or damage resulting indirectly from fire whether on the premises insured or elsewhere, was to get away from the rule which has always been applied in insurance cases in determining the cause of the loss, namely, "in an action on a policy of insurance the *causa proxima* is alone considered in ascertaining the cause of loss; but in cases of other contracts and in questions of *tort causa causans* is by no means disregarded."

Bird v. *St. Paul Fire, etc., Co.*, 224 N. Y. 47, 120 N. E. 86;

Hustace v. *Phoenix Ins. Co.*, 175 N. Y. 292, 62 L. R. S. 651;

Reischer v. *Borwick*, 1892, 2 Queen's Bench 550;

Ionides v. *Univ. Marine Ins. Co.*, 14 C. B. N. S. 289;

Leyland Shipping Co. v. *Norwich Fire Assurance Society*, 1917 (1 Kings' Bench 873, 883, 893);

German Fire Insurance Co. v. *Roost*, 55 Ohio State 581, 36 L. R. A. 236, 45 N. E. 1097;

Heuer v. *Northwestern National, etc., Co.*, 144 Ill. 393, 19 L. R. A. 594, 33 N. E. 411.

See also 4 Joyce on Insurance, 2nd Edition, Sections 2586, 2587.

This rule, with a number of leading authorities supporting it, is clearly and concisely given in *Bird* v. *St. Paul Fire & Marine Ins. Co.*, 224 N. Y. 47, 120 N. E. 86, 88, *supra,* where the New York Court of Appeals, speaking through Cardoza, *J.*, said:

> "Precedents are not lacking for the recognition of the space element as a factor in causation. This is true even in the law of torts where there is a tendency to go farther back in the search for causes than there is in the law of contracts. Smith, Legal Cause in Actions of Tort, 25 Harvard Law Review, pp. 126, 127, 326. Especially in the law of insurance, the rule is that, 'You are not to trouble yourself with distant causes.' Willes, *J.*, in Ionides *v.* Univ. Marine Ins. Co., 14 C. B. N. S. 289; Leyland Shipping Co. *v.* Norwich Fire Ins. Society, 1917, 1 K. B. 873, 883, 893. 'In an action on a policy, the *causa proxima* is alone considered in ascertaining the cause of loss; but in cases of other contracts and in questions of tort the *causa causans* is by no means disregarded.' Fenton *v.* Thorley & Co., 1903, A. C. 443, 454; Smith, *supra,* p. 326. The rule 'is based,' it is said, 'on the intention of the parties.' Reischer *v.* Borwick, 1892, 2 Q. B. 550."

From an examination of the causes cited *supra* it can readily be seen that in every instance it was necessary to determine what was the proximate or efficient cause of the loss, in order to determine whether the loss in question came within the policy. In the policies involved in the case at bar, each company "does hereby promise and agree to make good unto the assured or his, her, or their heirs, etc., all such loss or damage as shall happen by breakage of the glass described in the schedule hereon * * *" provided, "the company shall not be liable for any loss or damage resulting directly or indirectly (to the glass) from fire, whether on the premises above described or elsewhere." In other words, if the glass should be broken and the cause of the breakage should directly or indirectly be due to fire, there is no liability.

It is undisputed that the explosion or explosions that

caused the breakage of glass were caused by a fire, and it is therefore clear that the fire, if not a direct cause, was certainly an indirect cause of the breakage. In view of the fact that plate glass insurance has only been written extensively during the past few years, not very many cases will be found construing the provision now under consideration.

In *Frisbie* v. *Fidelity Casualty Co.*, 133 Mo. App. 30, 112 S. W. 1024, it was held that fire, and not the dynamiting of the insured property to prevent the spread of fire, was the proximate cause of damage, so as to relieve the insurer from liability for the breakage of plate glass under a provision which excepted the insurer from liability for damage which might happen by or in consequence of any fire.

Likewise, damage from an explosion of starch dust on which water is thrown to put out fire is a loss by fire, and is not covered by a policy of insurance against explosion and accident, which expressly excludes liability for loss or damage by fire, resulting from any cause whatever. *American Steam Boiler Ins. Co.* v. *Chicago Sugar Ref. Co.*, 21 L. R. A. 572, 6 C. C. A. 336, 9 U. S. App. 186, 57 Fed. 294.

