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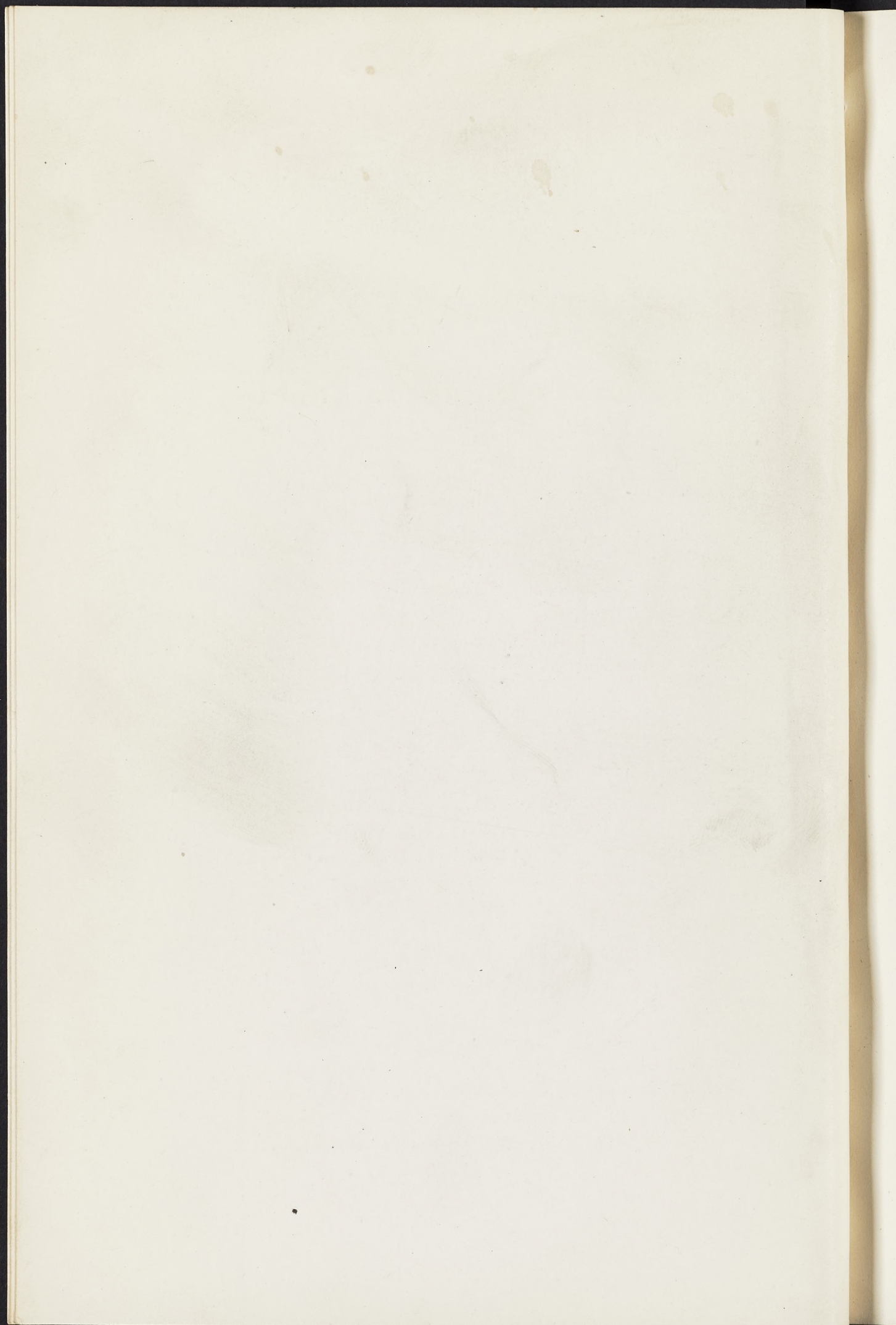
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(Filed April 4, 1919.)

New Jersey Supreme Court.

GEORGE H. STEVENS, Plaintiff-Respondent, vs. FERDINAND COIRIN and JOSEPH FORMANNS, Builders, and FER- DINAND COIRIN and LEONIE COIRIN, Owners, Defendants-Appellants.	}	Action at Law. On Lien Claim. NOTICE OF APPEAL.	10
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To: 20

Messrs. RAYMOND, MOUNTAIN and MARSH, At-
torneys of Plaintiff-Respondent.

Take notice that the defendants-appellants appeal
to the Court of Errors and Appeals of the State of
New Jersey from the judgment or Rule for Affirm-
ance of Judgment entered in this cause in New Jer-
sey Supreme Court on March 11, 1919, on the fol-
lowing grounds: 30

1. The Supreme Court erred in affirming the
judgment of the Bergen County Circuit Court in
this cause.

2. At the trial of the cause the Court committed
harmful and prejudicial error in its charge when it
said: "If the plaintiff has established by a fair pre-
ponderance of the evidence that he has superin-
tended the erection of a plant that is capable of pro-

II.
Notice of Appeal.

ducing one-quarter ton of this product in twenty-four hours by the process indicated in the contract, he is entitled to recover the amount agreed upon for his services, namely, \$2200.00, less the amount that he has already received, with interest on any defaulted payments from the date of such default."

10 3. The Court also committed harmful and prejudicial error in its charge when it said: "If you are satisfied from all the testimony that the plaintiff had constructed the plant called for in the contract, that is, a practical working plant of the capacity of one-quarter of a ton of this product in twenty-four hours, he can recover the full amount of the contract price, namely, \$2200.00, less the money received on account, which I understand was \$600.00,
20 together with interest on any payments in default."

4. At the trial the Court also committed harmful and prejudicial error in its charge when it said: "During the time that was actually required to complete the plant, this plaintiff was to receive \$50.00 per week, and he was entitled to receive these payments each week, whether the plant was fully completed within that time or not. If the plaintiff,
30 therefore, has not completed the contract, determine the number of weeks reasonably required to complete and equip the plant, and the plaintiff would be entitled to be paid for that number of weeks at \$50.00 less the \$600.00 already received by him, with interest on the balance, if there is any balance, from the time of default."

5. At the trial the Court also committed harmful and prejudicial error in its charge when it said: "The fact that the plant cost somewhat more than the plaintiff estimated the cost would be, would

III.
Notice of Appeal.

not entitle these builders to a verdict against the plaintiff, for the contract does not specify the amount that the plant was to cost. It does not appear that the builders have done anything since the fire to make the plant work or to change anything. The only thing they testify they have done is to repair the parts that were damaged by this fire, and prior to the fire the only evidence is that they hired some men, a few in number, to correct certain defects which had been pointed out by the plaintiff." 10

6. The verdict in the case was not grounded upon a true legal construction of the contract, and should have been set aside by the New Jersey Supreme Court.

7. Under the true construction of the contract, plaintiff was not to receive from defendants the far greater portion of the contract price, until the plant had been actually producing carbolic acid on a practical successful commercial scale, as provided in said contract. There was no evidence in the case that the plant had ever produced carbolic acid on such commercial scale. The verdict of the jury, in awarding to plaintiff the entire balance of the contract price, was unwarranted in law. 20 30

8. Under the true construction of the contract between plaintiff and defendants, under the evidence in the case, plaintiff was entitled to recover, from defendants, as a matter of law, but a small, if any, judgment. The verdict of \$1704.00 damages against these defendants is contrary to the true legal construction of the contract, and should have been set aside by the New Jersey Supreme Court.

9. The trial judge in his charge did not properly construe the contract in question, and the New Jersey Supreme Court erred in stating, in effect that said contract had been properly construed.

Dated March 31st, 1919.

WILLIAM V. ROSENKRANS,
Attorney for Defendants-Appellants.

10

20

30

(Filed August 27, 1918.)

Bergen County Circuit Court

GEORGE H. STEVENS,
Plaintiff,

vs.

FERDINAND COIRIN and JOSEPH
FORMANNS, Builders, and FER-
DINAND COIRIN and LEONIE
COIRIN, Owners,
Defendants.

10

Action
at Law.
On Lien
Claim.
NOTICE
OF APPEAL.

20

To:

Messrs. RAYMOND, MOUNTAIN and MARSH, or
Messrs. RAYMOND, MOUNTAIN, VAN BLARCOM and
MARSH, Attorneys of Plaintiff.

TAKE NOTICE that the defendants appeal to the
New Jersey Supreme Court from the whole of the
judgment entered in this cause on the twenty-
seventh day of June, 1918.

30

Dated August 1st, 1918.

WILLIAM V. ROSENKRANZ,
Attorney of Defendants.

(Endorsed: Service of the within notice of appeal
is hereby acknowledged this 2nd day of August,
1918—Raymond, Mountain and Marsh, Attor-
neys of Plaintiff.)

40

(Filed and entered September 4, 1917, at 9.30 A. M.,
in Bergen County Clerk's Office.)

IN THE
OFFICE OF THE CLERK OF THE
COUNTY OF BERGEN.

10

GEORGE H. STEVENS,
Claimant,

vs.

FERDINAND COIRIN and JOSEPH
FORMANNS, Builders, and FER-
DINAND COIRIN and LEONIE
COIRIN, Owners.

Lien Claim.

COUNTY OF ESSEX, ss. :

20

BE IT KNOWN, that George H. Stevens, of the City of Newark, in said County, claims a lien upon the building and lands hereinafter described, pursuant to the provisions of "An Act to secure to mechanics and others, payment for their labor and materials in erecting any building," and the several supplements thereto, for a debt contracted and owing to him for labor performed and materials furnished for the erection and construction of said building as hereinafter set forth, to wit:

30

FIRST: The said building is a factory on a lot or curtilage upon which this lien is claimed, situated in the Township of Saddle River, in the County of Bergen and State of New Jersey, and more particularly described as follows:

(Here follows same description of premises as in complaint.)

40

Lien Claim.

SECOND: The names of the Owners of the said land and the estate therein, on which said lien is claimed, are Ferdinand Coirin and Leonie Coirin, who has an estate in fee simple therein.

THIRD: The names of the persons who contracted the said debt, and for whom and at whose request the said labor was performed, and materials furnished, for which the aforesaid lien is claimed, are the said Ferdinand Coirin and Joseph Formanns. 10

FOURTH: The following is a bill of particulars of the aforesaid labor performed and materials furnished by the said George H. Stevens, the amount and kind of labor performed, and of materials furnished, and the prices at which and times when the same were performed and furnished, and giving credit for all the payments thereupon, and deductions that ought to be made therefrom, and exhibiting the balance justly due to him from the said Ferdinand Coirin and Joseph Formanns, viz.: 20

Between the first day of December, 1915, and the twenty-third day of May, 1917, to preparing plans and designs and performing architectural services in the erection and finishing of the factory building above mentioned, pursuant to contract, at the price of.....	\$2,500.00	30
Credits—Dec. 1, 1915.....	\$300.00	
Jan. 18, 1916.....	200.00	
Apr. 7, 1916.....	100.00	
June 24, 1916.....	100.00	
Oct. 21, 1916.....	100.00	
Dec. 29, 1916.....	100.00	900.00
Balance.....	\$1,600.00	

With interest from May 23, 1917.

40

Lien Claim.

All the above labor was performed and materials furnished between the first day of December, 1915, and the 23rd day of May, 1917, which said last-mentioned date is the date of the last work done and materials furnished, for which such debt is due.

10

STATE OF NEW JERSEY, }
 ESSEX COUNTY, } ss.:

20

GEORGE H. STEVENS, of Newark, of full age, being duly sworn, on his oath saith, that he is the claimant named in the foregoing claim; that the within bill of particulars and statements therein set forth are true; that the same is for labor performed and materials furnished by the claimant in the erection of the building in the said claim described, at the times therein specified, and that the amount, as claimed therein, is justly due and owing from the said Ferdinand Coirin and Joseph Formanns to the claimant.

GEO. H. STEVENS.

Sworn and subscribed before me
 this 20th day of August, 1917.

30

SPAULDING FRAZER,
 Master in Chancery
 of New Jersey.

(Endorsed: Sum. and Complt. sealed and issued Sept. 9, 1917, in favor of claimant against Ferdinand Coirin and Joseph Formanns, Builders, and Ferdinand Coirin and Leonie Coirin, Owners.)

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Pleadings.

(Filed September 27, 1917.)

BERGEN COUNTY CIRCUIT COURT.

<p style="text-align: center;">GEORGE H. STEVENS, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">FERDINAND COIRIN and JOSEPH FORMANNS, Builders, and FER- DINAND COIRIN and LEONIE COIRIN, Owners, Defendants.</p>	}	<p>On Mechanic's Lien. COMPLAINT.</p>	<p>10</p>
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Plaintiff, George H. Stevens, residing at No. 28 Stratford Place, in the City of Newark, Essex County, New Jersey, says that:

1. On the first day of December, 1915, the plaintiff, George H. Stevens, entered into a certain written contract with Ferdinand Coirin and Joseph Formanns, whereby the said plaintiff agreed to furnish the general plans and information necessary to enable the defendants to construct a plant and process for the manufacture of synthetic carbolic acid, to be located in the Township of Saddle River, County of Bergen and State of New Jersey, on the premises hereinafter described, and to do the necessary superintending in connection therewith, in accordance with the contract, a copy of which is annexed hereto and made a part hereof.

2. By the terms of the said contract the defendants agreed to pay to the said plaintiff the sum of \$300 upon delivery to the said defendants of the chemical data and general plans and instructions

Pleadings.

for the building and equipment of the said plant, and \$50 a week thereafter until the sum of \$2500 should be fully paid and satisfied.

10 3. That the said plaintiff has prepared the necessary plans and has superintended the erection and installation of the said plant for the said defendant, and has become entitled to the said sum of \$2500, as required by the said contract.

4. That the plaintiff has duly demanded from the said defendants the sum of \$2500, but has only received on account thereof the sum of \$900, and the defendants have refused and still do refuse to pay the balance so due to the said plaintiff.

20 5. Plaintiff avers and in fact says that the said debt is, by virtue of an act of the Legislature, entitled "An act to secure to mechanics and others payment for their labor and materials in erecting any building" (Revision of 1898), approved June 14, 1898, and the several supplements thereto and amendments thereof, a lien on certain buildings, curtilage and lands described as follows, the said buildings being a factory on a lot or curtilage situated in the Township of Saddle River and being more particularly described as follows:

30 BEGINNING at a point on the Northerly side of River Drive, which point is the Northwesterly corner of a tract of land conveyed to Ferdinand Coirin by Mary McGarry by deed dated January 29th, 1910, recorded in Book 747 of Deeds for Bergen County, at page 43; thence running North 79 degrees 20 minutes East 135 feet; more or less; thence North 11 degrees, 19 minutes West 107 feet; thence South 79 degrees, 20 minutes West 136 feet more or less to a brook; thence Southerly along said

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Pleadings.

brook to the Westerly line of River Drive aforesaid; thence Easterly and along said Northerly side of River Drive to the point and place of BEGINNING.

6. The plaintiff says that the said lands and premises are now owned by the defendants Ferdinand Coirin and Leonie Coirin.

Plaintiff therefore demands of said defendants the sum of \$1600, together with interest and costs of suit, and that the said amount shall be decreed to be a lien upon the land and premises hereinabove described. 10

RAYMOND, MOUNTAIN, VAN BLARCOM & MARSH,
Attorneys of Plaintiff.

AGREEMENT. 20

(Referred to in complaint and made a part thereof.)

AGREEMENT made this 1st day of Dec. 1915, by and between Geo. H. Stevens, of Newark, New Jersey, hereinafter called the first party and Ferdinand Coirin and Joseph Formanns of Dundee Lake, N. J., hereinafter together called the second party.

WITNESSETH, that whereas said first party is possessed of the detailed information and skill necessary to install a plant for the successful manufacture, on a practical commercial basis, of *Synthetic Carbohic Acid*; and 30

WHEREAS, the second party is desirous of establishing such a plant.

NOW THEREFORE, in consideration of one dollar paid by each party to the other party, receipt of 40

Pleadings.

which is hereby acknowledged, and in further consideration of the mutual agreements herein contained, said parties have agreed as follows:

10 1. Said first party agrees to furnish the second party immediately upon the receipt of Three Hundred Dollars (\$300) hereinafter mentioned, the general plans and information necessary to enable the immediate construction of a practical working plant and process for the manufacture of *Synthetic Carboic Acid*, such plant and process to be in accordance with the customary method of producing *Synthetic Phenol* by sulfonating Benzol, converting the resultant Sulfonic Acid into a Sodium Benzene Sulfonate (Sodium Salt solution) then into Sodium Phenolate through fusion, and finally separating the Phenol, and which process is now in successful commercial operation in both this Country and
20 abroad, and the plant to have a capacity of producing not less than one quarter ton of *Synthetic Phenol* in twenty-four (24) hours.

2. Said second party agrees to pay to said first party as full remuneration for plans, advice, supervision and information concerning said plant and process the following sums, payment thereof to be for the consideration and upon the conditions hereinafter set forth; to wit:

30 The sum of Three Hundred Dollars (\$300) to be paid as soon as said first party has furnished second party or its representatives the chemical data and general plans and instructions for the building and equipment of a plant and process for making *Synthetic Carboic Acid*, and said plant when completed to be capable of producing at least one quarter ton per day of *Synthetic Carboic Acid*.

40 Also, after the disclosure of said plans, if the second party then decides to proceed with the project

Pleadings.

that the second party agrees to pay the sum of Fifty Dollars (\$50) per week to said first party, from the time of signing the contract throughout the entire period required to completely install and equip said plant and to put the same in practical and successful working order.

Also, the second party agrees to pay the first party an additional sum sufficient to make a total payment of Twenty-Five Hundred Dollars (\$2500), including the above payments, and this balance to be payable after the said plant is in complete and practical working order, and has been producing for thirty (30) days, and is capable of producing Carbolic Acid on a commercial scale, said remaining payments to be made in the following manner:

After thirty (30) days of production the payments of Fifty Dollars (\$50) per week shall be increased to One Hundred Dollars (\$100) per week, and after Ninety (90) days, the payments shall be increased to Two Hundred Dollars (\$200) per week until the entire amount has been paid.

It is agreed by second party that in case of sale or assignment of said plant or process before full payment of the aforesaid Twenty-five Hundred Dollars (\$2,500) that the unpaid balance is an obligation upon both parties to such sale or assignment, if completion or operation be effective within Eighteen (18) months of the execution of this agreement.

3. Said first party agrees to give as much of his time as may be necessary, to properly lay out, furnish details and drawings, assist in or do the necessary purchasing of apparatus, inspect the building and work as it progresses, and break in such Superintendent, Foreman, Chemist and help as is selected by second party, and furnish such Engineers of said

Pleadings.

10 second party as may be selected, with the proper information, plans, and details, for carrying out the actual work of building and installation, and said first party agrees to be in personal attendance on the work at frequent intervals, and for suitable lengths of time, as may be needed, yet compatible with his other professional work, and is not hereby bound to any stated amount of time, so long as the ones in charge are at all times suitably supplied with the necessary instructions, for carrying the work forward without delay.

20 And said first party agrees to continue this supervision for at least Thirty (30) days after the plant is in operation, and further, to give his occasional advice thereafter for a period of eighteen (18) months without additional compensation (other than railroad fare and hotel bills when they may be necessary).

It is understood by both parties to this agreement that from the time of signing the contract until Thirty (30) days after producing (unless full settlement is made before that) that the entire work is under the supervision of first party absolutely.

30 It is mutually understood that this in no way abridges the right of consultation of the second party with outside engineers as often as necessary, and on any point that may arise, and permits of any changes in plans or process for which the second party is willing to be responsible.

The supposition being that so long as the contract price has not been fully paid, that a material responsibility rests upon the first party as Engineer, and so long as there is such responsibility upon him that he should be absolutely in charge.

4. Said second party agrees not to reveal said process within eighteen (18) months hereof, to any parties other than to its employees or assigns, in
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Pleadings.

case it should operate or in case it should decide to sell or otherwise dispose of said plant and process, or in case said plant should not be completed.

5. Notwithstanding any other provisions hereof, the first party releases the second party from all further obligations after the expiration of eighteen (18) months from date of this agreement. 10

6. In case said second party does not see fit to proceed with the undertaking, after the payment of the Three Hundred Dollars (\$300) and acquisition of the plans and process, the first party releases the second party from any further payments, so long, during the following eighteen (18) months, as no steps are taken by the second party to engage in the production of *Synthetic Carbolic Acid*. 20

7. It is mutually understood by both parties to this agreement that the payments herein mentioned, are for a plant having a capacity for producing one quarter ($\frac{1}{4}$) ton of *Synthetic Carbolic Acid* in twenty-four (24) hours, and that if the capacity of the plant be increased at any time within eighteen (18) months of the date of this agreement, by the second party, or its assigns, to a capacity of more than one ton in twenty-four (24) hours, that an additional sum of Twenty-Five Hundred Dollars (\$2,500) for each ton of increased capacity be due to said first party, and payable to him as soon as such capacity has been made possible, and that such sum is an obligation against both the second party, as well as its assigns, until it is paid. 30

8. It is further understood by both parties to this contract, that after payment of the Three Hundred Dollars (\$300) that the manufacture of *Syn-* 40

Pleadings.

thetic Carbohic Acid through any other process by the second party, or its assigns within eighteen (18) months and after disclosure of the sulfonation process, in no way relieves the second party or its assigns of the remaining obligations to the first party. The intent of this provision being to obviate any and all claims, that modifications of the process annul the remaining obligations, because of their not being the same process as the first party sold. Whereas the meaning of the contract is instead, that the knowledge of the sulfonation process is worth the amount asked, and such modifications or changes later in it are only in the usual way of business progress, and extended investigation.

9. It is further agreed by the second parties that as soon as their business organization is completed, that this contract shall then be duly and properly signed by the authorized officer of such organization.

10. The terms of this agreement shall bind and benefit the heirs, administrators and assigns of both parties.

IN WITNESS WHEREOF said parties have set their hands and seals on the day and year first above written.

FERDINAND COIRIN,
JOSEPH FORMANNS,
GEO. H. STEVENS,

Attest:

E. B. LINDOEFER.

Attest:

FRANK E. VALENTINE.

Pleadings.

(Filed October 2, 1917.)

BERGEN COUNTY CIRCUIT COURT.

GEORGE H. STEVENS, Plaintiff, vs. FERDINAND COIRIN and JOSEPH FORMANNS, Builders, and FER- DINAND COIRIN and LEONIE COIRIN, Owners, Defendants.	}	On Mechanic's Lien.	10
		ANSWER and COUNTERCLAIM of Ferdinand Coirin and Joseph Formanns.	

Defendants, Ferdinand Coirin and Joseph Formanns, residing in Saddle River Township, Bergen County, New Jersey, say that: 20

(1) They admit the first paragraph of said complaint.

(2) They deny the second paragraph.

(3) They deny the third paragraph.

(4) They deny the fourth paragraph, except that part thereof which states that they have paid plaintiff \$900.00.

(5) They deny the fifth paragraph. 30

FIRST DEFENSE.

(1) In said contract, which is the foundation of plaintiff's suit and a copy of which he has attached to his complaint and made a part thereof, plaintiff, among other things, agreed with these defendants to furnish them immediately upon the receipt of three hundred dollars the general plans and information necessary to enable the immediate con-

Pleadings.

struction of a practical working plant and process for the manufacture of synthetic carbolic acid (as therein described), of the capacity of producing not less than one-quarter ton of synthetic phenol in twenty-four hours.

10 (2) Defendants paid plaintiff said sum of \$300.00 forthwith after the signing of said agreement or contract.

20 (3) Plaintiff did not immediately upon receiving said money, nor at any time thereafter, furnish these defendants the general plans and information necessary to enable the immediate construction of a practical working plant for the manufacture of synthetic carbolic acid, of the capacity of producing not less than one-quarter ton of synthetic phenol in twenty-four hours, as he had agreed as aforesaid, or of the capacity of producing any appreciable quantity of synthetic phenol in twenty-four hours.

30 (4) Upon the receipt of said general plans and information these defendants proceeded forthwith to lay out large sums of money for the construction of said plant and for the equipment of the same and toward the operating of the same in accordance with said general plans and information and under the directions, instructions, inspections, training and absolute supervision of plaintiff, as provided in said contract.

(5) Said plant so constructed as aforesaid has never had the capacity of producing one-quarter ton of synthetic phenol in twenty-four hours, as agreed in said contract, or of producing more than an infinitesimal portion of said quantity in said time. It has never been a plant for the successful manufacture, on a practical commercial basis, of synthetic carbolic acid, as plaintiff agreed in said

Pleadings.

contract. Plaintiff has not kept and performed his part of said contract.

SECOND DEFENSE.

(1) All the foregoing statements of the First Defense are made a part of this Defense.

(2) In said contract plaintiff represented himself as being in possession of the detailed information and skill necessary to install a plant for the successful manufacture, on a practical commercial basis, of synthetic carbolic acid. 10

(3) Relying upon such representation and upon the immediate construction of said plant and its completion within a reasonable time, as contemplated by said contract, these defendants agreed to pay plaintiff the sum of \$2500.00 as full remuneration for his plans, advice, supervision and information in the construction and equipment of such plant and process for making synthetic carbolic acid capable of producing at least one quarter ton per day of synthetic carbolic acid, the great proportion of said sum to be paid plaintiff after said plant became capable of producing and did produce said acid on a practical commercial scale, to wit, after thirty days of such production and up to the ninety-first day, a period of 8½ weeks, at the rate of \$100.00 per week, and thereafter at the rate of \$200.00 per week until the said entire amount was paid. 20 30

(4) Notwithstanding such fact and the fact that said plant was never capable of producing on a commercial basis, these defendants paid plaintiff sums of money aggregating \$900.00.

(5) Plaintiff has already been overpaid under said contract.

Pleadings.

THIRD DEFENSE.

(1) All the foregoing statements of the First Defense are made a part of this Defense.

10 (2) On or about July 1, 1917, and over eighteen months after the date of the execution of said contract, plaintiff entirely gave up the idea of ever being able to make said plant a practical working one in compliance with his said contract, and absolutely abandoned said contract.

BY THE WAY OF COUNTERCLAIM.

(1) All the foregoing statements of First Defense are made a part of this counterclaim.

20 (2) In said contract plaintiff represented himself as being in possession of the detailed information and skill necessary to install a plant for the successful manufacture, on a practical commercial basis, of synthetic carbolic acid, and in said contract agreed to have such a plant constructed and in operation within a reasonable time.

(3) These defendants relied upon such representations and such promises of plaintiff.

(4) Said plant has never been put upon a practical producing basis by plaintiff, although almost two years have elapsed since the execution of said contract.

30 (5) Since the execution of said contract these defendants have laid out large sums of money for the construction of said plant and for the equipment of the same and toward the operating of the same, aggregating the sum of \$20,000.

These defendants claim as damages against plaintiff said sum of \$20,000.

WILLIAM V. ROSENKRANZ,

Attorney of Defendants,

Ferdinand Coirin and Joseph Formanns.

Pleadings.

(Filed October 2, 1917.)

BERGEN COUNTY CIRCUIT COURT.

<p style="text-align: center;">GEORGE H. STEVENS, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>FERDINAND COIRIN and JOSEPH FORMANNS, Builders, and FER- DINAND COIRIN and LEONIE COIRIN, Owners, Defendants.</p>	}	<p>On Mechanic's Lien. ANSWER of Leonie Coirin.</p>	10
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Defendant Leonie Coirin, residing in the Town-
ship of Saddle River, Bergen County, New Jersey, 20
answering separately, says that:

(1) As to the matters alleged in paragraphs one,
two, three and four of plaintiff's complaint, she has
no knowledge or information thereof sufficient to
form a belief.

(2) If paragraph five of said complaint means
that plaintiff has a lien upon her said interest in
the lands and premises therein described, then she 30
denies the same.

(3) She admits paragraph six.

WILLIAM V. ROSENKRANZ,
Atty. of Defendant Leonie Coirin.

Pleadings.

(Filed October 20, 1917.)

BERGEN COUNTY CIRCUIT COURT.

10	<p style="text-align: center;">GEORGE H. STEVENS, Claimant,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">FERDINAND COIRIN <i>et als.</i>, Defendants.</p>	<p>Action at Law. On Lien Claim. REPLY.</p>
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REPLY TO FIRST DEFENSE.

20 The plaintiff, by way of reply to the first defense of the said defendants, Ferdinand Coirin and Joseph Formanns, says:

1. That he admits the contents of paragraphs one and two of the first defense.

2. That he denies the contents of paragraph three thereof, and, on the contrary, states that he did furnish the knowledge necessary to construct a practical working plant for the manufacture of synthetic carbolic acid as provided in said contract.

30 3. He admits that the defendants proceeded to erect a plant for the manufacture of synthetic carbolic acid, but he says that he has no knowledge of the amount spent by the said defendants thereon, and denies that the said plant has never had a capacity of producing a half ton of synthetic carbolic acid in twenty-four hours, as provided in said contract, but, on the contrary, this defendant says that if the said plant is properly operated it will produce synthetic phenol as provided in said con-
40 tract.

Pleadings.

REPLY TO SECOND DEFENSE.

By way of reply to the second defense, this plaintiff says:

1. That he repeats his reply to the first defense and makes it part hereof.
2. That he admits the contents of paragraph two of said second defense in so far as the same is set forth in said contract. 10
3. He admits that the defendants agreed to pay \$2500, as set forth in said contract, but denies that the greater proportion of said sum was to be paid after the said plant was producing synthetic carbo-lic acid on a practical commercial scale, and refers to the said contract for the terms of such payment. 20
4. He admits that he received \$900 in accordance with said contract, but denies that he has been overpaid, and, on the contrary, says that there is still due to him the sum of \$1600.

REPLY TO THIRD DEFENSE.

Plaintiff, by way of reply to the third defense, says:

1. That he repeats his reply to the first defense as his reply to the first paragraph of said third defense. 30
2. That he denies that he has abandoned his contract or has ever given up the idea of making said plant in compliance therewith.

Pleadings.

REPLY TO COUNTERCLAIM.

Plaintiff, by way of reply to the counterclaim, says:

1. That he repeats his reply to the first defense by way of reply to the first paragraph of said counterclaim.
- 10 2. That he admits that he represented himself as having information and skill necessary to install a plant for the successful manufacture of synthetic carbohic acid, but denies that he agreed to have such a plant constructed or put in operation as alleged in the second paragraph of said counterclaim.
3. He says that he has no knowledge as to the allegations in paragraph three of said counterclaim.
- 20 4. Plaintiff says that the said plant is capable of producing synthetic phenol as provided by said contract, and that if the said plant has not been put upon a practical producing basis it is due to the failure of the defendants to operate the same in a proper manner.
- 30 5. Plaintiff says that he has no knowledge of the amount expended by the defendants in the erection of said plant, and denies that there is due to the defendants any money, by way of damages, as alleged in said counterclaim.

