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1871

1871

Notice of Appeal.

Filed April 11, 1918.

In Chancery of New Jersey

10

Between

PEN CARBON MANIFOLD COM-
PANY,

Complainant,

and

JAMES E. TOMNEY and CHARLES
A. TOMNEY,

Defendants.

20

The defendants James E. Tomney and Charles A. Tomney hereby appeal from the final amended decree entered into the above-entitled cause on the Twenty-eighth day of March, 1918, and from the whole and every part thereof, excepting therefrom so much of said decree that restrains and enjoins the defendants from giving any information or divulging any of the secret formulas and processes of the said Complainant, for the manufacture of its products more particularly described in said Bill of Complaint. Also excepting therefrom so much of said decree that directs these defendants to return any and all machines, parts, patterns, photographs, designs and drawings, the prop-

30

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Notice of Appeal.

erty of the Complainant, to the Court of Errors and Appeals in the last resort in all causes.

Dated, April 6, 1918.

EDMUND A. HAYES,
A. C. STREITWOLF.

10

Solicitors and of Counsel for Defendants.

We conceive there is a good cause for appeal in the above-stated cause.

EDMUND A. HAYES,
A. C. STREITUREF,
Of Counsel with Defendants.

20

30

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G-27

Subpoena.

New Jersey, to wit, The State of New Jersey to JAMES E. TOMNEY and CHARLES A. TOMNEY. *Greeting:* WHEREAS a bill of complaint has lately been exhibited against you in our Court of Chancery by PEN CARBON MANIFOLD Co. (a corporation), to be relieved touching the matters therein contained. 10

THEREFORE, we command you, if you intend to make a defense, that you file an answer to said bill in the office of the Clerk of our said court at Trenton, on or before the expiration of twenty days from and after the eleventh day of December, 1916, and in default thereof such order or decree will be made against you as the Court shall think equitable and just. 20

WITNESS, his Honor, EDWIN ROBERT WALKER, Chancellor of our said State, at Trenton, the twenty-ninth day of November, in the year of our Lord one thousand nine hundred and sixteen.

ROBERT H. McADAMS,
Clerk. 30

ALFRED S. MARCH,
Sol'r.

Subpoena.

(Endorsed)

IN CHANCERY OF NEW JERSEY.

42-498

277

Filed Dec. 5, 1916.

10

ROBERT H. MCADAMS,
Clerk.

I hereby deputize Thomas Revolinsky, a Citizen
of my County, to serve the within process.

EDWARD F. HOUGHTON,
Sheriff.

Fees \$3.62.

20

Received in the Sheriff's Office of the County of
Middlesex on the 29th day of Nov., 1916.

EDWARD F. HOUGHTON,
Sheriff.

30

Subpoena duly served December 2, 1916, person-
ally, upon Charles A. Tomney and upon James E.
Tomney, by leaving same at his usual place of
abode with a member of his family over the age
of fourteen.

EDWARD F. HOUGHTON,
Sheriff Middlesex County.

By THOMAS REVOLINSKY,
Special Deputy Sheriff.

40

Bill of Complaint.*Filed November 18, 1916.*

IN CHANERY OF NEW JERSEY.

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

The complainant, Pen Carbon Manifold Company, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and duly registered and authorized to do business in the State of New Jersey, and having its principal office and place of business at #65 Mine Street, in the City of New Brunswick, in the County of Middlesex and State of New Jersey, respectfully shows that:

1. It is engaged in the general business of manufacturing and marketing inked ribbons for use on typewriters, as well as carbons, carbon paper, stencils and similar duplicating accessories, and in connection with said business has formulated certain secret processes for the production of its products, and has designed and produced special and secret machinery to be used by it exclusively in the production of its commodities.

2. By reason of the said secret formulas and secretly and specially constructed machinery, complainant has been able to produce a special grade of merchandise not otherwise obtainable in the open market.

3. Charles E. Archbald is the president and general manager of complainant Company and the person who actually originated the designs for the construction of the special and secret machinery above referred to and the special and secret formulas for

Bill of Complaint.

the manufacture and production of the articles of merchandise above mentioned.

10 4. The said Charles E. Archibald, as president and in behalf of the complainant, of which he is the principal stockholder, has applied to the government of the United States for letters patent on the said secret machinery and processes, and the same are now pending.

20 5. The complainant, its officers, agents, servants and employees have observed and maintained the strictest secrecy relative to the construction and operation of the said machines and the production of said commodities, even to the extent of installing and housing all of said machinery in a secluded part of complainant's premises at New Brunswick aforesaid, and denying access or visit therein to any but those permitted and directed by the rules of the complainant to go therein in the necessary discharge of their duties in their respective capacities, all of them, however, being under the most stringent rules prescribed by the complainant against divulging any information relative to the formulas, processes, machinery and operation or production of any, or all of them, to any person or persons whatsoever, this provision being incorporated in
30 each case in the agreement of employment between complainant and its several employees.

6. On or about March 11, 1912, complainant hired one James E. Tomney, a machinist, to construct the finished machines from the secret and special designs of the said Charles E. Archibald; but this employment was made upon the distinct understanding and agreement on the part of the said James E. Tomney that the strictest secrecy was to be ob-

Bill of Complaint.

served in the performance of his duties, and that he was not under any circumstances to impart any information relative to the designs for the mechanical construction of the machines above mentioned, or any of the secret processes, formulas and methods—to all of which the said James E. Tomney agreed, and commenced his employment upon that understanding.

10

7. Subsequently complainant became possessed of information tending to show that the said James E. Tomney had violated the terms of his hiring, and, in open disregard of his agreements to the contrary, imparted important information relative to all the secret formulas, designs and processes above mentioned to his son, Charles A. Tomney, likewise a machinist by trade and occupation.

20

8. Thereafter, and on December 22, 1914, the complainant and the said James E. Tomney and Charles A. Tomney, for the purpose of adjusting and settling the difficulties that arose between them by virtue of the said violation of his agreement on the part of the said James E. Tomney, entered into an agreement, incorporated into a bill of sale, executed by said James E. Tomney and Charles A. Tomney to complainant (which bill of sale is hereto annexed and marked "Schedule A," and expressly made a part hereof), wherein and whereby the said James E. Tomney and Charles A. Tomney sold and conveyed to complainant all of their interest in, of and to the certain patterns, maps, memoranda, information, machinery and parts, formulas, designs, &c.; the said bill of sale also contained a clause stating that the object of the instrument was to settle forever the question of ownership between the parties to the commodities in question, and likewise incidental thereto.

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40

Bill of Complaint.

9. On the same date, to wit, December 22, 1914, the said James E. Tomney and Charles A. Tomney, as party of the first part, entered into a written agreement with the complainant as party of the second part (copy of which agreement is hereto annexed, marked "Schedule B" and expressly made a part hereof), wherein and whereby the said James
10 E. Tomney and Charles A. Tomney specially covenanted that from and after the date thereof they should not make, manufacture or produce themselves, or allow or authorize, directly or indirectly, anyone acting for them to make, manufacture or produce any machines, or parts of machines, to be used for the production of inked ribbons and accessories, including carbons, carbon papers, typewriter ribbons, stencil paper and other duplicating supplies, excepting only ten certain two color ribbon
20 machines mentioned in paragraph I of the annexed agreement, which were to be made by the said James E. Tomney and Charles A. Tomney personally, and for the complainant exclusively. The agreement contains a further clause prohibiting the said Tomneys, or either of them, from divulging or imparting any information relative to the secret designs, processes and formulas, and from producing, constructing, or disposing of any of the designs, patterns, maps, formulas, &c., as well as finished products, as above mentioned, to any person whatsoever,
30 without the consent in writing, under seal, of the complainant.

The said agreement also embodied a covenant providing that all machines made or produced by the said James E. Tomney and Charles A. Tomney, or either of them, or by anyone claiming under them, and for the production of inked ribbons and accessories, including the articles of merchandise above enumerated, as well as any and all formulas,
40

Bill of Complaint.

processes, designs, maps, information, &c., connected therewith shall belong to, and be the property of, the complainant Company exclusively.

10. The complainant Company has fully performed all of the covenants and agreements by it to be performed, as directed and provided in said agreement, and has fully observed the conditions and provisions therein contained. 10

11. The said James E. Tomney and Charles A. Tomney have manufactured the number of machines as required by the said agreement for complainant, but one of the same was delivered to complainant in an unsatisfactory condition, while the last one was delivered at a period antedating the time for delivery, as provided for in the agreement, of both of which facts complainant has given the said James E. Tomney and Charles A. Tomney due notice in writing. 20

12. The said James E. Tomney and Charles A. Tomney, in plain violation of their said covenants, as contained in the annexed agreement, have been, and now are, actually engaged in the construction of machines as hereinbefore described, and from the secret and exclusive designs and maps of the said complainant; the said Tomneys are so constructing the machines for the purposes of sale upon the open market, their agreement for such production for complainant having expired, with the exception noted in the preceding paragraph. 30

13. The said Charles A. Tomney was actually observed by the said Charles E. Archbald in the construction of parts of the said secret machinery, and James E. Tomney's attention was called 40

Bill of Complaint.

thereto in person by said Charles E. Archbald; whereupon the latter stated his unqualified determination to continue in the manufacture of such machines and was even then engaged in the making of six of them for purposes of sale, to persons other than complainant.

10 14. The said James E. Tomney and Charles A. Tomney have, and are also imparting information relative to the construction of important parts of the secret machines to persons not entitled to receive the same as above stated, and as provided in the agreement hereto annexed, in that they have procured the Brunswick Foundry Company, of the City of New Brunswick aforesaid, to manufacture for them certain pulleys and roller side brackets, which constitute a necessary part of said ribbon
20 machines; and for the purpose of enabling the said Brunswick Foundry Company minutely and properly to construct the said parts the said James E. Tomney and Charles A. Tomney have given, or have shown, and are still giving and showing, secret information relative to the detail of construction, as well as designs, maps, patterns, etc., all of which being, as aforesaid, the exclusive secret property of the complainant. The said parts of machinery so
30 being made by the Brunswick Foundry Company for James E. Tomney and Charles A. Tomney are for use only, and can be used only, in the construction of such machines as above described, being of a pattern peculiarly for such machines exclusively.

15. The said James E. Tomney and Charles A. Tomney by so constructing and selling the said machines, and incidentally imparting the secret information relative to such construction to persons
40 not entitled to receive the same, are causing the

Bill of Complaint.

complainant to suffer irreparable injury, and unless the said James E. Tomney and Charles A. Tomney are prevented and prohibited from so violating their agreement and from imparting any such information and constructing such machines, the said complainant will continue to suffer great irreparable damage.

10

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

1. That James E. Tomney and Charles A. Tomney, who are the defendants in this suit, may answer this bill of complaint, without oath, and each statement made therein.

2. That they may particularly set forth and discover fully and completely, item by item, the number of designs, patterns, maps, formulas, methods, processes, ribbon machines, parts of machines used in the construction of ribbon machines, as well as of any of the foregoing enumerated articles and things which they may, or might, have sold or otherwise disposed of to persons other than the complainant.