In *Jones* v. *Metropolitan Ins. Co.*, 144 Wis. 66, 128 N. W. 280, 40 Ins. L. J. 53, an explosion of dynamite upon other premises caused by fire precluded recovery under a policy insuring against loss by breakage of glass, the policy containing a provision excluding liability for loss or damage resulting directly or indirectly from fire, whether upon the insured premises or not.

These cases show that the purpose of the provision excepting from the policy as a risk a loss caused *directly* or indirectly from a fire was to do away with the rule of construction that compelled the courts to ascertain the proximate or efficient cause of the loss, in order to determine whether it was covered by the policy of insurance. In short, even though the explosion in the case at bar

might be said to be the proximate cause of the breakage of glass, nevertheless it can also be said that the fire which caused the explosion was an indirect cause or a *causa causans*. As a matter of logic this is so, for if there had been no fire there would have been no explosion. Therefore, it follows that loss or damage of which the plaintiff insurance companies complain, resulted indirectly from the fire. Unless this construction is placed upon the provision now under consideration, the word "indirectly" is entirely disregarded in determining the meaning thereof, and this would be contrary to the well settled rule that a contract should be so construed as to give effect to each word thereof. As stated in 9 Cyc. 583, "No word in a contract is to be treated as a redundancy, if any meaning reasonable and consistent with other parts can be given to it." All words are to be taken in the ordinary and popular sense, unless there is something to show that they were used in a different sense.

The other words used in connection with the word "indirectly," such as "resulting in any manner from fire, whether in the premises described in the schedule or elsewhere" and "indirectly by or in consequence of any fire," all tend to show that it was the clear purpose and intention to exclude from the risks insured any loss or damage that might be caused in any way proximately, remotely or otherwise by fire. Also another well settled rule formulated in 9 Cyc. 587 is as follows:

> "It is not the province of a court to change the the terms of a contract which has been entered into even though it may be a harsh and unreasonable one. Nor will the dictates of equity be followed if by doing so the terms of a contract are ignored; for the folly or wisdom of a contract is not for the Court to pass upon. Its terms, however onerous they may be, must be enforced, if such is the clear meaning of the language used, and the intention of the parties using that language."

It was suggested by the Trial Court on the argument of the motion for direction of verdict that if the plaintiff

insurance companies made their respective payments in good faith, believing that they were liable under the terms of their policies, that then they could nevertheless recover in an action of this kind, providing their assured could have recovered, even though there was no liability under the policies of insurance. Conceding that if there was doubt as to liability and the insurance companies paid in good faith, that they could sue, the fact still remains that a payment cannot be considered as having been made in good faith if there was clearly no liability on the part of the insurance companies to pay under the terms of their policies. We are familiar with the cases that hold where the insurance companies make the payment in good faith—where there is doubt as to its liability, that then the insurance company is entitled after it is subrogated to the insured's claim, to press that claim against a third party. We have been unable, however, to find any case which permits an insurance company to say that it had made a payment in good faith, where it clearly appears that there was no liability upon the part of the insurance company to make it. On the contrary, the presumption is, as against a third person, that a payment so made—when there is no liability to make it—is not a payment made in good faith. The situation is the same as though the insurance company had said:

> "We are not liable, under the terms of our policy, but we will, nevertheless, make a gift to you of an amount that will be equal to the amount that you could recover on your policy, if we were liable."

No one will contend for a moment that in such a case the insurance company would be entitled to sue a third person, on the theory that it had made a payment in good faith, under the terms of its policy.

We therefore respectfully submit that, so far as relates to the plaintiff insurance companies, the Trial Court erred in refusing to direct a verdict in favor of the defendant.

VI.

The Trial Judge erroneously ordered the consolidation of twelve cases for the purposes of the trial.

At the trial of the cause the attorneys moved the cases of certain plaintiffs against the defendant (p. 369). Objection was immediately made on behalf of the defendants and each of them to the consolidation of the cases, on the ground that there was no law to justify the same and that the rights of the defendants would be violated by any such order (p. 361). The consolidation was ordered and exception taken (p. 362, ll. 20-30).

We now raise the point in each case that neither at common law nor under any statute of this State is there authority to order the consolidation of separate actions wherein the plaintiffs and the issues are different, even though the suits may all be against the same defendant.