RAYMOND, MOUNTAIN, VAN BLARCOM & MARSH,
Attorneys of Plaintiff.

Testimony.

BERGEN COUNTY CIRCUIT COURT.

<p style="text-align: center;">GEORGE H. STEVENS, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>FERDINAND COIREN, JOSEPH FORMANNNS, Builders; FERDINAND COIREN and LEONIE COIREN, Owners, Defendants.</p>	}	<p>Action at Law. Before: Hon. WILLARD W. CUTLER, Judge, and a Jury.</p>	10
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Hackensack, N. J., June 24, 1918.

APPEARANCES:

For the Plaintiff: Messrs. RAYMOND, MOUNTAIN, VAN BLARCOM & MARSH; THEO. MCC. MARSH, Esq., of Counsel. 20

For the Defendants: WILLIAM V. ROSENKRANS, Esq.

The jury was empanelled, accepted and sworn.

Mr. Marsh opened the case to the jury on behalf of the plaintiff.

Mr. Rosenkrans opened the case to the jury on behalf of the defendants. 30

GEORGE H. STEVENS, called as a witness on his own behalf, being duly sworn, testified as follows:

Direct examination by Mr. Marsh.

Q. Mr. Stevens, where do you live? A. East Orange. 40

George H. Stevens—Plaintiff—Direct.

Q. And you are the plaintiff in this action? A. Yes.

Q. What do you do; what business are you in? A. A technical engineer, in this case acting in a chemical engineering capacity.

10 Q. And do you know anything about the manufacture of synthetic carbolic acid? A. I have been doing nothing else for the last three and a half years.

Q. Have you installed or supervised the installation of any plants that are interested in the manufacture of synthetic carbolic acid? A. I was the first engineer on the largest plant in the United States. I was consulting engineer for one year on one of the very large ones, and I have directed the installation in several others.

20 Q. What are the plants that you refer to? A. I was the first engineer on the Butterworth-Judson Company which is to be the largest in the country.

30 Q. And what are the other ones? A. I was the consulting engineer in the Commercial Acid Company in St. Louis producing five tons per day. I was the consulting engineer of the Cooper Creek Chemical Company at West Conshohocken, Pennsylvania. I had more than an advisory job in the Allen Chemical Company at Allentown. I was employed by the United States Steel Corporation in an advisory capacity. The Abbott Laboratories at Chicago employed me in the same capacity, all on carbolic acid, and several others.

Q. Do you know the defendants in this case, Ferdinand Coiren and Joseph Formanns? A. Yes.

Q. Did you have a contract with them? A. Yes.

Q. I show you this paper and ask you if that is the contract? A. (Referring) This is the contract.

40 Mr. Marsh: There is no objection to this, I suppose. I would like to have this contract marked.

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The Court: It may be marked P-1.

(Marked Exhibit P-1.)

Mr. Marsh: I think it would be well for me to read some of these sections to the jury.

The Court: I think it would.

Mr. Marsh: This is a contract made December 1, 1915, between George H. Stevens of Newark, and Ferdinand Coiren and Joseph Formanns, and recites, "Whereas, the first party is possessed of the detailed information and skill necessary to install a plant for the successful manufacture on a practical commercial basis of synthetic carbolic acid, and where the second party is desirous of establishing such a plant," and recites the consideration; and the first clause is this: "Said first party"—that is, Mr. Stevens—"agrees to furnish the second party immediately on the receipt of three hundred dollars hereinafter mentioned, the general plans and information necessary to enable the immediate construction of a practical working plan and process for the manufacture of synthetic carbolic acid, such plan and process to be in accordance with the customary method of producing synthetic phenol by sulfonating benzol, converting the resultant sulfonic acid into a sodium benzene sulfonate (sodium salt solution), then into sodium phenolate through fusion, and finally separating the phenol, which process is now in successful commercial operation in both this country and abroad, and the plant to have a capacity of producing not less than one-quarter ton of synthetic phenol in twenty-four hours."

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George H. Stevens—Plaintiff—Direct.

Now the clause as to payment: "Said second party agrees to pay to said first party as full remuneration for plans, advice, supervision and information concerning said plan and process the following sums; payment thereof to be for the consideration and upon the conditions hereinafter set forth, to wit:

10 The sum of \$300 to be paid as soon as said first party has furnished said second party or his representatives the chemical data and general plans and instructions for the building and equipment of a plant and process for making synthetic carbolic acid, and said plant, when completed, to be capable of producing at least one-quarter ton per day of synthetic carbolic acid.

20 Also, after the disclosure of said plans, if the second party then decides to proceed with the project, the second party agrees to pay the sum of \$50 per week to said first party from the time of signing the contract throughout the entire period required to completely install and equip said plant, and to put the same in practical and successful working order.

30 Also, the second party agrees to pay the first party an additional sum sufficient to make a total payment of \$2,500, including the above payments, and this balance to be payable after the said plant is in complete and practical working order, and has been producing for thirty days and is capable of producing carbolic acid on a commercial scale. Said remaining payments to be made in the following manner: After thirty days of production, the payments of \$50 per week shall be increased to \$100 per week; and

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after ninety days the payment shall be increased to \$200 per week until the entire amount has been paid."

I don't think the rest is necessary here, is it?

Mr. Rosenkrans: You had better read that next one in regard to payments.

Mr. Marsh: I don't think it has anything to do with this particular case. There is this clause I also want to read to you. "It is understood by both parties to this agreement that from the time of signing the contract until thirty days after producing, unless full settlement is made before that, that the entire work is under the supervision of the first party absolutely." 10

Mr. Rosenkrans: You might read the seventh. 20

Mr. Marsh: I will read the seventh and eighth.

"It is mutually understood by both parties to this agreement that the payments herein mentioned are for a plant having a capacity for producing one-quarter ton of synthetic carbolic acid in twenty-four hours, and that if the capacity of the plant be increased at any time within eighteen months of the date of this agreement by the second party or its assigns to a capacity of more than one ton in twenty-four hours, that an additional sum of \$2,500 for each ton of increased capacity be due to said first party, and payable to him as soon as such capacity has been made possible, and that such sum is an obligation against both the second party as well as its assigns until it is paid." 30

The eighth: "It is further understood by both parties to this contract that after pay- 40

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10 ment of the \$300, that the manufacture of synthetic carboic acid through any other process by the second party or its assigns within eighteen months after disclosure of the sulfonation process in no way relieves the second party or its assigns of the remaining obligations to the first party." The intent of this provision being to obviate any and all claims that modification of the process annul the remaining obligations because of their not being the same process as the first party sold; whereas the meaning of the contract is that the knowledge of the sulfonation process is worth the amount asked, and such modifications or changes later in it are only in the usual way of business progress and extended investigation.

20 There are other clauses in there, but I don't think they have any bearing particularly on the controversy.

Q. Mr. Stevens, after this contract was signed, did you receive \$300 from the defendants? A. Yes.

Q. Mr. Coiren or Mr. Formanns? A. Yes.

30 Q. And what did you do upon the receipt of the \$300? A. I turned over to Mr. Coiren the—a large roll of general drawings and the complete chemical matter with the general outline of the chemical procedure for building the plant and manufacturing the product.

Q. Did they give you any notification as to whether or not you were to go ahead with the work? A. Yes; not in a formal way, but they decided to go ahead and instructed me to prepare such necessary special drawings and advise them on the apparatus as the work progressed.

40 Q. Have you got those drawings here? A. I

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have them with other drawings that I supplied later.

Q. Are these the papers (indicating)? A. (Referring) Yes.

Q. Have you got the blue-print plans here for the building just so that we can identify what these are? A. (Referring) The drawings marked "24 Series" are the Coiren building blue-prints.

10

Q. What do you mean by "24 Series"? A. Each unit of apparatus or construction here (indicating) has a serial number; each sheet in that unit has a letter designation, so that the "24 Series" are the buildings starting with 24-A and going up.

Q. Yes. A. And elevations of the buildings after ground plans, shop plans, floor plan and some ten or fifteen sheets for the buildings alone.

Q. Yes; what else beside the buildings? A. Well, the apparatus as it was purchased—it was all special apparatus and it all had to be designed and the drawings that were furnished him after the general drawings were the special drawings made for the special apparatus.

20

Q. Are they here too? A. They are all in here (indicating). Eighty per cent. of these drawings were specially made for his work; the other twenty per cent. are drawings that are general drawings with slight modifications, or something of that kind were used, either to instruct him or assist the construction work.

30

Q. Now, do the apparatus have a different serial number on those? A. Each unit of apparatus has a different serial number.

Mr. Marsh: I would like to offer those in evidence.

The Court: Let them be marked.

Mr. Rosenkrans: One minute.

The Court: You want to cross-examine?

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Mr. Rosenkrans: I haven't seen them yet.

The Court: Did you deliver a copy of these?

The Witness: I have the tracings for all of them made in my office and blue-prints from those tracings were furnished Mr. Coiren.

10 The Court: Did you furnish to Mr. Coiren a blue-print like the one you have now?

The Witness: I gave him a general set for general information first, and as soon as, under discussion, the special unit to be used was decided upon, special drawings were made for that unit and he was supplied with blue-prints——

20 Q. He was supplied with duplicate blue-prints that appear here? A. Yes; and he has had duplicate blue-prints of those I have here and some others.

By Mr. Rosenkrans.

Q. The \$300, the first \$300 was paid to you on December 1, 1915? A. I think a few days later; I won't be positive.

30 Q. About the time you signed the contract? A. It was within such a short time that it was practically the same thing. I believe that they mailed me the check or brought it up to me a few days afterwards.

40 Q. And at that time you were to furnish the chemical data and general plans and instructions for the building and equipment of the plant for a process for making synthetic carbolic acid, said plant, when completed, to be capable of producing at least one-quarter ton per day of carbolic acid. On that date did you furnish these general plans, yes or no? A. The general plans were——

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Mr. Rosenkrans: I object.

The Court: Proceed.

(Question read.)

A. I don't know whether I furnished it on that day. I furnished it in two or three days, because I had the tracings. It was a question of time to make the tracings.

Q. At that time did you furnish all these plans? 10

A. No; only the general plans.

Mr. Rosenkrans: Then I object to this offer.

The Court: Why?

Mr. Rosenkrans: Because he states he furnished on that day general plans. These evidently aren't the general plans.

The Court: The general plans are included, are they not? 20

Mr. Rosenkrans: If he specifies which ones, there is no objection.

Mr. Marsh: These are plans, all of them, which were used in carrying out the contract; general plans first, and special plans afterward. They are all part of the case.

Mr. Rosenkrans: I have no objection to what were offered on that date.

The Court: I will admit it.

Mr. Rosenkrans: The Court will allow me an exception? 30

The Court: Yes, take your exception.

Mr. Marsh: Would you mark those, Mr. Stenographer?

(Marked Exhibit P.2.)

Direct examination by Mr. Marsh (continued).

Q. Besides furnishing these plans, what else did you do in pursuance of this contract? A. I gave 40

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him a typewritten copy of the chemical procedure, including the formulas and the physical procedure in the process.

10 Q. How about the construction of the building itself? What did you have to do with that, anything? A. That was a question of discussion, and my services were used to advise him how best to construct. I left him to construct as he pleased, but he asked me then, or rather, we agreed between us that I should furnish building plans which was not a part really of my agreement, and which I did furnish.

Q. And those building plans are part of this Exhibit P-2? A. 24-Series.

Q. Did you have anything to do with the making of the contracts for the erection of the buildings? A. Nothing whatever.

20 Q. Anything to do with the labor on the buildings? A. None at all.

Q. Do you know when those buildings were put up as to dates? A. No; but it was many months before they were completed.

Mr. Rosenkrans: What was that answer?

Mr. Marsh: Many months before they were completed.

30 Q. This contract was made on the 1st of December, 1915. Could you tell us about how many months it took to complete the building? A. I have no data showing when the building was completed.

Q. Well, did it take one month or two months, or what? A. It took way into the following spring.

40 Q. Now, as to the apparatus and equipment that was placed in this plant, what did you have to do about that? A. Submit to Mr. Coiren the different kinds of apparatus that could be used, have

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him decide which would be the most suitable, and then make designs for building them, and assist him in placing the order for it somewhere.

Q. Did you make any payments for the apparatus? A. None whatever.

Q. Did you place any of the orders? A. Never placed an order.

Q. You said you didn't place an order? A. 10
No; placed none of the orders.

Q. How long did this work continue? A. How long did his work or my work?

Q. Yours. A. My work continued until just prior to his fire, and to the day after.

Q. Did you go to his place, Saddle River, in connection with this work? A. I visited it many times, stayed there several days many times.

Q. You refer to a time when he had a fire. Can you tell me the date of that? A. I think it was 20
on or about the 23rd or 22nd of May, 1917.

Q. Well, now, between the first of December, 1915, and the 22nd of May, 1917, were you working in connection with this building on the apparatus?

A. Yes.

Q. And can you explain any reason why it should take so long as that? A. His building—

Mr. Rosenkrans: I object to that on the ground that there is nothing in the pleadings that charges delay on our part. 30

The Court: He is explaining himself what he did.

Mr. Rosenkrans: It depends how far he goes.

The Court: You may proceed.

Mr. Marsh: Read the question.

(Question read.)

A. The building, when nearly done, blew down in a storm one night; that had to be rebuilt. 40

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The Court: The building you erected?

10 The Witness: No; I had nothing to do with the erection. He erected it himself. There was some delay; some of the apparatus was not ordered as promptly as it could have been ordered after bids had been submitted. The erection work proceeded very slow because they were not competent mechanics in charge of the work. There was only a small force of men kept on the work at any time. Those were some of the delays in the completion of the project.

Q. What, if anything, did you have to do with the hiring of mechanics? A. Nothing whatever.

20 Q. What did you have to do with respect to a sufficiency of labor? A. I left that entirely with him. He was supposed to have the building of his plant—supposed to build the plant according to his own ideas after acquiring the knowledge necessary to construct it suitable for the purpose.

The Court: Did he use your plans?

The Witness: He decided to use my building plans. In other words, we decided, after submitting information, we decided between us what we would do; then I would make plans according to what he decided.

30 Q. But he followed out the general lines? A. The general lines I laid out.

Q. And also the general plans you laid out as to apparatus? A. Yes.

Q. Can you outline to the Court and jury what this process is that you gave him in general language so that we can understand it?

40 Mr. Rosenkrans: I presume it speaks for itself, whatever the formula is. That book hasn't been offered in evidence.

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The Court: Were they written or printed formulas?

The Witness: They were typewritten formulas.

The Court: They speak for themselves; yes.

Mr. Marsh: I am asking about the apparatus he set up, if he could tell us what it was, and the purpose of it; that is, the machinery actually put there, the tanks, what he put in, and what they were for. It seems to me that is perfectly competent? 10

The Court: I will allow that.

Q. If you will tell us what the apparatus was that was placed in this building under your plans and the purpose of the apparatus. A. The apparatus placed in this building— 20

Mr. Rosenkrans: I object to that, because if that answers generally, why, I presume that the contract speaks for itself, what the purpose was of putting the machinery in there.

The Court: I will allow that. Proceed.

A. The apparatus for this building consists of steel and cast iron tanks in which chemical actions take place, and wooden tanks for dilution and handling of large volumes of liquor; filter processes for precipitating the filtrates that are to be saved, when the proper filtrates are obtained, concentrators that are nothing more than tanks for boiling down the solutions to saturation. Then drying apparatus, which is a heated unit with an agitator to dry these solutions down to a dry powder. Then apparatus for fusing that dry powder with caustic soda. Other tanks for again dissolving it and acidi- 30 40

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fyng it with acid, and then decanting apparatus for drawing off oily layers on top, and stills for separating the water from the oily layer which arises from this oily layer, and anhydrous carbolic acid—do you mean that I go into it generally?

10 Q. Now, the first process of either chemical or mechanical and the first apparatus for that process as installed is what? A. The sulfonators.

Q. And that is what? A. A sulfonator is a receptacle in which, in this case, benzol and acid is agitated until a chemical action has taken place.

Q. What is produced? A. In that case a monocarbolic acid is produced.

Q. And the apparatus has been installed there in that plant for that purpose? A. Yes.

Q. And have you tested that apparatus? A. Yes.

Mr. Rosenkrans: One minute.

20 Q. And what was the result? A. It worked perfectly satisfactory and was used many times.

Q. Now, having produced this benzol mono-sulfonic acid, what is the next process and the next apparatus? A. The next apparatus is a tank in which the acidity is removed from this sulfonic acid by combining it with limestone or lime, consisting of nothing but a tank and an agitator and heating coils. This mixture of benzol and sulfonic acid was
30 run into this wooden tank, a 3,000-gallon tank, and limestone added until the acidity was removed, this acidity being converted into a precipitate, and that precipitate is removed by a filter process. The clear solution is the chemical product that you save.

Q. Did you test that apparatus? A. That has been tested.

Q. And what was the result? A. Perfectly satisfactory, and it was used many times.

40 Q. Now, having passed through that process, what is the next apparatus? A. The clear filtrate

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that comes from this unit just spoken of is known as a calcium salt solution, but it is necessary in making synthetic phenol to convert the benzol into a sodium salt. That is done by adding sodium carbonate to the solution, which changes the solution to a sodium solution instead of a calcium solution, precipitating the calcium as chalk. In the first case limestone or lime is added; in this case, the second tank, soda ash or sodium carbonate is added. The precipitate is again taken out in the filter process as in the first place. 10

Q. What is the apparatus itself? A. Simply a wooden tank, with an agitator and heating coils, a 3,000-gallon tank.

Q. Did you test this apparatus out? A. Tried and tested and used many times.

Q. And what was the result of it? A. Perfectly satisfactory. 20

Q. Now, the next process to change the sodium salt is what? A. The sodium salt solution that comes from that tank is a very weak solution that must be concentrated; so the liquor is run into another wooden tank with steam coils and simply boiled down to saturation.

Q. And what is the apparatus which has been installed for that purpose? A. Simply a wooden tank with steam coils that boil the solution, concentrate it. 30

Q. And has that been— A. Perfectly satisfactory; been used many times there, and has been satisfactory.

Q. Did it produce the necessary result? A. It concentrated the solutions properly.

Q. Now, going from that process of the powder, what is the next apparatus? A. This was the concentrated solution. Next is the powder. This concentrated solution is then put in a heating unit 40

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and agitated. While it still further condenses or is—yes, condenses until it becomes a dry powder. In this case a large circular cast iron piece of apparatus was used with a steam jacket on it and a stirring device, and in that a dry sodium salt was produced, or what is generally known as dry—containing not more than from two to four per cent. of moisture.

10 Q. And can you describe the apparatus for that?

A. The apparatus is a cast-iron circular pan with a cast-iron jacket for heating it and an agitator to stir the stuff as it comes down.

Q. And has that been tested? A. That has been tested, and did the work right, although there were defects in the foundry work in it, but it was used and many pounds of salts, several tons of salts were taken out of it.

20 Q. Now, the next apparatus is what? A. The next apparatus is the caustic fusion.

Q. You have spoken of a defect. Did you have anything to do with the casting or the— A. Only in designing the construction of it, passing on the machine work to see if it followed the drawings. The testing of it had to be done at the factory under steam.

30 Q. But the defect you speak of had no relation to your work or the plans? A. None whatever; no. The defects were merely in appearance. It was a very rough casting and puttied up with "Smooth-on," which fell out afterwards.

The Court: Was it practical? Could it be worked?

The Witness: It was worked. It worked practically successfully.

40 Q. Now, passing to the next set of apparatus, what is it? A. The next apparatus is a unit in

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which melted caustic soda is combined with this dry sodium salt.

Q. And what is that done in; what is the apparatus? A. The apparatus in this case was a steel auto-clave set in brick.

Q. What do you mean by "auto-clave"? A. It is an iron or steel vessel that is capable of being closed at the top, and has an agitator. In other words, a pot in which you can close it tight. 10

Q. And did you test that apparatus out? A. It was used several times.

Q. With what result? A. It was used successfully, and several batches were made in it.

Mr. Rosenkrans: Several batches of what?

The Witness: The product of the combination of caustic soda and that sodium salt is known as sodium-phenolate, in which is also sodium sulphite and excess caustic soda. But sodium-phenolate is the product that is wanted. 20

Q. When you referred to certain batches being taken out of that auto-clave, what did you refer to by the use of the term batches, batches of what? A. Each charge is known as a batch.

Q. Charge of what? A. Of the product that is put in there, a certain given number of pounds of one, the other is added and called a batch. 30

Mr. Rosenkrans: You mean batches or botches?

Mr. Marsh: I object to that question.

The Court: Proceed.

Q. What is the next apparatus and process? A. This fused material has to be dissolved in water so that it can be acidified, and in this case it was shut up to compressed air while still hot into a 40

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closed tank with a certain amount of water in and an agitator, which dissolved it and left it in shape for putting in the next unit in which it was acidified.

Q. And was that apparatus tested? A. Yes; and used several times.

10 Q. Did it produce the necessary and required results? A. And produced the proper results.

Q. And what is the product of that apparatus? A. That merely dissolves and comminates the cake and puts it into solution; it is an aqueous solution of these various products.

20 Q. What is the next apparatus and its process? A. The next apparatus is what we call the acidifier in which this product was run and into which dilute sulphuric acid was run to kill the alkilinity of these caustic products. When that alkilinity is neutralized the carbolic acid rises to the top as an oily layer containing a considerable percentage of water, usually anywhere from twenty to thirty per cent. of water. That is called the carbolic oil.

Q. And did you use that and test it? A. Yes.

Q. Did it produce the carbolic oil? A. We produced a good many gallons of carbolic oil.

30 Q. What is the distinction between carbolic acid and carbolic oil? A. Carbolic oil is carbolic acid with water in it, only carrying impurities that have not yet been removed.

Q. What is the next apparatus or process? A. The next apparatus is an acetylene tank to get as much of the mother liquor or water liquor out of this oil as possible, merely a decantation tank.

40 Q. A what? A. A decantation tank, a tank in which the water layer that would go to the bottom, the last trace of it can be removed; merely an auxiliary apparatus, not one of the important apparatuses.

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Q. And that is designed to remove the water from the carbolic oil? A. Yes, to remove the water that would settle, out of it, the two layers.

Q. And did you test that apparatus? A. That was used several times.

Q. And did it work? A. Yes.

Q. And does that complete the— A. No, the last process is the distillation process in which the carbolic oil is distilled under, first, atmospheric conditions, and then under a vacuum to obtain the crystalline carbolic. 10

Q. And what was the apparatus used for? A. Those were stills.

Q. Were those tested? A. They were tested on the aqueous, that is, on the atmospheric and some of the low vacuum work, and then the fire occurred before any crystalline carbolic had been produced.

Q. What have you to say as to the necessity of skill in the operator—in the use of this apparatus? 20

Mr. Rosenkrans: I object to that question. I don't see that it is relevant or material in any way.

The Court: How is it competent now?

Mr. Marsh: It may not be competent at this moment. I simply wanted to bring out the fact that the apparatus was more or less simple, that the knowledge really was a knowledge really of a proper mixture, when to use it. 30

The Court: I do not think that is competent as it stands now.

Q. Is the plant which you have designed and supervised capable of manufacturing on a commercial scale, carbolic acid?

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Mr. Rosenkrans: I object to that in that form.

The Court: Why, I suppose you have got to show whether it is capable of manufacturing the product called for in the contract.

Mr. Rosenkrans: That is it.

10 Mr. Marsh: What I want to show is whether he performed the contract.

The Court: You are not asking that.

Mr. Marsh: I thought I had asked him. I will start again.

Q. Has the plant a capacity of producing not less than one-quarter ton of synthetic phenol in twenty-four hours? A. It has.

20 Q. Did the plans and information which you submitted enable the immediate construction of a practical working plant and process for the manufacture of synthetic carbolic acid, such plant and process being in accordance with the customary method of producing synthetic phenol—

Mr. Rosenkrans: One minute; I object to that because the proof is that those plans were submitted in December, 1915, and the fact is that whatever was done wasn't completed until one and one-half years afterwards.

30 The Court: I will allow that.

Mr. Rosenkrans: I object to the question.

The Court: I will allow the question.

A. I would like the question again, please.

Mr. Marsh: All right; Mr. Stenographer, if you will read it.

(Question read.)

A. They do.

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Q. And has this process which you referred to been successful in commercial operation in this country and abroad? A. Yes.

Mr. Rosenkrans: Oh, I object.

The Court: I will allow that to stand.

Q. Part of your contract requires you to do whatever may be necessary in connection with the help, superintendent, foreman or other employees, the party of the second part; did you do anything in connection therewith? A. To instruct them in the operation of the units. 10

Q. You did that? A. Yes.

Q. Now, as to your payment, have you been paid? A. Not in money.

Q. Have you been paid \$2,500? A. No.

Q. Have you been paid \$50 per week commencing from the time when you were notified to go ahead with your work? A. No. 20

Q. How long after the date of the contract were you notified to go ahead? A. Within a very few days.

Q. Have you received any money other than the \$300 that was first paid you? A. Yes, about \$600 besides.

Q. And when did you get that, in one lump sum or not? A. In lots of \$100 and \$200.

Q. Do you know when the last payment was made to you? A. The last payment was made to me in—November 21, 1916, I believe. 30

Q. And you have received nothing from that time— A. Not from Mr. Coiren. I received a loan from Mr. Formanns of \$100 on December 29th following, of \$100.

Q. What is due you now?

Mr. Rosenkrans: One minute. I object to that question. That is a conclusion.

George H. Stevens—Plaintiff—Direct.

Q. Well, what is the amount unpaid of the \$2,500 referred to in the contract?

The Court: That is a matter for the jury.

Mr. Rosenkrans: That is what we are trying the case for.

The Court: I sustain the objection.

10 Mr. Marsh: All right; I only asked the question. I didn't think it was quite clear just how much he had received.

Q. How much did you receive in all from either Mr. Coiren or Mr. Formanns? A. \$1,600.

Q. You received that, you have been paid that money? A. \$900 from both of them.

Q. Have you made any attempts to get any money from Mr. Coiren or Mr. Formanns? A. Many attempts.

20 Q. And how were those attempts, by letter or orally? A. Both.

Q. And when? A. Throughout the entire work I made oral demands for money.

Q. Well, what—did you get the money? A. What I have received was gotten from those oral demands, that was all.

Q. And after the time when you received your last payment, did you continue to make demands for money? A. Many times.

30 Q. Did you get it? A. No.

Q. Well, what happened? A. Why, evasions.

Q. What do you mean? What did you say to Mr. Coiren or Mr. Formanns, and what did they say to you about it? A. Well, if I demanded it or asked for money, I was put off by no definite answers, simply evasions and postponement; in other words, anything that I could do, I couldn't seem to get any money.

George H. Stevens—Plaintiff—Direct.

The Court: We will take a recess at this point (4.46 P. M.) until 10 o'clock to-morrow morning.

RECESS.

TRIAL CONTINUED.

10

June 25, 1918.

GEORGE H. STEVENS resumed the stand.

Direct examination by Mr. Marsh (continued).

Q. Going back to your contract a minute, Mr. Stevens, did you or did you not properly lay out and furnish details and drawings in connection with this plant of Mr. Coiren and Mr. Formanns? A. I did. 20

Q. Did you or did you not assist in or do the necessary purchasing of apparatus? A. I purchased no apparatus. I assisted him to purchase it.

Q. And how was that done? A. By obtaining bids, in the first place; by submitting general drawings and the chemical procedure to instruct him so that he is capable of deciding with me what he wanted. Then when we decided what particular type of apparatus is wanted, I obtained bids from various makers; submitted these bids to him with possibly recommendations. Then I wrote out the specifications and he placed the orders, always signing his own firm or personal name to them. 30

Q. Were any of these apparatus billed to you or charged to you? A. I think a mill I purchased that I paid for with my own check and afterwards sold it to him. 40

George H. Stevens—Plaintiff—Direct.

Q. Is that all? A. The mill and perhaps some burrs that went with it; that is all. That was to save him a difference between the engineer's discount or consumer's price.

Q. How much of an apparatus is a mill, how much does it amount to? A. I think it was thirty-seven some dollars.

10

Mr. Rosenkrans: I don't see how this evidence is material in any way.

The Court: I cannot tell as it stands now whether it is or not. I will let it go in.

The Court: How much did you say it cost?

The Witness: Thirty odd dollars.

Mr. Rosenkrans: You were repaid?

The Court: Yes; he was repaid.

Mr. Marsh: We are not suing for it.

20

Q. Did you inspect the building and work as it progressed or not? A. I did.

Q. And how frequently? A. In the early part at intervals of a couple, of three weeks in the later periods; was there at several days at a time and at least every week.

Q. Did you or did you not break in foreman, superintendent or chemist in connection with this work? A. Such instruction as was given the help, I did.

30

Q. Did you instruct anybody else? A. And Mr. Coiren also.

Q. Did you furnish any engineers supplied by Mr. Coiren and Mr. Formanns with proper information, plans and details for carrying out the actual work of building and installation? A. Mr. Coiren acted as his own engineer, and I furnished these details to him.

Q. Now, with respect to payments. The last payment, I understand you say, was made in January,
40 1916?

George H. Stevens—Plaintiff—Direct.

Mr. Rosenkrans: I think we have gone over all this.

A. I believe the last payment was made November 21, 1916.

Q. And after that— A. That is, that I term a company payment.

Q. Then the payment that you referred to from Mr. Formanns? A. Came about a month later. 10

Q. After that time did you talk to Mr. Coiren about further payments? A. Many times.

Q. And what did he say to you? A. It is a little hard to say what he said. It was evasive entirely.

Q. Did he say whether or not he would pay you? A. No, he wouldn't say; wouldn't at that time.

The Court: Well, what did he say?

The Witness: Well— 20

Q. What did he tell you?

The Court: You asked him for money; what did he tell you?

The Witness: "Well, you wait," or "Just let this go on a little longer," or, "We are very hard up," or "Be a little accommodating with us," or "We will get in some money for you a little later," or evasions of that kind. 30

Q. Did you write any letters about it? A. Not at that time; not until the end of the time, as I remember.

Mr. Marsh: Have you got the letter of December 9, 1916, March 21, 1917?

Mr. Rosenkrans: December 9th?

Mr. Marsh: Yes. June 9, 1917?

Mr. Rosenkrans: What is the next one? 40

George H. Stevens—Plaintiff—Direct.

Mr. Marsh: March 21 is the next one.

Mr. Rosenkrans: 1917?

Mr. Marsh: Yes.

Mr. Rosenkrans: I haven't got that.
What is the next one?

Mr. Marsh: The next one is letter of
June 9th.

10

Mr. Rosenkrans: June 9th, 1917?