20

3. That the said James E. Tomney and Charles A. Tomney may be enjoined and restrained from disposing or transferring in any manner whatsoever, directly or indirectly, either by themselves, or by either of them, or by their, or either of their agents, attorneys or assigns, or by any person or persons acting by, or through or under them, or either of them, any of the articles and things in the foregoing paragraph mentioned and described, and from constructing or using, either by themselves, or by any agents, servants, employees or attorneys, di-

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40

Bill of Complaint.

rectly or indirectly, thereunto authorized, any ribbon machines, or parts thereof, as herein described and as more fully described in the schedule hereto annexed; and that they may be further enjoined and restrained from imparting or divulging any information whatsoever to any person or persons whatsoever, other than the complainant, concern-
10 ing any of the articles and things hereinbefore mentioned; and that they may be further enjoined and restrained from using or employing any of the said formulas or methods or processes, or any of said machines or parts thereof, for the manufacture and production of inked ribbons and accessories, including carbons, carbon paper, typewriter ribbons, stencil papers and other duplicators supplies.

4. That the said James E. Tomney and Charles
20 A. Tomney may be directed and decreed to hold and retain any of the articles and things herein described, or in anywise related thereto, and not herein described, which may now be in their possession, or under their control, until the determination of this Court, and to abide its order and decree in the premises.

5. That this complainant shall be decreed to be
30 the owner of all of said property, and that the said James E. Tomney and Charles A. Tomney may be directed and decreed to deliver the same to complainant, subject only to such claim as they, or either of them, may have for actual labor in the construction of said machines, or any parts thereof, in accordance with the said contract of hiring.

6. That a decree may be made herein, directing
40 so far as it may be possible and necessary for the protection of complainant in the premises to

Bill of Complaint.

marshal the assets and property of the said James E. Tomney and Charles A. Tomney, and that account may be taken thereof.

7. That a receiver be appointed by this Court to take, receive and hold in his possession all of said property, subject to the direction of this Court.

10

8. That the complainant may have such other and further relief as is proper.

9. That a writ of subpoena may issue, commanding the said defendants James E. Tomney and Charles A. Tomney to answer this bill of complaint and to abide by such decree as this Court shall make in the premises.

ALFRED S. MARCH, 20
Sol'r for and of counsel with complainant.

Schedule A.

KNOW ALL MEN BY THESE PRESENTS

THAT we, James E. Tomney and Charles A. Tomney, of the City of New Brunswick, County of Middlesex and State of New Jersey, of the first part, for and in consideration of the sum of one dollar and other good and valuable considerations, lawful money of the United States, to us in hand paid, at or before the ensealing and delivery of these presents, by PEN CARBON MANIFOLD COMPANY (a corporation), of the said City of New Brunswick, in the County of Middlesex, and State of New Jersey, party of the second part, the receipt whereof is hereby acknowledged have bargained and sold,

30

40

Schedule A.

and by these presents do grant and convey, unto the said party of the second part, its successors and assigns, the goods and chattels particularly described and mentioned in the schedule hereto annexed and located at premises Water Street, in the City of New Brunswick, County of Middlesex and State of New Jersey.

10

TO HAVE AND TO HOLD the same unto the said party of the second part, its successors and assigns forever. AND we do for ourselves, our heirs, executors and administrators, covenant and agree, to and with the said party of the second part, to warrant and defend the sale of said herein described and hereby sold unto the said party of the second part, its successors and assigns, against all and every person and persons whomsoever.

20

IN WITNESS WHEREOF, we have hereunto set our hands and seals the twenty-second day of December, in the year of our Lord One Thousand Nine Hundred and fourteen.

JAS. E. TOMNEY (L.S.)
CHAS. A. TOMNEY (L.S.)

Signed, Sealed and Delivered
In Presence of

30

ALFRED S. MARCH
EDMUND A. HAYES

40

Schedule A.

SCHEDULE.

1. One, two color, typewriter ribbon machine, together with all patterns, maps, accessories, formulas, methods and processes used or connected in any way with the same, as well as all rights of any nature whatever incidental thereto. Subject to the payment by the party of the second part on the date of delivery, of \$150 to party of the first part. 10

2. All formulas, methods and processes of every nature whatever for the production of inked ribbons and accessories, including carbons, carbon papers, typewriter ribbons, stencil papers and other duplicating supplies.

3. Also all other patterns, maps, accessories, measurements, memorandum and information for the construction of certain machinery used in connection with certain formulas, methods and processes for the production of inked ribbons and accessories, including carbons, carbon papers, typewriter ribbons, stencil papers and other duplicating supplies. 20

All property mentioned in paragraphs 2 and 3, being certain property used, owned and controlled by the said Pen Carbon Manifold Company for some time past, and the said parties of the first part having become possessed of the same by reason of the connection of the said James E. Tomney as an employee of the said Pen Carbon Manifold Company, party of the second part, and the said machine mentioned in the first paragraph having been constructed through information derived in such capacity. And the object of this bill of sale being to forever settle the question of ownership between the parties hereto to said commodities and rights incidental thereto; as well as certain litigation now pending between the parties in the Court of Chan- 30 40

Schedule A.

cery, in which the said party of the second part is mentioned as complainant, and the said party of the first part, as defendant, therein.

CHARLES A. TOMNEY (L. S.)

JAS. E. TOMNEY (L. S.)

10 Signed, sealed and delivered
in the presence of

ALFRED S. MARCH
EDMUND A. HAYES.

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

20 BE IT REMEMBERED, That on this twenty-second day of December, in the year of our Lord One Thousand Nine Hundred and fourteen, before me the subscriber, a Master in Chancery of the State of New Jersey personally, appeared JAMES E. TOMNEY and CHARLES A. TOMNEY, who, I am satisfied, are the grantors mentioned in the within Indenture, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

30

ALFRED S. MARCH,
Master in Chancery,
State of New Jersey.

Schedule B.

THIS AGREEMENT made this twenty-second day of December, in the year nineteen hundred and fourteen, between JAMES E. TOMNEY AND CHARLES A. TOMNEY, party of the first part, and PEN CARBON MANIFOLD COMPANY (a corporation), party of the second part:

WITNESSETH, that the said party of the first part, for and in consideration of the agreement and covenants entered into by the said party of the second part, doth agree as follows: 10

1. *Commodity*—To make, manufacture and produce as the servants, employees and agents of the party of the second part, and for the party of the second part, ten two color typewriter ribbon machines, according to the ideas and instructions of Charles E. Archbald, president, manager and special agent of the party of the second part, and as mentioned in supplemental specifications for said machines to be furnished by the said party of the second part. 20

2. *Delivery*—One machine to be delivered on or before the tenth day of January, 1915, and the remaining nine machines to be delivered on successive dates following, two months apart, commencing with the tenth day of March, 1915. 30

3. *Price and Payment*—The price of said machine shall be at and after the rate of one hundred and fifty dollars each, to be paid when delivered in good condition and in satisfactory working order, at the factory or plant of the said party of the second part. If any default be made by party of the second part in the payment of the price for any of said machines and the said purchase price shall remain unpaid for a period of twenty days, party of 40

Schedule B.

the first part shall have the option and privilege to dispose of any of said ten machines that remain at said time—anything herein contained to the contrary notwithstanding.

10 4. *Restrictions, Secrecy, &c.*—Party of the first part specially covenants, promises and agrees from the date of these presents not to make, manufacture or produce, themselves—or allow or authorize, directly or indirectly, any one acting for them, to make, manufacture or produce—any machines, or parts of machines to be used for the production of inked ribbons and accessories, including carbons, carbon papers, typewriter ribbons, stencil papers and other duplicating supplies, except the above mentioned ten two color ribbon machines mentioned in clause I preceding, which are to be made by the
20 parties of the first part personally.

It is stipulated, however, that in case the parties of the first part shall need additional help for the manufacture of said machines and shall make a request of the said party of the second part for the right to hire said help, said help shall not be hired unless the party of the second part shall approve of the same in writing, under seal; but in all cases, such persons so hired shall specially agree in writing, under seal, to all the covenants and conditions
30 of this agreement.

Party of the first part specially covenants, promises and agrees that the above mentioned ten two color typewriter ribbon machines shall be made and produced by the party of the first part, in secret, at premises # Water Street, New Brunswick, N. J., with doors locked; and that at all times no persons, except the parties of the first part and the representatives of the party of the first part, and such extra help as may be hired under approval of
40 the party of the second part in writing, as above

Schedule B.

mentioned, shall be allowed in said premises where said machines are being constructed at # Water St., New Brunswick, N. J., and where patterns, maps, measurements, information formulas, processes and other memorandum shall be kept.—It being hereby specially stipulated that said property shall be kept in secret at said premises # Water Street, New Brunswick, N. J., or at such other place as the party of the second part may agree upon in writing, until the delivery of the tenth machine.—This stipulation, however, to be subject to the delivery of each machine when completed, and subject to delivery of all the property in case the party of the first part shall forfeit its right to make said machines under clause 6. 10

Parties of the first part further specially covenant, promise and agree to and with the party of the second part that said machines and methods of making the same, including all patterns, maps, measurements, accessories, formulas, processes and information and other memorandum in reference to any machines, patterns, maps, measurements, formulas and processes used in any way for the production of inked ribbons and accessories, including carbons, carbon papers, typewriter ribbons, stencil papers and duplicating supplies, shall be kept private and secret at all times; and under no circumstances shall the same be divulged to any person or persons, without the consent of the party of the second part in writing, under seal, first had and obtained. 20 30

The true object of this agreement being to forever settle the rights of the said party of the second part in reference to said machines, patterns, maps, measurements, formulas and processes, and to declare the same as the secret property of the said party of the second part, together with the special 40

Schedule B.

rights to use the same under secret methods and processes. And the said party of the second part agreeing to discontinue a certain Bill for Injunction and Rule to Show Cause in the Court of Chancery of the State of New Jersey, and dated December 17th, 1914, in the name of the party of the first part, Pen Carbon Manifold Company, as complainant, and against the said party of the first part, James E. Tomney and Charles A. Tomney, as defendants; and giving the said party of the first part an order for ten two color typewriter ribbon machines, as above mentioned, upon that understanding; and in consideration of the said party of the first part executing this agreement and executing a Bill of Sale for said property, bearing even date herewith, which Bill of Sale is hereto attached and making a part hereof.

20

5. *Title to Property*—It is hereby specially stipulated, covenanted and agreed that all machines made or produced by the party of the first part, or anyone claiming under them, and for the production of inked ribbons and accessories, including carbons, carbon papers, typewriter ribbons, stencil papers and other duplicating supplies, as well as all formulas, methods, processes, patterns, maps, measurements, information and accessories connected with the said machines, or used in connection with the production of said commodities shall belong to, and be the property of the Pen Carbon Manifold Company.

30

On the date set forth for the delivery of the last of the said ten two-color typewriter ribbon machines, party of the first part agrees to deliver all of the above-mentioned property to the party of the second part. Party of the first part to have a lien for work on each of said ten two color typewriter ribbon machines above-mentioned in clause

40

Schedule B.