The first question is whether there is any such power at common law. Under certain conditions the Trial Court has inherent power to order the consolidation. The conditions under which such power may be exercised are stated as follows:

> "First. The actions must be depending, all perfect and complete, at the same time, or at least before any writ is issued.
>
> Secondly. *The actions must be between the same plaintiff and the same defendant.*
>
> Thirdly. The actions must be such as may be joined." (Vol. 4, Encyclopedia of Pleading and Practise, p. 677.)
>
> "In the absence of legislative enactment, courts of general common law jurisdiction have inherent power to consolidate two or more actions *at the instance of the defendant or with his consent.*" (8 Cyc., 591, 2.)

It will be observed that the consolidation of cases for the purpose of trial is usually on application of the defendant, or with the defendant's consent—presumably for the purpose of avoiding costs and vexation to the defend-

ant; but even in such an event the consolidation could be ordered only when the actions were between the same plaintiff and the same defendant. The case is entirely different where the defendant objects to the consolidation and where there are different plaintiffs. In the reported cases in this State wherein consolidation was ordered, one or the other of these two conditions arose. Thus in the case of *Den* v *Kimble,* 9 N. J. L. 335, the Court ordered a consolidation of several actions of ejectment brought by the same plaintiff upon a mortgage against a number of defendants, and it appeared that the same legal points were involved in all the cases.

In *Worley* v. *Glentworth,* 10 N. J. L. 241, the Supreme Court of this State refused to consolidate two actions brought against the *same* person by the *same* plaintiffs, upon different promissory notes, where it did not appear that the *defense* was the same in each. The motion to consolidate was made in this case by the defendant. In refusing the order, the Court said: "We find no principle or precedent to support it."

In the case of *Lee* v. *Township of Kearny,* 42 N. J. L. 543, the *defendant* obtained a rule to consolidate thirteen actions brought by the same plaintiff on thirteen certificates all for the same amount, for the same consideration and all due. In this case the Court cites several of the common law authorities to the effect that the Court will compel a *plaintiff* to consolidate causes of action if they are of such a character that the plaintiff might have included both of them in the same declaration. The Court pointed out that the purpose of ordering a plainiff to consolidate different causes of action was "to prevent oppression and the accumulation of costs" (p. 545).

In the case of *Bell* v. *Keppler,* 57 Atl. 257, the Supreme Court of this State reversed a judgment entered in an action for three several penalties alleged to have been incurred by the defendant to the owners of three sev-

eral lots of cans, on the ground that the claims cannot be consolidated. The Court said:

> "The plaintiff pleads that he is the authorized agent for this purpose of each of these owners. That does not authorize the consolidation of the suits for the penalties due to each of its principals. An agent can do no more than his principal may, and these principals, acting personally, could not blend their action into one, hence they cannot authorize it to be done by another for them. This objection was taken and is fatal to the judgment, which is reversed, with costs."

The rule on the subject is summarized as follows in 1 Corpus Juris, p. 1124:

> "Unless otherwise provided by statute, the conditions ordinarily prescribed as authorizing, and essential to authorize, a consolidation of actions at law are that the different actions shall be pending in the same court at the same time, *between the same parties,* and involving substantially the same subject matter, issues and defenses."

The above summary is in accord with the common law authorities on this subject.

> Chitty on Pleading, Vol. 1, Star page 199, title "Of Joinder of Actions."
>
> Comyns Digest, Vol. I, Sec. 1-2, "Consolidation of Actions," p. 226. Day's first American Edition.
>
> Cox's Common Law Practice, p. 239.
>
> Tidd's Practice of the Court of King's Bench, Vol. 1, Star page 614.

The conditions under which consolidation might have been ordered at common law did not exist in the present case. The actions are pending in the same court, at the same time, but they are not between the same *parties* and do not involve the same *issues* and *defenses.* Each of the parties to the twelve actions is entirely independent of the others, and the issues in some of the cases are different from the issues in others. To illustrate, in case No. 10, St. Paul's Church, the only claim made in the com-

plaint was that the defendant was guilty of a nuisance, whereas, in all of the other cases claims were made that the defendant was guilty of negligence in certain respects. In the case of *Fidelity and Casualty Co.,* the complaint alleged nuisance in one count and negligence in another count, but said nothing whatever about the interstate commerce regulations. In cases Nos. 1, 2, 3, 4, 8 and 9, several specific charges of negligence were made. In case No. 6 certain specific charges were made, some of which were the same as those in case No. 1, etc. In case No. 5 certain other charges of negligence were specified, and finally in cases Nos. 11 and 12 all of the charges that were in the first named cases were made, together with several other additional charges—as set forth in detail under Point III. In the last two cases the special defense of contributory negligence was set up, which did not apply at all to any of the other cases. A summary of the various specifications of negligence was given in the Court's charge, the mere statement thereof requiring three printed pages (pp. 1035-7).