Mr. Marsh: Yes; and March 21, 1917, of
Mr. Formanns.

Mr. Rosenkrans: March 21, 1917?

Mr. Marsh: Yes.

Mr. Rosenkrans: No; I have not.

Mr. Marsh: March 21 is to Mr. Formanns
and the next one is May 31 to Mr. For-
manns?

Mr. Rosenkrans: I have that, two pages.

20

Mr. Marsh: And which do you find then,
the 21st? June 9th, 1917, Mr. Formanns?
Let me have those three you have.

Mr. Rosenkrans: (Handing papers to Mr.
Marsh.)

Q. Did you write that letter (indicating) to Mr.
Coiren? A. (Referring) Yes.

30

Mr. Marsh: It is a letter of December
9th, 1916, I would like to offer it in evi-
dence?

The Court: A letter that they produced?

Mr. Marsh: They produced it; yes.

The Court: It may be marked.

(Marked Exhibit P-3.)

Mr. Marsh: This letter reads as follows:
Address (Reading), "Coiform Chemical
Company, Dundee Lake, New Jersey. Mr.
Coiren. December 9th, 1916.

40

George H. Stevens—Plaintiff—Direct.

Dear Sir:

On starting to St. Louis, I find I have drawn my bank account down much more than I had expected, and as Christmas is coming on, I generally try to give my three daughters a pretty good Christmas time, I must ask you to prepare in some way so that I can get \$100 shortly after my return from St. Louis. I have been fairly liberal with you with regard to my pay, and if finances are a little close with you, I shall not unduly press you for money until you get started; but I must be able to count on \$100 from your plant before Christmas. I shall probably be gone a week, so you will have plenty of time in which to accommodate me.

10

Anything you wish to know about anything can be communicated through the office while I am away, as Miss Bruce will be in touch with me every day, and I believe she can in that way take care of any questions that may arise.

20

Wishing you lots of luck and hoping that when I get back the plant will be about ready to start, I am,

Respectfully yours,

30

George H. Stevens."

Q. Did you receive any reply to that letter? A. None whatever.

The Court: What was the date of that letter?

Mr. Marsh: That is December 9, 1916.

40

George H. Stevens—Plaintiff—Direct.

Q. Now, when was the last day that you were at the plant of Mr. Coiren and Mr. Formanns in connection with the work there, to do any work?

A. The day following the fire.

Q. When was this fire? A. I believe it was on or about the 23rd day of May, 1916.

Q. 1916? A. 1917; the 22nd day of May, I think.

10 Q. Prior to the time of the fire, what was the condition of the plant? A. Complete.

Q. And when you came back there, what did you find after the fire; what had happened? A. The end of the plant in which the last end of the process was to be effected was largely destroyed.

Q. Now, do you know anything about that? Did you have any talks with Mr. Coiren before going away about what should be done with the plant, or after you got back, as to what had happened?

20 A. When I went away I expressly asked him not to touch the fusion while I was gone, because there might fire result from it, as he had been very unfortunate in whatever work he had attempted on the fusion. I left on Friday expecting to be back Tuesday, and said that I preferred to do the fusion until it was working properly. I not only asked him once, but several times to not attempt the fusion. Several times while I was away he attempted it, while I was gone, and the fire resulted.

30 Q. And did you talk to him about it when you got back on the 23rd of May, 1917? A. Well, only in asking him how it occurred, and the general inquiries in regard to the—

Q. What did he tell you? A. He said he had made one successful fusion and the second one got away from him.

Q. Was anything said about going ahead with the work? A. No; because the plant was in the hands of the insurance companies, as I understood.

George H. Stevens—Plaintiff—Direct.

Q. During the month of May how many men were working at the plant, laborers? A. Well, in the latter part of May there was nobody regularly in the plant except Mr. Coiren and the engineer, who was not one of the shop hands.

Q. And how long had that condition continued prior to the time of the fire? A. I can't say exactly how long, but my impression is possibly two weeks or more. 10

Q. On May 31st did you write a letter to Mr. Formanns? A. (Referring) Yes.

Q. And that is the letter (indicating)? A. That is the letter.

Mr. Rosenkrans: If the Court please, I object to that letter on this ground: Their complaint in this case is based upon the proposition that they had done all the work and are entitled to the money, and there is nothing in that complaint that there has been anything on our part to retard the work. That brings incompetent evidence; the letter is such that the case is brought on another theory. 20

Mr. Marsh: The letter is a demand for payment of money.

Mr. Rosenkrans: I know, but there are other things in it which are not in the pleadings. 30

The Court: If you want to read into evidence the portion of the letter "the second matter about myself," I will allow it to be put into evidence.

Mr. Marsh: That is the part I had in mind.

The Court: You may read that into the evidence. See whether there is any other portion of it. The rest of it brings in a 40

George H. Stevens—Plaintiff—Direct.

matter that is not in issue. The first part might tend to becloud the issue.

Mr. Marsh: I am perfectly satisfied to have it taken out.

The Court: You may read it into the evidence.

10 Mr. Marsh: Beginning "the second matter about myself"?

The Court: Yes.

Mr. Marsh: Will you mark the letter?

(Marked Exhibit P-4.)

Mr. Marsh: Letter dated May 31, 1917, addressed to Mr. Joseph Formanns, Paterson, and starts, "the second matter is about myself."

20 The Court: I might say to the jury that the first part has nothing to do with this case.

30 Mr. Marsh: (Reading) "Now, I have a contract with you and with Mr. Coiren personally and not with the incorporated company for certain services to be paid for at so much per week. There is no clause in the contract that gives any guaranties of any kind on my part, or that permits you to lapse any of the weekly payments under any circumstances; yet I have permitted this thing to run on now for eighteen months with only a little money paid me. Your plant was practically complete and there have been delays upon delays, not due in any way to myself. The plea for a long time was that you were out of money, and for that reason could not pay me, but now you have obtained some money to help fix up matters and something must be done about a portion of my account. I have tried to be liberal throughout this whole thing,

40

George H. Stevens—Plaintiff—Direct.

and the other day in a pleasant way I reminded Mr. Coiren that I would like a little money.

Now, it is useless for you to tell me to see Mr. Coiren about this matter, as you are the principal financial backer back of him. I have called Mr. Coiren's attention to the matter, and it is now up to you to have an interview with him and tell me whether you are going to give me some money on account or not. I think I have done my share toward bringing your project along, and am willing to continue to do so, but there is a limit to all things and something must be done on your side as well as on mine. There is no hard feeling anywhere, and I don't propose there shall be any, but many times I have put myself out personally and been put to personal expense to help the affairs of the Coiform Chemical Company along and in ways that my contract don't call for and in ways that there was really no obligation on my part to do. For these reasons, then, I believe that I am fully justified in now demanding that a substantial sum be paid me on my contract, and then if the balance of the work moves along with proper speed, you will not find me unreasonable in my demand for the balance.

I hope you will take this matter up with Mr. Coiren at an early date, as something must be done about it.

With best wishes to yourself and kindest regards to your family, I am, meanwhile,

Yours very truly,

George H. Stevens."

George H. Stevens—Plaintiff—Direct.

Q. Did you receive any answer to this letter?
A. What is the date of that?

Q. May 31, 1917. Look at it. A. (Referring)
Why, I had several discussions over the telephone
in regard to it. I tried to get a personal interview,
but was not able to do so.

10 Q. Did you get any money as a result of that
letter? A. No.

Q. Also the letter of June 9th addressed to Mr.
Coiren.

Mr. Rosenkrans: I object to a part of this
letter on the same ground as before, because
it raises a question or presumes the impres-
sion——

The Court: Let me read the letter.

20 Mr. Rosenkrans: There is nothing in the
pleadings to show that the complaint is in-
complete on account of our delay.

The Court: I will admit that letter.

Mr. Rosenkrans: You will allow me an
exception?

The Court: Yes.

Mr. Marsh: Will you mark that?

(Marked Exhibit P-5.)

The Court: This is after the fire?

30 Mr. Marsh: This is after the fire, yes;
that other letter was after the fire, that May
31st, that was about a week later. Letter of
June 9, 1917.

(Reading.) "Coiform Chemical Company,
Mr. Coiren.

Dear Sir:

40 In connection with our conversation of the
other day regarding the payment of some-
thing to me on the work that I have done in

George H. Stevens—Plaintiff—Direct.

connection with your plant: I have need for \$500 to take care of some matters that are pressing me this month, and I think you or your company should pay me at least that much now on the work. I am ready to come down any time and give you such help as I can, as I always have been willing to do, and hope that you will get the plant fixed up at an early date so that you can make it productive. You have had this enterprise hanging fire now for many months, and you should try your best to complete it and get it operating, because, some of these days, the United States Government may desire to place some large carbolic acid contracts, and if your plant is in position to turn out phenol, you would probably get your share. I am just back from Allentown, but hope to get a chance to come down and see you again within a short time to see how the repairs are progressing. Meanwhile, if you can send a check as requested, it will be appreciated.

Respectfully yours,

George H. Stevens."

Q. Did you get any answer to that letter? A. No.

Q. Well, did you talk to Mr. Coiren about money after that time? A. Yes.

Q. And what was the conversation, and what was said? A. The result of the conversation was that I would see Mr. Formanns—

Mr. Rosenkrans: No; just a minute.

Q. What did Mr. Coiren say about it? A. He said he would see Mr. Formanns about it.

George H. Stevens—Plaintiff—Direct.

Q. When did that conversation take place? A. It was after this letter, and I saw him several times with the same results.

Q. And did these conversations come to an end at any time? A. No.

10 Q. Did you have any conversation in which he either agreed or disagreed as to paying you any money? A. Over the telephone I finally got a statement out of him that he would not pay any more.

Q. And when was that? A. I can't give the date exactly. Just prior to filing the suit; that is why the suit was filed.

Q. The date of that appears to be September, 1917. A. I don't remember the date.

Mr. Marsh: I think that is right.

Mr. Rosenkrans: September, 1917.

20 Q. You would say, then, it was some time in September, 1917, is that correct? A. I think so.

Mr. Marsh: I would like to offer now in evidence certified copy of deed of John De-Jager to Ferdinand Coiren and wife for property in the Borough of Saddle River.

Mr. Rosenkrans: I object to that offer.

Mr. Marsh: It is part of the lien claim feature of the case, to show the ownership of the ground.

30

The Court: What objection is there to that?

Mr. Rosenkrans: So far it hasn't been connected in any way.

The Court: I suppose you cannot connect it until you get the deed. If it isn't connected with this plant, it has nothing to do with it.

George H. Stevens—Plaintiff—Direct.

Mr. Marsh: It is simply a matter of introduction. If I can't prove it—the property that is involved, it wouldn't be evidential, of course.

The Court: You may offer it.

(Marked Exhibit P-6.)

The Court: What is the wife's name?

10

Mr. Marsh: Leonie.

The Court: Isn't there a question whether a lien can be on a married woman's property, and so on?

Mr. Marsh: That is covered in the statute, I think, in cases of this kind which permit it.

The Court: I only call your attention to it.

Mr. Marsh: I haven't got the case, but the married woman, I think, where the husband is a party—and it goes on under a contract, I think it is without any written consent; that is my recollection of the statute.

20

The Court: You may put it in, but I only call your attention to it now.

Mr. Marsh: Yes.

Q. I show you this map and ask you what that is? A. (Referring) This is a map of Mr. Coiren's property as given to me by him at the time when the lay-out of the plant was made by me.

30

Q. Can you tell us where the plant was located on that map? A. How can I describe it?

Q. Well, mark it on the map. A. Where this grass is (indicating).

Mr. Marsh: I would like to offer this map in evidence. It is a map that was given to him by Mr. Coiren.

40

George H. Stevens—Plaintiff—Direct.

The Court: Yes.

Mr. Rosenkrans: No objection.

(Marked Exhibit P-7.)

The Court: Did he locate where the plant was?

10 Mr. Marsh: Yes; he indicated it by the—
said it was at the place where the grass is
on the map.

Q. I show you this blue-print and ask you what that is? A. (Referring) This is a scale drawing of that portion of the map there, and the lay-out ground plan of the plant as laid out by me.

20 Q. And that is the outline of the building as erected for Mr. Formanns and Mr. Coiren in connection with this contract? A. Yes; the lay-out of the plant as it was to be erected. Now, whether it has been erected just on that position or not, I don't know.

Q. Was it erected on that plot of ground? A. Yes.

Mr. Rosenkrans: Whether it covered that area or not, you don't know?

The Witness: No, I don't know just to the inch, but it is substantially according as it is shown there (indicating).

30 Mr. Rosenkrans: Why do you say substantially, then; you just testified you didn't know?

The Witness: I measured up the survey stakes and I merely go by the other drawing.

Mr. Rosenkrans: By which drawing?

The Witness: The map that he furnished me.

40 Mr. Rosenkrans: So, as a matter of fact, the exact location of that building you don't know?

George H. Stevens—Plaintiff—Direct.

The Witness: Not to within a foot or two, but substantially I do know.

Q. How does it stand with respect to the river drive?

Mr. Rosenkrans: I object to that; he says he doesn't know.

The Court: He may answer that question if he knows. 10

A. Substantially shown here (indicating); the corner of the building is where that bend in the road comes.

Q. And how about with respect to the brook indicated on this map? A. On the side as shown here (indicating).

Q. And as to the building dimensions, how do they— A. They correspond with the building as erected. 20

Q. They correspond with the building as erected? A. Yes.

Mr. Marsh: I would like to offer this also, if the Court please.

The Court: Show it to the other side.

Mr. Rosenkrans: We object to the admission of that map in evidence on the ground, from his own testimony, it doesn't represent exactly where the building is located. 30

The Court: Practically, he says. I will admit it.

(Marked Exhibit P-8.)

Mr. Marsh: There is a brook which corresponds with the brook that runs across there (indicating), and the river road runs right through there (indicating).

The Court: All right. 40

George H. Stevens—Plaintiff—Direct.

Q. Have you been to the plant recently to look at it? A. Yes.

Q. And who went with you? A. Doctor Busch.

Q. And how did the condition of the plant at that time compare with the plant in May, 1917?

10 A. Some of the apparatus had been taken down; some moved outside; some other apparatus for other purposes had been set up in the plant; but the damage caused by the fire had been, so far as I could see in the short inspection, been replaced.

Q. Well, take these different apparatus which you erected and have specified as being in some six or seven different processes; were they there at the time? Take the first process; was that there? A. The measuring tanks for the first process had been taken down.

20 Q. Were the measuring tanks actually there in the building? A. They were. I believe they were laying down on the floor or outside. They had been taken down and disconnected.

Q. And how about the rest? A. Some of the large wooden tanks, two large wooden tanks in the same room had been taken out and set up elsewhere for other purposes.

30 Q. And how about the second process, and about the rest of this machinery and apparatus? A. The rest of the process through to the crystallizing plan was substantially, so far as I could see, as it was before. The crystallizing plan which had met with several accidents in the meantime was apparently to be replaced by a different device for crystallizing salts—

Mr. Rosenkrans: I object to that.

The Court: Yes; it may be stricken out.

40 Q. Not what you may think to be the case, but only that what you saw there as to these different apparatus. A. Yes.

George H. Stevens—Plaintiff—Direct.

Q. Now, taking the first process, you say the tanks had been taken down? A. Yes.

Q. And were in the building? A. Yes.

Q. The rest of it was there? A. Yes.

Q. Now, how about the process for neutralization and conversion of the sulfonate to a calcium salt solution? A. That was there, and seemed to be in proper condition.

10

Q. And as you had left it in May, 1917? A. Yes.

Mr. Rosenkrans: Which process is that?

Mr. Marsh: That is the neutralization and conversion of the sulfonate; that is Number 2.

Q. Number 3 process is the conversion of the calcium salt to a sodium salt. How about the apparatus? A. It seemed to be the same as it was before.

20

Q. Now, the apparatus in connection with the process of concentrating the sodium salt? A. The same as before.

Q. And drying it into a fine powder, that process? A. That, I was told, was out—entirely out of commission.

Q. Who told you that? A. Mr. Formanns and Mr. Coiren.

Q. And did you see any of that apparatus at the time you were there? A. I believe I saw the unit sitting on the floor. I wouldn't be sure.

30

Mr. Rosenkrans: Which one is that?

Mr. Marsh: Three we are on now.

Mr. Rosenkrans: Three is out of commission?

Q. What apparatus do you call it that was out of commission? A. The crystallizer.

40

George H. Stevens—Plaintiff—Direct.

Q. Now how about the apparatus in connection with the fusion of sodium salt with caustic soda?
A. That was in proper shape.

Q. And as you had left it in May, 1917? A. Well, I can't answer that positively, because from there the fire took place, and I haven't inspected the apparatus for working condition, but so far as
10 observation goes it was the same.

Q. How about it as to design? A. The same.

Q. Now, as to the process of acidifying? A. The same thing.

Mr. Rosenkrans: Which one is that?

The Court: What do you mean by "the same thing"?

The Witness: The same piece of apparatus re-erected.

20 Q. And the next process, I believe, is the distillation? A. Yes.

Q. And how about that apparatus? A. That had been re-erected.

Q. But it was the same as designed by you? A. Same as designed, and same as before.

Q. Does that cover all of the processes? A. All of the processes and auxiliaries were the same.

30 Q. At that time did you see any carbolic oil at the plant of Mr. Coiren? A. I saw some in the acidification tank shown in the gauge glass.

Q. Did you show this—what is his name? A. Doctor Busch.

Q. Doctor Busch your plans? A. Yes.

Q. And designs for this building and apparatus?
A. Yes.

Mr. Marsh: That is all.

The Court: Cross-examine.

George H. Stevens—Plaintiff—Cross.

Cross-examination by Mr. Rosenkrans.

Q. Mr. Stevens, you say that you have been in the business of a technical engineer for the manufacture of carbohc acid for how long? A. About three and a half years.

Q. Now, in 1916, you were engaged in another line, weren't you? A. I don't get your question, please. 10

Q. In 1916 you were engaged in another line of chemical research, were you not? A. Well, I do all kinds of chemical research.

Q. All kinds? A. Yes.

Q. And you are what we call a theoretical chemist, aren't you? A. No; I am not very much of a chemist; I am an engineer.

Q. And in 1916 you were an expert on China-wood oil? A. No, I published a compilation on China-wood oil, but I know very little about it. 20

Q. That is why you published the compilation? A. A compilation is what somebody else writes.

Q. I show you a letter here, George H. Stevens, 77 Orange Avenue, Irvington, New Jersey, and on the other end, J. Warren Armitage, 886 Lake Street, Newark, New Jersey, compilers and publishers of patents, technology, bibliography of China-wood oil (tongue oil). Now, prior to 1916, you were engaged in that kind of work, were you not? A. As stated, I published that book with the assistance of Mr. Armitage on China-wood oil, but published long prior to that. 30

Q. How much experience had you had before December 1st, 1915, in the practical manufacture of carbohc acid? A. Nearly a year.

Q. Nearly a year. And you installed the plant for the Butterworth-Judson Company? A. I what?

Q. You installed a plant for the Butterworth-Judson Company? A. No; I did not. 40

George H. Stevens—Plaintiff—Cross.

Q. What did you do? A. I was consulting engineer for the installation of their first work, and bought much of their apparatus, or arranged for them to buy much of their apparatus.

Q. When was that? A. The contract was signed January 30, 1915. I have the contract here.

10 Q. As consulting engineer for them? A. On carbolic acid.

Q. Were you ever paid for your services? A. I was, in full.

Q. In full? A. In full.

Mr. Marsh: I object to that question.

Q. Now, the United States Steel Corporation, are they in the carbolic acid business? A. I was engaged as consulting engineer on carbolic acid work for them.

20 Q. Have they a carbolic acid plant? A. I do not know.

Mr. Marsh: I object to that question. How is it material?

The Court: He said he was engaged by them. He may cross-examine as to that.

Mr. Rosenkrans: The point is, if the Court please—

The Court: Never mind; proceed.

30 Q. You don't know of any carbolic acid plant which the United States Steel Corporation has? A. Because I was employed to design a plant for them.

Q. You don't know whether they ever did it or not? A. I don't know whether they ever did it or not.

Q. Referring to Exhibit P-2— A. Referring to what?

40

George H. Stevens—Plaintiff—Cross.

Q. Referring to Exhibit P-2, how much of this—what part of these blue-prints did you give to Mr. Formanns and Mr. Coiren at the time you received the \$300? A. Possibly twenty to twenty-five per cent. of them.

Q. Will you just indicate by pages just what part of that entire P-2 was given to them at that time? A. (Referring) 3-G.

10

The Court: What is the first?

The Witness: 3-G. Shall I call them off one after another?

The Court: Yes; call them off.

The Witness: 3-G; 3-I; 6-A; 8-A; 8-B; 8-C; 8-D; 8-E; 8-F; 9-a; 9-D; 9-E.

Mr. Rosenkrans: 9-E?

The Witness: 9-E; 9-J; 13-A; 13-B; 13-C; 13-D; 13-E; these run alphabetically; 13-F; 13-G; 13-H; 13-I; 14-A to I inclusive; 17-A; 17-B; 17-C; no, 17-C, I don't think 17-C; 17-B; 21-A; 23-A; 23-B; 23-C; 23-D; 23-E; 23-F; 25-A; 25-B; 25-C; 26-A; 26-B; 26-C; 26-D; 26-E; 28-A; 30-C; and 30-D. There are a few of these I cannot be positive of in this hurried way.

20

Q. Yes. A. The rest were made from time to time as the work required; that is why I cannot differentiate so accurately.

30

Q. As you are leafing those over, how many blue-prints would you say the rest comprise? A. How many what?

Q. How many prints would you say the rest comprise? A. (Referring) Fifty or sixty.

Q. That is the rest? A. Yes.

Q. Now, under this contract, reading from paragraph one, "Said first party agrees to furnish the second party immediately upon the receipt of \$300

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George H. Stevens—Plaintiff—Cross.

hereinafter mentioned, the general plans and information"—understand that this is the general plans and information, is it not? A. This is the general plans and the specific plans.

Q. And the specific plans? A. (Nodding head) Yes.

10 Q. You mean by that the information? A. The general plans are general information; the specific plans are the plans decided on for the particular unit decided on.

Q. And they are all in there (indicating)? A. They are all in there.

20 Q. "Said first party agrees to furnish the second party immediately upon the receipt of \$300 hereinafter mentioned, the general plans and information necessary to enable the construction of a practical working plant and process for the manufacture of synthetic carbolic acid, said plant and process to be in accordance with the customary process of producing synthetic phenol by sulfonating benzol, then into sodium phenolate through fusion and finally separating the phenol, which process is now in successful commercial operation in both this country and abroad, and the plant to have a capacity of producing not less than one-quarter ton of synthetic phenol in twenty-four hours." You so agreed. Now, at the time they
30 paid you the \$300 in pursuance of that agreement, you didn't turn over all the plans, did you? A. You couldn't turn over those that hadn't been decided on. I turned over such general instructive plans as would make my client capable of discussing the process with me.

Q. Reading from paragraph six of that contract: "In case said second party doesn't see fit to proceed with the undertaking after the payment of \$300 and the acquisition of the plans and processes"—
40 in other words, I understand at the time they had

George H. Stevens—Plaintiff—Cross.

the plans and processes for \$300, where they could produce on a practical basis, the carbolic acid, then it was up to them to elect whether to proceed or not, is that true? A. Yes.

Q. They had the full knowledge— A. They had sufficient knowledge to go ahead with the business.

Q. I am again reading: "In case said second party does not see fit to proceed with the project after the payment of \$300, for the general plans and information necessary to enable the immediate construction of a practical working plan and process for the manufacture of synthetic carbolic acid"—in other words, that first \$300 was for this detailed plan and the blue-prints whereby a person could construct a plant on a practical basis with a chemical formula, is that true? A. Yes. 10

Q. Why wasn't that plant constructed under the plans as originally given, then? A. Because the original plans were general plans of instruction which might be developed into a small plant or a large plant. That is the general information of apparatus that could be used, various plant lay-outs, and the general information that a man needs who knows nothing about the business to determine whether he wants to go ahead with it or not. 20

Q. Well, if a man knew nothing about the business, you think he could take that book of plans and construct a plant that would produce 500 pounds, do you, of synthetic carbolic acid? A. With the assistance of a chemist; yes; not without. 30

Q. Upon the receipt of \$300 to furnish the general plans and information necessary to construct a plant necessary for the manufacture of synthetic carbolic acid, the plant to have a capacity of producing not less than one-quarter ton of synthetic phenol within twenty-four hours. A. The plans are supposed not to be understandable except by some technical person, and nobody but a technical person would undertake a technical piece of work. 40

George H. Stevens—Plaintiff—Cross.

Q. Then, if I understand you, at the time they paid the \$300, and not to have gone further, they wouldn't have had plans by which they could have produced a quarter ton of synthetic carbolic acid?

A. They had sufficient plans to construct a plant and produce carbolic acid, what I gave you in the first place.

10 Q. And for this specific plant? A. Not for this specific plant, because that was a question of specific drafting.

Q. Specific what? A. Drafting.

Q. I notice you have a preface here (indicating) that the following blue-prints do not constitute a complete set of necessary drawings for the construction and installation of the apparatus of a synthetic phenol plant. Is that true? A. If it—

Q. Yes or no. A. Read it again, please.

20 Q. The following blue-prints do not constitute a complete set of the necessary drawings for the construction and installation of the apparatus of a synthetic phenol plant. That's true, is it? Yes or no. A. Well, that is a removable sheet. It might or might not, according to what it went with.

Q. It is a removable sheet? A. Why, they are all removable sheets.

The Court: Did it belong in that sheet?

30 The Witness: This is my set. Now, in his set there was a sheet like that.

The Court: Wasn't his set the same as this?

The Witness: I gave him the general plans in the first place, and afterwards sent him many more sheets that were added to it.

The Court: And is this attached to the general plans?

The Witness: Yes; this is attached to the general plans.

George H. Stevens—Plaintiff—Cross.

Q. Second paragraph: "Illustrative of the several types of apparatus that may be used are of various kinds and sizes; several of the sheets may not correlate correctly, as they may have been taken from apparatus that was intended for quite different plans, or they may have been suggested by contingencies that came up, have been prepared for inspection, and then not used." Now, I ask you, taking your own statement by which you are bound, how can you say that on December 1, 1915, when you put before Mr. Coiren and Mr. Formanns this abnormal display of blue-prints, that you gave them such information as they could construct a plant for the practical manufacture of synthetic carbolic acid on a basis of 500 pounds every twenty-four hours? A. Because, just as that preface says: "These are general plans of general pieces of apparatus from which units could be selected for your own particular requirements."

10

20

Q. But you have already testified on cross-examination that this contained the specific information?

Mr. Marsh: There is no such evidence at all. I object to the question. There is no testimony that this contains specific plans for this building; only these general plans that were first offered.

The Court: I do not understand so. The general plans are supplemented by the fifty or sixty sheets that went with the particular plans for the building that were furnished afterwards.

30

Mr. Rosenkrans: Of course, there were more plans furnished afterwards.

Q. Now, you endeavored to construct such a plant, didn't you? A. I endeavored what?

40

George H. Stevens—Plaintiff—Cross.

Q. You endeavored to construct such a plant?

A. I didn't construct any plant. I endeavored to teach him to construct a plant.

Q. You endeavored to superintend— A. No, I didn't pretend to superintend. I tried to educate and teach him the consulting work.

10 Q. Well, I will put it this way: You endeavored, to use your own language, to try and teach him to construct a plant that would turn out 500 pounds of synthetic carbolic acid. Why didn't you endeavor to do that under the original plans?

A. One man might want a twenty-five-ton plant, and another man a 500-pound plant.

20 Q. Yes, but you knew in this case what was wanted. A. It isn't a physical possibility to turn out a sufficient quantity of drawings like that in twenty-four or forty-eight hours, and I delivered him general plans in a few hours after I received the money.

Q. Why didn't you take the care to have these plans in the first place the plans which would be used afterward? A. Because it would be a physical impossibility.

Q. In other words, in order to get that \$300, you wanted to hand him something? A. You would have to hand him something.

30 Q. Yes, that is what I thought. Now we understand each other. You had to hand him something before they handed you anything, and this is what you handed them? A. (No response).

Q. During the construction of that plant, you ordered most of the machinery, did you not? A. I ordered none of it.

Q. Is it not a fact that during the construction of that plant, the way you proceeded was that you had the letterheads of the Coiform Chemical Company in your office?

George H. Stevens—Plaintiff—Cross.

Mr. Marsh: Answer yes or no, if you will, Mr. Stevens, because the stenographer cannot get those nods.

A. Yes.

Q. That is true, is it not? A. Please put the question again.

Mr. Rosenkrans: Put the question, will you please? 10

(Question read.)

A. Yes.

Q. And on those letterheads you would make out what was to be ordered, did you not? A. Specifications.

Q. Specifications? A. Yes; I will answer your question, yes.

Q. And you would fill those out and send them back to Mr. Coiren to sign? A. Yes. 20

Q. And then they were mailed to the different— A. Yes.

Q. —people? A. Yes.

Q. So that whatever machinery went in that plant went in there under your directions? A. Certainly; that is the contract; went under my directions. But he didn't always send those letters as I had sent them. Sometimes that stuff was bought of somebody else. That was optional with him. 30

Q. Yes; but he bought the stuff which you wanted? A. Yes.

Q. Now, you speak about fusion; what does fusion mean? A. Fusion in this case means the melting of caustic soda; then stirring into it these dry sodium salts until the chemical reaction has taken place.

Q. And that is about the end of the process, isn't it? A. No. 40

George H. Stevens—Plaintiff—Cross.

Q. What part of the process is that? A. What part?

Q. What part of the process? A. Is this?

Q. Is the fusion? A. Well, it is about two-thirds of the way along.

Q. So that at the time of the fire you were only two-thirds of the way along; is that right? A. We were working on the last end at the same time. There had been several fusions made.

Q. But the fusion is very essential, is it not? A. The most critical work in the whole.

Q. And without the fusion you couldn't manufacture this carbolic acid? A. No.

Q. What is the color of synthetic carbolic acid when manufactured? A. The crystal is a white crystal.

Q. Crystal white? A. Pharmaceutically it is crystalline white; technically it is slightly colored.

Q. Phenol and carbolic acid are the same things? A. Yes.

Q. You say this phenol, meaning carbolic acid, I take it, is of dazzling whiteness in long slender needles in more pronounced form than— A. That is crystal carbolic.

Q. That is what you were to manufacture? A. The contract doesn't call for the specific kind of carbolic.

30 The Court: What do you say your plant would do when it was done, complete?

The Witness: Carbolic acid, depending on what his market was.

The Court: No, what would your plant make?

The Witness: It would make any of them under proper procedure.

The Court: When you left, what would it make?