1, at and after the rate of one hundred and fifty dollars per machine.

6. *Forfeiture*—In case the said party of the first part, or either of them, or anyone claiming under them, makes any default in any of the terms, stipulations or conditions of this contract, the said party of the second part shall be entitled immediately to a delivery of all machines, or parts of machines, as well as all patterns, maps, measurements, information, formulas, methods, processes and accessories used and connected with the same, or used in connection with the production of inked ribbons and accessories, including carbons, carbon papers, typewriter ribbons, stencil papers and duplicating supplies; and shall only be liable to pay the said party of the first part for such of said two color typewriter ribbon machines as shall be actually completed at said time, at and after the rate of one hundred and fifty dollars per machine. The said party of the second part to be released from any further claim for the purchase of machines at said time; and shall also be entitled to all damages of any nature whatever, as well as all other legal rights arising by reason of a breach or default in any of the covenants and conditions herein contained.

7. Party of the second part covenants to pay for said ten machines according to the terms of this contract and to do and perform all other acts to be done by it.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals and the said Pen Carbon Manifold Company (a corporation), party of the second part, has caused this instrument to be signed by its president, witnessed

Schedule B.

by its secretary, and its corporate seal hereto affixed the day and year first above written.

PEN CARBON MANIFOLD CO. (Seal)

CHAS. E. ARCHBALD, Pres. (L. S.)

JAS. E. TOMNEY, (L. S.)

CHAS. A. TOMNEY. (L. S.)

10 Signed, sealed and delivered
in the presence of

ALFRED S. MARCH,

ED. A. HAYES.

Attest:

WM. T. REMISSEN,

Secty.

20 It is further stipulated and agreed that the said party of the second part consents that said patterns, maps, measurements and drawings, etc., be kept in secret at the dwelling house of the said James E. Tomney, known and designated as #26 Delafield Street, New Brunswick, New Jersey, as well as at Premises # Water St., New Brunswick, N. J.

30 IN WITNESS WHEREOF, said parties of the first part have hereunto set their hands and seals and the said party of the second part has caused this instrument to be signed by its President, witnessed by its secretary, and its corporate seal hereto affixed the day and year first above written.

PEN CARBON MANIFOLD CO. (Seal)

CHAS. E. ARCHBALD, Pres. (L. S.)

JAS. E. TOMNEY, (L. S.)

CHAS. A. TOMNEY. (L. S.)

Signed, sealed and delivered
in the presence of

ALFRED S. MARCH,

EDMUND A. HAYES.

40 Attest:

WM. T. REMISSEN,

Secretary.

Schedule C.

THIS SUPPLEMENTAL AGREEMENT, made the Second day of October, in the year of Our Lord One Thousand Nine Hundred and Sixteen, Between JAMES E. TOMNEY, of the City of New Brunswick, in the County of Middlesex and State of New Jersey, party of the first part, and THE PEN CARBON MANIFOLD COMPANY, a Corporation, of the second part, WITNESSETH:—

10

The party of the first part does hereby covenant, promise and agree to and with the party of the second part to deliver to the said party of the second part the balance of typewriter ribbon machines specified and contracted for in a certain agreement between the parties, dated December 22, 1914, in the following manner and at the following times:—One machine on October 11, 1916; a second machine on November 11, 1916, and a third machine on December 11, 1916, and for the performance by the said party of the first part, he does agree to pay unto the party of the second part a forfeit of \$2.50 per day for every day beyond the times above specified in which the delivery of the said machines, in accordance with the original contract between the parties, shall be delayed. That this forfeit shall be secured unto the party of the second part by Edmund A. Hayes, a Counselor at Law, of the State of New Jersey, holding the sum of One Hundred Dollars (\$100.), and I hereby authorize and instruct said Edmund A. Hayes to so pay said forfeiture upon a breach by reason of delay accruing.

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30

In consideration of the above covenants and agreement, the party of the second part does hereby promise and agree and does hereby pay unto the party of the second part the sum of Four Hundred and Fifty Dollars (\$450.), less a ten per cent allowance which the party of the first part does here-

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Schedule C.

by agree and consent to on the amount due for the second and third machines, to wit, the sum of Three Hundred Dollars (\$300.), which allowance amounts to the sum of \$30., the receipt of which said sum of Four Hundred and Fifty Dollars (\$450.), less the Thirty Dollars, allowance, to wit, Four Hundred and Twenty Dollars (\$420.) is acknowledged by
 10 the party of the first part.

And the party of the first part does further, on receipt of said sum, agree to deliver to the party of the second part the following patterns in use by him for the construction of said machines, to wit: 1 side frame; 1 pulley and boss; 1 side bracket for pulleys; 1 wind-up arm; 1 front gage bracket (right and left); 1 gage holder; 1 lever bracket; 1 shaft bracket; 1 adjusting bracket; 1 base and core box; 1 shifting work; 1 schieve; 1 wind-up schieve; 1
 20 bracket for adjusting gauge; 1 pattern for weight; 1 side pattern for box, and in addition to the foregoing named patterns, said party does agree to give up and deliver the following drawings; which are in use by said party of the first part in the construction of said machines, to wit:—1 wind-up (rough sketch) 1 top roll; 1 split roll; 1 adjusting, right and left feeder (complete with gauge), which patterns and drawings are to be delivered unto the said
 30 party of the second part on demand on October 3, 1916.

And it is further agreed by and between the parties that whereas, the drawings and patterns are to be delivered unto the party of the second part and whereas, the party of the first part is to construct additional machines, to wit, the two machines for delivery on Nov 11, 1916 and December 11, 1916; and whereas patterns will be made, the parties do hereby agree that the following castings shall be
 40 ordered from the Brunswick Foundry Co. or the

Schedule C.

New Brunswick Iron Works by the party of the second part and be charged to the account of the party of the first part, which castings are to be made from the patterns and drawings above referred to and which castings in detail are as follows:—Two bed plates; 4 legs; 2 side brackets for pulleys; 4 brackets (2 each); 2 wind-up arms; 4 side brackets (2 each); 2 sets brackets for underneath (weight levers); 2 weights; 1 large shieve; (8 in. in diameter). 10

And it is agreed by and between the parties hereto that on the performance by the party of the first part of the covenants and agreements herein expressed, and the delivery of said machines as herein enumerated, and the delivery of the drawings and patterns above expressed, shall and will be a compliance of a certain other agreement by the parties above referred to, insofar as the delivery of the said ten machines is concerned, but shall not in anywise affect or change the relative positions of the parties as far as the legal rights under the foregoing agreement, dated December 22, 1914, is concerned. 20

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal, and the party of the second part has caused this agreement to be signed by its President and its corporate seal hereto affixed, the day and year first above written. 30

JAS E. TOMNEY (L. S.)

PEN CARBON MANIFOLD CO., (L. S.)

CHAS. A. ARCHBALD,
President.

Signed, Sealed and Delivered :
in the presence of :

Edmund A. Hayes.

H. R. Regan.

Answer.*Filed December 5, 1916.*

IN CHANCERY OF NEW JERSEY.

The defendants James E. Tomney and Charles A. Tomney answering the Bill of Complaint, say that they deny that the complainant is authorized to do business in the State of New Jersey.

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1. They admit the business of complainant, but they deny the other allegations in Paragraph One.

2. Paragraph Two is denied.

3. Paragraph Three is denied.

4. These defendants have no knowledge or information sufficient to form a belief as to the statements in Paragraph Four.

5. Paragraph Five is denied.

6. Paragraph Six is denied.

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7. Paragraph Seven is denied.

8. The defendants, answering Paragraph Eight, say that they did agree not to disclose the method of manufacturing a certain machine mentioned in Schedule "A" so long as the same was kept secret property by complainant.

30

9. These defendants admit that they agreed not to make, manufacture or produce any machines or parts to be used for the production of inked ribbons and accessories, etc., so long as the certain machine mentioned in Schedule "A" was kept the secret property of complainant.

10. Paragraph Ten is denied.

11. Paragraph Eleven is denied and defendants say that they have in all ways complied with the certain agreement set forth in Schedule "B," and that all machines were delivered in a satisfactory working condition.

40

Answer.

12. Defendants deny any violation of the covenants on their part and admit that they are engaged in the construction of machines but deny that they are the secret and exclusive design of complainant.

13. Paragraph Thirteen is denied.

14. Paragraph Fourteen is denied.

15. Defendants deny Paragraph Fifteen and say that there is not any secret information relative to the construction of said machines vested in them not otherwise vested in the public at large. 10

Defendants deny the right of complainant to the relief contained in Paragraphs Two, Three, Four, Five, Six, Seven and Eight.

EDMUND A. HAYES,
Solicitor of Defendants
James E. Tomney and Charles A. Tomney.

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Replication.

Filed December 7, 1916.

IN CHANCERY OF NEW JERSEY.

The complainant joins issue on the answer of the defendants.

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ALFRED S. MARCH,
Solicitor of Complainant.

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Order of Reference.

Filed December 7, 1916.

IN CHANCERY OF NEW JERSEY.

10 This matter being opened to the Court by Alfred S. March, solicitor for and of counsel with the complainant, and it appearing that issue in this matter has been joined by the pleadings; it is on this Seventh day of December, nineteen hundred and sixteen

ORDERED that the above stated cause be referred to J. Merritt Lane, one of the Vice-Chancellors, to hear the same for the Chancellor, and to report thereon to him, and advise what order or decree should be made therein.

20

E. K. WALKER,
C.

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Testimony.

March 13, 1917.

Transcript of shorthand notes of testimony taken in the above-entitled cause on March 13th, 1917, at Chancery Chambers, Newark, New Jersey, before Hon. Merritt Lane, Vice-Chancellor.

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APPEARANCES :

MR. ALFRED S. MARCH and MR. I. BENJAMIN
GLUECKFIELD, for complainant.

MR. EDMUND A. HAYES, for defendants.

Mr. Glueckfield: Let me explain what the situation is so far as the facts may be admitted. First: It is admitted that the contract referred to in the bill of complaint was actually made. Secondly: It is admitted that the defendant Tomney has or is about to disclose information with respect to this alleged secret process. 20

Mr. Hayes: It is admitted that the defendants are about to engage in the manufacture of typewriter ribbon machines, but not the machine mentioned in Schedule A. 30

Mr. Glueckfield: The defendants should be held to their answer, paragraph 12, which leaves no doubt that they manufacture the machine or machines outlined in the bill of complaint. 30

The Court: The defenses are: First: That you do not intend to use this alleged secret information. Second: That the contract is void and is against public policy. Third: That the process is no longer secret, having 40

Charles E. Archbald—Direct.

been disclosed by the complainant. Fourth: That the complainant does not need protection because it is applying for a patent. Complainant may proceed.

10

CHARLES E. ARCHBALD SWORN.

Direct examination by Mr. Glueckfield.

Q. Where do you reside? A. New Brunswick, New Jersey.

Q. What is your business or occupation? A. I am a manufacturer of carbon papers and typewriter ribbons, stencil papers and inks.

20 Q. Are you in anywise connected with the complainant in this case, Penn Carbon Manifold Company? A. Yes, I am president of the company.