There being no common law power to order a consolidation, under such circumstances the next question is whether there is any statute which would authorize consolidation. The Practice Act of 1903 gives the *defendant* the right to move to consolidate several actions "which are capable of being consolidated." See Section 115. This section is evidently carried forward from Section 121 of the Practice Act of 1874 (Revision of 1877, p. 867), which is referred to in the case of *Lee* v. *Township of Kearny, supra,* and under which the defendant was authorized "at any time before issue joined" to consolidate "unnecessary" actions.

The only other sections in the Practice Act of 1903 which deals with the subject are Nos. 29 and 164. Section 29 permits the consolidation of actions in suits on bills of exchange or promissory notes under certain conditions named in the statute. Section 164 permits a consolidation for the purpose of trial "if several actions between the

same parties in which the same or similar matters of controversy are involved, or if cross-actions between the same parties with respect to the same transaction, which are triable in the same manner and may be conveniently tried together, are pending in the same court." There is nothing in the Practice Act of 1912 which in any way changes or enlarges these provisions of the statutes of 1903, except that Section 29 is repealed (Rule 7 of the Practice Act of 1912 taking its place).

It may be claimed that the order of the Trial Judge was justified under Section 4 of the statutes of 1912. This reads as follows:

> "Subject to rules, all persons claiming an interest in the subject of the action and in obtaining the judgment demanded, either jointly, severally or in the alternative, may join as plaintiffs, except as otherwise herein provided. And persons interested in separate causes of action may join if the causes of action have a common question of law or fact and arose out of the same transaction or series of transactions."

It may be open to doubt whether this section would apply to tort actions; the word "transaction" as used in the statute is not ordinarily used in connection with torts. But aside from that question, there is nothing in the section which permits different actions after they have been brought to be consolidated, so that even if these various plaintiffs might have originally joined in the same action, it does not follow that after they have elected to bring separate actions, that they can thereafter have them consolidated for the purpose of trial.

The impossible situation created by the consolidation of these twelve actions is emphasized by the fact that the issues in some of the cases were different from those in other cases, and hence there would not have been any authority to order the consolidation, even if the actions had been between the same parties. Ten of the actions were for damage to plate glass and other parts of buildings, one of them was for damage to schooner, and the

other for personal injuries. The ordinary difficulties inherent in a trial of so complicated a case were multiplied ten-fold by the variety of causes and issues; and the practical result was that the defendant's right of trial by jury, instead of remaining "inviolate," in accordance with Section 7 of Article I of the State Constitution, was taken from it. Under this provision, the right of trial by jury in civil actions remains as it was at common law.

Howe v. *Plainfield,* 37 N. J. L. 145, and cases cited.

Under Section 1 of Article X the common law remains in force in so far as it is not repugnant to the State Constitution. No case has been found in the common law reports which permitted the consolidation of civil actions for the purpose of trial except within the limitations specified in the foregoing authorities. If the right of trial by jury in civil actions is to "remain inviolate" that result can only be accomplished by giving the defendant such right in *each* case where it is entitled to have such a trial. In view of the constitutional provision, it is doubtful whether the Legislature has the power to order two or more cases to be tried by the same jury, against the objection of one of the parties, when the parties or issues are different. If two cases or a dozen cases with different plaintiffs and different issues can be consolidated there is no logical stopping point, and no reason can be suggested why the Trial Judge should not consolidate a thousand such cases—indeed, in the very cases now before the Court far more than twelve parties are interested; each of the complaints has attached thereto a schedule or exhibit giving a list of the names and addresses of the individuals or companies for whose benefit the insurance suits were brought. It may well be that as to some of these persons or individuals the important consideration on the question of liability would be whether their property was within the reasonable limit of what the defendant might have expected in the event of such a catastrophe as occurred in the present case. For example, the very first name in the first case is that of a resident

of South Amboy (p. 38, l. 25). Others are scattered through various parts of New York, Brooklyn, Staten Island, Newark, Hoboken, Jersey City and other towns, some of them many miles from the scene of the explosion. The number of claimants in the several insurance cases is as follows:

Royal Indemnity Co.	64	(p. 38)
N. Y. Plate Glass Ins. Co.	952	(pp. 60-77)
Chicago Bonding & Ins. Co.	61	(p. 98)
Ocean Acci. & Guar. Corp.	100	(pp. 120-2)
Lloyd Plate Glass Ins. Co. of N. Y.	687	(pp. 147-161)
Metropolitan Cas. Ins. Co. of N. Y.	634	(pp. 180-193)
Fidelity & Casualty Co.	285	(pp. 207-13)
Commercial Casualty Ins. Co. of Newark	292	(pp. 232-8)
Total	3075	

There surely must be some limit to the range of human expectation; the Trial Judge charged the jury as requested by the defendant, that the defendant could be held liable only for such results as from common experience and the usual course of events might reasonably have been expected (p. 1053, ll. 1-15). It is difficult to imagine for example, how this defendant or anyone else in the ordinary course of human events, would be expected to anticipate that a fire in the Black Tom yard and an explosion of munitions therein would damage somebody's plate glass or other property in Harlem or Newark or Perth Amboy or Arlington, or other points far removed from the scene of the fire. But no jury, even though it be of superhuman intelligence, would be able to make any distinction in these thousands of claims—particularly when even as to those claims, which were of the same general character, namely, for damage to glass, plaintiffs' attorneys in some of the cases elected to present a variety of issues for the consideration of the jury. It is no answer to this argument to say that it is convenient to try twelve cases at the same time; of course, it is convenient from the standpoint of the plaintiffs, but the

defendant cannot be deprived of its legal rights merely for the sake of convenience of the plaintiffs. If it be said that it would not be practicable to try each of the several hundred or several thousand cases before a different jury, the answer is that if such a situation should arise there would be ground for the parties to go into a court of equity and have the liability as to all of the claims determined in one proceeding.

Even when these several hundred claims are combined the situation is not materially improved as the issues are still different and the defendant is still bound by the decision of a single jury in all the twelve cases instead of having its rights determined by a different jury in each case. We are not now raising any question as to the right of the several insurance plaintiffs to bring these suits in their own names instead of in the names of the parties who suffered the actual damage; all that we insist upon is that the defendant is entitled to a separate trial in each case wherein there is a separate and distinct plaintiff, whether it be an individual or an insurance company.

The impossible situation thus created by this attempted short-cut is again emphasized by the fact that certain evidence was introduced because it was relevant in one case, notwithstanding it was obviously irrelevant in any of the other cases. For example, the testimony as to the loss sustained by Allen, a steward of the schooner, and by Captain Jamieson and by the owners of that boat, has nothing whatever to do with any of the other plaintiffs; so also the medical and other testimony as to the personal injuries sustained by Allen has no relevancy to any of the other cases; likewise, the extent of the damage sustained by any one of the claimants in any one of the insurance cases is irrelevant to the issues in any of the other cases; and hence if this point were fully developed the objections would be interminable as they would increase by the arithmetical progression as the number of cases under trial increase. For a discussion of this point at the trial see pages 443-7. This again illustrates the

utter futility of attempting to have a fair trial before the same jury in several cases where the parties and the issues are different.

VII.

In the Clark case, it was error to admit evidence as to the amount of the uncollected freight moneys, and to permit the jury to include such amount as a part of the verdict.

In the Clark case, the witness Eleazer E. Clark, was permitted, against objection, to testify as to the amount of the freight due on the cargo that had not been discharged at the time of the fire (pp. 389 to 400). The jury were permitted to include this item as a part of the verdict (p. 1033, ll. 20-25). The amount thereof was $5,874.

It was admitted that part of the cargo had been discharged at the time of the fire, and it was further admitted that the amount of the verdict for this item is correct, if anything at all should be allowed therefor.