40

George H. Stevens—Plaintiff—Cross.

The Witness: It wasn't completed when I left; that is, the last stages hadn't been effected when the fire took place.

The Court: Had not?

The Witness: No.

Q. Never been completed? A. The plant was completed, but the last operations hadn't been operating because I was helping him out on a mistake that he had made on acidification. 10

Q. Never perfected? A. The procedure hadn't been completed. The plant was all in before that.

Q. But the procedure wasn't completed? A. No; the units were full of stuff and we couldn't go any further until that stuff was disposed of.

The Court: What prevented you from finishing it up?

The Witness: The fire. 20

The Court: How long had it been completed before the fire?

The Witness: Several weeks.

The Court: Then why hadn't you finished the stuff?

The Witness: We were working on the—there was no help there except Mr. Coiren, and he and I were working on the material that was already coming through, and we had the units full of material, and had to get some of it out of the way before we could start any more. 30

Q. But you never put the units all the way through, to use your expression? A. Never put the product all the way through, no.

The Court: I would like to know right there why you didn't finish some of it instead of making so much; why you didn't 40

George H. Stevens—Plaintiff—Cross.

put some of it all the way through your process?

The Witness: Well, Mr. Coiren diluted a lot of his carbolic acid and I was trying to save it for him instead of throwing it away, and I spent a week or more on that.

10 Q. That is your only explanation of it? A. The units were all full of this stuff; it was a question of throwing it away, or trying to save it.

Q. During the month of April and May you were up in that plant a number of times, weren't you?

A. Yes.

Q. And under your contract, the plant was always under your complete control, was it not?

A. Not under my complete control. It was——

20 Q. I don't mean physically, but as a matter of fact? A. Yes.

Q. And you tried in May and the latter part of April, 1917, to put through these different processes, didn't you? A. (No response.)

Q. And do you remember in April, 1917, before Mr. Coiren's fire, the fire you had? A. I had no fire.

Q. Don't remember that? A. No; I had no fire.

Q. But you had rapid combustion? A. Mr. Coiren boiled over a batch that I started.

30 Q. You were there at the time, were you not? A. Yes.

Q. And at the end of that, that day, the experimenting boiled over, that was the end of it, wasn't it? A. The end of the work?

Q. On that day? A. Yes; because it ended at night.

Q. And you tried a number of times in April, 1917, to put through the different units, did you not, and didn't accomplish it? A. I tried to put

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through one fusion and put it through successfully.

Q. How much? A. The regular charge; one-sixth of a ton charge.

Q. Fusion that was? A. That we were just speaking of, the fusion of caustic soda with sodium salts.

Q. And what did that make? A. Sodium phenolate. 10

Q. And which process is that? A. The one we have been discussing.

The Court: Did you carry it any further than that?

The Witness: Yes; it was carried over to the acidification tank, out of which this oil Mr. Coiren obtained with some others.

Mr. Marsh: What oil?

The Witness: Carbolic oil. 20

Q. Carbolic oil isn't carbolic acid? A. It is carbolic acid.

Q. When did you ever produce, in that plant, carbolic acid? A. Then.

Q. You have testified a few minutes ago that you never produced carbolic acid? A. I never produced crystal carbolic acid. This is carbolic acid with water in it.

Q. You never produced the carbolic acid which this contract calls for; you got no further than the carbolic oil? A. The contract doesn't call for crystal carbolic. 30

Q. What does it call for? A. It calls for carbolic acid depending what your sale is for. These various kinds of carbolic acid are all marketable products. In fact, the most of the carbolic acid turned out in phenol plants is not this dazzling white phenol, pharmaceutical phenol; it is phenol for picric acid manufacture. 40

George H. Stevens—Plaintiff—Cross.

Q. When you say here you were to construct a plant for the commercial operation—for the manufacture on a commercial basis of synthetic phenol, now, what do you mean by that? A. Well, such phenol as you have call for; it had to be decided whether it was technical phenol or pharmaceutical phenol.

10 Q. What do you mean by that? A. A technical phenol is not as carefully made a product as a pharmaceutical phenol.

Q. What is the pharmaceutical phenol then, one more carefully made? A. Very much more carefully made.

Q. That is your only explanation? A. That is the difference between the two.

Q. How is it sent out of the factory? A. Usually in bottles.

20 Q. In liquid form? A. No, in crystals; that is the pharmaceutical.

Q. And what about the other? A. The other is usually sent out in drums.

Q. Is that in crystal form? A. It is solid.

Q. What are your processes, the last process is the crystallizing plant, is it? A. No, the last process is the distillation to take out the water; the crystallizing plant is merely to take out the salts in the middle of the process.

30 Q. The last process takes out the water, for what purpose? A. To take out the water to crystallize it.

Q. So your last process is to crystallize it? A. Yes.

The Court: Did you ever crystallize any in your plant?

The Witness: No.

The Court: Why do you say you know your plant was completed if you never crystallized any?

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George H. Stevens—Plaintiff—Cross.

The Witness: You have to get the oil down enough to make a charge to do that, and we didn't have enough of that oil.

The Court: How much?

The Witness: 150 gallons.

The Court: And you never had made—

The Witness: We hadn't enough of a sufficient density to start the crystallization. 10

The Court: How much of the oil did you make in the plant at any one time?

The Witness: I think we made about 100 to 150 gallons of this oil.

The Court: All at one time?

The Witness: No; that came out in two or three partial batches.

The Court: What did you do with the oil after you got it?

The Witness: Part of it was drummed 20 and part of it was left in the still. There was a still nearly full when the fire took place, ready for crystallizing.

Q. Now, referring to the contract, or the letter of May 31, 1917. Of course, I take it by your contract—the contract says in the preamble, "Witnesseth, that whereas the said first party," that is yourself, "is possessed of the detailed information and skill necessary to install a plant for the successful manufacture on a practical commercial basis of synthetic carbolic acid"—that's what you represent? A. Yes. 30

Q. Then you covenant in this contract, "Said first party agrees to furnish the second party immediately upon the receipt of \$300 hereinafter mentioned, the general plans and information necessary to enable the immediate construction of a practical working plant and process for the manufac-

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10 ture of synthetic carbolic acid, such plant to be in accordance with the customary method of producing synthetic phenol by sulfonating benzol, converting the resultant sulfonic acid into a sodium benzene sulfonate, then into sodium phenolate through fusion, and finally separating the phenol, which process is now in successful operation in both this country and abroad, and the plant to have a capacity of producing not less than a quarter ton of synthetic phenol in twenty-four hours." Then, under the terms of this contract, if they accepted your plans and specifications, you were to go ahead and produce in that way, were you not?
A. Yes, sir.

Q. And, of course, this contract is under seal?

A. Yes.

20 Q. Now, you say in your letter of May 31, 1917—

Mr. Marsh: If I may correct that statement. The original contract was not under seal.

Mr. Rosenkrans: It is immaterial.

Mr. Marsh: It is immaterial, but it makes the record incorrect to state it was.

The Court: Strike it out; put on the record that the contract was not under seal.

30 Q. You say in your letter of May 31, 1917, P-4, "There is no clause in the contract that gives any guaranties of any kind on my part." Do you mean that? A. That means in reference to apparatus. That means purely in a question of mechanical matters which I never guarantee.

Q. Then you distinguish between mechanical matters and practical results? A. Mechanical matters and chemical matters, absolutely.

Q. That's your idea, is it? A. Yes.

George H. Stevens—Plaintiff—Cross.

The Court: What do you mean by that? You didn't guarantee that your plant——

The Witness: No, I wouldn't guarantee a piece of mechanical apparatus to do a specific thing. I would use my best mechanical knowledge to——

The Court: You did agree to produce a plant that would furnish a quarter of a ton a day? 10

The Witness: I did agree the final production of carbolic acid in the contract.

The Court: What did you mean by your letter that you hadn't agreed to anything of that kind?

The Witness: That means if a piece of apparatus constructed along radical lines didn't work the first time—I wasn't guaranteeing it to work the first time—that the client should be perfectly willing to make those changes and not consider me as holden for any cost of alteration, the same as he would his own mechanic. I act as his mechanic at the time. 20

Q. You acted as engineer and expert, didn't you?

A. As an engineer.

Q. You weren't a mere mechanic? A. That is an engineer's work, only higher mechanics; it is termed engineering. 30

Q. In other words, an engineer, modestly speaking, is a higher mechanic? A. That is the idea.

Q. Now, in your letter of June 9th, 1917, you say, "I am ready to come down at any time and give you such help as I can." A. Yes, sir.

Q. Do you know Mr. George J. Flushing, Jr.? A. Yes, sir.

Q. Who works for the Casting and Supply Company, Jersey City? A. Yes. 40

George H. Stevens—Plaintiff—Cross.

Q. And during the process of this plant you used to call upon him once in a while, didn't you? A. Yes.

Q. And ask him to help you out and tell you how to make a piece of machinery? A. Never.

Q. No? A. Never, not on carbolic acid.

10 Q. You promised to put the plant on a practical, commercial basis? A. Yes.

Q. And about the time that the contract was signed and the \$300 paid over you gave an estimate, didn't you, of the cost of the plant, not including the building? A. Yes.

Q. And is that the estimate (handing paper to witness)? A. (Referring) Yes; there should be a letter accompany the estimate.

Q. I ask you whether that is the estimate? A. Yes.

20 Q. And that estimate is for how much? A. Eight thousand and some odd dollars; I think eight thousand dollars.

Q. Did you know, as a matter of fact, that that plant, exclusive of the building, cost about \$18,000?

Mr. Marsh: I object. How is that material in this contract?

The Court: What difference does it make?

30 Mr. Rosenkrans: He says "a practical plan." If the plant is on a practical, commercial basis it has something to do with the amount of money invested, I take it.

The Court: It is only an estimate. He doesn't agree in the contract for any particular price. Suppose an architect gives you a figure on a house and figures the house at \$10,000. When you come to get an estimate it may cost you three or four times as much.

Mr. Rosenkrans: Yes, but with this distinction. You go to an architect and you

George H. Stevens—Plaintiff—Cross.

want a building put up. You go to an engineer of this kind and he guarantees. I never saw an architectural plant where they guarantee that the building afterwards would be a good investment; but he says here that this whole thing is for the manufacture of synthetic carboic acid on a practical basis. Now, of course, he must have taken into consideration the building. He says himself, on his direct examination the other day—

The Court: I don't think that is competent. I sustain the objection.

Mr. Rosenkrans: I would like this marked for identification. I offer it in evidence.

Mr. Marsh: I don't care particularly.

The Court: It may be marked for identification. I don't want you to misunderstand me, that you couldn't offer that later on.

(Marked Exhibit D-1 for Identification.)

Q. You say that—why didn't you finish the plant? A. I can't afford to without I get some money paid. I can't work for nothing.

Q. And that's the reason you don't finish it? A. Yes.

Q. The plant is almost completed? A. I—it has been partially dismantled now.

Q. Haven't you been told by them, by Mr. Coiren and Mr. Formanns, any number of times, in replies to your letters, and in your conversations with them, that if you would only go over there and show results you would get your money in accordance with the terms of the contract? A. And I have always offered to come—

Q. Yes or no? A. Yes.

George H. Stevens—Plaintiff—Cross.

Q. You have been told that, haven't you? A. Yes.

Mr. Rosenkrans: That is all.

Mr. Marsh: What was your reply?

Mr. Rosenkrans: One minute. I object.

The Court: He may answer that.

Mr. Marsh: What was your reply?

10 The Witness: I would come any time that they would pay me a reasonable amount of money.

Mr. Marsh: Did they?

The Witness: No.

Mr. Marsh: Did they ever offer to pay you any?

The Witness: No; they refused to pay.

Mr. Marsh: You have made a distinction——

20 Mr. Rosenkrans: One minute, please.

Mr. Marsh: You made a distinction in your testimony on cross-examination between plant and procedure. What did you mean by that distinction?

The Witness: The plant means the units of apparatus and their correlation; procedure means the operation of the apparatus.

Mr. Marsh: Then the plant itself was complete?

30 The Witness: Yes.

Mr. Marsh: I neglected to offer the lien claim in evidence. I think that should be offered.

Mr. Rosenkrans: I object to the lien claim being offered. What do you mean, just the lien claim itself?

Mr. Marsh: The document itself.

Mr. Rosenkrans: I did not understand.

George H. Stevens—Plaintiff—Redirect—Recross.

The Court: It is a record. Don't mark it. It is offered in evidence.

(Designated Exhibit P-9.)

Mr. Marsh: That is all.

By the Court.

Q. How long would it take you to complete this plant? When you start it how long should it take you to complete it? A. That time would depend on how fast the manufacturers could deliver apparatus, which, at that time, was very slow. 10

Q. Well, from your idea how long would it take? A. The plant ought to have been completed in three or four months.

Recross-examination by Mr. Rosenkrans.

Q. You were ordering apparatus all through the year 1916, weren't you, and you ordered some in 1917? A. You mean for this plant? 20

Q. For this plant? A. I was assisting Mr. Coiren to order it.

Q. Well, there is the same quibble again. During 1916— A. I was recommending apparatus, that is what I was doing.

Q. During all the year 1916 and in 1917 were you not giving recommendations? A. No, not apparatus, material; it might have been adjuncts. 30

By the Court.

Q. At any time has this plant been in complete, practical working order? A. Yes.

Q. When? A. Before the fire.

Q. When do you say the plant was complete and in practical working order? A. In the latter part of May, 1916. 40

George H. Stevens—Plaintiff—Recross.

Q. Latter part of May, 1916? A. 1917.

Mr. Marsh: What year?

The Witness: Latter part of May, 19—
well, last year, 1917.

10 Q. The fire was on the 23rd of May, you said,
the 22nd of May? A. Well, then, in the early part
of May, last year.

Q. How long before the fire was that plant in
complete working order? A. I should say two or
three weeks before.

Q. And you have never made any of the product
that your contract called for? A. Well, there was
no labor there except Mr. Coiren.

*Recross-examination by Mr. Rosenkrans (con-
tinued).*

20

Q. Well, why do you say that plant was in com-
plete working order? A. That is, Mr. Coiren had
the construction all in.

Q. And that is the only reason you say that? A.
(No response.)

Q. Did you ever, in that plant, turn out 500
pounds of synthetic carbolic acid in twenty-four
hours? A. No, because there was no help there to
do it.

30

Q. Was that the only reason? A. Yes.

Q. And how much did you turn out? A. None.

Q. None? A. No.

Q. And you never turned out any because there
wasn't any help? A. Yes.

Q. And that is your answer, is it? A. If there
had been proper help there we could have completed
this, but there was no help there at all.

40 Q. Yes; but as a matter of fact you never did
complete it, did you? A. No, I didn't complete the
operation.

George H. Stevens—Plaintiff—Recross.

Q. No; so whether it was on a practical working basis or not you don't know, do you? A. Yes, I know it was.

Q. How? A. Because it is in the conventional way; completed in the conventional way.

Q. Your apparatus isn't a conventional apparatus, is it? A. Yes.

Q. Don't you know that in any line of engineering that before a plant is turned over as complete it has to meet a test? A. That is true. 10

Q. Yes, and this never met the test, did it? A. It had been tested, all except the very last steps, which had been partly tested, which proved that they would do the work.

Q. The last work you did was in May, wasn't it? A. Yes.

Q. Do you remember saying on your direct examination, when you went away in May or the latter part of April, in putting the blame of the fire on Mr. Coiren, in your direct examination you said, "I told Coiren when I was gone not to touch the fusion while I was gone; I preferred to do the fusion until it was working properly"? You testified to that, didn't you? A. Yes. 20

Q. So that at no time that plant actually turned out carbolic acid on a commercial basis? A. No.

Mr. Marsh: That is all, Mr. Stevens.

30

Basil W. Busch—For Plaintiff—Direct.

BASIL W. BUSCH, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. Marsh.

Q. Where do you live, Dr. Busch? A. 896 South 16th Street, Newark, New Jersey.

10 Q. And what business are you in; what do you do? A. I am a chemist—a manufacturing chemist.

Q. Do you know anything about carbolic acid? A. I do.

Q. And what experience have you had in connection with that? A. I have had eight months' experience in turning out carbolic acid in commercial quantities.

Q. Where? A. With the Amalgamated Dye Stuff of Newark, New Jersey.

20 Q. Have you any degrees as a chemist or— A. Yes, sir.

Q. What? A. A graduate of the University of Moscow and graduate of the University of Bonn.

Q. Can you tell us what is the process for use—used in the commercial manufacture of carbolic acid? A. Yes, sir.

Mr. Rosenkrans: If the Court please, I object to that. I presume that is immaterial, what the process is.

30 The Court: You had better confine yourself to whether this process would be the particular one. There may be other processes.

Mr. Marsh: No, not any other processes, except those in use in this plant.

The Court: Confine yourself to that.

Q. You know Mr. Stevens, do you not? A. I do.

Basil W. Busch—For Plaintiff—Direct.

Q. And you have seen the plans and his processes in connection with the Coiren-Formanns plant at Saddle River? A. I have.

Q. And you have been to the plant itself? A. I have.

Q. And you are familiar with the process which has been adopted there? A. I am.

Q. Now, can you tell us what that process is? A. 10
That process consists in treating benzol, that is to say, the first run of coal tar oil, with sulphuric acid, commonly called oil of vitriol. This gives at first—the acid and the benzol are separate; that is to say, they form separate layers (indicating); then upon agitation and heating they combine together to form a homogeneous liquid. This liquid is pumped by any convenient means into a neutralizing vat, where the sulphuric acid or the resulting benzol sulfonic acid is neutralized with milk of lime 20
or carbonate of lime, commonly called limestone, which gives a mixture consisting of sulphate of lime, which is the precipitate or solid matter, and a solution which consists of the lime salt of the benzol-sulfonic acid or calcium sulpho-sulfenate.

The Court: Is that a liquid or a solid?

The Witness: That is liquid. Now this liquid solution is put through a strainer, which, amongst chemists or manufacturers, is called a filter press. This strainer or filter 30
press separates the solid part, which is the waste product consisting of sulphate of lime, which is known as plaster paris, and the liquid part, which is a solution of lime benzol-sulphenate. This solution is forcibly pressed through a filter or straining cloth, gathered into troughs, and collected into a vat. This calcium benzol sulphenate is converted into the sodium salt of benzol 40

Basil W. Busch—For Plaintiff—Direct.

10 sulphonic acid or sodium benzol sulphenate
by means of the addition of carbonate of
soda, which is the sal-soda of household use,
only in dry form, or in solution, just as the
man in charge prefers to have it, and the
solution thus is converted—that is to say,
the product is thus converted again into a
mixture, because the lime of the calcium benzol
sulphenate solution with the carbonate
of soda forms a precipitate of lime carbonate,
and a solution containing the sodium benzol
sulphenate, which is the valuable product.
The precipitate or the solid residue of calcium
carbonate is again retained in a
strainer or filter press, in fact, the same
filter press can be used, and the solution is
pumped into an apparatus in which it is concentrated.
20 After it is concentrated to a certain—

The Court: What do you mean by that?

30 The Witness: That is to say, made to contain more of the valuable material by evaporation of water. When it is concentrated to a certain degree, which is practically determined by seeing whether any scum forms on top, which consists of minute crystals of the sodium benzol sulphenate, the solution is pumped hot into a crystallizing plant, or in a drying apparatus, of which there are many forms, and when the dry sodium benzol sulphenate is obtained in the powder form, it is removed from there and next treated in a fusion kiln or fusion apparatus. The fusion from a chemical standpoint consists in melting a chemical, adding to it another chemical, in which the second chemical dissolves.
40 After a certain length of time, and applica-

Basil W. Busch—For Plaintiff—Direct.

tion of heat, why, a product results which can be treated in several manners. In this particular case the fusing material is caustic soda, which is nothing but common lye, which can be bought in cans. Our housewives buy it in stores to clean their china with and sinks.

Caustic soda or lye is melted in this cast iron vat or steel kettle, whichever is preferable in a given case, and the dry sodium benzol sulphenate is added to it in certain proportions, and when the whole mass has properly united it forms a homogeneous liquid. It is run out either hot into pans or it is diluted with water if the closed vessel is at hand which can be hermetically sealed and air pressure applied—that is to say, the material is put into solution and put into a vat where it is acidified—that is to say, lye is strongly alkali and holds the resulting sodium phenolate in solution. Upon addition of sulphuric acid, the chiefest of acids, the crude carbolic acid, the crude carbolic acid in the form of an oil, separates out, and that is the manufacture in a general way of synthetic carbolic acid in its crude form.

Q. Well, now, this process which has been devised for use in this Coiren-Formann's plant, is that the process which is in successful commercial operation in this country and abroad? A. It is.

Mr. Rosenkrans: That is your reference there to the chemical process?

Mr. Marsh: I am referring to the term in the contract, chemical process

Basil W. Busch—For Plaintiff—Direct.

Q. Now, as to the apparatus which is there. Did you see the apparatus in connection with the sulfonation process? A. I did see it.

Q. And is that designed to properly perform its functions? A. It is.

10 Q. And how as to the apparatus for use in neutralization and conversion of the sulphonate into a calcium salt solution? A. It is satisfactory.

Q. The apparatus is designed, in your opinion, correctly for the purpose for which it is to be used? A. Correctly.

Q. Then the apparatus which involves the process to convert a calcium salt to a sodium salt, is that designed correctly so far as to produce the desired result? A. Yes; it is designed correctly.

Q. And there are some connecting processes, are there not, between those two apparatus? A. Yes.

20 Q. Auxiliary processes? A. Auxiliary processes.

Q. And are those designed, in your opinion, correctly? A. They are.

Mr. Rosenkrans: One minute. What do you mean by design process?

Mr. Marsh: Designing the apparatus for use in the process.

A. I beg your pardon. You mean the straining apparatus and the pumping apparatus?

30 Q. Yes. A. It is all there.

Q. It is all there, and the apparatus as it is there is good for the purpose for which it is intended? A. Yes, it is.

Q. Now, the next process is that of producing sodium salt by concentration; is that apparatus which is there according to the best practice, so far as it is—for its purpose? A. It is.

Q. And the next process has to do with the fusion of the sodium salt with caustic soda; is that correct?

40 A. Correct; that is correct.

Basil W. Busch—For Plaintiff—Direct.

Q. What have you to say as to that apparatus?

A. That apparatus is there also.

Q. And it is designed in connection with the work for which it is intended? A. Yes. And it is a practical design, a good design.

Mr. Rosenkrans: What was that?

The Witness: It is a good design.

10

Q. And as to the next process, which is the acidifying process, what have you to say as to that apparatus? A. It is very elaborate, very efficient.

Q. Is it designed to do the work for which—

Mr. Rosenkrans: I object.

The Court: As to whether it would do the work. It might be designed to do the work and not be able to do it.

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Q. Would it do the work for which—

Mr. Rosenkrans: I object.

The Court: He is an expert.

Mr. Rosenkrans: All right.

The Court: In your opinion, would it do the work?

The Witness: It certainly would; yes.

Q. And the next process has to do with the distillation? A. The distillation.

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Q. And would that apparatus do the work? A. It would.

Q. Taking the apparatus as set up as a whole, would that do the work of producing synthetic carbonic acid? A. It would.

Q. And is its capacity sufficient so that it would produce a quarter of a ton per day? A. It is.

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Basil W. Busch—For Plaintiff—Cross.

Cross-examination by Mr. Rosenkrans.

Q. Mr. Busch, how long were you in the plant of the Coiform Chemical Company? A. How long?

Q. Yes. A. Why, I should say about an hour.

Q. Did you see Mr. Coiren there? A. I did.

Q. This gentleman (indicating)? A. Yes, sir.

10 Q. Did you make any tests of the machinery? A. Yes; I made a test by moving the wheels around, by putting my hands on various parts, seeing whether the mechanical parts, such as bearings and boxes or shafts, were in good condition.

Q. Then, the wheels turned? A. Well, I don't know whether I made the wheels turn, but you know how a mechanical man is; he has to put his fingers to everything he sees.

20 Q. But you didn't give that plant any test? A. Oh, no, no; no manufacturing test; of course not.

Q. So, as far as your testimony is, from the appearance of looking at these machines, why, it ought to produce? A. Yes.

Q. And for whom do you work? A. The Amalgamated Dye Stuff & Chemical Works.

Q. And do they turn out carbolic acid? A. They have discontinued the manufacture of carbolic acid about a year and a half ago.

30 Q. I see. A. Because we can buy the stuff much cheaper from the Butterworth-Judson Corporation, and make in the same apparatus much more valuable products.

Q. How much was your apparatus turning out? A. How much?

Q. How much carbolic acid? A. How much we turned out?

Q. Yes. A. Oh, we turned out some—let me see—over a hundred ton.

Basil W. Busch—For Plaintiff—Cross.

The Court: Per day?

The Witness: Per day?

The Court: Yes.

The Witness: Oh, per day we turned out a ton and a half.

Q. And even turning out a ton and a half you didn't consider your plant on a practical commercial basis? A. At the time that was all we did. 10

Q. Now, did you tell Mr. Coiren, looking over the plant, that the machinery was different than the machinery that you had in your place? A. Well, yes.

Q. Yes, you told him that. Just be frank about it. Don't put it that way at all. A. I beg your pardon. Just a minute.

Q. Just with this combination of machinery? A. What did I tell Mr. Coiren? Will you kindly tell me? 20

Mr. Rosenkrans: Just read the question.
(Question read.)

A. I said some machinery was different.

Q. Yes. A. During the description of the process I said that there are apparatus of different designs that can be used, some maybe more or less elaborate.

Q. But didn't you tell Mr. Coiren that with some of those machines you had never had any practical experience? A. I told as a fact—I told Mr. Coiren that his apparatus was much more elaborate than the apparatus I had. 30

Q. It was different, wasn't it? A. Of course, different; more elaborate. That's what I told him.

Q. Well, sometimes they are elaborate, aren't necessarily practical, are they? A. Of course, we manufactured carbolic acid; it was just the beginning of the carbolic acid period. Since that time they 40

Basil W. Busch—For Plaintiff—Cross.

have made improvements in the design of the apparatus, and I was very pleasantly surprised to see such efficient apparatus there.

Q. Why do you say it was efficient? A. Oh, well, from my general practical experience I know a piece of apparatus when I see it.

10 Q. Isn't a test of efficiency the amount of production in the machine? A. You can tell the efficiency from seeing the different parts of a machine.

Q. Then if you were sent by this company whom you work for, the American— A. The Amalgamated, I said.

Q. And were asked to purchase a plant? A. Yes, sir.

Q. Why, as an expert, all you do is look over the machinery? You wouldn't test it? A. No, we never test it.

20 Q. You wouldn't try to find out whether it worked or not? A. What do you call test; for instance, I would take a hammer and see whether the casting was not cracked, or something of that kind.

Q. That is the only practical test? A. Well, when a man has been in practical work for some twenty years he can form an opinion pretty near whether or not an apparatus is efficient or not.

30 Q. Then, as I understand you, if you were sent as an expert to examine, we will say, a plant in Pittsburgh, a chemical plant, and to find out whether that plant would produce 500 pounds of synthetic carbolic acid in twenty-four hours, the idea being that if it did the people whom you represented would purchase it, you would go out with a hammer, would you? A. With a hammer and other tools, and also simply with my eyes.

Q. Wouldn't test it? A. No. What for?

40 Q. Well, what is the test for? A. Well, I see the machinery; I see the machinery, castings, kettles

Basil W. Busch—For Plaintiff—Cross.

and vats of certain size, and I see an engine and a boiler, and, of course, I deduct from it that the plant is complete, and I can turn out stuff.

Q. And that is as far as you would go, is it? A. Sure.

Q. Why is it, in these contracts, for instance, where a mechanic installs boilers and all the tubing and heating, all the machinery to run some big plant, why is it that it has to stand a test first? A. Well, you see in specific cases a boiler has to stand very high pressure, and, of course, endangers the lives of people operating those boilers, and, therefore, they have to be tested. 10

Q. Is that the only reason? A. Why, surely.

Q. Don't they test the piping to find out whether it leaks or not? A. Surely, for leaks; there is loss of water and steam, and so forth, of course.

Q. Can you name any line of manufacture where business men turn over a plant where they don't first require a test? A. No; it isn't always necessary. 20

Q. Well, do they do it without a test? A. Why, no; it isn't like buying an automobile that will give you a ride in it, or something to show you that it is working properly. A big factory—take, for instance, a carbolic acid plant. My gracious, it would take two or three weeks to show it is in working order. 30

Q. Takes three weeks to show it? A. As the processes are going along, it takes two or three weeks to go through it.

Q. It takes two or three weeks to show that? A. Yes.

Q. You come here and testify that with an hour inspection at that plant you turn out carbolic acid on a practical commercial basis. Do you mean to say that? A. Surely. 40

Basil W. Busch—For Plaintiff—Cross—Redirect.

Q. You do, eh? A. Of course.

Mr. Rosenkrans: That is all.

Redirect examination by Mr. Marsh.

10 Q. Dr. Busch, when you were there, did you see any product in the process of manufacture? A. I did see.

Q. What did you see? A. I saw a layer of carbolic oil, several inches of thickness, in the acidifying tank.

Q. What is the difference between carbolic oil and carbolic acid? A. The difference is that carbolic oil contains between 20 and 25 per cent. of water.

Mr. Marsh: That is all.

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PLAINTIFF RESTS.

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Mr. Rosenkrans: If your Honor please, I move for a nonsuit in this case on the ground that the plaintiff hasn't proved his case; in other words, that at the time of starting this suit they proved no measure of damages; they haven't proved that anything is due from us. There is nothing before this jury to show whether we owe them anything, or six cents, or what we owe them; there is no proof. What does your contract say? The first part of the contract says \$50 per week. No argument on that point; \$50 a week. By their own admission they worked a year and a half on it. A year and a half is eighteen months, and on that theory, \$50 a week for eighteen months, they ought to have \$3800. What does the

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Argument.

contract say? "Also the second party agrees to pay a total sum of \$2500, including the above payments, that is the payment of \$300 originally and the \$50 a week, and this balance to be payable after the said plant is complete and in practical working order and has been producing for thirty days and is capable of producing carbolic acid on a commercial scale, said remaining payments to be made in the following manner: After thirty days of production, the payments of \$50 a week shall be increased to \$100 per week, and after ninety days the payments shall be increased to \$200 per week, until the entire amount has been paid." Now, just notice that. Between the thirtieth and the sixtieth day, why, we are to pay them between the thirtieth and the ninetieth day for sixty days while this plant is producing, not while theoretically it isn't producing, but while it is producing we are to pay them \$100 a week. That is sixty days, eight and a half weeks. There would be one hundred and fifty right there. And after ninety days the payment shall be increased to \$200 a week; so it contemplates when the payments shall be made after production. And he says himself that the plant could be fixed up, put up in two or three months. Of course, that accounts for \$900 we have already paid.