Q. Who is the manager of the company? A. I am also manager of it.

Q. Are you the Charles E. Archbald who is mentioned in the bill of complaint filed in this cause? A. Yes.

Q. What is the business of the Penn Carbon Manifold Company? A. We are manufacturers of carbon papers, typewriter ribbons, stencil papers, inks and other accessories.

30

Q. By "accessories" you mean typewriter accessories? A. Everything that goes with the typewriter.

Q. Do you manufacture these things that you have mentioned according to any well known standards or formulas? A. No, I always devise any machinery that I have.

Q. Was this machinery that you speak of of your exclusive design? A. Yes.

40

Charles E. Archbald—Direct.

Q. Are the processes by which you make the various merchandise which you mention secret or not? A. Yes.

Q. And of whose device are they? A. Mine.

Q. Is the grade of merchandise that you manufacture made by anyone else? A. No; I have distinctive grades from other people.

Q. Do you consider your merchandise superior to that of other merchandise on the market? A. We do so think. 10

Q. Have you constructed any special machinery for the making of typewriter ribbons? A. Yes.

Q. State briefly the general nature of it and in what way it is different from others. A. I might say that the old style process under which two-color ribbons are manufactured is what is known as the interleaving process, and that process is fairly and generally known throughout by the manufacturers that are making two-color ribbons. I worked for several years in devising a special process that would control the inkings and manufacture the ribbons without loss—without waste—and this machine referred to was an idea of my own, and Mr. Tomney, who is a mechanic in my employ, taking the place of a former employee who had done similar work for me, did the mechanical work in the manufacture and the development of this machine under my direction and supervision. 20 30

Q. Who drafted the plans and designs for the construction of this machine? A. All of the ideas and everything pertaining to it and the information necessary was given to Mr. Tomney by myself.

Q. Did Mr. Tomney have any other interest in the manufacture of this machine besides that of being your employee? A. No, he was an employee—got paid by the hour.

Q. How long was he in your employ in the manner in which you stated? A. Why, I can't give you 40

Charles E. Archbald—Direct.

the exact date. Some time in 1912 he came to work for me.

Q. Wasn't it in the month of March? A. It was the early part of 1912, I think, about March.

Q. At the time of your employing Mr. Tomney did you indicate to him the fact that you considered your machinery a secret? A. Yes.

10 Q. Did he work with you or for you under any agreement relative to the secrecy of the machine? A. A verbal understanding.

Q. To what effect? A. To the effect that he would not divulge outside of the factory anything that went on inside of anything that was made there.

Q. Were these machines manufactured by Mr. Tomney in your plant in the presence of other employees? A. They were built on the top floor.

20 Q. Was the top floor a separate part aside from your other factory? A. There was a "No admittance" sign on the door, and no one was permitted to go in there but the people who were employed by the company, and they only went in in the discharge of their duties.

Q. Was general admittance to that part of your plant denied to other people? A. Yes.

30 Q. Now state about when Mr. Tomney left your employ and under what circumstances? A. My recollection is that he left my employ twice; the first time the difficulty that arose was over the completion of a machine which I had manufactured—a two color machine—and in which there was an imperfection, and he objected to my calling his attention to it and he put his hat on and left. He was away from me a little time and afterwards came back to my employment, and then he left me just before he started to manufacture this present machine that he is manufacturing at the present

40 time unknown to me.

Charles E. Archbald—Direct.

Q. Now, some time during the year 1914, you instituted a suit in the Chancery Court against Mr. Tomney, did you not? A. Yes.

The Court: That is shown by the record.

Mr. Glueckfield: I will introduce the record.

No objection. Admitted in evidence.

The Court: The discontinuance of the suit was the entering into of the agreement? 10

Q. The consideration of the discontinuance of that suit was the entering into of the agreement between yourself and Mr. Tomney and his son, and also the execution and delivery of a bill of sale? A. That was to settle our differences, and I took him back in our employ.

The Court: The bill of sale and the agreement may be offered in evidence and marked C-2; the file of the Court of Chancery I will consider as having been marked C-1. 20

Q. Now, that agreement provides, among other things, for the construction by the Tomneys for you of ten machines of the kind in question. Have they been constructed? A. Yes, part of them were constructed, and he refused to construct the balance and I had to enter into a supplemental contract in order to get delivery of the others, and I had to pay for them in advance, and I got a special reduction, and then he gave me an agreement to deliver, and there was trust money put up in the hands of Mr. Hayes as a guarantee that the delivery would be made. 30

Q. Is this the supplemental agreement that you refer to (showing witness paper)? A. Yes.

Mr. Glueckfield: I offer this in evidence.

The Court: It may be marked.

(Marked Exhibit C-3.) 40

Charles E. Archbald—Direct.

Q. That supplemental agreement provided, among other things, for the future delivery of certain machines? A. Yes.

Q. Has this delivery been made? A. Delivery is being made with the exception that there are two or three imperfections which I have called attention to, and which have not been taken care of.

10 Q. But the ten machines provided for in the agreement have been built? A. Are now built.

Q. Have you any knowledge, any personal knowledge, as to the conditions in the making of these machines, or parts of the same, by the Tomneys delaying the delivery of the ten machines? A. Yes.

20 Q. State what it is. A. On November 14th, 1916, I went over to see the Tomneys, and I saw them in the act of manufacturing various parts of these machines, among which were rolls, both solid and split, and I also saw some frames which were similar, and other parts, which showed me at once that this machine was being constructed. I called Mr. Tomney's attention to the fact, and he said he was going to manufacture the machines whether I like it or not. He said that he had somebody backing them, and if I took any action that he would see the thing through to the finish.

Q. Was Mr. Charles A. Tomney there? A. Yes, they were both there that day.

30 Q. These parts that you say you saw on that occasion were such parts as could be properly used only in the construction of such a machine? A. They are useless in anything else except ribbon machines.

Q. By the way, is the Penn Carbon Manifold Company a corporation? A. Yes, incorporated under the laws of New York and authorized to do business in New Jersey.

40 Q. I show you this certificate, and ask you if that

Charles E. Archbald—Direct—Cross.

was issued to you by the State authorities at Albany (showing witness paper)? A. Yes.

(Offered in evidence and marked Exhibit C-4.)

Cross-examination by Mr. Hayes.

Q. Just repeat the conversation that you had with Mr. Tomney on November 14th. A. You mean what I said? 10

Q. What he said. A. He said that he would make these machines whether I liked it or not.

Q. Is that all? A. He said several things. I didn't get the drift of everything.

Q. As a matter of fact, did Mr. Tomney say anything to you other than he would build these machines whether you liked it or not? A. Yes, he did. He said somebody was backing him, and if I started to fight he would go straight through with it and see the thing through to the finish, if I started any proceeding. 20

Q. He used those words? A. Words to that effect.

Q. Did you have any reason for not putting that in your affidavit? A. No.

Q. The ten machines have been delivered to you as provided for in the contract, except there are some slight imperfections, you say? A. Yes. 30

Q. How many of the machines are imperfect? A. I think there were two imperfect.

Q. Can't you tell us for certain whether there are two or three or four? A. I could if I could look at my papers.

Q. Can you tell us the imperfections that exist in the machines? A. Yes, I think one of them the rolls didn't come together properly—permitting the inks to come light and heavy where they should work 40

Charles E. Archbald—Cross.

uniformly; also imperfections in the arm of the partition where it fitted the roll in one case. I had to fix it myself and had to have a new partition made and had to have these rolls grinded inside.

Q. You say that you prepared the plans under which these machines were constructed? Did you do that? A. I devised all the ideas in connection
10 with the machines.

Q. Just answer my question, please? A. I can't answer without making——

Q. I am asking you if you drew the plans under which these machines were constructed? A. Yes; I gave the ideas to Mr. Tomney in regard to his doing this.

The Court: The question is whether you drew the plans.

20 A. There were no official plans drawn of the machines at any time to my knowledge.

Q. There were no plans drawn officially or otherwise? A. There were pencil sketches; all the information and measurements and ideas were given to Mr. Tomney by myself; I was the originator of the original machine.

Q. Plans were necessary to construct the patterns, I believe? A. They are not necessary.

30 Q. And there were no plans used in the construction of these machines? A. I might call them plans. They are ideas—not officially drawn, but a working scale. You might say that those plans, ideas and measurements would be considered as plans.

Q. And those plans and ideas were put on paper before any machine of this particular make was constructed, is that true? A. The machine is constructed part by part, as a matter of fact. I laid out certain things to be done, and I had certain things done, and the next move was taken up, and
40 I had that done.

Charles E. Archbald—Cross.

Q. Did you draw plans of each particular part separately? A. There are many parts that were utilized—taken off other machines—uprights and things of that kind. We used a pulley that was in the shop on some other machine for a pulley, and used uprights that I had in the shop, and the principal features of the machine naturally had to be made, and those were made just by giving the diameter of the rolls, etc., and manufacturing according to those instructions. 10

Q. No plans were drawn of the particular part of the machine by you? A. I have just explained what I felt to be a plan.

Mr. Glueckfield: If your Honor pleases, I object to this line of examination, for while it may be quite proper, it will not get us anywhere. If the object of this is to show that the defendant originally designed this machine, even granting the argument, they cannot manufacture it, for by that agreement they sold everything they had to Mr. Archbald. 20

The Court: But you wanted that advantage—you attempted to show this—

Mr. Glueckfield: All I wanted to show was the point of the matter of the ten machines in the agreement— 30

The Court: You endeavored to show this machine was designed by Mr. Archbald, and it went in without objection of the other side and without objection of the Court. I suppose counsel has a right to cross-examine as to how this machine was originally designed? I think myself it is a waste of time. I think your question was outside of the scope of this particular examination.

Mr. Hayes: This will lead to something. 40

Charles E. Archbald—Cross.

Q. Mr. Archbald, you say that there was one part of the machine, namely, the rolls and partitions that were not taken from some other machine? A. Yes.

Q. Were the plans for those rolls and partition—were they placed on paper by you? A. Just a pencil sketch.

10 Q. When was that done? A. Some time after March, 1912.

Q. And where was that done? A. In the factory.

Q. And you gave that information to Mr. Tomney and told him to construct the machine? A. Yes.

Q. As a matter of fact, when was the first machine constructed, according to those ideas?

Mr. Glueckfield: Objected to as immaterial.

20 A. You mean when was it completed?

(Question admitted.)

Q. Yes. A. It was not completed until six or eight months after we took it upstairs and built it after this plan.

Q. And that is the machine that you consider to be your secret idea? A. Yes.

30 Q. And that is the machine that is in controversy at the present time, according to your idea? A. No, the machine to-day is developed and improved over and above that.

Q. That carries the main idea with it, doesn't it? A. No, I wouldn't say it does, because it wasn't in working order for months. Until it was completed, it wouldn't be a working idea.

Q. You say it was completed six or eight months after? A. This particular machine.

40 Q. And that was the machine that had your secret ideas that you complain of? A. That had part of those ideas.

Charles E. Archbald—Cross.