The defendant claims that the schooner "Walcott" had completed its trip from Buenos Ayres to New York, and that the defendant should not be charged with the loss of any part of the freight moneys due the owners, merely because the owners refused to pay the full amount of such moneys. The charter party provided that the payment for the use of the vessel was to be fixed at the rate of $8.50 (eight and 50/100 dollars) per ton of 2,240 lbs. delivered, payable at port of discharge, etc., the custom of the trade at each port to be observed where not otherwise expressed. (See Ex. P. 4, p. 1162, l. 35.) There was no proof of any custom of the trade at the Port of New York relating to the collection of freight moneys. We submit, that a fair construction shows that the vessel was entitled to payment in full for the freight, after it had completed the trip from Buenos Ayres to New York, even though part of the cargo was lost before it had been

actually transferred from the boat to the land. The vessel had made a trip of many thousand miles, and the freight was earned, and was collectible from the other party to the contract.

The agreement in the charter party was "for a voyage from Buenos Ayres to New York" (p. 1162, l. 25). Both parties understood that the voyage had been completed, as, after the arrival of the vessel in New York Harbor, the Central Leather Company, which had chartered the boat, directed the captain to what berth he should go for the purpose of discharging the cargo (p. 421, l. 20, to 428, l. 46).

This case is different from the case where the actual voyage is interrupted by some cause beyond the control of the captain or the owner of the ship; in such a case it might be that the vessel would not be entitled to receive even a pro rata share of the freight moneys. But, here, the voyage had been completed, and the vessel was actually in New York Harbor, and had been there for several days and part of the cargo had been discharged. Can it be said that if none of the cargo had been delivered, the vessel would not have been entitled to a single penny on account of the charter party after it had made this long trip, lasting for several months, and at heavy expense to its owners? If the loss of the cargo, in whole or in part, were due to the negligence of this defendant, the owners of the cargo would, of course, have a right of action against the defendant, and, presumably, would include in such claim the amount of the freight, as that would be one of the elements of the value of the cargo. But it is absurd to say that merely because part of the cargo was not delivered, the owners of the vessel (whether they are acting for themselves, or for the consignees) should have the right to take a short cut by including a proportionate amount of the freight moneys in their claim for damages, by reason of the destruction of the vessel.

VIII.

For these reasons the judgments and each of them in the several cases under review should be reversed and a new trial ordered.

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to

51 NOV T. 1919

Filed after the Oral Argument by leave of Court.

New Jersey Court of Errors and Appeals

1. ROYAL INDEMNITY COMPANY,
2. NEW YORK PLATE GLASS INSURANCE COMPANY,
3. CHICAGO BONDING & INSURANCE COMPANY,
4. OCEAN ACCIDENT & GUARANTEE CORPORATION, LIMITED, OF LONDON, ENGLAND,
5. LLOYDS PLATE GLASS INSURANCE COMPANY OF NEW YORK,
6. METROPOLITAN CASUALTY INSURANCE COMPANY OF NEW YORK,
7. FIDELITY & CASUALTY COMPANY,
8. COMMERCIAL CASUALTY INSURANCE COMPANY OF NEWARK, N. J.,
9. CHILDS COMPANY, a corporation,
10. TRUSTEES OF ST. PAUL'S EVANGELICAL LUTHERAN CHURCH,
11. ELEAZER E. CLARK, et al.,
12. IRA W. ALLEN,

Plaintiffs-Respondents,

vs.

LEHIGH VALLEY RAILROAD COMPANY,

Defendant-Appellant.

REPLY BRIEF IN FAVOR OF LEHIGH VALLEY RAILROAD COMPANY, DEFENDANT-APPELLANT.

The Court will recall that at the argument of these cases, at the November Term, 1919, counsel for the plaintiffs-respondents were given leave to file a printed brief, subsequent to the oral argument. An examination of the brief thus filed shows that the argument therein made has been fully anticipated in our original brief, but we desire to call attention to certain statements in the brief which we think are not fully justified by the record, and also desire to add one or two authorities in support of the legal points which were made in our original brief.

Under Point III of plaintiff's brief, beginning at page 14, it is stated that the only issue left to the jury was whether the defendant had exercised due care; and in support of this statement, counsel argue that all that the trial judge did was to read the allegations in each

of the several complaints and then define or explain the meaning of reasonable care. It is further stated in the plaintiff's brief that counsel found it difficult to understand what was meant by the statement in the defendant's brief that "it was error to permit the jury to find the defendant liable," on certain grounds, as particularly set forth in the brief, and it is also stated in the brief that in his instructions to the jury, the trial judge "never mentioned or even referred to, the so-called common law duties complained of in defendant's brief." (See pp. 15 and 16 of plaintiff's brief.)