Now, besides that: "It is understood by both parties to this agreement that from the time of signing the contract, until thirty days after producing (unless full settlement is made before that), that the entire work is under the supervision of first party absolutely."

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Argument.

10 "It is mutually understood by both parties to this agreement that the payments herein mentioned are for a plant having a capacity of producing one-quarter ton of synthetic carbolic acid in twenty-four hours, and that if the capacity of the plant be increased at any time within eighteen months of the date of this agreement by the second party or its assigns to a capacity of more than one ton in twenty-four hours, that an additional sum of \$2500 for each ton of increased capacity be due to said first party."

20 It all depends on the production. Now, what is the evidence? It is all right to have these experts on the stand and say that the plant can do this and do that. Now, what does this man say himself? Why, in the first place, our expert says, he says that one of the processes, and this is the fusion, the fusion of caustic soda with dry soda, benzol sulphate, that is, the melting together when the whole mass is properly united, it is put into a vat and pressure applied, and then it comes out in a crude carbolic—anyhow, it is put in the plant and pressure applied. The expert says that himself. What does this man Stevens say? He says that the fire was the cause of this trouble; that is the inference. He blames the fire on Coiren. He says, "Right before that fire I told Coiren when I was gone to not touch the fusion, not touch it while I was gone. I prefer to do the fusion until it was working properly." He preferred to do that one step until it was working properly. Now, taking his own testimony, where, in the name of Heaven, is there any evidence here that that process and that plant could turn out at

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Argument.

that time 500 pounds of carbolic acid every twenty-four hours?

The Court: Stevens said they could if they would get help.

Mr. Rosenkrans: Stevens says also it is defective here. He goes off to Allentown. In his own testimony he says, "I told Coiren not to bother with the plant; I prefer to do the fusion until it was working properly." What does he mean? Language must mean something, and I go further than that. I say it was not working properly. The time isn't right for this suit. Let him go ahead and finish the plant. I say, further than that, this contract contemplates the payment of that money, how? Why, after the plant has been turning out from thirty to ninety days carbolic acid. Then they are to get \$100 a week for sixty days. The contract says so itself, turning out 500 pounds, when it is on a practical commercial basis, and then after the ninety days he is going to pay the balance of this \$2500, not at \$100 a week, but at \$200 a week.

Now, I say there isn't a scintilla of evidence in this case as it stands now to tell this jury what the defendant owes this plaintiff. He wanted to swear that the whole balance was due. Of course, it wasn't allowed, and there is nothing before this jury in the line of testimony to show them what is due; no evidence before the Court.

The Court: I will hear you, Mr. Marsh.

Mr. Marsh: I simply want to point out my construction of this contract is somewhat different from my adversary's. The contract, as I read it, is a contract which has

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10 two sides to it; first, a contract for \$300 to turn over the general plans, which is not involved in this situation. Second, that the said party of the second part agrees to pay \$50 per week to said first party from the time of signing the contract throughout the entire period required to complete, install and equip the said plant and put the same in practical and successful working order. That fixes the second class of payments. First, \$300; second, \$50 per week during the time through the period of the work and the installation. That obligation, therefore, of \$50 per week occurred on the first of each and every week, or the last, whichever the case may be, and, being \$2300, would have taken forty-six weeks to use it up. So that, during the time, he, having worked for considerably more than that period of forty-six weeks, the \$50 was due during that period, the rest of the period he is compelled to work free. \$2500 serves as the maximum payment. Then the condition here says that whatever is left of the \$2500 shall be paid to him after thirty days when the plant has been in operation.

80 The Court: It is evidently, though it would not take as long as he has taken.

Mr. Marsh: That is a mere guess, because the contract says specifically throughout the entire period, no matter what it is.

Mr. Rosenkrans: Then he ought to have 4,000.

Mr. Marsh: Not at all, because the maximum payment is \$2,500, and then to get that \$50 throughout the entire time, it doesn't make any difference how long it takes, or

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how long he may estimate it may take. As long as he does the work and is continuing there until he has reached the \$2,500, he is entitled to \$50 a week. If the situation arises where he completes it within that time, then his payments increase after the operation commences, but they stay at \$50 until he has done that. Now, that is contemplated very clearly, it seems to me, when you look at the top of the fourth page where it says:

“It is understood by both parties to this agreement that from the time of signing the contract until thirty days after producing, unless full settlement is made before that * * *.”

In other words, that shows that they contemplated a situation where full settlement might be made under this \$50 a week before the full payment was reached—that they might have made their full payment before the period fixed here, namely, the thirty days, complete and practical working order. It seems to me that that contract says distinctly \$50 a week during the time that was required. We cannot read into that contract anything else, because it specifically says, during the entire period required to completely install. It doesn't say in three or four months, but covering all that time. Then if, when we come to the end, it is finished—

The Court: Do you think “required to install” has any meaning?

Mr. Marsh: I suppose it means the time actually utilized in installation.

The Court: Is that the usual meaning of those words?

Argument.

10 Mr. Marsh: Throughout the entire time required. I think that means the actual time which is necessary to install; that is my understanding of the use of the word "required"; that which is necessary to install. Now, that might fluctuate. We cannot say specifically that it would be any particular time when we see how this operates, because the installation was entirely in Mr. Coiren's control. He had charge of the building; he had to erect the building, which took three or four months in itself; he had to get the apparatus there, get it on the ground and furnish the labor to put it up. It was a matter that was in his control, and if it being in his control, and the entire period which is necessary to install it happens to be an indefinite period, a year or six months or eighteen months, he should continue at \$50 a week until such time as it reaches the maximum payment of \$2,500, and from that time on Mr. Stevens has to work free, if it goes that way. If it goes the other way, then he increases his payments to \$100 a week, or \$200 a week, whichever way the situation actually determines as the building and the work progress.

30 The Court: Suppose he gets this \$2,500 and he never gets a working plant?

Mr. Marsh: Then he is entitled to damages on counterclaim; in other words, that is a set-off as against his claim for his breach of contract. That is the way I interpret this contract.

40 Mr. Rosenkrans: You will find under Paragraph 2 at the bottom of the page there

Argument.

which takes up all these payments, your first paragraph is:

“The sum of \$300 to be paid as soon as said first party has furnished second party or its representatives, the chemical data and general plans and instructions for the building and equipment of a plant and process for making synthetic carbolic acid, and said plant when completed to be capable of producing at least one-quarter ton per day of synthetic carbolic acid. 10

Also, after the disclosure of said plans, if the second party then decides to proceed with the project, that the second party agrees to pay the sum of \$50 per week to said first party from the time of signing the contract throughout the entire period required to completely install and equip such plant and to put the same in practical and successful working order.” 20

Then the next one: “Also, the second party agrees to pay the first party an additional sum sufficient to make a total payment of \$2,500, including the above payments, and this balance to be payable after the said plant is in complete and practical working order and has been producing for thirty days, and is capable of producing carbolic acid on a commercial scale, said remaining payments to be made in the following manner.” 30

Then comes your sixty days. Now, just look at the next one. You have got to read all of these together.

“It is agreed by said second party that in case of sale or assignment of said plant or process before full payment of the aforesaid \$2,500, that the unpaid balance is an obliga- 40

Argument.

tion upon both parties to such sale or assignment, if completion or operation be effective within eighteen months of the execution of this agreement."

10 Now, if you take Mr. Marsh's theory of eighteen months, eighteen months is sixty-two weeks—seventy-two weeks, and \$50 a week is \$3,600. All we had to pay is the balance, which is \$2,200.

Suppose that they quit if the operation be completed in eighteen months of the execution of this agreement? Suppose they decided it in seventeen months? There would be absolutely nothing to pay under his theory. In other words, that clause wouldn't mean anything. So, when you take all four of them together, there is no question—

20 The Court: Then you certainly have a jury question, which I couldn't take away from the jury and grant you a non-suit.

Mr. Rosenkrans: No, because, I go further. That is true on that one point. I say, there is nothing now before the jury in regard to any measure of damages at all.

30 The Court: They are entitled under this contract, are they not then, to \$50 a week until such time as would be required to put this plant in proper working order?

Mr. Rosenkrans: No.

The Court: I don't think there is any question about that; they are entitled to that amount under this contract.

Mr. Rosenkrans: Regardless of production?

40 The Court: Yes. That is a question for the jury to say. If it only took three months to complete it, not the length of

*Argument.**Ferdinand Coiren—For Defendant—Direct.*

time they took to do it, but the time they took to do it, and they are entitled to \$50 a week during that time, and after that they are entitled to the balance of their money in the manner designated in this contract. That is a question for the jury to say, how long it would require to complete that plant, to put it in practical working order. 10

I refuse your application, and you may note your objection.

Mr. Rosenkrans: Exception.

The Court: Proceed with the defense.

FERDINAND COIREN, called as a witness on behalf of the defendants, being duly sworn, testified as follows: 20

Direct examination by Mr. Rosenkrans.

Q. Mr. Coiren, you are one of the defendants in this case? A. Yes, sir.

Q. And what is your business? A. Manufacturing chemist.

Q. And how long have you been a manufacturing chemist? A. Why, over fourteen years. 30

Q. And what do you manufacture? A. I manufacture nitrate of iron, soaps, ink, tin products; that is all at present.

Mr. Marsh: I didn't get that.

The Witness: Various kinds of soaps and tin products, that is, products derived from tin, from block tin.

Q. Who is Mr. Formanns, the other defendant? 40
A. Mr. Formanns is a resident of Bergen County,

Ferdinand Coiren—For Defendant—Direct.

a gentleman that has been engaged in the silk business for a number of years, and at present in this Coiform Chemical Company.

Q. And is he a chemist? A. No, sir.

Q. And he is in with you on this as an investment? A. As an investment.

Q. Now, how long have you known Mr. Stevens?

10 A. Why, I met Mr. Stevens in the latter part of October, 1915.

Q. How did you come to meet him? A. Why, on or about the 14th or 15th of October, 1915, I received a letter by mail from Mr. Stevens, signed by Mr. Stevens, offering services as engineer.

Q. And is this the letter (indicating)? A. (Referring) Yes, that is the letter.

The Court: Show it to the other side.

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Mr. Marsh: No objection.

The Court: It may be offered.

(Marked Exhibit D-2.)

Mr. Rosenkrans (reading): "Newark, N. N. J., October 13, 1915.

Coirin Chemical Works,

Dundee Lake, N. J.

30

Gentlemen: Are you interested in the production of carbolic acid from benzol; if so, I would be glad to be of service to you.

I have about one hundred detailed drawings and blue prints of the required apparatus and machinery for the manufacture of synthetic carbolic acid by sulfonating benzol.

I also have all the necessary chemical data, formulas and information relative to the process, and can equip, furnish instruction, and

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Ferdinand Coiren—For Defendant—Direct.

start a plant operating for anyone within an exceedingly short time.

I have recently designed and put in two separate plants for different parties in different parts of the United States, and have much valuable data from the actual work.

The profits from manufacturing synthetic carbolic acid from benzol are phenomenal and the product will continue to be reasonably profitable after the war is over. The investment is comparatively small. 10

If you are interested in any phase of the subject, I will be glad to hear from you. I would expect to act for you only during the selection and installation of the apparatus and in the starting up of the actual manufacturing processes.

With the present high prices of sulphuric acid and benzol, synthetic carbolic acid (phenol) can be produced for less than twenty cents per pound and its selling price today is \$1.40, and in normal times phenol can be manufactured synthetically for less than ten cents per pound. 20

I would be very glad to hear from you.

Respectfully,

GEORGE H. STEVENS." 30

Q. Now, after you got that letter, what did you do? A. I wrote Mr. Stevens at his Newark address, requesting Mr. Stevens to call.

Mr. Marsh: I object to the contents of the letter.

The Court: Yes; the letter should speak for itself. The fact that you wrote Mr. Stevens is competent. 40

Ferdinand Coiren—For Defendant—Direct.

Q. What happened as a result of your writing him? A. The result was that Mr. Stevens came out to see me.

Q. Now, what was said? A. Mr. Stevens went in my office and sat down and gave me some information as to the cost of the production, and an estimate, a verbal estimate of the outlay for the——

10

Mr. Marsh: I object to any verbal negotiations that ultimately turned into the contract itself. That is not admissible evidence, because the contract itself speaks for the relationship between these parties.

The Court: That is so.

Q. And you talked it over at that time, did you? A. I did.

20

Q. And at that time was anything said in regard to how long it would take to construct such a plant?

Mr. Marsh: I object; that is not material.

The Court: Yes, I think it is.

Mr. Marsh: There is no allegation of fraud or anything of that nature, and that would be the only basis on which they could vary the terms of the contract.

30

Mr. Rosenkrans: It is already in evidence.

The Court: I will allow that question.

Mr. Marsh: I ask that an objection be noted.

The Court: Note your objection.

Q. How long did he say? A. About sixty days.

Q. And in order to put the plant together in sixty days, did he say how it could be done?

40

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Mr. Marsh: I want to object to the question on the same ground, because it all seems to me to tend to introduce elements which are in writing, and it doesn't seem to me competent to introduce verbal testimony relating to the contract.

The Court: You may answer that question.

Mr. Marsh: I would like my objection 10
noted.

The Court: Yes.

The Witness: Read the question, please.
(Question read.)

A. Yes, he did.

Q. And what did he say? A. He said that we
would——

Mr. Marsh: I object to this on the same 20
ground.

The Court: Yes.

Mr. Marsh: The same objection noted.

A. Why, he said that I would have to sign a contract, and I would then receive a formula, a complete formula of the procedure, and also a set of blueprints, which would enable me to erect a plant in that time.

Q. Did he say anything at that time about 30
whether he would go ahead and order the machinery if you entered into such a contract with him?

Mr. Marsh: I object to that. I don't see how that is possible.

The Court: I don't think that makes any difference.

Mr. Rosenkrans: The only thing I was figuring on was this: That I understand the scheme was at the time the building was 40

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being constructed that these orders should be immediately sent out to all the different plants for the different parts.

The Court: Find out what was done after the contract was signed. You cannot alter your contract by any verbal——

Mr. Rosenkrans: I understand that.

10

Q. Did you, after that, have any other conversations with him, with Mr. Stevens? A. I did.

Q. And where did you next meet him? A. In Newark.

Q. And who was present beside you and Mr. Stevens? A. Why, Mr. Formanns.

Q. That is the other defendant? A. The other defendant, yes; and a young lady in the office, a stenographer.

20

Q. And on that day was the contract closed? A. No, sir.

Q. And at that meeting what, if anything, was said with regard to the costs of the plant, outside of the building?

Mr. Marsh: I object to that again on the same grounds.

The Court: I don't think that is material.

30

Mr. Rosenkrans: I think it is material in this way: That as a result of this conversation there is an agreement signed whereby Mr. Stevens was going to furnish them the technical knowledge and practical knowledge whereby they could construct a plant for the manufacture of synthetic carbolic acid on a practical basis. Now, it certainly does make some difference, as far as the practical end goes, what that plant costs, whether it costs \$50,000 or \$8,000.

40

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The Court: I don't think it has anything to do with it. The contract doesn't limit the expense at all.

Mr. Rosenkrans: You will allow me an exception?

The Court: Take your exception.

Q. And when was the next time that you saw Mr. Stevens? A. Well, very shortly after I went with Mr. Formanns to Mr. Stevens' office to sign a contract. 10

Q. And is that the time that the contract was signed, marked P-1? A. Yes, sir.

Q. (Showing witness P-1.) A. (Referring) Yes; that is my signature to the contract.

Q. Did you receive anything at that time? A. Yes; I received a book of formulas and a number of blue-prints. 20

Q. Is this the book of formulas which you received? A. (Referring) Some of it.

Q. Referring to this book, can you indicate to the jury which part you received at that time? A. Well, the typewritten part mostly was in here, and the cover wasn't on, of course.

Q. That is, there was no cover on at that time? A. No cover.

Q. Was it loose paper? A. Just tied together with a string. 30

Mr. Marsh: Do I understand you to mean everything except this blank paper (indicating)?

The Witness: No, Mr. Stevens from time to time sent out sheets by mail, which were inserted later on. I can't tell which they are. There was no way of telling which they are.

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Q. That is, you don't know exactly how much of them was given to you at that time? A. No; there is no way of telling.

Mr. Marsh: I suggest that be marked or offered in evidence; it becomes part of the record.

10 Mr. Rosenkrans: I will offer it in evidence subject to those qualifications.

(Marked Exhibit D-3.)

Q. And at the same time you were given blueprints, were you? A. Yes, sir.

Q. And in what form were they? A. Well, they were rolled together and wrapped in a paper.

Q. Were they fastened? A. No, sir.

Q. And tied together? A. No, sir.

20 Q. And covered with imitation leather? A. No, sir.

Q. As in Exhibit P-2? A. No, sir.

Q. And did they have any name upon them such as Coiren Manufacturing Company? A. No name on them.

Q. No name on them at all? A. No name.

Q. And were these loose sheets? A. Loose sheets.

30 Q. How many of them would you say? A. I don't know exactly how many; quite a few; quite a number of them; a good-sized bundle.

Q. And after you took those plans, did you and Mr. Formanns decide to have the plant installed? A. Oh, yes.

Q. Now, what was your arrangement in the installation of that plant with Mr. Stevens—well, in regard to machinery? Just explain it to the jury. A. The arrangement was that we were to furnish Mr. Stevens with some stationary on which to write out the orders for such machinery as he found was

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needed for the plant, and that stationery was furnished to him with instructions to make out the orders for all that was needed, and the time went by and there were no orders placed. Finally there were one or two orders placed, and then another one, and time dragged along. Then I found out that the orders that were being placed were not in relation to the blue-prints, not in all cases; that machinery was being designed other than to the blue-prints given to me, so that that was a great cause of delay. 10 *

Q. And for how long would he make out orders for the machinery? A. He made out orders for the——

Mr. Marsh: What do you mean by that?

Q. How many months was that? A. Mr. Stevens made out orders for that plant for thirteen months. 20

Q. And do you recall when he started making out the orders? A. Why, I believe that the latter part of January one or two orders were placed. I don't recollect the exact date.

Mr. Marsh: Do you mind giving the year?

The Witness: The year? 1916.

Q. I show you a letter dated February 16, 1916, addressed to the Coiform Chemical Company, Dundee Lake, New Jersey, from the Casting & Supply Company. A. (Referring) Yes. 30

Q. For an order for stills? A. Yes; an order for stills.

Q. And is that one of the first orders? A. That is one of the first; it may not be the first one, but it is one of the first.

Q. One of the first? A. One of the first.

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Mr. Marsh: Would you mind identifying that, so we may know what it is?

Q. And for how long after did Mr. Stevens continue to give orders? A. Thirteen months.

Mr. Marsh: Are you offering this in evidence?

* 10

Mr. Rosenkrans: I will offer that in evidence; have you any objection to it?

Mr. Marsh: None at all.

(Marked Exhibit D-4.)

Q. Taking the correspondence which you had from Mr. Stevens, can you tell the jury when, during what time, from the letters, that the orders were made? A. Well, we have copies of the orders here, some of them on yellow paper, and there is 20 letters from Mr. Stevens, stating that he had ordered certain things. Those are various dates for a period of thirteen months.

Q. Now, during those thirteen months, under whose supervision was the construction of the plant? A. Mr. Stevens'.

Q. And would he give the directions to you? A. Yes, sir.

Q. And were any changes made? A. Oh, yes. 30

Q. Now, just explain to the jury in what way changes were made. A. Well, Mr. Stevens would come and he would request apparatus to be piped in such a manner, and then the next time he would come he would have some changes, which would necessitate taking the pipes off and the valves, and cutting more pipe and putting it up again; and the next visit the next piece of apparatus would have to be changed, and we had to buy more pipe and have it cut, and more valves ordered, which was, 40

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of course, a great loss, and a great delay. That is, we never accomplished anything that way. It was continual change, changing all the time, and that was a cause of delay.

Q. And when those changes were suggested by him, did you say anything to him about it? A. Why, I just simply asked "why," and I was told to do it. 10

Q. And what would he answer? Would he give any reason why? A. No reason whatever, only that it had to be done.

Q. Are you familiar with blue-prints? A. I am familiar with some of them that we had to use; not all of them.

Q. Can you say as to what percentage of the blue-prints originally given you at the time you paid the \$300 were actually used on this plant? A. Very few of them. I can't say how many, but not over 10 per cent. or 15 per cent.; a small number of them. 20

Q. And where did those come from which were eventually used? A. Well, they were mailed to us from time to time, or given to me at Mr. Stevens' office at Newark during these several months, and after signing a contract, of course.

Q. Now, when was that plant first tested, the first test? A. The first test was made in January, 1917. 30

Q. The first test ever made of any part of it? A. Any part of it, 1917, January.

The Court: What part was tested then?

The Witness: Sulfonator. That is the beginning of the process.

The Court: That is the only part that was tested then?

The Witness: Yes, sir; that day. 40

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Q. And that was a test of which part of the process? A. Sulfonating.

Q. And which part is that? A. That is the beginning.

Q. That is the very beginning? A. The very beginning; yes, sir.

10 Q. And how long after that was the second test made? A. Why, I don't know the exact date; shortly afterward; a few days afterward.

Q. And when was the plant nearing completion, so far as being ready for a test of the entire plant? A. Why, a couple of months after that.

Q. Would it be March or April? A. About March, or the beginning of April, 1917.

Q. And were tests made at that time? A. Various apparatus were tested.

20 Q. And by whom were those tests made? A. Mr. Stevens and I.

Q. Now, will you just describe to the Court and jury those tests, designate what was tested, and what happened, with the dates as near as possible? A. Well, the first thing to do was to measure off benzol and sulphuric acid, and that was done and run into the sulfonator, and the sulfonator has an agitator which was started off, and the acid and benzol was sulfonated in this machine, with a little heat, for about seven hours; and Mr. Stevens said that the reaction was complete. And this machine is emptied by compressed air. The valve is closed on it and compressed air is opened into it. That forces out the contents of the kettle into the cooling tank upstairs. Now, that worked so far as the blowing out upstairs, and that was left there until the next day to cool off, or the following day, if it happened to be a Sunday, of course, it was left there until Monday, and then run down into the neutraliz-

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ing tank. That tank has a lead coil in it and an agitator, and this liquor from the sulfonator is run into this tank, and pulverized limestone is added to it to neutralize the acid, and this part of the process we tested. We put enough limestone under Mr. Stevens' directions to neutralize the acid, and when this was done, the following day the liquor was pumped through a filter press to separate the calcium sulphate, which is a waste or by-product, and the filtrate, that is the clear liquor from the filter press, was then pumped into the soda tank. There is a pump for that purpose, and then soda ash added to it which precipitates calcium in the form of chalk. And that step was also taken. Then the liquor from that is taken to a concentrating tank and concentrated to a proper degree for the crystallizing plant; and that step was also taken several days after. When the liquor was put in the crystallizing plant from the first batch, we had enough of it to make a test of the crystallizing plant, and we run in something like 200 gallons, which is a part of the charge for the machine, supposed to be part of the charge. So we attempted to use that machine for crystallizing purposes, but it wouldn't work. In regards to the machine, it had two scrapers at the bottom, which are clearly shown on the drawings, and these scrapers didn't work. They balled up all the salts when they got a little dry; they balled into—

Mr. Marsh: What is that word?

The Witness: B-a-l-l-e-d. Balled up, so that the stuff wouldn't dry. If the knives would work properly, this material should be in the powered form. In this case we never could get it dry, because of the faulty construction of the crystallizing plant.

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Mr. Marsh: I object to that. This man is not an expert.

The Court: Yes; but he is an expert. Strike out the conclusion; let the result stand.

10 The Witness: The use of that machine was obtaining a number of balls from the size of a marble to the size of a baseball, and some larger, but no powder, with the exception of a few pounds from the rubbing of these balls together, and this material wasn't fit for fusion, so that was laid aside——

Q. One minute. What is this material that is in these balls? What is it? A. That is the result of the concentrator tank.

20 Q. What process is that? A. That is about the middle of the process.

30 Q. Go ahead? A. So the contents of this crystallizing plant in such condition as it was, was put into a couple of packing cases and left for future experimenting. Then we tried out the sulfonator again and worked out some more salts to that same stage, and we had the same results. The machine simply wouldn't crystallize any salts. So Mr. Stevens told me that he couldn't do anything with the machine. We would have to get some other means or he would throw up his hands. He said he couldn't do anything with it. There he left it to me to work it out. We spent lots of time trying to work it up. We stayed there until 11 o'clock at night and kept the power going. We never got any dry salts, nothing but balls, which this material from rolling around would accumulate into balls of various sizes, but not a powder. So Mr. Stevens threw up his hands and said he couldn't do anything with the machine and went away, back to

40

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Newark, and left the machine to me to fix up, and I spent lots of time and money to make the machine work, and finally I got it to produce a little dry salts by making very expensive changes, and I got enough dry salts for Mr. Stevens to test out the auto-clave.

Q. Is that the next process, the auto-clave? A. Yes. When I had enough dry salts for Mr. Stevens, he came one day and put in some caustic soda in this auto-clave, which is the proper thing to do, and he added some salts, but this machine is of such construction—

10

Mr. Marsh: I object to that. I ask it be stricken out.

The Court: Strike it out. Don't comment on it, because you are not an expert on machinery as far as appears.

20

A. Mr. Stevens added these salts, a shovelfull or two at a time, which is the proper thing to do, and after about four or five hours, somewhere around 1 and 2 o'clock in the afternoon, the thing began to burn; the contents of the kettle got on fire, and there is a steel cover goes with it, and we clapped that cover on and got some water ready and by pouring water slowly on the contents of the kettle, we got the fire out so as not to damage the building, but the contents of the kettle were destroyed. There was nothing but a black mass resembling coke.

30

Q. And was that in the month of April, 1917?

A. Why, that was the latter part of March, or early in April; latter part of March, I believe, 1917.

The Court: We will take a recess now (1 p. m.) until 2 o'clock.

RECESS.

40

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AFTER RECESS.

FERDINAND COIREN resumed the stand.

Direct examination by Mr. Rosenkrans (Continued).

10 The Court: The 13th section provides that, "Provided further, nothing in this Act contained shall be so construed as to make the lands of any person liable for any building or repairs not authorized by the owner, or done without the knowledge of the owner." That is the intent of the section of the married woman's act. I only call your attention to it. There wasn't any evidence that she was involved at all.

20 Mr. Rosenkrans: There wasn't any evidence about the acreage either.

The Court: Well, proceed. I only call counsel's attention to that situation, the way it stands.

Q. Now, speaking of that auto-clave, that is where the fusion is done, is it not? A. Yes, sir.

Q. And that is next to the last process, is it? A. Not exactly the last process, but near the end.

30 Q. And you say on that day of the fire, or that day the chemicals burned up to which you have just testified, Mr. Stevens was there? A. Mr. Stevens supervised the job.

40 Q. Now, after that, what was done after that in regard to the auto-clave? A. Well, the auto-clave had to be cleaned out, which would, of course, take about two days to introduce steam pipes and boil out this black mass. It had to be removed and the kettle cleaned out thoroughly in order to make another trial, and as far as I recollect, we could start the next day and do some of it, but we had to

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go cautiously not to crack the kettle on account of the extreme heat, and, as I recall it, it took about two days to put it in condition for another trial.

Q. After the two days, did Mr. Stevens come back? A. After a day or so after that.

Q. And did he attempt another fusion? A. Yes.

Q. And with what result? A. Why, that was a little better, and we finally got this small batch over into the quencher. 10

Mr. Marsh: What is that word?

The Witness: Quencher. That is a tank.

Q. Mr. Stevens has testified on his direct examination that he told you that he was going to Allentown and not to bother with the fusion. Did he tell you that? A. Yes. He told me to go ahead with it.

Q. To go ahead with it? A. Yes.

Q. And did he give you directions as to what to do? A. He told me the quantity of caustic soda to put into the auto-clave, keep adding salts until we had in proportion of 140 pounds to 100 pounds of caustic. 20

Q. Did he tell you to test it out for him? A. Yes; he said to do just—

Mr. Marsh: I object to these leading questions.

The Court: Yes; it is leading.

Q. What did he say to you? A. He told me that he was going to Allentown, and I could add that quantity of caustic soda to the kettle and keep on adding salts until I got that proportion, and then blow it over into the quencher. Now, either the following day, or the day after, whichever the case may be, I did as Mr. Stevens instructed, and the result was that my fusion got a good deal hotter than the first one Mr. Stevens made, and boiled over 30

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and set the woodwork on fire. We had to get the fire department to put out the fire on the woodwork, and it damaged the floors, and a couple of tanks were tilted over out of plumb, made a general mess around there, destroyed a couple of belts, and as we had insurance, we, of course, were tied up. We had to wait until the insurance adjusted the loss and that took several days. In the meantime while we were waiting for the insurance adjusters, Mr. Stevens came to the factory. He had telephoned and inquired about the fire. Then he came to the factory and looked the thing over, and said, "Put it back in the same condition as it was," and put it back in good shape as soon as we could do so, owing to the insurance delay. So we finally got settlement from the insurance company without any difficulty, and we immediately got carpenters to repair the floors which—that was the largest damage, the woodwork, and put a skylight over the autoclave so as to have a little better light, and we put the plant in good condition again. We got a couple of new belts and put everything in good shape again; and the understanding was that we were to order a new thermometer, because the designing of that kettle didn't permit the thermometer to go down deep enough.

Q. Who designed the kettle? A. Mr. Stevens; and this thermometer, not going down deep enough, permitted the—

Mr. Marsh: I object as a conclusion.

The Court: I think he may tell us what took place.

Mr. Marsh: Yes; but he is giving us his opinions.

Q. What did Mr. Stevens say at the time he told you to order another thermometer? A. Mr. Stevens

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told me to order a long thermometer which we have at the present time; and that thermometer is seven feet long. It is a steel tube and the thermometer is contained therein, and it took a little time to get that thermometer, and that thermometer was bought under Mr. Stevens' directions, so that it would reach down to the bottom of the kettle and prevent a recurrence of this overheating.

10

Q. And you ordered such a thermometer, did you? A. I did.

Q. Now, after the fire—did the fire affect the plant much? Not the building, but the plant? A. Not much on the plant; most of the damage was wood; of course, the tanks cannot burn, and they being steel and cast iron cannot burn; they were not destroyed in any way. The loss on the plant was nothing at all, a couple of belts.

Q. After the fire did you put the plant back in the condition it was before? A. I put everything back in exactly the same condition as it was. I made a few little changes, which Mr. Stevens suggested ought to be done before we could go ahead.

20

Q. Now, are these the suggestions—were those suggestions made by letter, in part? A. Well, the suggestions I refer to were verbal.