Q. Tell us the difference? A. There were new washers in between the center partition; the partition has a different shape to it, and the boxes are different; the carrier is different, and there are a number of points of development that have been added to that machine to perfect it.

Q. Namely, a washer and different shape box. But you testified and stated that the new idea was the method of imparting color, and this was by way of a second roll and the partition. A. I might say that the two color idea had been attempted in Montreal some time two years before that, but had not been successful. 10

Q. This machine that was perfected six or eight months after was the machine that was first perfected, according to those ideas? A. That machine was never, in fact, perfected. 20

Q. But that machine imparted the color to the ribbons in two colors by way of a second roll, over which the ribbon runs? A. Yes, but it had a partition in it. There was a new partition put in that machine in order to make it right. 20

Q. Are you familiar with the schedule attached to the bill of complaint in this cause? A. Yes.

Q. And can tell us the difference between the machine that you just say was completed six or eight months after March, 1912, and the schedule mentioned in this suit? A. I could tell that better if I had the parts here and saw the changes that were made. One way you could run the machine for a long time without the inks going from one side of the ribbon to the other, whereas on the later machines, which were manufactured after, I perfected that difficulty, and our ribbons would run all day without the inks ever crossing from one side to the other. The machine was never satisfac- 30

Charles E. Archbald—Cross.

tory for at least a year or a year and a half. The machine never made any satisfactory ribbons.

Q. And the new machine had a guide for the ribbon, something the old machine didn't? A. The first machine had guides as far as to feed the ribbon, but they were merely made in the crude form.

10 Q. What do you consider to be the new idea of this first machine that you made; what part of that machine was new? A. The manufacture of a machine of that kind—it was a general machine; the completed perfected machine was the new idea. It was only in the experimental stages for a year.

Q. The new perfected machine doing what? What was the new idea? A. Producing ribbons all day without any waste.

20 Q. Was the old style known as interleaving built this way? A. No; we use to pull it through a divided box.

Q. Tell us how the new one did it? A. Made it between pressure rolls.

Q. So that you carried on this idea created in March, 1912, by imparting color through pressure rolls? A. So far as making two color ribbons instead of in single colors.

Q. That was the first time any double color was manufactured to your knowledge? A. As far as I know.

30 Q. When did you make the next machine?

Mr. Glueckfield: I don't think that is material.

A. About a year and a half after.

Q. Can you tell us where the machines are now?

A. I can tell you that from the memorandum.

40 Q. Can you tell how many machines you caused to be made following this new idea from March, 1912, down to the present time? A. Yes.

Charles E. Archbald—Cross.

Q. And tell us where each and every machine is at the present time? A. I guess I could.

Q. Have you got the records? Tell us——

The Court: This is not cross-examination.

Mr. Hayes: It is cross-examination that he claims secrecy.

The Court: I don't think it is cross-examination, but I will allow you to answer the question. 10

Q. Can you tell us from your own knowledge where the machines are? A. There were two or three machines that were sold before the agreement of December 22nd, one of which was delivered, I think, to Stafford, and I think one was delivered to a firm in Paris. I think the third one was used in our own place. I think that was the third machine. Since then there was another one sent to a firm in London, and about the time the agreement was made there was a machine that Mr. Tomney had offered to sell to Mittag & Volger, that he had built during the time that he was away from me for two or three months, and also during the time that he was in my employ, and I was astonished to find that he was building in his own shop; that machine was sold to Mittag & Volger some time later. 20

Q. That was before this agreement was entered into? A. After the agreement was entered into; there was a lot of trouble, because I found that machine in Tomney's possession, and which he had offered to sell to Mittag & Volger. 30

Q. Who else got a machine? The U. S. Machine Company, in Philadelphia? You know they did, don't you? A. Yes.

Q. Who else? A. I think a machine was shipped to Australia—that is, one of these ten.

Charles E. Arghbald—Cross.

Q. Yes. Any of the machines ever get to Washington, D. C.?

Mr. Glueckfield: I object to that. I think counsel has been able to follow up every machine that has ever been made.

10 A. I don't think one ever went to Washington; in fact, I am sure of that.

Q. You have accounted for four of these ten. How many have you left in your possession? A. I think I have one of them in my possession.

Q. Where are the other five? A. One of them went to Canada, to a concern there.

Q. Where are the others? A. One I have rented to a concern in New York, the Alliance Manufacturing Company.

20 Q. Can you tell us where the others are? Three more. A. Yes, one went to Chicago, to Rothchild.

30 Q. That is enough. You say that from the time these machines were first made it has been your endeavor to keep the machine a secret; you have stored it away in a part of your factory where no one was permitted to see the machine? A. I have always exercised a great deal of care in connection with that, and, inasmuch as I have had the machines made on the top floor, where I had a "No admittance" sign on the door, and I have in every case, when I negotiated to sell a machine, advised the people that it was a secret machine, and that I didn't care to divulge the machine to them until such time as they had placed an order; I got one-half in cash, and they bought the machines under the guarantee that they would produce the work, and do everything I claimed for. They didn't see the machines until they were constructed, and then they afterwards came there and accepted the machines and paid

Charles E. Archbald—Cross.

the balance of their money, and accepted them as being satisfactory, and I have many letters that I can show where I have called attention to the fact that these machines have been made secretly, and, in fact, many concerns refused to buy them because they couldn't see them.

Q. You didn't want anybody to see the machine who placed an order with you and placed a certain amount of money with you? A. No. 10

Q. And the reason of your doing so was because of the fact that you were afraid the machine might be copied if someone saw it? A. I knew that anyone could build the machine for much less money than what I was selling them for.

Q. How did you know that? A. I knew for a fact that it could be constructed at a moderate price, but I figured this way—that in selling the machines we had to get a very large margin of profit in order to make it profitable for me to sell these machines. 20

Q. But, understanding that, you knew that anyone seeing the machines could build them for a lower amount than what you were selling them for, you had permitted the machine to be examined by the different workmen in your factory? A. They were built on the top floor of the factory, and Tomney was the only one who saw it.

Q. You employed other help in that factory. You had men running the machine? A. Yes. It was necessary in the conduct of the business for the men to see it. 30

Q. And the other men passing around could see it? A. It is a well-recognized thing that anyone that goes into a place will not divulge what goes on inside and will not tell the secrets of the employer.

Q. People going into your factory where this machine was had an opportunity to examine the machine? A. No people going into the factory. 40

Charles E. Archbald—Cross.

Q. The people that you sold machines to—Stafford & Company, the firm in Paris, U. S. Ribbon Company, the firm in Australia, the Alliance Company, Mittag & Volger, Rothchild—they are competitors of yours and rivals in business? A. All business rivals in the same industry.

10 Q. And they are using these machines in their different places? A. Yes.

Q. And they are turning out two-color ribbons with these machines? A. Yes.

Q. Could anyone examining the machine there, could they duplicate the machine? A. Anyone who had any mechanical ability and had a chance to examine the machine sufficiently long would undoubtedly be able to make the machine. I feel sure if I saw the machine and had a chance to examine it I could produce t.

20 Q. If you had an opportunity to examine it, you could have someone produce it? A. I could give them my ideas and they could construct a similar machine along the same principles.

Q. So that the secret attached to this machine was not by reason of any secret combination used in the making, but because of the secret method of assembling the machine to get the good out of it? A. Of course, the whole thing is more or less of a secret.

30 Q. Any person having any mechanical ability would be able to duplicate the machine if they saw one, is that true? A. I think so.

Q. If that is true, there can be nothing secret about the machine, other than the method of its working, is that true? A. Yes, I think so; that anybody that was in the business or anyone that was interested in that machine and knew what it is for, could convey the information to someone whereby it could be used.

Charles E. Archbald—Cross.

Q. Why do you now claim that this is your secret property when as a matter of fact it has been disclosed to ten different firms that you have mentioned? A. Well, the reason I consider it my secret property is because it does not belong to Mr. Tomney; he made a bill of sale of his rights to me for settling our differences there. He agreed that it was my property.

10

Mr. Glueckfield: Objected to.
(Question admitted.)

Q. Do you contend if the U. S. Rubber Company was making these machines, that you could restrain them from making them because it was secret property of yours? A. I couldn't restrain it if they have the information and I didn't have the machine patented.

Q. You sold them this machine, didn't you? The rubber company? A. No.

20

Q. I mean the U. S. Ribbon Company? A. Yes.

Q. And that was all the information or knowledge they required about the machine in order to make another machine like it? A. Quite right.

Q. If they manufacture machines, is it your contention that you can prevent them from making the machines? A. Not unless they were patented. I had my application for a patent—

Q. Have you since received your patent? A. I received it the same day as the case came up the last time.

30

Q. The patent is for the same machine that is in controversy here, isn't it? A. Yes.

Q. The machine that you claim to be your secret idea? A. Yes.

Q. And it is also in part the same machine that was manufactured in March, 1912? A. In 1912; that was an experimental machine.

40

Charles E. Archbald—Cross.

Q. And this perfected machine which was constructed six or eight months after March, 1912, it was then not an experimental machine? A. No; that machine—that was an experimental machine.

10 Q. The second machine, was that an experimental machine? A. I think there were some ideas on the second machine which were not perfected, and that when the third machine was made we perfected that machine. That was the machine we shipped to Paris.

Q. The first machine is still being used by Stafford? A. Possibly.

Q. You know it to be a fact, don't you? A. I couldn't say so.

20 Q. How about the machine sold to Mittag & Volger; was that machine in its imperfect state or was it a perfected machine? A. Perfected machine, would be considered such.

Q. Was the machine manufactured for Mittag & Volger and sold to them, the same machine as the one on which you obtained a patent?

Mr. Glueckfield: Objected to as immaterial.

(Question admitted.)

30 Q. Is that true, Mr. Archbald? A. I think there are one or two points of it in the patent perfected.

Q. It was practically the same machine as the other? A. Call it practically the same if you wish.

Q. I show you this paper, and ask you if that is the patent that you obtained? A. Yes.

Charles Crawford—Direct.

CHARLES CRAWFORD SWORN.

Direct examination by Mr. Glueckfield.

Q. Do you reside in New Brunswick? A. Yes, sir.

Q. What is your business and by whom are you employed? A. Machinist; employed by Mr. Archbald and the Penn Carbon Manifold Company. 10

Q. What is the nature of your employment? A. Building machinery.

Q. Any particular kind of machinery? A. Yes, all parts of machinery; all different machinery. Two-color ribbons, carbon paper, stencil machines, etc.

Q. Are you familiar with the kind of machine which is the subject of this suit? A. Yes.

Q. Have you anything to do with the mechanical construction of such machines? A. Yes, sir. 20

Q. Under whose supervision and direction? A. Mr. Archbald's.

Q. What part of the Penn Carbon Company plant do you work in? A. Third floor.

Q. In the presence of other employees? A. No, I am the only one in that room.

Q. Is there any general access to any one? A. Once in a while a man goes there.

Q. Where you are building these two-color machines? A. No. 30

Q. Do you know Mr. James E. Tomney and Mr. Charles A. Tomney? A. I don't know James E. I met Charles A.

Q. Are you familiar with all of the parts that make up one of the two-color ribbon machines here in question? A. Yes.

Q. You have made an affidavit in which you say, "On Tuesday, November 7th, 1916, about two-thirty

Charles Crawford—Direct.

o'clock in the afternoon, I was at the plant of the Brunswick Foundry Company on New Street, in the City of New Brunswick, and while there observed the moulder employed therein, making pulleys such as are necessarily and indispensably used in the construction of ribbon machines, as described in the bill of complaint and schedules thereto annexed?"