In reply to this argument, we beg leave to call the Court's attention to Point III, beginning at page 86 of our original brief, where we quote those parts of the charge wherein the trial judge recited the several grounds of negligence, and he then said: "so that so far as the charges against the defendant are concerned, the duty which rested upon the defendant company was to use a degree of care commensurate with the risk of danger" (p. 1039, ll. 1-9 of Record).

We respectfully submit that it is impossible to conceive any reason why the trial judge should read the allegations of a complaint to the jury, unless it is for the purpose of advising them what the particular grounds of negligence are and of permitting them to find the defendand liable, in the event that some one or more of such charges are found to be sustained by the evidence. It would be a useless formality for the trial judge to read the allegations of negligence in a complaint, and then to inform the jury that these allegations had nothing whatever to do with the case which was to be submitted for their consideration. Of course, the trial judge might, if he saw fit, remove entirely from the consideration of the jury, by an express charge to that effect, any one or more of the particular grounds of negligence that were alleged; but that is not what was done in these cases. The trial judge read *all* of the charges in each case and did not remove any of them from the consideration of the jury.

May we ask for what reason counsel suppose these allegations were read to the jury? They certainly were not read as a piece of entertaining fiction, although it seems to us that some of them, at least, belong to that class of literature. In theory, the pleadings are in the hands of the jury for their examination and study; and when the trial judge tells the jury that the allegations in the pleadings are the *charges* which were made against the defendant, and that with respect to these charges, the duty of the defendant was to use a degree of care commensurate with the risk of danger—what conclusion could a jury or any one else reach, other than that the ground of negligence which they are to consider are those which were stated in the pleadings and recited by the trial judge—unless, of course, some one or more of the allegations of the complaint had been expressly withdrawn from their consideration.

We, therefore, insist that in our original brief, we correctly stated the legal situation, when we urged that the jury were erroneously *permitted* to find the defendant liable, by reason of a violation of certain so-called common law duties—the expression "common law duties" being used in contradistinction with the specific duties required by the regulations of the Interstate Commerce Commission. Even if the record showed nothing but the charge on this subject, and the exceptions thereto, the defendant would be in a position to urge that it was error to permit the jury to find the defendant liable with respect to some one or more of the particular allegations set forth in the complaint, and recited in the charge; but, in addition to these errors in the charge itself, the same points were raised by certain requests to charge. These are quoted at length at pages 90 and 91 of the original brief, and all of them were denied except No. 20.

In the original brief, at page 87, we cited authorities to the effect that when a case is submitted to the jury on several theories, and there is a general verdict, there

must be a reversal if it appears that some one of the theories is either erroneous in point of law or lacks evidential support in point of fact.

A recent authority which did not come to our attention until after the argument, is the opinion of the Circuit Court of Appeals for the Second Circuit, in the case of *New York Central R. Co.* v. *Lloyd,* 258 Fed. 111 (advance sheets of September 18th, 1919). In that case the trial judge submitted four questions of fact on which he said there might be predicated negligence on the part of the defendant's employees. One of these four was that the accident may have been due to negligence on the part of the defendant in failing to provide a sufficient crew for the train whereon the plaintiff was a passenger at the time of the accident. The Appellate Court reversed a judgment for the plaintiff on the ground that the verdict was a general one, and that there was no evidence to show any negligence in this particular respect. The Court said:

> "It is not known whether the jury found the plaintiff in error negligent in respect of all the claims of negligence submitted to them, or any one or several of them."

To the same effect are the cases of:

New York Central, &c. R. Co. v. *Banker,* 224 Fed. 351, at page 355.

St. Louis, &c. Ry. Co. v. *Needham,* 63 Fed. 107, at page 114.

And see also the case of *Maryland* v. *Baldwin,* 112 U. S. 490, 28 L. Ed. 822, where the United States Supreme Court said:

> "On the trial, evidence was introduced bearing upon all the issues, and if any one of the pleas was, in the opinion of the jury, sustained, their verdict was properly rendered, but its generality prevents us from perceiving upon which plea they found. If, therefore, upon any one issue, error was committed, either in the admission of evidence or in the charge of the Court, the verdict cannot be up-

held, for it may be that by that evidence the jury were controlled under the instructions given."

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