Q. And were other suggestions made? A. Yes; a few.

Q. I show you letter bearing date May 31, 1917, signed by George H. Stevens, and ask you whether that contains some of the suggestions?

30

Mr. Marsh: What is the date?

Mr. Rosenkrans: May 31, 1917.

Mr. Marsh: Is that the one already in evidence?

Mr. Rosenkrans: No; I am going to offer it.

40

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A. (Referring) Yes; that is one of the changes.

Q. This is after the fire? A. Yes; that is after the fire.

Mr. Rosenkrans: Do you want to see the letter?

Mr. Marsh: Yes, sir. (Referring) No objection.

10 Mr. Rosenkrans: I will offer this letter in evidence.

The Court: It may be offered.

(Marked Exhibit D-5.)

20 Mr. Rosenkrans: (Reading) "Newark, New Jersey, May 31st, 1917. Coiform Chemical Company, Dundee Lake, New Jersey. Gentlemen: When you commence to fix up the apparatus for use again, I strongly advocate your putting new steam coils in the present stills, rather than to attempt to use them as they are now arranged, for steam direct in the jackets. What carbolic acid is now in the stills we can readily distill out just the same as we did before, and as soon as it is out take the stills apart and put in the proper coils. If you do this, it will be necessary to order a similar coil to the one you have from Al-

30 bright, or someone else, and before ordering the second coil it might be well to see how the first coil fits. Of course, in using these coils, the outlet of the coil comes out through the present opening in the bottom part of the still, and an additional opening will have to be drilled and tapped so that you can remove the oil from the oil jacket at any time that you want, the same as you do in the

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sulphonator. Respectfully yours, George H. Stevens.”

Q. And you say besides this he gave you further oral instructions? A. Yes; in regard to such machinery as had been destroyed, displaced by the fire.

Q. And after the machinery had again been set up according to these new instructions and your knowledge, did you call on Mr. Stevens? A. Yes; I telephoned Mr. Stevens as soon as the thermometer came in that the plant had finally arrived, and I was ready for him to go ahead. 10

Q. And what did he say? A. Well, Mr. Stevens replied that he wouldn't do any further work unless I handed over \$500, a lump sum. So I replied that I had no objections to paying anything that was due Mr. Stevens, but I would like to have a little results for ourselves, as we had a lot of money tied up, and I obtained no satisfaction. 20

Mr. Marsh: No; just what happened. Not whether you obtained satisfaction. I object; that is a conclusion.

The Court: Yes; that is a conclusion.

Q. What else did he say, anything? A. That was the sum of the conversation, that Mr. Stevens wanted \$500 before coming out to do any further work, and I refused on the ground that I was willing to pay—— 30

Mr. Marsh: What did you say to him?

The Witness: I said that to him.

Mr. Marsh: What?

The Witness: I refused to pay Mr. Stevens any money until he produced something for us, continue the process. 40

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Q. And this was in June or July, 1917? A. Well, shortly after the fire. It may have been in June, because the thermometer took a little time to be obtained. We couldn't get it from stock. We had to wait a few days.

10 Q. Now, you have already testified that Mr. Stevens kept making changes and ordering material as late as the year 1917. Is that true? A. I did.

Q. I show you a billhead from Allbright Son & Company, bearing date March 12, 1917, and for one-inch E. H. coil, as per sketch, sixty-one feet two-inch pipe, and ask you whether that was ordered by Mr. Stevens, and whether that was for this plant? A. (Referring) Yes, that was ordered under Mr. Stevens' instructions, and it was to be for that plant.

20 Mr. Rosenkrans: I offer this in evidence. Any objection?

Mr. Marsh: No.

(Marked Exhibit D-6.)

Q. Before the fire did Mr. Stevens ever have the plant so that it produced carbolic acid? A. No, sir.

30 Q. Did Mr. Stevens ever produce, at any time, carbolic acid at that plant? A. No, sir.

Q. Has he ever produced carbolic acid at that plant at the rate of 500 pounds every twenty-four hours? A. No, sir.

Q. Has he ever produced it there at any appreciable rate? A. No, sir.

40 Q. Mr. Stevens has testified that in June, 1917, or thereabouts, that when he came to your plant you and Mr. Formanns refused to pay, or refused to have anything more to do with him, because it had taken so long, the market had changed, and

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that there wasn't much money in production any more, or words to that effect. Is that true? A. No, sir.

Q. What is the condition of the plant to-day in regard to the time—in regard to the condition it was at the time you notified Mr. Stevens to come?

A. The plant is just as Mr. Stevens left it.

Q. Mr. Stevens has testified that one or two tanks were moved from one place to another. Is that true? A. I moved two wash water tanks that were in a rear building, and I moved them to another building, because last winter the pipes froze, and in order to avoid freezing next winter, if the tanks are still there (and we have to keep water in them to keep them together), I had those tanks put in the main building, where we could keep them warm, because where they were placed before they were in the sulfonating room. That is a very thin construction building, built up on a light clapboard on two-by-fours, which, in case of explosion, would destroy the building quickly and not do very much damage. Those water tanks being in there, I had to keep water in them so they wouldn't dry out, and last winter there was no way of keeping the place warm. I found out one morning the pipes were frozen, and we had to take the pipes off and move the tanks into the main building, where there was ample room for them, and they can be used just as well where they are. I put the connections all back again in the same condition as they were.

Q. Why have you kept the plant in practically the same condition as in 1917, in June? A. I am waiting for Mr. Stevens to produce carbolic acid.

Q. And if Mr. Stevens produces the carbolic acid, what is your intention with regard to this contract?

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Mr. Marsh: I object to that as a pure matter of calculation.

The Court: That is immaterial, what he intends to do.

Mr. Rosenkrans: All right.

10 Q. Mr. Stevens has testified that no carbolic acid was produced owing to the fact that you didn't have help enough. Is that true? A. That is not true.

Q. And why isn't that true? A. Well, I had myself and Mr. Stevens and four other men there at all times, and also the fireman, who had very little to do and could have given some assistance if necessary, because he is a practical pipefitter, and could have helped out; but there were always four laboring men there—that is, men to be broke into the making of carbolic acid. We had to break the
20 help——

Q. Did Mr. Stevens ever find fault that you didn't have help enough? A. No; he never found fault that way.

Q. Now, you and Mr. Formanns paid Mr. Stevens altogether how much money? A. \$900.

Q. And why didn't you pay him more? A. Why, I didn't refuse to pay more. I objected to paying \$500 in a lump sum, but I was willing to con-
30 tinue——

Mr. Marsh: I object to what he was willing to do unless something was said.

The Court: It is immaterial. The question is, what he did.

Q. Why didn't you pay more?

Mr. Marsh: I object to the question why, unless there is something communicated to Mr. Stevens.

Ferdinand Coiren—For Defendant—Direct.

The Court: What you told Mr. Stevens is proper.

A. I told Mr. Stevens a number of times that I would live up to the contract and give him his money at any time if he would do a little something for us.

Q. What do you mean by a little something for you? A. Produce a little carbolic, and teach me the balance of the process, so that I could in turn teach other men, so that we could get a little return for our outlay. 10

Q. Now, how much money have you invested in the carbolic plant, outside of the building?

Mr. Marsh: I object.

The Court: How does it throw any light on the subject?

Mr. Rosenkrans: That is a matter of proof here. 20

The Court: Well, supposing it is?

Mr. Rosenkrans: Here is the situation: I propose to show that we spent \$18,000—

The Court: Well—

Mr. Rosenkrans: —and had no results out of it at all, absolutely nothing.

The Court: After the plant is said to be completed by the party and you spend any money after that in order to do what was required to be done, I think that would be competent; but there is no limit on your original plant. 30

Mr. Rosenkrans: No, but the point is just this: It is our contention that that plant never was completed, never produced results, and we followed out the terms of this contract; we followed out the instructions given 40

Ferdinand Coiren—For Defendant—Direct.

by Mr. Stevens, and we spent some \$18,000; the agreement with him that he would construct a plant where we could manufacture carbolic acid, 500 pounds a day, on a commercial basis. Now, we can't manufacture anything.

10 The Court: On what theory do you ask to recover against the plaintiff; because the plant cost you more than you thought it would originally?

20 Mr. Rosenkrans: No; on the theory—suppose the plant had cost us what we thought it would originally, on the theory that it doesn't produce results. He tells us in there—he agrees to furnish us the plant and the information, the supervision, instruction, to install a plant, which the evidence shows the plant was installed under his own supervision; all our ordering was done through him for everything. He drew the plans, and everything, and now we have got no result of any kind. Just on that theory, the measure of damages.

The Court: On the theory, then, that he hasn't fulfilled his contract?

Mr. Rosenkrans: Yes, sir.

The Court: I will hear you on that.

30 Mr. Marsh: On the theory of the damages, that he hasn't fulfilled the contract, would seem to be what it would cost this gentleman to complete the contract—that is to say, the difference between that which he has and that which it might cost him to have a plant for that purpose—but the original outlay for the plant for goods which he has in his possession, for the cost of the steel, for the cost of piping or belting, that which he spent for

40

Ferdinand Coiren—For Defendant—Direct.

that, is not the measure upon which damages could be based, assuming that the plaintiff failed. That is the way it would strike me, and you can't, by offering the original cost, get the basis for damages for what is undone.

The Court: No; I think your only question would be what it would cost to complete this plant, the character of the plant; the plaintiff says it would be a commercial plant. 10

Mr. Rosenkrans: I didn't catch what you said.

The Court: The only evidence you can put in as a question of damages would be the expense this man—the defendants—was put to make it a commercial plant above the cost that is already put in. You haven't shown it is of no value at all. You simply show in the condition it is now it doesn't work. Now, you may show what it will cost to make it work, or any amount he has expended after the time this gentleman says it was in working order. He says when he left it in May it was in working order. Now, if he has spent any money since that to make it work, or you are required to spend more money to make it a working plant, you may show that, and that would be an element of damages. 20 30

Mr. Rosenkrans: Our situation in regard to that is just this: That here is a plant under which Mr. Stevens' contract agreed to construct a plant, to put it on a practical working basis. Now, we have said to him, "Mr. Stevens, come on; complete your plant. We aren't carbolic acid engineers. We don't know what the trouble is. All we know is that it don't produce anything." 40

Ferdinand Coiren—For Defendant—Direct.

Now, he refuses to do that; that is our testimony.

The Court: Then it is your duty to get someone to go ahead and do it for you and charge it up against the plaintiff.

10 Q. You have already testified that Mr. Stevens was ordering machinery through you from 1916 to the early part of 1917. During that time did he also send you other blue-prints? A. Oh, yes; a number of them.

Q. And these blue-prints were different from the original ones handed you at the time the \$300 was paid? A. Entirely so.

20 Q. I show you letter bearing date August 23, 1916, addressed to the Coiform Chemical Company, and signed by George H. Stevens, and ask you if that is one of the letters in regard to material? A. (Referring) That is.

Mr. Rosenkrans: I offer this letter.

(Marked Exhibit D-7.)

Mr. Rosenkrans (reading):

“ August 23, 1916.

Coiform Chemical Co.,
Dundee Lake, N. J.

30

Mr. Coirin.

Dear Sir:

I am today in receipt of the enclosed bill of lading showing shipment to you of four shaft bearings and two post heads for the neutralizing and soda tanks, shipped by Mr. Charles Spangler of Allentown, Pennsylvania.

40

Ferdinand Coiren—For Defendant—Direct.

I judge from this that Mr. Spangler has just about finished such work as he is doing for you. If so you should receive the other four tanks from Heilman within the next few days.

These tanks consist of:

1—Quencher.

1—Condenser tank.

1—Washer.

1—Soda solution tank.

10

These four tanks are provided with cast iron covers, leg brackets and two of the tanks with agitation drive, gears, etc.

Respectfully yours,

GEO. H. STEVENS."

20

Q. I show you letter, dated August, 1916, addressed to Coiform Chemical Company, and signed by George H. Stevens.

Mr. Marsh: What is the date, 16th?

Mr. Rosenkrans: August 15, 1916.

Q. And ask you whether that was in regard to blue-prints for this contract? A. (Referring) Yes, four blue-prints.

30

Mr. Rosenkrans (reading): "August 15, 1916.

Coiform Chemical Company,
Dundee Lake, New Jersey.

Mr. Coirin. Dear Sir:

I enclose you, under separate cover, blue prints 29-A; 29-B; 29-C; 29-D, which are section plans of the autoclave brick setting.

40

Ferdinand Coiren—For Defendant—Direct.

I will mail you tomorrow or next day a section elevation showing the heights at which these plan sections were taken.

In the meantime I think, however, you can get some idea of the arrangement from these plan sheets.

Respectfully yours,

10

GEO. H. STEVENS."

The Court: What is the date of that letter?

Mr. Rosenkrans: August 15, 1916. I offer that in evidence.

(Marked Exhibit D-8.)

20

Q. I show you letter, dated August 26, 1916, addressed to Coiform Chemical Company, Dundee Lake, New Jersey, and signed George H. Stevens, referring to blue-prints, and ask you whether those blue-prints were used on this contract?

Mr. Marsh: That is the 26th of August?

Mr. Rosenkrans: August 26, 1916.

A. Yes; there are several blue-prints after that date.

30

Mr. Rosenkrans: Do you want to see the letter?

Mr. Marsh: Yes, sir; I would like to see it; I haven't identified it as yet.

Mr. Rosenkrans: I offer this in evidence.

(Marked Exhibit D-9.)

40

Ferdinand Coiren—For Defendant—Direct.

(Reading:) "August 26, 1916.

Coiform Chemical Company,
Dundee Lake, N. J.

Mr. Coirin. Dear Sir:

I am sending you today under separate cover a new blue print showing detail of the agitator for the neutralizing tank in which I have corrected the mistake in the first print. Please destroy the other one. 10

I also enclose a blue print of the assembly of the soda tank.

Details of the agitator will follow later.

I will also make details of the pipe coils for each and also for the concentration tank.

Am getting bids on these coils and order can probably be placed by Tuesday of coming week. 20

Respectfully yours,

GEO. H. STEVENS."

Q. I show you letter of August 28, 1916, addressed to the Coiform Chemical Company, Dundee Lake, New Jersey, and signed George H. Stevens—

Mr. Marsh: The date of that again, Mr. Rosenkrans? 30

Mr. Rosenkrans: August 28, 1916.

Q. —in regard to blue-prints, and I ask you whether those blue-prints were for the plant? A. (Referring) Yes, sir.

Mr. Rosenkrans: I offer it in evidence.

(Marked Exhibit D-10.)

Ferdinand Coiren—For Defendant—Direct.

Mr. Rosenkrans (reading): "August 28, 1916.

Coiform Chemical Co.,
Dundee Lake, N. J.

Mr. Coirin. Dear Sir:

10

I am sending you today blue prints, one of which shows the lead pipe coil for the neutralizing tank and the other shows the detail of the pieces for the agitator of the soda tank.

These blue prints are sent you for shop use as they have not had the finishing touches for the book.

Respectfully yours,

20

GEO. H. STEVENS."

Q. I show you letter, dated August 29, 1916, addressed to Coiform Chemical Company, Dundee Lake, New Jersey, and signed George H. Stevens, and ask you whether that letter refers to the contract on the plant? A. (Referring) Yes; it does.

Mr. Rosenkrans: Do you want to see this letter?

30

Mr. Marsh: I haven't identified it yet (referring). All right.

Mr. Rosenkrans: I offer this letter in evidence.

(Marked Exhibit D-11.)

40

Ferdinand Coiren—For Defendant—Direct.

Mr. Rosenkrans (reading): "August 29, 1916.

Coiform Chemical Co.,
Dundee Lake, N. J.

Mr. Coirin.

Dear Sir:

10

Regarding changes on the twelve Erie Tanks:

The inside tanks with covers are 18-inch diameter and 3 feet deep.

The covers have a center opening $3\frac{5}{8}$ -inches and a pipe tap at the side for $\frac{3}{4}$ -inch pipe.

The bottom of these tanks have a 1-inch pipe tap. Three of these tanks will now be used as inside carbolic condensers.

20

The $3\frac{5}{8}$ -inch opening must have a pad riveted over it and tapped for standard 3-inch pipe.

This 3-inch tap is then connected with the reducing pipe of the still by 3-inch standard pipe.

The $\frac{3}{4}$ -inch tap in the cover is for a vacuum gauge.

The 1-inch pipe tap in the bottom of the tank must be changed to a 2-inch pipe tap, on account of the vacuum work that must be done through it while the distillate is running.

30

The three remaining tanks with covers are then to be used as the three aqueous tanks.

The $3\frac{5}{8}$ -inch openings must also have pads riveted over them and tapped for standard 2-inch pipe and an extra pad fastened on,

40

Ferdinand Coiren—For Defendant—Direct.

opposite the $\frac{3}{4}$ -inch pipe tap and tapped for 2-inch pipe.

The $\frac{3}{4}$ -inch pipe tap is for a vacuum gauge. The center opening goes to the vacuum pump line and the other 2-inch line to the carbolic condenser.

10 The 1-inch pipe tap in the bottom is all right as it is, on these three.

The outside tanks are 24-inch diameter and 45-inches deep. They have a strap across the open top and a $1\frac{3}{8}$ -inch opening in the center of the bottom and two $1\frac{1}{8}$ -inch openings, one on each side of the center opening.

20 Three of these open top tanks are to be used as jacket tanks for the carbolic condensers and so the $1\frac{3}{8}$ -inch openings in the bottom must be enlarged to $2\frac{1}{2}$ -inch openings so that the 2-inch pipe from the condensers can pass through them and be made tight with lock nuts. (O. D. 2-inch pipe is 2.375".)

The four bolts holding the strap are to be changed to eye bolts and then these tanks are suspended by rods from above which connect to these eye-bolts.

30 The two $1\frac{1}{8}$ -inch openings are for $\frac{3}{4}$ -inch steam coils and lock nuts and are all right.

The remaining three open top tanks are to be used as jackets for three of the Koven anhydrous tanks.

40 The straps across the top are to be taken off and the $1\frac{3}{8}$ -inch bottom openings are all right to use as they are, if the Koven tanks with 2-inch pipe taps are bushed down to 1-inch. Then the 1-inch pipe will pass through these $1\frac{3}{8}$ -inch openings and lock nuts make the connection tight. The $1\frac{1}{8}$ -inch openings are all right as they are.

Ferdinand Coiren—For Defendant—Direct.

Brackets on the side of the Koven tanks have holes that should bolt onto the flange of the open top tanks, but it will not do to drill these flanges until the Koven tanks are received, so the outside tanks had better not be touched until you receive the Koven tanks.

I believe these changes will make everything O. K. and you have blue-print of the elevation of the stills showing how the tanks are changed.” 10

How the tanks are changed?

Mr. Marsh: How the tanks were arranged.

Mr. Rosenkrans: Or arranged.

Q. Now, you already testified, I believe, that other changes were made by you under verbal instruction, oral instruction? A. Yes.

Q. I show you letter dated April 14, 1917, and addressed to Coiform Chemical Works, Dundee Lake, New Jersey, and signed Mr. George H. Stevens, and ask whether they are instructions in regard to this plant? A. (Referring) Yes, they are; that is the object of the letter. 20

Q. And this letter was written before the fire? A. Before my fire.

Q. Before your fire? A. Before my fire; yes.

Q. And after Mr. Stevens' fire? A. After Mr. Stevens' fire. 30

Mr. Rosenkrans: Do you want to see this letter?

Mr. Marsh: It begins, “The following items should be attended to”?

Mr. Rosenkrans: Yes.

Mr. Marsh: All right.

Mr. Rosenkrans: I offer this letter in evidence.

(Marked Exhibit D-12.)

Ferdinand Coiren—For Defendant—Direct.

Mr. Rosenkrans (Reading) :

“April 14, 1917.

Coiform Chemical Works,
Dundee Lake, New Jersey.

Gentlemen :

10

The following items should be attended to before we go very far on the next steps of the process, and if you possibly can, try and get the most of them fixed up at an early date.

A 3-inch pop safety valve for low pressure to go on the quencher.

A 60-pound gauge, also to go on the quencher.

20

Clean out the pet cock in the lower gauge glass on the quencher so that it can be used as a sampling cock.

Refit the two large gauge glasses on the acidifier with proper rubber gaskets, so that we can indicate up as high as the lower part of the upper glass, also have on hand one reserve glass in case one of them breaks.

Put a sampling cock on the acidifier, so we can draw a sample of the liquor for testing.

30

Purchase a connecting piece or joint so that you can use two pieces of the glass gauge, in case the pieces left are long enough to thus make up a new glass. Screw a nipple and cap into the carbolie condenser tank top, in place of the present leaky plug, or fix up the opening in some way so that it does not leak.

40

Ferdinand Coiren—For Defendant—Direct.

Put a 'U' trap on the carbolic receiving tank so that it can be used in this way for atmospheric distillation.

Put in a steam trap, and connect the two stills to the steam trap with a valve between the trap and each still, so that the steam jacket can thus be kept dry.

There is no reason why one steam trap 10
should not serve for both stills.

Arrange to put a pressure gauge on the still in place of on the receiving tank, where we used it the other day.

Take off the extension head to the still that we were using, and expand the end of the pipe inside to a tight joint on the flange, and this can be done by hammering the end of the pipe outward with the round head of a machinist's hammer. 20

Remove the ferrule from the lower end of the inside discharge tube to the autoclave.

This is supposed to have been shrunk on here and not welded, consequently a hack-saw should be able to readily cut it in two for removal.

Bear in mind that the tube is only one-quarter of an inch thick, and care should be exercised that you do not cut through the tube, or weaken it. Attach the proper thermometer to the lower portion of the acidification tank. 30

Respectfully yours,

GEO. H. STEVENS."

Q. Did he tell you what the proper thermometer was to be attached to the lower portion of the acidification tank? A. No; we had that thermometer.

Q. You had that thermometer? A. Yes.

Ferdinand Coiren—For Defendant—Direct.

Q. Now, you have already testified that of the blue-prints first given you at the time the \$300 was paid, very few were used? A. I did.

Q. Is that true? A. Yes.

Q. And afterwards did Mr. Stevens furnish you many other blue-prints and diagrams? A. He furnished some blue-prints afterwards from time to
10 time.

Q. Did he make any changes in those which he furnished afterwards? A. Yes; he made changes on those.

Q. I show you a piece of paper containing a drawing entitled "Rough outline of filter plate connections which feed wash water and clear water connections," and ask you who made that outline?

A. (Referring) Why, it came from Mr. Stevens' office, made under Mr. Stevens' directions.

20 Q. Did he bring it to you? A. Yes, sir.

Q. What machinery was this for? A. Why, this is the connections of the filter press, two filter presses, in relation to the tanks, wash-water tanks, which I displaced some time later into the large room which I had reference to a while ago, and also the neutralizing tank and the soda tank. These presses are correlated to the tanks and these pipes which go back and forth to the pumps and to the presses, and vice versa.

30 Q. And did you follow out the instructions given on this— A. Yes; everything was put up just as marked on there (indicating).

Q. And what, if anything, happened after you constructed the work as marked on there? A. I didn't get the question.

Q. What, if anything, did you have to do in the work which you had constructed according to this diagram? A. I put up the piping as the plan called for, and after it was all up Mr. Stevens made these
40 changes here (indicating), which are scratched off.

Ferdinand Coiren—For Defendant—Direct.

Everything that is marked off here had to come down and be put up again in a different manner. That is his mark there on the pipe.

Q. You are referring now to the zig-zag pencil marks? A. Yes, and those marks across here (indicating) are two-inch pipe lines, and valve connections. These here (indicating) represent valves.

Mr. Rosenkrans: I offer this in evidence. 10
Any objection?

Mr. Marsh: Let me look at it. (Referring) May I ask one or two questions about this?

The Court: Yes, you may ask him.

By Mr. Marsh.

Q. There are marks on this plan, Mr. Coiren. Who made those marks? A. Mr. Stevens. 20

Q. Those are Mr. Stevens' marks there (indicating)? A. They are.

Q. Did you see him make them? A. Certainly.

The Court: It may be marked.

(Marked Exhibit D-13.)

By Mr. Rosenkrans.

Q. During the months of March and April, 1917, while Mr. Stevens was making these tests in regard to the auto-clave and in regard to the fusion, and at the time that he had the small fire did he offer you any explanation? A. Why, he said that owing to faulty designing of the machinery these things happened, and that necessary changes would have to be made, which would, of course, take time, and that eventually they would be overcome. That was the explanation given me at various times. 30

Ferdinand Coiren—For Deft.—Direct—Cross.

Q. Did he put any limit on the word "eventually," or just say "eventually overcome"? A. He said "eventually"; that is all.

Q. And you say he said it was due to faulty designing. Who designed these different parts of the machinery? A. All the blue-prints came from Mr. Stevens' office, and I presume Mr. Stevens designed them—the blue-prints that he furnished.

Mr. Rosenkrans: Cross-examine.

Cross-examination by Mr. Marsh.

Q. When did you have this conversation, Mr. Coiren, about faulty design? A. Why, after Mr. Stevens' fire.

Q. And when was that? A. Well, that was the latter part of March or the beginning of April, I don't know the date exactly.

Q. And what machine did he refer to? A. The auto-clave.

Q. Is that the only one? A. The only one that day.

Q. Is that the one that that conversation referred to, the auto-clave? A. Oh, no; that conversation refers to a number of them.

Q. Well, what ones did he refer to then? A. Well, the crystallizing plant, particularly.

Q. Particularly the crystallizing plant, and doesn't refer to the auto-clave at all? A. It refers to all of them.

Q. To every machine in the place? A. No, sir.

Q. Which ones? A. Those two.

Q. Any more beside those two? A. That is all that I can recollect.

Q. Now, when was it by months— A. What do you mean?

Ferdinand Coiren—For Defendant—Cross.

Q. —that you had this conversation referring to the auto-clave and the crystallizer? A. That was at the time of the fire.

Q. January, February, March or April? A. The latter part of March or beginning of April.

Q. Of April, 1917? A. No, no, no; yes, 1917.

Q. And what was done with the auto-clave, if anything, after April 17th? A. What was done with it? 10

Q. Yes. A. Why, we made some changes. We took off a ferrule at the bottom under Mr. Stevens' directions. He instructed us to take the ferrule off. We also took off a large part of the casting off the top so as to permit the two tubes to turn around.

Q. Bored a hole in it you mean—there was only one machine—bored a hole to let the tubes go through? A. No; we had to remove a ferrule on the bottom so that the outside tube and the inner tube would turn together. 20

Q. How long did that take you? A. That took a good part of two days.

Q. Yes; all right. What else? A. Then we had to take the top piece off and get another valve for the top and connect that on.

Q. How long did that take? A. It may have taken a couple of days.

Q. How many men? A. How many men?

Q. Working on it? A. Well, the whole shop was there. 30

Q. No; how many men were working on this change of the ferrule and the valve which takes four days? A. Two, I believe.

Q. Two men? A. Yes.

Q. Include yourself? A. No.

Q. Two other men beside yourself? A. Yes.

Q. And that was all that was done to the auto-clave? A. At that time. 40

Ferdinand Coiren—For Defendant—Cross.

Q. At any time subsequent to April, 1917? A. No, that wasn't all.

Q. Well, what else was done to it? A. We had to make changes in the thermometer tubes.

Q. In the thermometer? A. Yes.

Q. What did you do? A. We had to order a new thermometer.

10 Q. That was after the fire? A. That was after the fire.

Q. Then between the time in April, 1917, up to the time of the fire on May 22nd you made two changes in it; one is to cut off a ferrule, and the other is to put a new valve at the top; is that correct? A. That is right.

Q. And those are the only two items in the faulty design of the auto-clave? A. Except the thermometer; there is a tube there to be changed.

20 Q. Now take the crystallizer. You had this conversation in April, 1917, that the crystallizer was faulty. What did you do to the crystallizer between that time and the time of the fire in May, 1917? A. The crystallizer—we had to order a large casting from the Watson Machine Company.

Q. When did you make that order? A. I haven't the date exactly.

Q. Well, about when? A. Somewhere before the fire.

30 Q. I know; but a month before the fire or two months before the fire? A. I can't recollect the date exactly.

Q. Well, was it three months before the fire? A. Possibly it may have been a couple of months before.

Q. Well, was it at least two months before the fire? A. I can't place the date exactly.

Q. Well, I know. Can't you give the date approximately? You seem pretty sure this thing was

Ferdinand Coiren—For Defendant—Cross.

faulty and you had this conversation about it. When was it? A. I don't know exactly.

Q. You don't know when you fixed up the crystallizer? A. I don't know exactly.

Q. You don't know whether it was March, February or April, 1917? A. I don't know exactly the date.

Q. It might have been February? A. Possibly. 10

Q. Then it might have been before the time that you had this conversation that the crystallizer was faulty that you had already corrected it and ordered the new part; is that so? A. No.

Q. You said you had your conversation in April, 1917? A. Yes.

Q. Now you say you may have ordered the piece to correct it in February, 1917, which is a month and a half before this conversation? A. Certainly.

Q. Then at the time you had the conversation in April this had been fixed up, had it not, so far as the crystallizer was concerned? A. The crystallizer had been repaired partly. 20

Q. Before you had the conversation in April, 1917? A. Oh, no.

Q. No? A. No.

Q. What else was the matter with the crystallizer; anything else? A. Why, that was the stirring device, that was the whole trouble with it.

Q. The agitator? A. Yes. 30

Q. And you got a new agitator? A. Yes, we have a new agitator.

Q. When did you get it? A. I don't know exactly what date.

Q. At the time of the fire had all the apparatus required in the process, so far as you knew, been delivered to the plant? A. No, sir, not all.

Q. What was missing? A. Why, we got a coil in after that for one of the stills.

Ferdinand Coiren—For Defendant—Cross.

Q. A coil? A. Yes.

Q. Was that injured at the time of the fire and replaced? A. No, sir.

Q. Replacement? A. No, sir.

Q. Was it a repair? A. That was a change.

Q. Was it a repair to take up a defective coil?
A. No, sir.

10 Q. It was not? A. No, sir.

Q. Had everything else except that coil been delivered at the plant prior to the time of the fire in May, 1917? A. I think it was, sir.

Q. Since the fire in May, 1917, have you endeavored to use the plant there? A. Yes, I did.

Q. When did you try it? A. Oh, I have tried it a number of times.

Q. When? A. All the time.

Q. Continually? A. Yes, sir.

20 Q. During June, July, August and September, 1917? A. Continually; intermissions in between, of course.

Q. And who was there beside yourself? A. Why, a couple of men to help.

Q. Laborers? A. Men, yes.

Q. Men in your plant? A. Regular men for that purpose.

Q. Where did you get them from? A. Hired them.

30 Q. Were they men that you were using in the adjoining plant which you operate? A. No, sir.

Q. Where did you get these men from? A. Why, from—some come from Paterson and some from Dundee Lake.

Q. Were they chemists? A. No, sir.

Q. What was their business? A. I don't know what they were. I couldn't tell you what they were. I don't know. I didn't ask them.