10 A. Yes, sir.

Q. Did you at that time see any parts which were necessarily parts of a two-color ribbon machine such as the one here in question? A. On the 7th of November?

Q. On that occasion? A. Yes, sir.

Q. In whose possession were they? A. In the moulder's possession.

Q. Did you on that occasion see Mr. Tomney? A. No, sir, not on that occasion.

20 Q. Did you on any subsequent occasion or shortly thereafter see Mr. Tomney? A. Yes, sir, on Saturday, the 11th, I saw Mr. Tomney at the office with a pattern similar to what I was getting cast—what I was waiting for.

Q. By a pattern what do you mean? A. A pattern for a casting.

Q. Was it the kind of casting that goes into the manufacture of such machine? A. For an upright to hold the rollers.

30 Q. Was it such a casting that could be used only in such machines? A. I guess it was, so far as I know; the same size as the one I was after.

Q. Did you speak to Mr. Tomney at that time? A. No, sir; he seen me and he went. He didn't wait for his pattern; he took his pattern and went out.

Q. And this was in the plant of the Brunswick Foundry? A. On New Street, yes.

*Charles Crawford—Cross.**Cross-examination by Mr. Hayes.*

Q. You say you are a machinist? A. Yes, sir.

Q. How long have you been working for Mr. Archbald? A. Six months.

Q. And where did you work before that? A. Simplex Automobile Company.

Q. And up there you were a furnace tender? A. 10
No, sir.

Q. Attended to the furnaces? A. No, case hardener.

Q. How long did you work as a furnace tender in the Simplex plant? A. I didn't work as a furnace tender, but as a fireman.

Q. Does that have anything to do with the trade of a machinist? A. I don't have to follow my trade.

Q. Tell us what experience you have had as a 20
machinist.

Mr. Glueckfield: Objected to as immaterial.

A. I worked for the Caliber Machine Company for about eight or ten years, at different times.

Q. On your trip to the New Brunswick Foundry, did you bring anything with you that day? A. Did I bring anything with me? I think I took two small patterns. I am not positive of that. 30

Q. For parts of this machine? A. I think I did, I am not sure. I went for castings.

Q. Where did you see Mr. Charles A. Tomney? A. By the door. He was by the office door.

Q. What did he have with him? A. A wooden pattern of the upright that they use on the machine.

Q. Did he have it wrapped up? A. He had it wrapped up in paper.

Q. What kind of paper? A. Newspaper.

Charles Crawford—Cross.

Q. Covered up with a newspaper wrapper. How big is the pattern that you speak of, about? A. It is about ten inches high.

Q. And he had a newspaper wrapper around this ten-inch article, did he? Three inches across on one end, and the other end was about nine inches.

10 Q. Did he take the newspaper off while you were there? A. He had it off when I saw the pattern right by the door of the office. He seen me and he went out the back way.

Q. What part of the machine was that pattern for that he had? A. I told you it was an upright for the rollers.

Q. I don't understand what you mean by an upright? A. An upright for to hold the rollers together.

20 Q. The rollers are the two pieces of metal under which the ribbon runs? A. Between which the ribbon runs.

Q. And these rolls are what are known as double rolls? A. One is a double roll—a split roll.

Q. The pattern was to have cast some part of that machinery to hold these rolls in place? A. To hold the rolls in place, yes, sir.

Q. Had you ever seen any pattern similar to that one that Mr. Tomney had that day for use in any other machine? A. No, sir, not that size.

30 Q. That machine which has the split roll and the partition box is a common machine, isn't it? A. A common machine.

Q. The only part of the machine that is at all novel is the split roll on bottom and the other roll on top that presses against the ribbon which runs between these two rolls and over the partition set in the color box.

Mr. Glueckfield: Objected to as not cross-examination. Counsel cannot be permitted

Charles Crawford—Cross.

to get knowledge of the construction of this machine when the witness has not testified anything about the construction of it.

The Court: He testified that this particular pattern was one that provided for the building of a part that was useful only for this class of machine. He can be examined as to his knowledge of that particular kind of a machine. 10

Q. The question is as to that machine being novel, in so far as it had this double roll, one of which was split and set over the partition box. A. I think that is the main foundation of the machine; the machine is no good without it.

Q. Outside of that, the machine is a common machine—the rest of the machine consists merely of framework and fixtures— A. Other fixtures and other things, which amount to a good deal. 20

Q. During the four or six months you have been working for the Penn Carbon Company you have been engaged on the third floor? A. Yes, sir.

Q. And you are the only person who works there, except that people pass through? A. Yes.

Q. Who are the people that pass through? A. The man that makes the carbon paper; the man that makes the ribbon on the ribbon machine. 30

Q. In other words, your fellow-employees pass through that room? A. To get to another room; they don't bother me and I don't bother them.

Q. They can see you as they pass through? A. Yes.

Q. There are no other employees in that room? A. Nobody but Mr. Archbald and one other man that he fetched in there.

Q. When was that that he brought the man in? A. He brought him there—I don't know the date. 40

Charles Crawford—Cross.
Charles E. Archbald—Recalled—Direct.

Q. Did he show him the machine you were working on? A. No, sir.

CHARLES E. ARCHBALD recalled.

10

Direct examination by Mr. Glueckfield.

Q. I show you a letter purporting to be sent by Mr. Hayes, the opposing counsel, to the Alliance Manufacturing Company, and ask you where you obtained that? A. I obtained this from Mr. Reimer of the Alliance Company.

20

Mr. Glueckfield: I want to offer this letter, if there is no objection.

The Court: It may be marked for identification.

COMPLAINANT RESTS.

DEFENDANT'S CASE.

JAMES E. TOMNEY SWORN.

30

Direct examination by Mr. Hayes.

Q. Where do you live? A. New Brunswick.

Q. What is your business? A. Machinist.

Q. How long have you been a machinist? A. About thirty years.

Q. You entered into a contract with the Penn Carbon Manifold Company for the construction of some typewriter ribbon machines? A. Yes, sir.

40

James E. Tomney—Direct.

Q. And did you construct these machines as contracted by you to do? A. Yes, sir.

Q. Where were these machines constructed; in the factory of the Penn Carbon Manifold Company?

A. No; in Water Street, and I live now in Delafield Street.

Q. What was the nature of the machine, in so far as its workings were concerned; what were its duties? A. To separate two colors as the ribbon runs through between the two rolls. 10

Q. Did you ever see that machine—that idea under which that machine worked before the time that you built this first machine? A. Yes, in a paper shop.

Mr. Glueckfield: Objected to.

(Question admitted.)

20

Q. When did you see such a similar machine at the paper shop? A. In 1896; I worked for John Waldron Company in New Brunswick; I made a split roll machine; in 1907 I went to Janeway & Carpenter to make wall paper, and I saw the same machines that we manufactured on Water Street for putting colors on paper by the use of the partition.

Q. Was that the same thing used on this machine that Mr. Archbald testified to? A. Same thing. 30

Q. Calling your attention to C. 5, what do you say as to the machine mentioned in that specification there?

Mr. Glueckfield: If your Honor pleases, I don't think the question is definite enough.

40

James E. Tomney—Direct.

Q. As relating to the machine which you built for Mr. Archbald? A. This machine is the machine we worked in the paper shop.

Q. The machine that was built by you under contract? A. This is the same machine.

Q. That machine is identical to the one that you built in 1896? A. With the divided rolls; just the same.

Q. Only on paper? A. Instead of this fabric.

Q. How long were you working for Mr. Archbald before you entered into this agreement of December 22nd, 1915? A. I went to work in the factory in March, 1912; I worked there two years.

Q. And during that time how many similar machines to the one mentioned in the contract were built? A. There were three, with the division, but none like this machine.

Q. What happened to the machine that you built with the division roll? A. It went to Stafford of New York, I think.

Mr. Glueckfield: I object to the question, unless he knows of his own personal knowledge.

The Court: It is all in on Mr. Archbald's testimony.

A. We sent it there.

Q. Did you see any of the machines that you built under this contract at any time after you delivered them to Mr. Archbald or the Penn Carbon Manifold Company? A. Most of them.

Q. Where did you see them? A. In his factory and the one in New York.

Q. From your experience as a machinist can you say whether or not a machinist making an observation of this machine could construct a similar machine? A. Oh, yes; anyone could do that.

James E. Tomney—Direct.

Q. Nothing secret about that? A. Nothing secret, no.

The Court: Will you tell us, Mr. Tomney, why you entered into the agreement that you did enter into in which the statement is made that the object being forever to settle the question of ownership between the parties in reference to formulas, etc., and to declare the same as the secret property of the said party of the second part. 10

A. Why, I signed the agreement—I was making this machine; I designed this machine out of my own head; it is my design—the patterns and everything else.

The Court: Why did you sign the agreement in which it is admitted, under seal, that the machines were the secret property of the Penn Carbon Company? 20

A. Well, I didn't see what else I could do.

The Court: You didn't have to sign it, did you?

A. I didn't have to sign it; I couldn't go ahead in court with it. I would lose out anyhow. I didn't have the money to carry it through. 30

The Court: He gave you an order for ten machines, to keep them secret, and you signed an agreement to keep them secret, and that they were the Penn Carbon Company's secret process. You want to tell me that there was nothing secret about them?

A. It was not a secret method; the invention was a secret. 40

James E. Tomney—Direct.

The Court: The machines that you were making at the time of the signing of this agreement were the same machines as covered by this patent?

A. Yes.

10 The Court: Why did you then admit in the agreement they were secret?

A. I don't know as I did that.

The Court: But you did.

A. There was nothing secret about it.

The Court: They were secret up to the time that you built them?

20 A. This one machine—that was secret—I had in my own place.

The Court: Had you ever seen a machine built for the same purposes according to that design before this one that you built for Mr. Archbald?

A. One machine I built myself.

The Court: For whom?

30 A. For him, from my ideas.

The Court: For him in his employ, while you were in his employ?

A. I built one machine under his employment for Stafford; that was a crude affair.

The Court: And whether it was his design or your design at the time the first machine

James E. Tomney—Direct—Cross.

was built, it was a secret, wasn't it, and no one else had used it for that particular purpose; it was a new thing at that time?

A. A new thing for making ribbons.

The Court: And whosoever designed it, it was new then?

10

A. Yes; the only machine that was made to do it then.

Cross-examination by Mr. Glueckfield.

Q. Was Mr. Hayes your attorney in October, 1916?

Mr. Hayes: I object to this line of cross-examination.

20

The Court: I admit it.

Mr. Hayes: I pray an exception.

The Court: There are no exceptions in this court.