40 Q. You just hired them as day laborers, didn't you? A. To break in on this work.

Ferdinand Coiren—For Defendant—Cross.

Q. They knew nothing about it other than what you told them? A. That is right.

Q. Did you consult any expert after the time of the fire until the present time? A. No, sir.

Q. So as to run your plant? A. No, sir.

Q. Why not? A. Why, it is under Mr. Stevens' charge, and I didn't know if I had a right to do it.

Q. And you were content to have the plant remain idle for one year without making any attempt on your own part to get someone to do the work? A. I couldn't take it away from Mr. Stevens. 10

Q. But you made no attempt to get anybody else to help you out? Yes or no. Did you or did you not get somebody in there— A. I got nobody in there.

Q. When you received these original plans which were given to you in return for your \$300, did you find among them any building plans for the factory? A. No, sir. 20

Q. The plans which you received were general plans, were they not, would have applied to any factory? A. No; I was given to understand they were for this particular factory.

Q. Did you read the preface which appears on the first page of these plans? A. I never had a chance to read it.

Q. Why not? A. Because it wasn't delivered until we paid the money. 30

Q. When you got these plans, you then knew that you were to receive other plans, did you not, for your building? A. I didn't know it.

Q. You didn't know it when you read the preface? A. I did not.

Q. What did you think the preface meant when the preface said, "Illustrative of the several types of apparatus that may be used"? What did you think that meant? A. I thought the several types of apparatus were contained in that book of plans. 40

Ferdinand Coiren—For Defendant—Cross.

Q. Did you look and see whether they were there or not? A. I looked in and found a number of apparatus, but I couldn't tell which were which.

Q. You couldn't tell what they were? A. I couldn't tell; I never had any experience with it.

Q. You never had any experience with work of this kind? A. No.

10 Q. This is the first time? A. Yes.

Q. You did receive building plans? A. Subsequently.

Q. When did you get them? A. Some time in January or February, 1916.

Q. When did you begin building? A. I had the foundations done on the 20th of January, 1916.

Q. When did you have the roof on? A. The roof was—I may say the building was well under cover by the 31st day of March, 1916.

20 Q. And when did you get the partitions, floors and the place generally ready for installing the machinery? A. The floor was laid first.

Q. When was the place ready for the machinery? A. The floor was ready for the machinery not later than the 15th of February, 1916.

Q. And the roof was put on about March 31, 1916? A. I should say it was completed about that time.

30 Q. Had any machinery been delivered before March 31st, 1916? A. I believe we received two filter presses, which came from Newark. I don't know of anything else.

Q. That was all? A. Well, I am not sure as to just what time the other thing came in.

Q. When did you place orders for the filter presses? A. They were ordered, I believe, in February or January; I don't know which.

40 Q. When did you place orders for the tanks to use in the sulfonating process? A. I don't know; I can't remember.

Ferdinand Coiren—For Defendant—Cross.

Q. You don't remember? A. I don't remember.

Q. And how about the tank for the acidifier? A. As far as I can remember, the acidifier was not ordered by Mr. Stevens until July or August.

Q. Now, how about the other tanks used in this process? When were they ordered? A. Some in July; some in August.

Q. Some in May and June? A. Some in September. 10

Q. Kept on giving you the orders from the time you started the building up through September? A. Oh, yes.

Q. And you would get orders from Mr. Stevens every little while to supply apparatus; is that right? A. That is right.

Q. You don't recall when he placed these orders for these tanks and how long it took to make deliveries after he placed the orders? A. Why, they 20 agreed to place them as soon as possible, but I don't recall the time.

Q. During the year 1916 didn't you have trouble in finding factories who would manufacture these products? A. Oh, no.

Q. Did you have any trouble with deliveries? A. No.

Q. Did you have any freight congestion? A. No.

Q. Not at all in 1916? A. None at all in 1916.

Q. Not the slightest trouble? A. Not the slightest 30 trouble.

Q. Do you recall receiving a letter from Mr. Stevens where it stated that there were no flat cars available on the part of one of the railroads to receive the goods so that they couldn't be delivered to your plant? A. I don't recollect that letter.

Q. You run a factory right next door to this, don't you? A. Right next door. 40

Ferdinand Coiren—For Defendant—Cross.

Q. What do you make there? A. Nitrate of iron, soaps, tin products.

Q. How many men do you employ? A. From four to six.

Q. During the month of May how many men did you have employed, May, 1917, in connection solely with the work of this chemical plant of Mr. Stevens? A. Four.

10 Q. Were they there all the time? A. All the time.

Q. How many men did you have in April, 1917? A. Four.

Q. The same four men? A. The same four men.

Q. Were they there every month from January, 1916, to May, 1917? A. In the beginning we only had two; then we increased the force as the plant went on to four. When the first apparatus came in, there was only two men.

20 Q. And you are not referring to other men used in connection with your other business? A. This business has nothing to do with the other business.

Q. The men you refer to were hired solely for this business? A. They were hired for the Coiform Company.

Q. Have you any records here to indicate that fact? A. I can get them.

Q. Here, I said. A. No; not here.

30 Q. Now, with respect to the orders which were sent out for the various tanks and other apparatus; they were all signed by you, were they not? A. Mostly; not all.

Q. What wasn't signed for by you? A. That I can't tell exactly, because Mr. Stevens had the plant under his charge, and I could order whatever was right, and whatever Mr. Stevens would order we would stand by.

Ferdinand Coiren—For Defendant—Cross.

Q. And the practice was, however, for Mr. Stevens to prepare these orders and forward them to you for your signature, and you would then send them out; is that correct? A. That was to be that way; that was the understanding.

Q. And the greater part of the work was done that way, was it not? A. Some of it.

Q. Well, what piece of apparatus do you recollect that wasn't ordered in that way? A. Well, there were several tanks ordered from the boiler people at Allentown, and they were ordered verbally by Mr. Stevens at their plant; and there was never any order signed by myself for those tanks. 10

Q. You never confirmed the order? A. I never confirmed it; only sending a part payment on them; that was a confirmation.

Q. Is it not true that shipment was refused until you confirmed it? A. Why, there was no shipment ready; they had to make these tanks. 20

Q. Yes; but when they came to shipment of the order, didn't they refuse to act until they received confirmation from you? A. They had part of the money for them.

Q. Did they or did they not refuse to act on Mr. Stevens' verbal statement without confirmation from you? A. I don't remember that they did.

Q. Do you remember that they didn't? A. I do not. 30

Q. You don't know anything about it either way? A. I can't remember what was said at the time.

Q. Do you know whether or not any carbolic oil was produced in this plant? A. There was a little produced.

Q. There was carbolic oil? A. A little bit; yes, sir.

Q. Do you know what the distinction is between carbolic acid and carbolic oil? A. This is the first time I have heard it, to-day. 40

Ferdinand Coiren—For Defendant—Cross.

Q. But you knew this was carbolic oil? A. I knew it was carbolic acid.

Q. That was produced? A. Yes, sir.

Q. Then you did produce carbolic acid at the plant? A. Crude carbolic acid.

10 Q. Did you have any conversations at all with Mr. Stevens about the change in the market on carbolic acid? A. No, sir.

Q. Did you ever say anything to him about the fact that the price of carbolic fell during the year 1916? A. Never had any conversation about prices.

Q. Never talked to him about it? A. We had nothing to sell, so it was very immaterial.

Q. Do you know whether or not the price did change of carbolic acid? A. Oh, I believe it did change.

20 Q. It fell down, didn't it? A. Sometimes it went up.

Q. During the year 1916, do you know what the price of it was in January, 1916? A. I do not.

Q. Do you know whether it was a dollar a pound? A. It may have been a dollar; it may have been 95 cents; I am not sure.

Q. Do you know what it was in April or May, 1917?

30 Mr. Rosenkrans: One minute. I object to this line for two reasons: First, it isn't cross-examination, and, the second place, I don't see how it is material in any way.

The Court: No; I do not see that it is.

Mr. Marsh: He stated that he had no conversation on his direct examination. He was asked the question whether he had anything to do or any conversation with Mr. Stevens about the price or changing price of carbolic acid. Now, I am simply asking him whether he did, and following that up by—

Ferdinand Coiren—For Defendant—Cross.
Joseph Formanns—For Defendant—Direct.

The Court: What the price was is immaterial. You may proceed on the question of any conversation. This is immaterial in this case.

Mr. Marsh: I don't know that I care to go any further.

Q. When you received the letter of June 9, 1917, written by Mr. Stevens, and asking you for some money, did you answer it? A. Yes, sir.

Q. By letter? A. No, sir.

Q. Did you call him up, or what? A. Yes, I did.

Mr. Marsh: I think that is all.

JOSEPH FORMANNS, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Rosenkrans.

Q. Mr. Formanns, you are the Mr. Formanns that signed the contract known as P-1?

Mr. Marsh: P-1 is correct.

A. That's my name.

Q. And the other person signing it was Mr. Coiren? A. Mr. Coiren.

Q. And together you formed the Coiform Chemical Company? A. We did.

Q. Now, are you a chemist? A. No.

Q. And what is your business? A. Why, I am a general merchant.

Q. And the interest you had in that plant was investing money? A. It was.

Joseph Formanns—For Defendant—Direct.

Q. You took it as an investment? A. Yes.

Q. And have you kept in touch with the plant referred to in that contract? A. I did.

Q. Do you know whether or not that plant has ever produced carbolic acid? A. I know that it has not.

10 Q. And how do you know that? A. Well, I know that from the fact that I positively know it; because I would know it; I would have to make out some bills and have to look for some customers to sell it to.

Q. You never had any to sell? A. I never had any chance to sell any.

Mr. Marsh: I object to that. I don't think he is competent to know whether or not he manufactures carbolic. I ask it be stricken out.

20 The Court: No; I won't strike it out. Proceed.

Q. That contract was signed on December 1st, 1915, and since December 1st, 1915, until July or August, 1917, how often did you visit the plant of the Coiform Chemical Company? A. Generally every week; once, if not oftener. If it was very cold, then I didn't come so often.

30 Q. Did you ever talk to Mr. Stevens in regard to how the work was progressing? A. Quite often.

Q. Did you ever have any conversations with him in the spring of 1917? A. Pretty sure.

Q. You heard the testimony in this case, have you? A. I did, some.

Q. In the spring of 1917 Mr. Stevens was testing out the plant? A. He was.

Q. At different times? A. Yes.

Q. Did you have any conversations with him while he was testing it out? A. I did.

Joseph Formanns—For Defendant—Direct.

Q. When, as near as you can recall? A. Oh, occasionally. Whenever he was there I tried to be there. I called up the firm or the factory, and when Mr. Stevens was there, and I was in town, I went to see him.

Q. What did you say to him? A. I said to him, "Now, I hope you know we get that going."

Q. And what did he say? A. He said, "There is no reason it shouldn't." I said, "Well, then, I will be glad to keep to it." Outside of that, I often visited Mr. Stevens in Newark in his office, to push the thing along. 10

Q. Were you there the day of the fire? A. No.

Q. Were you there the day that Mr. Stevens—
A. No.

Q. Tested it? A. I heard of it. I probably been there that night later, but I went there that time because Mr. Coiren told me about it, that the doctor had a little accident almost. 20

Q. In the spring of 1917 did Mr. Stevens ever ask you for money on account of the plant? A. Oh, yes; he did that frequently.

Q. And what did you say to him? A. I would say, "Now, Doctor, it isn't the money so much, but produce something."

Q. And what did he say? A. I said, "You told me sixty days, ninety days at the latest, you would have money coming in for me." I says, "You didn't keep your word." "Why," he says, "the circumstances." "Why," I says, "you didn't tell me about circumstances then." 30

Q. And did you ask him why he didn't produce? A. I certainly did, too.

Q. Well, what did he say? A. Why, he said, "You know this apparatus doesn't work. You know I got to test that out yet, and you can do that in a day or two. Now, give me time." And when we give him time he disappeared again for a 40

Joseph Formanns—For Deft.—Direct—Cross.

week or two. One time I was pretty hot against the doctor. I told him it is for us he works, and he made contracts with us before the Allen Chemical Company in Allentown, that he should prefer us, because I said, "I am looking for an income." And I was just quite tired of Dr. Stevens.

10 Q. And when he asked you—did he ask you in the spring of 1917 for money? Ask you for any payments? A. I particularly remember he asked me for money at the end of May or during June, just at the time when the new thermometer came, and I thought he would come. He asked me for \$500 several times, and my last decision was this, that it isn't the \$500, but "it is for you now." I says, "Doctor, we have been lenient with you. The thermometer is there. Now come out. You will get your \$500 in a couple of days, but prove to us
20 the plant is running." He says he wouldn't come out for less than \$500. So I says, "Don't call me up no more. I tell you if you can produce now, within a week you get the \$500."

Q. And did he ever produce? A. And he didn't come. I talked with him over the 'phone, and I says, "Now, Doctor, we have been good friends. Now, don't let that \$500 worry you." I says, "You know me; that when you come and produce, you get money, probably more than you want."

30 Q. And he never produced? A. And he never came.

Mr. Rosenkrans: That is all.

Cross-examination by Mr. Marsh.

Q. What line of business have you been in? A. Oh, I been in half a dozen or more. The last five years—before five years ago I was a silk dyer, skein silk dyer.

Joseph Formanns—For Defendant—Cross.

Q. You don't know anything much about chemistry, do you? A. A little bit. If I wouldn't have known anything——

Q. Did you take any part in the work on this plant? A. Yes.

Q. What did you do? A. I do——

Mr. Rosenkrans: One minute.

The Court: I will allow the question. All right, proceed. 10

A. All right. I try—I mean I purchase goods, look over the market, what can be had, and I was ready, you know, to sell if I had anything. It was my business.

Q. When did Mr. Stevens first ask you for any money? A. When?

Q. Yes. A. I don't know that—that money matter, you know, the last I gave him \$100, personally. 20

Q. When was that? A. That was the end of 1916, I think, in December. I think I made it so that he had it the last of the month, when he wanted to go out West.

Q. And did he ask you for money during January or February, 1917? A. I don't think so soon.

Q. How about March, 1917? A. That is more like it.

Q. Did you give him money? A. No.

Q. Did he ask you in April? A. He asked me repeatedly. 30

Q. You didn't give him any, did you? A. No.

Q. How about May? A. The same thing.

Q. He would ask you repeatedly, and you never gave him anything? A. Not repeatedly; he asked me for money. I said, "Don't ask me for money; produce something."

Q. He was working at the plant at that time? A. Not much.

Joseph Formanns—For Defendant—Cross.
George J. Flushing, Jr.—For Defendant—Direct.

Q. Not much? A. No; every once in a while that I seen him.

Mr. Marsh: That is all.

The Witness: I know, because I been there at the plant.

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GEORGE J. FLUSHING, JR., called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. Rosenkrans.

Q. Mr. Flushing, do you know Mr. Stevens? A. I do.

20 Q. The gentleman sitting here (indicating)? A. Yes, sir.

Q. Do you know Mr. Coiren? A. I do.

Q. And Mr. Formanns? A. I do.

Q. And do you know about the work that was done under the direction of Mr. Stevens for the Coiform Chemical Company? A. Quite some of the work.

Q. And what is your business? A. Manufacturer of machinery.

30 Q. Where? A. We are now located in Jersey City.

Q. Are you in business for yourself? A. Yes.

Q. And were you in 1917? A. I was.

Q. And under what name were you trading? A. The Casting & Supply Company.

Q. And did you furnish some of the material, or some of the machinery for this plant? A. I did.

Q. And who ordered it? A. Well, I got to think. I considered Mr. Stevens—

40

George J. Flushing, Jr.—For Defendant—Direct.

Mr. Marsh: No, no. I object to that, and ask it be stricken out, what he considers.

The Court: Was that a written order or verbal?

The Witness: Verbal that is, and confirmed later by Mr. Coiren.

Q. And what did you furnish? A. Furnished some carbolic acid stills, three, I believe, in number, and a crystallizing tank. 10

Q. And a crystallizing tank? A. Yes.

Q. Now, under whose instructions did you make those stills and tank? A. Mr. Stevens'.

Q. Did you have many considerations with him in relation to the work being done at the Coiform Chemical Company, for them? A. Quite a number.

Q. What about? A. Principally about the way the machines should be put together, and as long as we got up something that would work, it would be all right; and regarding the crystallizing plant, we knew at the time that the construction was faulty, but, however, we followed the instructions to go ahead with it. We pointed out the weak points in it several times. That was on the stirring device. 20

Q. And what did Mr. Stevens say? A. Go ahead and make it, make it work. 30

Q. Told you to go ahead and make it work? A. Yes; we made it work as best we could.

Q. Did he ever bring to you other blue-prints or plans in regard to this company? A. Well, there was quite a number of plans and blue-prints brought there for these purposes, one in particular that I remember that showed a remodelled drawing of the carbolic acid still, which I know we didn't follow. We tried to get Mr. Stevens to come there and watch a test on it, but Mr. Stevens was off 40

George J. Flushing, Jr.—For Defendant—Direct.

somewhere. But we had to get this still out to Allentown, to be frank about it, we needed the money. We knew as soon as we got this still on Mr. Coiren's property we would receive our money. We couldn't find Mr. Stevens to witness a test; we shipped it out there in any case in order to receive the money, which we needed at that time.

10 Q. Did you ever have any conversations in regard to other machines not furnished by you, of which Mr. Stevens showed you a blue-print, and asked you whether you thought it would work out?

A. I was out to Mr. Stevens' office on several occasions for proposed building of machinery for other concerns.

Mr. Marsh: I object to that.

The Court: What he said about machinery for those concerns.

20

A. The purpose of my visit out to his office was principally to give him an approximate estimate of what the units would cost for the Coiren Chemical, but it developed during the evening I found out we were there to help design it.

Mr. Marsh: I don't think that is proper.

The Court: What took place at that time between them?

30

Q. What was said by Mr. Stevens? A. Well, he spoke about some man being connected with A. & F. Brown Company coming there and getting \$5 an hour to help them design the stuff, and it made me feel that I was worth \$5 an hour.

Mr. Marsh: I ask that that be stricken out.

The Court: Yes.

40

George J. Flushing, Jr.—For Defendant—Direct.

Q. Did he ask you questions as to how the machinery should be made? A. There were several changes made there while I was there.

Q. For the Coiform plant? A. Yes, several changes made from the original drawings that he had there, that we later got the corrected drawings with several changes on them as proposed by us.

Q. And why did you propose those?

10

Mr. Marsh: I object to that, the reason why he proposed it. I don't see that this man's reason is evidence in this case at all.

The Court: How is that competent?

Mr. Rosenkrans: Here is a machinist; I presume if those blue-prints were not proper, I suppose he would tell him so.

The Court: What he told him about the blue-prints, I don't know that even that would be competent. You might find out whether the machines built from the blue-prints would work. That would be competent.

20

Q. Of the different blue-prints he showed you, referring to them one evening, did you discuss with him whether machinery drawn on that plan would be practical or not, would work? A. Well, there were several points on the blue-prints that we didn't think would be of good construction, such as advising him as to the kettle standing on legs; and I believe there was something in the agitation of the crystallizing plant that we suggested. Then there was a way of putting the dome on that; we made a few corrections, how to get it together; in fact, there was quite a number of changes we had to make in order to make the machine go together.

30

Q. In order to put it together at all, eh? A. If we followed the blue-print line for line, I don't

40

George J. Flushing, Jr.—For Deft.—Direct—Cross.

think we would have got a machine. There is many times a blue-print comes into the shop we don't follow it, but you use a lot of your horse sense to get it together, and draftsmen can't see it.

Mr. Rosenkrans: Cross-examine.

Cross-examination by Mr. Marsh.

10

Q. What did you manufacture for this Coiform Chemical job? A. We did the machine work on the castings of the carbolic acid still and crystallizing plant.

Q. When did you get the order for the carbolic acid still? A. Oh, this is 1918; must be more than two years ago. It is over two years ago.

Q. Do you know the date of it? A. No.

20

Mr. Marsh: Have you got that letter you offered as an exhibit signed by Mr. Flushing?

Q. I show you letter D-4; does that help you any? A. Yes; considerably.

Q. Can you tell us when you got the order? A. (Referring) Well, this looks like the 14th of February, 1916, we got the order.

Q. Can you tell us who sent you the order, now that you have got that letter before you? A. Mr. Coiren.

30

Q. Mr. Coiren sent you the order, did he not? A. Yes, in confirmation of Mr. Stevens' orders.

Q. You says here, "We have your valued order of the 14th instant—" A. Exactly.

Q. Referring to Mr. Coiren's order? A. Exactly. Confirmation of the order by Mr. Stevens.

Q. I didn't ask you that.

40

Mr. Marsh: I ask that that be stricken out; that isn't responsive.

George J. Flushing, Jr.—For Defendant—Cross.

The Witness: Well, my dear friend——

Mr. Marsh: Just a minute. There is no question being asked you. I ask the Court to direct this witness not to answer unless there are questions being asked.

Q. When did you deliver these goods, these stills?

A. Oh, I guess somewheres maybe three to four months later than that. 10

Q. So that you delivered— A. Four or five months; four to five months later.

Q. July or August, 1916? A. Somewheres around that, yes.

Q. When did you get an order for the crystalizer? A. At the same time we got the order——

Q. When did you deliver that? A. Oh, maybe six or seven months later.

Q. So you wouldn't have delivered that probably until fall, 19— A. Later than that order. 20

Q. Yes, that would make it September or October, 1917? A. Yes, about that time.

Mr. Marsh: That is all.

Mr. Rosenkrans: That is all. That is the case.

DEFENDANTS REST.

30

Mr. Marsh: I want to recall Mr. Stevens for a moment.

40

George H. Stevens—Recalled—Direct.

GEORGE H. STEVENS, recalled in rebuttal as a witness in his own behalf, testified as follows:

Direct examination by Mr. Marsh.

10 Q. Mr. Stevens, Mr. Coiren has testified that you stated to him that there were certain faulty designs in the machines which required correction. Did you ever say that to him? A. No.

Q. Did you ever say anything like it? A. I said that there were small, unimportant changes in piping or adjustments of machines that would have to be made, and were made as they are in all mechanical installation. The most material change was the change in the agitator of the crystallizer, which, when it was final, was understood was purely experimental.

20 Q. Will you tell us about that crystallizer? A. The various kinds of salts in the chemical industry that are crystallized have different apparatus for loosening under drying, and the design of the agitator to scrape those off of the bottom of the pan would not handle these salts as they would other salts; so the agitator had to be changed to a different pattern, which was an unimportant matter, and the change consisted of a cast iron bar with a couple of small chains hitched to it.

30 Q. How about these salts that turned into balls? What have you say about that? A. That means that the salts, instead of sliding off the top of the broad knife, stuck to it; too much surface to the knife.

Q. Was that corrected? A. That was corrected. The correction was made——

40 Q. Did you ever tell Mr. Coiren that he had to get some other machine and leave it to him to fix it up; that you couldn't do anything with it? A. No. The suggestion for the change made by myself

George H. Stevens—Recalled—Direct.

and the change that he made was substantially the same thing.

Q. Did you have any talk with Mr. Formanns about that the apparatus didn't work, and that you would have to fix it up, and that if he would have patience— A. No, no such conversation.

Q. Did you ever have anything like that with Mr. Formanns? A. No.

10

Q. Did you ever talk over the work with him at all? A. Yes; frequently.

Q. And what about? A. Largely the question of delay in the work going forward.

Q. What did you say, and what did he say to you? A. He wanted to know why the work didn't go forward faster, and I said he would have to get some mechanics put in there instead of the common labor he had.

Q. What did he say to that? A. He said he would see to it and have it changed.

20

Q. Well, was it changed? A. The change was never made.

Q. Now, there has been some testimony here that the reason why this work took long was due to constant changes in plans and designs made by you. What have you to say to that? A. A few unimportant changes on apparatus that hadn't been set up was made because both Mr. Coiren and Mr. Formanns asked me to give the plant the benefit of any improvements in the process that might be evolved during the interim of the completion.

30

Q. Did that affect the time of its construction at all? A. Not at all; didn't delay anything.

Q. Did you have any difficulty with respect to placing orders? A. A great deal of difficulty.

Q. And what was the trouble? A. Manufacturers at that time were so crowded with work that you had to beg them to make your work. I had to take it in almost any way we could get it.

40

George H. Stevens—Recalled—Direct.

Q. How about freight and rail conditions? A. Freight and rail conditions were about the same, but our stuff didn't have to come great distances. That didn't enter into it so much as a delay in manufacture to complete the work. There were some rail delays, but not so serious as the others.

10 Q. Mr. Coiren has testified that he had four men hired working in that factory all the time during the two months preceding the fire. What have you to say as to that? A. The man whom he had as foreman, together with his helpers, had been discharged some time before that, and another man put into the plant as a regular employee there.

20 Q. So that during April and May, 1917, how many men were there there? A. Well, possibly the last two or three weeks there was no one employed in there regularly in the carbolic acid work except Mr. Coiren.

Q. I show you this Exhibit D-13, and ask you if this is your plan? A. (Referring) That is one of my own sketches.

Q. What about these marks (indicating); is that yours? A. (Referring) Those are not mine.

Q. Did you make any changes of that character on it? A. Not on this drawing. There were some suggestions for better facilitating the movements of these fluids, but they were unimportant.

30 Q. Now, did you have any conversation with Mr. Flushing with respect to the way the machines should be put together? A. No. Mr. Flushing received his blue-prints and typewritten specifications, and was supposed to follow them absolutely without any—

Q. Do you know whether the apparatus he did furnish did follow the blue-prints? A. He followed the blue-prints absolutely.

George H. Stevens—Recalled—Direct.

Q. Did you ever have any conversation with Mr. Coiren about market conditions and prices of carbolic acid? A. Quite a number of conversations.

Q. What were they?

Mr. Rosenkrans: If the Court please, I object to that, going into the market conditions of carbolic acid.

The Court: How do you think it is competent? 10

Mr. Marsh: It is rebuttal. Mr. Coiren said he didn't have the conversation. Now, I want to ask Mr. Stevens whether he did.

The Court: Read the question.

(Question read.)

The Court: Yes; he may answer it.

A. The conversations were on the line that there was no money in phenol at the present prices. 20

Q. What did he say to you, and what did you say to him? A. He said he couldn't make any money out of phenol at the present price of caustic.

Q. What did you answer? A. Well, I said I couldn't govern that.

Q. Mr. Coiren testified that the auto-clave was defective, and that it took certain corrections of the ferrule and a new valve, and correction at the cover or top. What have you to say as to that? 30

A. The only change made was to put a union on the discharge so as to make it detachable instead of permanent, and to cut off the ferrule at the bottom, which was perhaps half an hour's time of one man.

Q. What was the other job? A. The other job was purchasing a large malleable union and threading it and putting it on; perhaps, if it went to a machine shop, perhaps a day or two days' time.

Mr. Marsh: That is all.

Ferdinand Coiren—Recalled—Direct.

I would like to open my case a minute and call Mr. Coiren on the feature of this married woman statute.

The Court: All right, you may.

Mr. Marsh: Mr. Coiren.

10 FERDINAND COIREN, recalled, testified as follows:

Direct examination by Mr. Marsh.

Q. Mr. Coiren, are you married? A. Yes, sir.

Q. Where do you live? A. Dundee Lake.

Q. How far from the factory? A. From this factory?

Q. Yes. A. A couple of hundred feet.

20 Q. Does your wife live there with you? A. Yes, sir.

Q. Has she seen the building going up, to your knowledge?

Mr. Rosenkrans: I object to that.

Q. Can the building of this factory be seen from where you live? A. No, sir.

Q. Did you ever tell your wife about this plant? A. No, sir.

30 Q. Never said a word to her about it? A. Not at the beginning; no, sir.

Q. Did you ever say anything to her at any time about it? A. Lately, but not in the beginning.

Q. Does she know anything about this, so far as you know? A. She knows there is a building there at the present time.

Q. Well, did she know anything about it, about the construction of it? A. No, sir.

Ferdinand Coiren—Recalled—Direct.

Q. Didn't know a thing about it? A. No, sir; not in the beginning.

Q. When did she find out? A. After the plant was going on, then she found out there was a building going up.

Q. Then she saw the building going up, didn't she? A. She saw the building going up after it was started.

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Mr. Marsh: I think that is all. Plaintiff rests.

TESTIMONY CLOSED.

Mr. Rosenkrans summed up the case to the jury on behalf of the defendants.

Mr. Marsh summed up the case to the jury on behalf of the plaintiff.

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The Court: We will take a recess now (4.43 P. M.) until 10 o'clock to-morrow morning.

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Charge.

BERGEN COUNTY CIRCUIT COURT.

	GEORGE H. STEVENS, Plaintiff,	}	Action at Law.
	vs.		
10	FERDINAND COIREN, JOSEPH FORMANNNS, Builders, FERDINAND COIREN and. LEONIE COIREN, Owners, Defendants.		

Hackensack, N. J., June 26, 1918.

CUTLER, J.:

20 Gentlemen of the Jury: On the 1st day of December, 1915, the plaintiff and the defendants, Ferdinand Coiren and Joseph Formannns, who are termed in the pleadings builders, and whom I shall refer to in my charge as the builders, entered into a written contract, whereby, among other things, they agreed—the plaintiff agreed to furnish the builders (I am reading from the contract, substituting the word “plaintiff” and “builders” for parties of the first part and parties of the second part) “immediately upon the receipt of \$300, hereinafter mentioned, the general plans and information necessary to enable the immediate construction of a practical working plant and process for the manufacture of synthetic carbolic acid, such plant and process to be in accordance with the customary method of producing synthetic phenol by sulfonating benzol, converting the resultant sulfonic acid into a sodium benzene sulfonate (sodium salt solution), then into sodium phenolate through

Charge.

fusion, and finally separating the phenol, which process is now in successful commercial operation in both this country and abroad, and the plant to have a capacity of producing not less than one-quarter ton of synthetic phenol in twenty-four hours."

You will notice that these builders were to pay the plaintiff the sum of \$300, and upon receiving that sum the plaintiff was immediately to furnish the general plans and information necessary to enable the immediate construction of a practical working plant and process for the manufacture of synthetic carbolic acid in the manner indicated in the contract, the plant to have a capacity of producing not less than one-quarter of a ton of synthetic phenol in twenty-four hours. The \$300 was in full payment for the general plans and information. If the builders did not decide to proceed with the construction of the plant, nothing more was required of the plaintiff, and nothing more was required of the builders, except that they were not to manufacture synthetic carbolic acid within eighteen months, and not within the same time to disclose or reveal the process to any party, except their employees or assigns. If, however, the builders decided to construct such a plant as was described by the plaintiff, plans and information, the contract then provides what the plaintiff was to do in the following language, except that I will use, as I have said before, the word "plaintiff" and "builders" for the parties of the first part and parties of the second part.