Q. (Question repeated.) A. Yes.

Q. Was he authorized by you to write to the Alliance Manufacturing Company of New York City, offering them the sale of a certain two-color typewriter machine at a certain price?

30

Mr. Hayes: Same objection, with respect to this entire language.

Same ruling.

Q. Was he authorized by you do to it? A. It was brought up after this contract that we got into that.

Q. Did you authorize Mr. Hayes as your attorney to write to the Alliance Company, offering them the sale of two-color typewriter machines? A. Well, I guess I did.

40

James E. Tomney—Cross—Redirect.

Q. Will you look at this letter and tell the Court if that letter was sent entirely with your approval and authority? A. Yes, sir.

Q. Didn't you know that this was in violation of your agreement with Mr. Archbald? A. Well, the agreement was broke, wasn't it, when I got——

10 Q. What do you mean by that? Did you break it?

Mr. Hayes: I make a formal objection.

The Court: I will overrule the question.

Q. When this letter was sent, you were then under contract with Mr. Archbald not to make typewriter ribbon machines except the ten you were to make for him, is that correct? A. Yes, if he didn't break the agreement; he broke the contract, didn't he?

20 Q. You say that the machine described in that patent is the machine that you designed. Why didn't you seek a patent on it? A. I can't say about that. I didn't think he would get a patent on it.

The Court: In this letter, in the machines that you intended to manufacture in accordance with the provisions of this letter, you were going to use the same design?

30

A. The machine is a different machine.

Q. But the fundamental underlying design is the same, isn't it? A. Yes.

Redirect examination by Mr. Hayes.

Q. At the time this letter was written was the machine mentioned in the contract the secret property of Charles E. Archbald? A. No.

40

James E. Tomney—Redirect—Recross.

Mr. Glueckfield: Objected to. The agreement speaks for itself.

The Court: I will overrule the question. That is for me to determine, Mr. Hayes.

Q. At the time the letter was written had you ever seen any of these machines in use by any other person than Mr. Archbald? A. Oh, yes; seen them down in New York. 10

Q. The same machine? A. Yes.

Q. And it was in such a position that a person making an examination of it would be enabled to duplicate the machine if they were so inclined and had the ability? A. There were people running in and out of the place all day.

Q. It was on exhibition there? A. Yes.

Recross-examination by Mr. Glueckfield.

20

Q. Mr. Tomney, you permitted certain people who were not prospective buyers to see these machines while they were in course of construction in your plant? A. No.

Q. Did you permit Mr. Donegan to see it? A. He never seen it. He might have seen it in New York.

Q. Elmer Lowe, did he see it? A. He seen it after the contract was done; when Mr. Archbald was complaining that the work wasn't done right; the last machine; he saw that; he came to see if everything was right and tested it. 30

Q. Didn't Mr. Ross, of Charles Ross & Sons, call upon you and see this machine? A. No, he did not.

Q. You are sure about that? A. I am positive. I don't know him.

Q. Is the same true of Mr. Gardner, of Charles Ross & Sons? A. No.

Q. He did not see it? A. No, sir; don't know the man. 40

Charles A. Tomney—Direct.

CHARLES A. TOMNEY SWORN.

Direct examination by Mr. Hayes.

10 Q. Mr. Tomney, you are one of the parties defendant to this suit, and also one of the parties who signed the agreement between the Penn Carbon Manifold Company and yourself and your father?

A. Yes, sir.

Q. What is your business? A. Machinist.

Q. How long have you been a machinist? A. About seven and a half years.

Q. Mr. Tomney, at the time you signed this agreement was the machine mentioned in the schedule attached to the agreement secret in so far as you and Mr. Archbald were concerned?

20 Mr. Glueckfield: Objected to, if your Honor pleases.

The Court: I will admit it.

Mr. Glueckfield: If your Honor will pardon the further interruption, I submit that the witness should be held to his former statement.

The Court: I will admit the question.

30 Q. (Question repeated.) A. It was a secret in regard to the making of ribbons.

The Court: The devise of that ribbon was secret?

A. It was secret, yes.

Q. Was the principle of the machine secret? A. No, it was not.

Q. In that particular industry it was a secret?

A. In that particular industry.

Charles A. Tomney—Direct—Cross.

Q. From your experience as a machinist can you tell us whether or not a practical man making an inspection of this machine could duplicate the same? A. He could.

Q. Without any trouble? A. Without any trouble whatever.

Q. Have you from the time of entering into this contract preserved this machine as a secret, so far as you were personally concerned? A. I have. 10

Cross-examination by Mr. Glueckfield.

Q. Did you know that your father was seeking to make a sale of these machines? A. Was seeking to make a sale of these machines?

Q. Yes, to the Alliance Manufacturing Company? A. I do now.

Q. At any time? A. I wasn't taken into his confidence. 20

Q. Didn't know anything about it? A. No, sir.

Q. This is news to you? A. Not news now.

Q. This is the first time you heard about it? A. Not until the contract was finished. Not while the contract was on.

Q. Which contract are you referring to? A. The first contract that I have signed, about the ten machines. 30

The Court: That isn't the question. Did you know that your father was seeking to sell machines of this general type of construction to the Alliance Company?

A. No, I didn't.

Q. When was the first time that you heard of his endeavoring to make such a sale? A. About a month ago. 40

Charles A. Tomney—Cross.

Q. How did you learn that? A. He told me himself.

Q. Did you object? A. No, sir.

Q. You acquiesced in it, didn't you? You did not object to making such a sale? A. I did not, no, sir.

10 Q. You are engaged, so far as you are not precluded by the restraining order, in the making of these typewriter ribbon machines? A. Not now; I was.

Q. You recall the time in November when you were served with the restraining order? A. Yes, sir.

Q. You were at that time engaged in making such machines? A. Yes, sir.

Q. That was November, 1916? A. Yes, sir.

20 Q. What were you going to do with those machines when they were completed? A. They were to be sold.

Q. Did you have orders for them at that time? A. To my knowledge, yes, there were orders for them.

Q. From whom? A. A concern in New York.

Q. Wasn't the Alliance Company one of those concerns? A. Yes, they were one.

Q. Was the H. M. Storms Company a prospective customer? A. Not that I know of.

30 Q. Give us the name of several others that you were going to sell them to? A. There were no others that we were to sell them to, to my knowledge. That is all.

Q. Do you know the Columbia Ribbon Company? A. No, sir.

Q. The International Company? A. No, sir.

Q. These are the only two you can remember? A. Yes.

Charles A. Tomney—Cross.

Q. Where did you have your castings made for the construction of these machines? A. That is, afterwards?

Q. During 1916. A. The Empire Foundry, and Henderson, and the New Brunswick Foundry Company.

Q. All of which companies are not controlled by you? A. No, sir.

10

Q. They are all in New Brunswick? A. All in New Brunswick.

Q. They are strangers to you; so far as the making of these machines, they are strangers, aren't they? A. Yes, sir.

Q. You are the Charles A. Tomney who is mentioned in the bill of sale and agreement, aren't you? A. I am.

Q. You are the one who signed them both? A. Yes, sir.

20

Q. By that agreement of December, 1914, you were to turn over to Mr. Archbald all plans, patterns, drawings, designs, etc., after the completion of the ten machines. Did you do that? A. Yes, sir.

Q. Have you any plans in your hands now? A. No, sir.

Q. Did you make any plans after that date? A. I did, yes.

Q. Where are they? A. At home.

30

Q. Why haven't you turned them over to Mr. Archbald? A. Well, they are not his. This was after, when that agreement and bill of sale was finished; we designed a different machine.

Q. But with the same underlying principle, wasn't it, relative to the making of two-color typewriter machines? A. Yes, the same principle, but with a great deal of improvements. The underlying principle was the same.

40

Charles A. Tomney—Cross.

Q. Are you ready to turn these designs over to Mr. Archbald now? A. No.

Q. You don't propose to, unless compelled by the Court? A. I haven't the control of it. I am merely working for my father. I made them for him.

Q. You have no control over them? A. No, I have no control over them.

10 Q. Where did you get the necessary measurements and other information necessary to make such designs and drawings and patterns? A. From my father.

Q. Do you know where he got it? A. I couldn't say where he got it. I think he designed it himself; at least, I know that.

Q. How do you know that? Who told you that? A. Well, he told me so.

20 The Court: How did the new plans differ from the old ones?

A. They differed in this respect—in the old machine when the ribbon was passed through these rolls it crushed the ribbon, and it naturally squeezed the ink out of it to a certain extent; in the new machines we have an adjustable screw, and it comes down and adjusts the bottom bearing that holds the split roll, and that gauges it within two
30 or three thousandths from the top roll, allowing as much pressure as you like.

The Court: Is that the only difference?

A. That is the only difference in the principle.

Q. I ask you, Mr. Tomney, to look at these plans, blue-prints, and drawings, and ask you whether they are those that were made by you? A. I made them,
40 all right.

Charles A. Tomney—Cross.

Q. They all bear your name, don't they? A. Yes, sir.

Q. And they all bear a date, don't they? A. Yes, sir.

Q. And they all bear date some time during the year 1915? A. 1915.

Q. Where are those drawings which under that agreement of 1914 you were to turn over to the Penn Carbon Manifold Company? A. I didn't have any drawings at that time. 10

Q. Didn't have any at all? Why, then, did you agree to turn over something which you say you didn't have? A. I didn't have anything to do with it. I was supposed to make drawings to a certain extent.

Q. But you are aware of the fact that you agreed to turn over certain drawings which were then in existence? A. Yes, sir. 20

Q. You admit that they were in existence before this contract was made? A. They were in existence before this contract was made.

Q. In pursuance of that contract, is it true that you did not turn over any plans, blue-prints, etc., to the Penn Carbon Manifold Company, is that right? A. I did turn them over.

Q. This was after the agreement was signed? A. Yes. 30

Q. Outside of those plans, did you turn any other plans, etc., over to the Penn Carbon Manifold Company? A. No, sir.

Q. You say they are in existence? A. No, sir.

Q. These designs were made while you were building these ten machines for Mr. Archbald? A. They were.

Q. You have now in your possession at home certain plans, drawings, etc., for the building of such machines, have you not? A. My father has. 40

Charles A. Tomney—Cross.

Q. Did you get paid by your father? A. Yes.

Q. A salary? A. No.

Q. You were to get a portion of the profits that your father was to realize on this machine? A. No, sir.

Q. How were you to be paid? A. By the hour.

Q. Have you been so paid? A. Yes, sir.

10 Q. Gotten all of your money? A. Yes, sir.

Q. Then your father, to your knowledge, has such plans and drawings at home now? A. Yes.

The Court: Will you show me on these patent papers where it is that your machine differs as indicated there?

20 A. (I am referring to the first page, lower photograph, right here, line 9.) There is a boss on here on the left-hand side which is jammed out and projects over the frame and adjusts this bearing on the bottom roll, and that keeps the two rolls from coming together and prevents the ribbon from being squeezed.

The Court: How is that operated?

A. It has a screw on top, and you attach that to suit the tension.

The Court: So you can gauge the rolls?