"Three: The plaintiff agrees to give as much of his time as may be necessary to properly lay out, furnish details and drawings, assist in or do the necessary purchasing of apparatus, inspect the buildings and work as it progresses, and break in

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Charge.

10 such superintendent, foreman, chemist and help as selected by the builders, and furnish such engineer of said builders as may be selected with the proper information, plans and details for carrying out the actual work of building and installation, and said plaintiff agrees to be in personal attendance on the work at frequent intervals, and for suitable lengths of time as may be needed, yet compatible with his other professional work, and is not hereby bound to any stated amount of time so long as the ones in charge are at all times suitably supplied with the necessary instructions for carrying the work forward without delay. The said plaintiff agrees to continue this supervision for at least thirty days after the plant is in operation, and further to give his occasional advice thereafter for a period of

20 eighteen months without additional compensation, other than railroad fare and hotel bills when they may be necessary. It is understood by both parties to this agreement, that is, the plaintiff and the builders, that from the time of signing the contract until thirty days after producing, unless full settlement is made before that, that the entire work is under the supervision of the plaintiff."

30 You will have the contract, gentlemen, before you and should read it with great care, for it contains other provisions than those I have referred to and may refer to hereafter in my charge.

The contract also provides that the builders, in case they proceed with the erection of this plant, were to pay the plaintiff \$50 per week from the time of the signing of the contract throughout the entire period required to completely install and equip said plant and to put the same in practical and successful operation. They also agree as follows: "To pay the plaintiff an additional sum sufficient to make the total payment of \$2500, including the

Charge.

above payments, that is, the payment of \$300 originally and the \$50 a week, and this balance to be payable after said plant is complete and in practical working order, and has been producing for thirty days, and is capable of producing carbolic acid on a commercial scale, the remaining payments to be made in the following manner: After thirty days of production, the payment of \$50 per week shall be increased to \$100 per week, and after ninety days, the payments shall be increased to \$200 per week, until the entire amount has been paid." 10

Both parties were bound by the terms of this contract, and both parties were obliged to live up to its terms. If one of them failed to do so, the other party has a cause of action against the party so in default to recover such damages as resulted from the breach; but if both parties failed to carry out the contract, neither party would have a cause of action against the other. The plaintiff claims that he has carried out the terms of this contract, and the builders have failed to carry out their part in paying him the money they should have done, and asks at your hands a verdict for the money still due on the contract, together with interest from May 23rd, 1917. The builders deny this, and say that the plaintiff has not fulfilled his contract and cannot recover, and also ask a judgment against the plaintiff for damages they allege they have sustained by the plaintiff's failure to live up to the terms of his contract. 20 30

It is admitted that the builders paid the plaintiff the sum of \$300 at or about the time of the signing of this contract, and received from the plaintiff certain plans and information about the construction of a plant for the making of carbolic acid, and that the builders, about the same time, notified the plaintiff that they would construct such a plant described in the contract. It therefore became the duty of 40

Charge.

the plaintiff to carry out his contract, and to superintend the immediate construction of a practical working plant and process for the manufacture of not less than one-quarter of a ton in twenty-four hours of synthetic phenol in accordance with the plans and information he had already furnished the builders.

10 If the plaintiff has established by a fair preponderance of the evidence that he has superintended the erection of a plant that is capable of producing one-quarter ton of this product in twenty-four hours by the process indicated in the contract, he is entitled to recover the amount agreed upon for his services, namely, \$2200, less the amount that he has already received, with interest on any defaulted payments from the date of such default. If he has not constructed a plant, he cannot recover the full amount designated in the contract. If the plant erected under the specifications of the plaintiff would produce at least one-quarter of a ton of this product in twenty-four hours by the process indicated in the contract, he can recover, even if the builders refused to operate the plant after it was erected, for the builders cannot deprive him of his right to recover by their failure to operate if the plant could be operated.

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30 In this case, the plaintiff says he furnished the plans, and that some time in the latter part of April, 1917, or, as I remember his exact language, several weeks prior to the fire, the plant was in a condition to produce the products. You are, gentlemen, to determine just exactly what the evidence was on that subject, whether the plaintiff contended and testified that the plant was ready to produce the product which he was to produce before the fire, or whether it was not in working order at the time of the fire. If you are satisfied from all the testi-

Charge.

mony that the plaintiff had constructed the plant called for in the contract, that is, a practical working plant of the capacity of one-quarter of a ton of this product in twenty-four hours, he can recover the full amount of the contract price, namely, \$2200, less the money received on account, which I understand was \$600, together with interest on any payments in default. If you reach the conclusion that the plaintiff has not completed his contract, he would still be entitled to recover, if anything is due him on his weekly payments, unless you are satisfied that the plans and information furnished, if carried out, would not result in a practical working plant capable of producing one-quarter ton of this product in twenty-four hours; and there is no direct evidence, as I recall the testimony, that this plan of the plaintiff's could not be made to produce this quantity of material. The evidence relates to defects in machinery and apparatus and in construction. The plaintiff was to be paid \$50 per week from the signing of the contract throughout the entire period required to completely install and equip a plant and to put the same in practical and successful operation.

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No time is designated in the contract. The contract does not say the plaintiff was to receive \$50 per week until the plant was in successful operation. It limits the payment to the entire period required. It is, therefore, important to determine, if the plaintiff has not fulfilled his contract, the length of time that would reasonably be required to fully equip and finish this plant. The builders say that the plaintiff informed them that the plant could be put in operation in sixty or ninety days. You are to say from the evidence whether there has been any evidence produced on behalf of the plaintiff or on behalf of the defendant builders as to the

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Charge.

length of time that it would require to put this plant in operation. There has been something said about three or four months being required. You are to be the sole judges of the testimony in this regard, and in determining the time that was required to put this plant in operation you should consider the fact that the plans and information furnished for the \$300 by the plaintiff were for the immediate construction of this plant. If the plans so furnished were faulty and incomplete, and required changes, the defendants would not be held responsible for the additional time required to make these changes or alterations. They were to receive for their \$300 the plans and information to enable them to immediately construct this plant. During the time that was actually required to complete the plant, this plaintiff was to receive \$50 per week, and he was entitled to receive these payments each week, whether the plant was fully completed within that time or not. If the plaintiff, therefore, has not completed the contract, determine the number of weeks reasonably required to complete and equip the plant, and the plaintiff would be entitled to be paid for that number of weeks at \$50 per week, less the \$600 already received by him, with interest on the balance, if there is any balance, from the time of default.

The builders counterclaim—that is, they ask damages of the plaintiff for the failure of the plans to produce the product required. If, after the plaintiff left the work as completed, it was found defective, and the builders were obliged to remedy the defects in the plans furnished by the plaintiff, the amount that they expended in remedying these defects or to correct the plans or information which had been furnished them by the plaintiff, they would be entitled to recover against the plaintiff. The fact that

Charge.

the plant cost somewhat more than the plaintiff estimated the cost would be would not entitle these builders to a verdict against the plaintiff, for the contract does not specify the amount that the plant was to cost. It does not appear that the builders have done anything since the fire to make the plant work or to change anything. The only thing that they testify they have done is to repair the parts that were damaged by this fire, and prior to the fire the only evidence is that they hired some men, a few in number, to correct certain defects which had been pointed out by the plaintiff. 10

There cannot be, in this case, a verdict for both the plaintiff and the defendant. If you find that the builders are entitled to anything against the plaintiff, and the plaintiff is entitled to a recovery against the builders, then, in that case, you should deduct one sum from the other, and find your verdict for the party in favor of whom the balance is, whether it is the builders or the plaintiff. The builders must establish their counterclaim by a fair preponderance of the evidence. 20

Consider, gentlemen, the case carefully, and find such verdict as you believe the evidence will warrant. If you find for the plaintiff, your verdict will be against the builders generally, and if you are satisfied the work was done on property owned by the persons designated in the pleadings as the owners, and that the last work was done within four months before the filing of the lien claim, which, if I recall, was on the 4th day of September, 1917, you may find a special verdict against the land—that is, that the judgment, the general judgment, shall be made specially for the lands and buildings described in the lien claim. If the work was completed prior to the 4th day of May, 1917, there cannot be a special verdict, because the stat- 30

Charge.

ute only allows a special verdict in cases where the last work was done within four months prior to the filing of the lien claim.

10 Now, gentlemen, take the case, consider it carefully. If you find that the plaintiff—there is nothing due the plaintiff, then your verdict should be a general verdict in favor of the defendant and against the plaintiff; if you find there is any amount due the plaintiff, then you should find a general verdict against the builders, and in case the work was done, the last work was done, within four months prior to the 4th day of September, then, in addition to a general verdict, you should say that a judgment should be made specially for the lands and buildings described in the lien claim.

Swear an officer.

20 Mr. Marsh: The lien claim is the only exhibit that isn't here.

The Court: I have the pleadings and the lien claim here, and they may go out, too.

You may note your exceptions now.

(The jury retired.)

30 Mr. Rosenkrans: I ask an exception to that part of the charge where the Court stated that by the contract the builders were to pay the plaintiff \$50 per week throughout the entire period it took plaintiff to complete the plant and put it into complete operation.

The Court: Was not that the exact terms of the contract?

Mr. Rosenkrans: Part of it, or the words to that effect.

The Court: You mean to say those words are not in the contract, that I misquoted the contract?

Mr. Rosenkrans: No; but the way it was charged.

40 The Court: You do not say that that is not part of the contract?

Argument.

Mr. Rosenkrans: No, no; you read from the contract; but the way the terms were used in your charge.

The Court: Then you object to the way I used the terms, not that there was a misquotation from the contract?

Mr. Rosenkrans: Oh, no; I do not say that; but the way the terms were construed by the Court. 10

I also take exception to that part of the charge in which the Court said that if the plaintiff has proven that the plant is capable of producing the amount of carbolic acid, of 500 pounds per twenty-four hours, he can recover the balance due under the contract.

The Court: You may note your objection to what I said on that subject; the words I used.

Mr. Rosenkrans: Or words to that effect. And also to that part of the charge in which the Court said that if you are satisfied that the plaintiff has constructed a plant that is capable of producing 500 pounds of carbolic acid in twenty-four hours, he can recover the full amount of the contract price. 20

And also to that part of the charge in which the Court said that if the plaintiff has not completed the contract he is entitled to recover on his weekly compensation of \$50 per week, if you are satisfied that the plant can be made to produce 500 pounds of carbolic acid in twenty-four hours, or words to that effect. 30

The Court: The words that I used; yes.

Mr. Rosenkrans: And also to that part of the charge in which the Court stated that the plaintiff was entitled to recover \$50 per week, whether the plant was equipped or not, or words to that effect.

The Court: Yes.

Mr. Rosenkrans: And also to that part of the charge in which the Court said that the fact that 40

Argument.

the plant cost more than was estimated cannot enable the defendants to recover damages from the plaintiff, or words to that effect.

10 Mr. Marsh: I would like to have one objection noted to the charge, and that is the Court's construction of that part of the contract which states that the time required, the Court construed it to be the time reasonably required, instead of the time actually used.

The Court: Yes.

Mr. Marsh: In the construction.

The Court: I will allow that.

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Judgment.

BERGEN COUNTY CIRCUIT COURT.

<p style="text-align: center;">GEORGE H. STEVENS</p> <p style="text-align: center;">vs.</p> <p>FERDINAND COIRIN and JOSEPH FORMANNS, Builders, and FER- DINAND COIRIN and LEONIE COIRIN, Owners.</p>	}	<p>Action at Law. On Lien Claim.</p>	<p>10</p>
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Raymond, Mountain, Van Blarcom and Marsh,
Plaintiff's Attorneys.

Amount on damages in trial, One Thousand Seven
Hundred and Four Dollars and Eighty Cents, and
costs, Fifty-eight Dollars and Seventy-eight Cents,
generally against the builders and specially against
the land and building in the complaint described.

Dam	\$1704.80
Costs	58.78
	\$1763.58

Judgment signed and entered June 27, 1918, at
3.45 P. M.

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Grounds of Appeal.

called for in the contract, that is, a practical working plant of the capacity of one-quarter of a ton of this product in twenty-four hours, he can recover the full amount of the contract price, namely, \$2200.00, less the money received on account, which I understand was \$600.00, together with interest on any payments in default."

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(3) The Court committed harmful and prejudicial error in its charge when it said:

"If you reach the conclusion that the plaintiff has not completed his contract, he would still be entitled to recover, if anything is due him on his weekly payments, unless you are satisfied that the plans and information furnished, if carried out, would not result in a practical working plant capable of producing one-quarter ton of this product in twenty-four hours * * *. The plaintiff was to be paid \$50.00 per week from the signing of the contract throughout the entire period required to completely install and equip a plant and to put the same in practical and successful operation."

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(4) The Court committed harmful and prejudicial error in its charge when it said:

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"During the time that was actually required to complete the plant, this plaintiff was to receive \$50.00 per week, and he was entitled to receive these payments each week, whether the plant was fully completed within that time or not. If the plaintiff, therefore, has not completed the contract, determine the number of weeks reasonably required to complete and equip the plant, and the plaintiff would be en-

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Grounds of Appeal.

titled to be paid for that number of weeks at \$50.00 less the \$600.00 already received by him, with interest on the balance, if there is any balance, from the time of default."

(5) The Court committed harmful and prejudicial error in its charge when it said:

10 "The fact that the plant cost somewhat more than the plaintiff estimated the cost would be, would not entitle these builders to a verdict against the plaintiff, for the contract does not specify the amount that the plant was to cost. It does not appear that the builders have done anything since the fire to make the plant work or to change anything."

20 (6) The Court also committed harmful and prejudicial error by stating, in effect, that by the terms of the contract the Builders were to pay the plaintiff \$50.00 per week throughout the entire period it took plaintiff to complete the plant and put it into complete operation.

(7) The verdict in the case is not grounded upon a true legal construction of the contract, and should be set aside.

30 (8) Under the true construction of the contract, plaintiff was not to receive from defendants the far greater portion of the contract price, until the plant had been actually producing carbolic acid on a practical and successful commercial scale, as provided in said contract. There was no evidence in the case that the plant had ever produced carbolic acid on such commercial scale. The verdict of the jury, in awarding to plaintiff the entire balance of the contract price, was unwarranted in law.

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Grounds of Appeal.

(9) Under the true construction of the contract between plaintiff and defendants, under the evidence in the case, plaintiff was entitled to recover from defendants, as a matter of law, but a small, if any, judgment. The verdict of \$1704.00 damages against these defendants is contrary to the true legal construction of the contract, and should be set aside. 10

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(10) During the trial of the cause, the Court below committed error in denying defendants' motion for non-suit.

WILLIAM V. ROSENKRANS,
Attorney of Defendants-Appellants.

(Acknowledgment of service endorsed thereon by 20
attorneys of defendants.)

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NEW JERSEY SUPREME COURT

(Filed March 3, 1919.)

10 GEORGE H. STEVENS,
Plaintiff and Respondent,

vs.

FERDINAND COIRIN et al.,
Defendants and Appellants.

Submitted December 5, 1918; Decided March 3,
1919.

20 On appeal from the Bergen County Circuit Court.
Before—Gummere, Chief Justice, and Justices
Swayze and Trenchard.

For the appellants, WILLIAM V. ROSENKRANS.

For the respondent, RAYMOND, MOUNTAIN &
MARSH.

Per Curiam:

30 This is an appeal from a judgment in favor of the
plaintiff entered upon the verdict of a jury.

Plaintiff Stevens and the defendants entered into
a contract December 1, 1915, whereby the plaintiff
agreed to furnish to the defendants general plans
and information necessary to enable an immediate
construction of a practical working plant and pro-
cess for the manufacture of carbolic acid; and if the
defendants should determine to go ahead with the

Opinion of Supreme Court.

erection and construction of the plant, the plaintiff would complete detailed plans and information, and would supervise the actual construction and erection of the plant.

This suit was brought to recover compensation for such services.

The contract is somewhat involved and requires careful reading before settling upon the merits of the controversy here. 10

The only ground of appeal requiring consideration is that regarding the charge of the trial judge. We conclude that the judge in his charge properly construed the contract, bearing in mind that it must be construed as a whole, and not with reference to isolated paragraphs alone. So considered it seems clear that the construction put upon it by the judge was proper. 20

The judgment will be affirmed, with costs.

NEW JERSEY SUPREME COURT

<p style="text-align: center;">GEORGE H. STEVENS, Plaintiff-Respondent,</p> <p style="text-align: center;">vs.</p> <p>10 FERDINAND COIRIN and JOSEPH FORMANNS, builders, and FER- DINAND COIRIN and LEONIE COIRIN, owners, Defendants-Appellants.</p>	}	<p>Action at Law. Rule for Affirmance of Judgment</p>
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The above entitled cause having been duly argued at the November Term, 1918, of this court by Raymond, Mountain, & Marsh, attorneys of George H. Stevens, Plaintiff-Respondent, and William V. Rosenkrans, attorney of Ferdinand Coirin, Joseph Formanns and Leonie Coirin, Defendants-Appellants, and the Court having considered the same and finding no error in the judgment in the Bergen County Circuit Court,

It is thereupon, ordered and adjudged that the judgment of the Bergen County Circuit Court in this cause be affirmed with costs; and that the record be remitted to the said Bergen County Circuit Court to be proceeded with in accordance with this judgment and the practice in such case made and provided.

Entered Mar. 11, 1919.

On motion of

RAYMOND, MOUNTAIN & MARSH,
Attys for Plaintiff-Respondent.

A true copy,
Enoch L. Johnson,
Clerk.

New Jersey Court of Errors and Appeals

GEORGE H. STEVENS,

Plaintiff-Respondent,

vs.

FERDINAND COIRIN and JOSEPH FORMANNS, build-
ers, and FERDINAND COIRIN and LEONIE COIRIN,
owners,

Defendants-Appellants.

Action at Law.

On Lien Claim.

On Appeal.

BRIEF FOR PLAINTIFF-RESPONDENT.

Statement of Facts.

The plaintiff, George H. Stevens, and defendants, Ferdinand Coirin and Joseph Formanns, entered into a contract on the first day of December, 1915, whereby the plaintiff agreed to furnish to the defendants general plans and information necessary to enable an immediate construction of a practical working plant and process for the manufacture of synthetic carbolic acid; and, if the defendants should determine to go ahead with the erection and construction of the said plant, after consideration of the general plans, that the said plaintiff would complete detailed plans and information and would supervise the actual construction and erection of the said plant. The contract itself appears on page 7 of the state of the case. The matter in controversy relates largely to the terms of payment, and the clauses of the contract which have any bearing thereon are as follows:

“1. Said first party (George H. Stevens) agrees to furnish the second party (Ferdinand Coirin and Joseph Formanns) immediately upon the receipt of \$300, hereinafter mentioned, the general plans and information necessary to enable the immediate construction of a practical working plant and process for the manufacture of synthetic carbolic acid, such plant and process to be in accordance with the customary method of producing synthetic phenol by sulfonating benzol, converting the resultant sulfonic acid into a sodium benzene sulfonate (sodium salt solution), then into sodium phenolate through fusion, and finally separating the phenol, and which process is now in successful commercial operation in both this country and abroad, and the plant to have a capacity of producing not less than one-quarter ton of synthetic phenol in twenty-four hours.” (State of the case, p. 8, l. 4.)

“2. Said second party agrees to pay said first party, as full remuneration for plans, advice, supervision and information concerning said plant and process, the following sums, payments to be for the consideration and upon the conditions hereinafter set forth, to-wit:

“The sum of \$300 to be paid as soon as said first party has furnished second party, or its representatives, the chemical data and general plans and instructions for the building and equipment of a plant and process for making synthetic carbolic acid, and said plant when completed to be capable of producing at least one-quarter ton per day of synthetic carbolic acid. Also, after the disclosure of said plans, if the second party then decides to proceed with the project, that the second party agrees to pay the sum of \$50 per week to said first party from the time of signing the contract throughout the entire period required to completely install and equip said plant and to put the same in practical and successful working order.

Also, the second party agrees to pay the first party an additional sum sufficient to make a total payment of \$2,500, including the above payments, and this balance to be payable after the said plant is in complete and practical working order and has been producing for thirty days, and is capable of producing carbolic acid on a commercial scale, said remaining payments to be made in the following manner:

After thirty days of production the payments of \$50 per week shall be increased to \$100 per week, and after ninety days the payments shall be increased to \$200 per week until the entire amount has been paid.” (State of the case, p. 8, l. 23.)

Promptly after the signing of the contract the plaintiff furnished to the defendants general plans for the construction of a plant to manufacture synthetic carbolic acid, and received the \$300 called for by the agreement. The defendants then determined to construct the plant and so notified the plaintiff. He set to work thereupon and supervised the erection of the plant during the period from December 1, 1915, to May 23, 1917. He was engaged in this work for the defendants during a period totaling at least seventy-two weeks. On May 22, 1917, a fire occurred at the plant, damaging it to a considerable extent, and from then on no work was done by the plaintiff and but a slight restoration by the defendants. No serious attempt since has been made to operate the plant by the defendants.

The defendants have, in addition to the \$300 paid at the time when the general plans were delivered, paid to the plaintiff \$600, or a total of \$900 on account of the \$2,500 referred to in the contract.

Thus far both sides agree. The dispute arises over the character of work performed and the liability of defendants. The plaintiff testified that the plant, as constructed and designed by him, is capable of producing the amount of carbolic acid required by the contract, and that with adequate help it would have done so.

“Q. Has the plant a capacity of producing not less than one-quarter ton of synthetic phenol in twenty-four hours? A. It has.

Q. Did the plans and information which you submitted enable the immediate construction of a practical working plant and process for the manufacture of synthetic carbolic acid, such plant and process being in accordance with the customary

method of producing synthetic phenol— A They do. (State of the case, p. 40, ll. 14-23; l. 40.)

Q And has this process which you referred to been successful in commercial operation in this country and abroad? A Yes. (State of the case, p. 41, ll. 1-3.)

Q Prior to the time of the fire, what was the condition of the plant? A Complete. (State of the case, p. 48, ll. 10-11.)

Q At any time has this plant been in complete, practical working order? A Yes.

Q When? A Before the fire.

Q When do you say the plant was complete and in practical working order? A In the latter part of May, 1916. (State of the case, p. 81, ll. 35-40.)

Q Did you ever, in that plant, turn out 500 pounds of synthetic carbolic acid in twenty-four hours? A No, because there was no help there to do it." (State of the case, p. 82, ll. 26-40.)

The testimony as to the correctness of the design and of the practical nature of the plant as actually set up, is corroborated by an expert witness, Basil W. Busch.

"Q Well, now, this process which has been devised for use in this Coirin-Formanns plant, is that the process which is in successful commercial operation in this country and abroad? A It is. (State of the case, p. 87, ll. 30-34.)

Q Taking the apparatus as set up as a whole, would that do the work of producing synthetic carbolic acid? A It would.

Q And is its capacity sufficient so that it would produce a quarter of a ton per day? A It is." (State of the case, p. 89, ll. 33-40.)

The defence claims that as the plant had never actually produced carbolic acid on a commercial scale that no money was due from them at the present time, and would not be due until actual production.

The case was submitted to a jury by the Court and judgment was rendered for \$1,600, with interest and costs. From this judgment the plaintiff appeals, alleging error in the charge of the Court and in the refusal to non-suit.

POINT I.

The charge of the Court in construing the contract was accurate.

The defendants have alleged that there exists some five errors in the charge of the Court, all of which have to do with the construction of the contract by the Court.

The first ground alleged is that the Court committed error when it stated:

"If the plaintiff has established by a fair preponderance of the evidence that he has superintended the erection of a plant that is capable of producing one-quarter ton of this product in

twenty-four hours by the process indicated in the contract, he is entitled to recover the amount agreed upon for his services, namely, \$2,200, less the amount that he has already received, with interest on any defaulted payments from the date of such default."

The second error alleged is that the Court committed error in stating:

"If you are satisfied from all the testimony that the plaintiff has constructed the plant called for in the contract, that is, a practical working plant of the capacity of one-quarter of a ton of this product in twenty-four hours, he can recover the full amount of the contract price, namely, \$2,200, less the money received on account, which I understand was \$600, together with interest on any payments in default."

This part of the charge should be considered also in reference to its context. The Court also stated, following the first sentence above quoted, that

"If the plant erected under the specifications of the plaintiff would produce at least one-quarter of a ton of this product in twenty-four hours by the process indicated in the contract, he can recover, even if the builders refuse to operate the plant after it was erected, for the builders cannot deprive him of his right to recover by their failure to operate if the plant could be operated."

The language excepted to by the defendants is little more than a quotation of the terms of the contract itself, the Court merely stating that if the plaintiff performed his contract he could recover, and if he did not he could not do so, and that the defendants could not escape paying the money due on the contract by refusing to operate the plant when completed. We fail to see how any exception could be taken to such an obviously proper statement. The contract provides that \$2,500, less \$300 paid for the original information at the outset, is to be paid by the defendants for a plant capable of producing one-quarter of a ton of synthetic phenol in twenty-four hours. The plaintiff testified that he did so, and the Court was correct in stating to the jury that if he performed his contract he was entitled to recover.

The third and fourth errors relate to the Court's charge in connection with the payment of the \$50 per week.

In the third error alleged the language used by the Court is again almost an exact copy of the language of the contract itself. The contract provided that the plaintiff was entitled to the sum of \$50 per week from the time of the signing of the contract throughout the entire period required to completely install and erect said plant and to put the same in practical and successful working order. This is what the contract says, and the Court repeats the language. This cannot be error.

In the fourth allegation of error, the Court limited the extent of the payment of the \$50 per week to the number of weeks reasonably required to complete and equip the plant. It is our belief that the

Court's construction of this clause in the contract was too favorable to the defendants, in that it construed the contract to require that the \$50 be paid only during the time reasonably required to complete and equip the plant, regardless of the time actually used in installation thereof. The plaintiff worked at least seventy-two weeks. In forty-five weeks the full amount due the plaintiff should have been paid. Therefore, if there is any error in this construction as to the number of weeks during which the \$50 a week was due, it is not one prejudicial to the defendants, but one strongly in their favor.

The fifth alleged error is that the Court charged "that the fact that the plant cost somewhat more than the plaintiff estimated the cost to be, would not entitle these builders to a verdict against the plaintiff, for the contract does not specify the amount that the plant was to cost." There is nothing in the written agreement between the parties whatever as to the actual cost of the contract, and the arrangements made for construction were such that the defendants were fully informed of the progress of the work and of the expenses from day to day. All orders for goods and payments of material were made by them. There is no allegation that the defendants were induced by any fraudulent representations as to the cost to enter into the contract, and there is nothing in that agreement whatever as to costs. The plaintiff was to erect a plant capable of producing one-quarter of a ton of synthetic phenol, and if he did that he had performed his contract. Any failure on his part which might give rise to a counterclaim by the defendants would not give rise to damages based on cost or estimated cost, but on expense of so altering the plant as to make it conform to the terms of the contract.

Board of Education v. Jaeger, 67 N. J. L. 39.

With respect to the sixth alleged error, we call attention to the fact that the phrase used by the Court, and excepted to in this ground of appeal, is merely a statement of the language of the contract and a quotation therefrom, and cannot, therefore, be a harmful or prejudicial error.

The balance of the grounds of appeal refer to an alleged error in the general interpretation of the contract by the Court. Judging from the arguments of counsel, the basis of the objection is that no payments were or could be due from the defendants until thirty days after production. For this contention the defendants rely on that part of the contract above quoted where the said party of the second part agreed "to pay an additional sum sufficient to make the total payment of \$2,500, including the above payments, and the balance to be payable after the plant is in complete and practical working order and has been producing for thirty days." This clause, when considered in connection with the rest of the contract, cannot possibly mean that no payment other than \$300 is due until after completion and production by the plant. The contract specifically provides that \$50 is to be paid weekly during the entire period required to completely install the plant, and then adds that the balance (if any) is to be payable after the plant is in complete and practical working order. The true construction of this contract is that the plaintiff was to re-

ceive \$50 so long as he was working to install the plant; that, if before the full sum of \$2,500 had been paid to him under his weekly arrangement the plant should be completed, that then the payments should be increased to \$100 a week thirty days after production on a commercial scale had commenced, and \$200 per week ninety days after such period. This in effect the Court charged, limiting the \$50 a week period to the reasonable time required to install a limitation exceedingly favorable to the defendants. If we examine the rest of the contract it appears clearly that the intention was that \$2,500 should be paid for information and plans, and that payment was not to be postponed until after production. Other paragraphs of the contract support this as:

“It is understood by both parties to this agreement that from the time of signing the contract until thirty (30) days after producing (unless full settlement is made before that time) that the entire work is under the supervision of first party absolutely.” (See state of the case, p. 10, ll. 21-25.)

“It is further understood by both parties to this contract that after payment of the three hundred dollars (\$300) that the manufacture of synthetic carboic acid through any other process by the second party, or its assigns, within eighteen (18) months and after disclosure of the sulfonation process, in no way relieves the second party or its assigns of the remaining obligations to the first party. The intent of this provision being to obviate any and all claims, that modifications of the process annul the remaining obligations, because of their not being the same process as the first party sold. Whereas the meaning of the contract is, instead, that the knowledge of the sulfonation process is worth the amount asked, and such modifications or changes later in it are only in the usual way of business progress, and extended investigation.” (State of the case, p. 11, l. 38; p. 12, ll. 1-16.)

Knowledge of the process is worth the full amount, and payment is for that. Payment is not contingent upon thirty days of production.

Again, it appears in the evidence that the plaintiff and his witnesses testified that the plant is completed and capable of producing carboic acid as required by the contract, and that only owing to the defendants' failure to avail themselves thereof it is not producing. The defendants cannot, by allowing their plant, which is solely under their control, to remain idle, prevent the plaintiff from collecting that which is due him under the contract.

From these two points of view the allegation of the defendants that the plaintiff must show thirty days of actual production before any recovery can be had under the contract, is not a true construction of the contract.

There was, therefore, no error in either the charge of the Court or in its refusal to non-suit, and judgment should be affirmed with costs.

Respectfully submitted,

RAYMOND, CLANCY, MARSH & ELLIS,
Attorneys of Plaintiff-Respondent.

Note: By agreement of counsel, the verdict of the jury has not been printed in the state of the case; contract between plaintiff and defendant, and known as Exhibit P. 1, is printed on page 7 (Exhibits); P. 2, P. 6, P. 7, P. 8, P. 9, D. 3, D. 6. and D. 13 have not been printed in full. Balance of exhibits were read to jury and appear in testimony when introduced in evidence.