30 A. You can gauge it from 1 to 5/100 of the thickness of the ribbon. You can move it.

The Court: From 1 to 5/1000 of an inch?

A. Yes, sir.

The Court: That is the only difference between the plans that you have and this particular machine?

40 A. Yes, sir.

Charles A. Tomney—Cross.

Q. Mr. Tomney, isn't it true that Mr. Reimer, who is president of the Alliance Company, conceived that slight improvement and not you? A. On this?

Q. What you have described. A. Mr. Reimer?

Q. Yes. A. Not that I know of.

Q. You won't say that he did not? A. To the best of my knowledge my father conceived that idea. 10

Q. By the best of your knowledge you mean he told you so? A. Yes, he told me.

Q. You can't say positively that Mr. Reimer didn't do it? A. Not positively.

The Court: When did your father first tell you that he had conceived that idea?

A. In November. 20

The Court: Of what year?

A. 1916.

The Court: And not before then?

A. No, sir.

Q. Before or after the last machine had been delivered to the Penn Carbon Manifold Company?

A. That was after. 30

The Court: How long after you had delivered these plans to Mr. Archbald?

A. A couple of days.

Q. And Exhibit C-3 contains a list of patterns and forms that you agreed to deliver to the Penn Carbon Manifold Company. I show you this agreement and ask you if you know whether or not the patterns and drawings therein mentioned were actually delivered and if so, by whom? A. Yes, 40

Charles A. Tomney—Cross—Redirect.

they were delivered, and they were taken by Mr. Archbald himself; he came down for them.

Q. Did you give them to him? A. My father did.

Q. Do you know that to be a fact? A. I know that to be a fact.

Q. And that the articles mentioned in there were all of the property either you or your father had belonging to the Penn Carbon Manifold Company?
10 A. That was all.

Q. Your contract with them in so far as any property that you had or ever had belonging to them was terminated, is that true? A. That is true.

Mr. Hayes: I submit that is a question of construction.

The Court: I will overrule the question.

20 *Redirect examination by Mr. Hayes.*

Q. You just stated that the plans were turned over to Mr. Archbald by your father? A. They were turned over by my father.

Q. In the affidavit which you previously made it is stated that you turned them over to Mr. Archbald. Is that error or are you making an error now? A. They were turned over by my father in
30 my presence.

Elmer Lowe—Direct.

ELMER LOWE SWORN.

Direct examination by Mr. Hayes.

Q. Where do you live, Mr. Lowe? A. New Brunswick.

Q. What is your business? A. Foreman machinist. 10

Q. How long have you been a machinist? A. Twenty years.

Q. Where are you engaged now? A. Simplex Automobile Company.

Q. Do you know the defendants James Tomney and Charles Tomnay? A. I do.

Q. Were you ever called upon to act in the capacity of an expert and to examine any machinery for Mr. Tomney, and if so, when? A. I was asked by Mr. Tomney, in October, if I would come over to his place and look at the machine; as to the alignment and the workmanship on it. I went over and looked at it and told him that the workmanship on it was first class. 20

Q. Did you test the machine? A. I tested the workings of the rolls and the upright.

Q. What was that machine for; what was it to do? A. That was, I understood from Mr. Tomney, to print ribbons.

Q. You say you examined the machine. Did you test the machine by using it? A. Only turning it over. 30

Q. What was the principle under which that machine was constructed? A. It was two rolls of the same type used in wall paper except in the partition it separated the two colors and the ribbon ran between the rolls and that printed it.

Q. Was that something new to you? A. That particular machine was, but the idea was used in wall paper where I served my time. 40

Elmer Lowe—Direct.

Q. From your experience as a machinist, would you say a man having an opportunity to examine that machine and making an inspection of it could duplicate the machine? A. He could.

Q. Nothing secret about the method of construction? A. Nothing whatever.

10 The Court: It is a fact that a qualified machinist can almost take any piece of machinery and reconstruct it?

A. Yes.

The Court: Any small piece of machinery that he can see?

A. Yes.

20 Q. And if he can get hold of the machine, he can take it apart and reconstruct it? A. Yes.

Q. Did you ever see that machine, or any part of that machine, prior to the time that you examined it for Mr. Tomney? A. I had the supervision of some parts for Mr. Tomney, and he brought them to the Penn Carbon Company about 1913, I would say, when I was employed by the New Brunswick Refrigerating Company.

30 Q. Did you know what the parts were for at the time you had charge of them when you worked for the New Brunswick Refrigerating Company in 1913? A. I knew they were for a ribbon machine, but just what I didn't know.

Q. You could tell that from an examination of the parts, or would you have to rely on someone else's say so? A. I could tell that from the piece I was working on.

Elmer Lowe—Cross.
George A. Seidel—Direct.

Cross-examination by Mr. Glueckfield.

Q. You say as a machinist it would be practicable for you to reconstruct such a machine as the one you saw in Mr. Tomney's place? A. Yes, sir.

Q. You don't mean you could build a machine here? You would have to have the sample before you? A. No, the idea is all I would want. I could build a machine to do the same work. 10

Q. You say Mr. Tomney sent for you in October and exhibited this machine to you? A. Yes, sir.

Q. Who else was there? A. His son came in; he called him in when I was there.

Q. Anyone else? A. No.

Q. Just you three? A. Yes.

Q. He didn't say anything to you about its being a secret? A. No. 20

Q. Did he tell you not to say anything about the machine? A. He asked me if I would keep the thing quiet, not to say anything about the workings of the machine.

Q. Did you say anything about the workings of the machine to anyone? A. No.

GEORGE A. SEIDEL SWORN. 30

Direct examination by Mr. Hayes.

Q. Where do you live? A. New Brunswick, N. J.

Q. What is your business? A. Machinist.

Q. How long have you been a machinist? A. Fourteen years.

George A. Seidel—Direct.

Q. Are you acquainted with Mr. Archbald? A. Yes, sir.

Q. And you know Mr. Tomney, James Tomney?

A. I do.

Q. Did you ever work for Mr. Archbald? A. I have.

Q. In and about his factory at New Brunswick, the Penn Carbon Manifold Company factory? A. I did.

Q. Have you ever seen any machines used for imparting color to fabric? A. I did not see it in use; I seen them setting down on the floor as I entered the building.

Q. When was that? A. It was during the time I repaired a motor for him. I couldn't tell you exactly when it was. Mr. Archbald knows the time.

Q. Tell us as nearly as you can. A. About two years ago; I should think about that time.

Q. What kind of a machine was it you saw there? A. It was a machine setting on four legs; just the same as we planed off in the New Brunswick Foundry.

Q. You had seen that particular machine before, had you? A. Yes, sir.

Q. Where? A. New Brunswick Foundry.

Q. What were you doing there? A. Machinist.

Q. And you had planed a similar— A. I didn't plane it; I seen it.

Q. Did you know who the work was being done for? A. Yes, sir.

Q. Could you describe the machine? A. I just passed by the machine.

Mr. Glueckfield: We will admit on the record that the witness saw on the floor such a machine as is the subject of this suit.

George A. Seidel—Direct—Cross.

Q. From your experience as a machinist can you tell us whether or not it is possible for you to construct a machine similar to the one you saw at the Penn Carbon Company plant? A. I could.

Q. If you got a contract for the construction of one of those machines to do the same work as that machine, could you make one? A. I think I could.

The Court: I will take judicial knowledge of that.

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A. (Witness continuing) I think any man who had an opportunity to examine it, could make one like that.

Cross-examination by Mr. Glueckfield.

Q. This machine that you saw, Mr. Seidel, in Mr. Archbald's plant looked as if it had just been delivered? A. Yes, I spoke to Mr. Archbald and he said it is going to be shipped.

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Q. He didn't show it to you? A. I know the machine. I ground the rolls myself for the Brunswick Foundry.

The Court: What is your name?

A. George A. Seidel.

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John A. Donegan—Direct.

JOHN A. DONEGAN SWORN.

Direct examination by Mr. Hayes.

Q. Mr. Donegan, you are a practising attorney of New York City? A. Yes.

Q. And specialize in patent work? A. Yes.

10 Q. And how long have you been a practising attorney? A. Eleven years practising patent attorney, admitted to the bar for seven years.

Q. Did you examine a machine in the office of the Alliance Manufacturing Company of New York for Mr. Tomney? A. Yes.

20 Q. Will you tell the Court, please, what kind of a machine that was, and also whether or not it is possible for that machine to be duplicated by any machinist, or anyone who makes an examination of the machine?

Mr. Glueckfield: We will admit both that the machine can be duplicated, and that he did see such a machine at the Alliance Company plant.

A. I don't know about the qualifications of a patent attorney to——

30 The Court: Instead of going into that counsel have admitted that it could be done.

Q. In connection with your studies for admission as a patent attorney, did you pursue any other course, and if so, what? A. Not for my admission as a patent attorney, but for admission as an examiner to the patent office.

Q. Where did you pursue such a course? A. George Washington University.

John A. Donegan—Direct.

Q. Coming to the question of the perfection on this machine, if it is the same machine—Mr. Donegan, can you tell us what the effect of that is—the particular devise attached to the machine? Don't go into a lot of— In the machine that you examined at the Alliance Manufacturing Company's office of New York was that equipped with the appliance that the witness Tomney has testified was his invention on this machine? A. Before I go into that, I would like to be released from any confidential communications that Mr. Tomney made to me, and I to him as an attorney. If I can be released I can say wherein the two machines differed and what I advised Mr. Tomney to do. 10

The Court: You may be released. You may explain wherein the two machines differ. 20

Q. Well, then, Mr. Tomney came to me around the latter part of October or the fore part of November, 1916, and he exhibited drawings of a machine; in fact he exhibited two sets of drawings; one corresponded in a measure with the patent here in suit, and the other showed an improvement. I examined the nature of the improvement and found that his improvement would function entirely different from the patented machine. He asked me to advise him as to how he should proceed and as to what his chances were in law for getting a patent, and he then set forth that the Alliance— 30

Mr. Glueckfield: I object to that.

The Court: Strike out the conversation between the parties.

Q. As a result of that what conclusion did you come to regarding the machine, a drawing of which 40

John A. Donegan—Direct.

he submitted to you, and which was a different one?

A. I concluded it was patentable, and I based my opinion upon a search of the patent office records.

Q. And you say this one functioned entirely different from the old one? A. Yes.

Q. In what way? A. It functioned that the amount of ink to be applied to the ribbon was under the control of the operator at all times. The
10 old machine consisted of a pair of split rolls and an upper solid roll. These lower rolls were worked in contact with the ribbon between the upper and lower rolls by weights. The weights were adjustable and were hung on levers, so that the amount of pressure applied to the ribbon could, in a measure, be adjusted. But the adjustment was crude and limited by the notches on the lever arms. Tomney's was a structure whereby he could absolutely
20 force the lower rolls away from the upper rolls, together with the levers, and thereby he obtained a fine adjustment that was not proposed by the patent. Now, then, I figured that inasmuch as the science of the whole thing amounted to the application or the impregnating of a ribbon with ink, that if the pressure could not be regulated to do that, either of two things would happen; first, the amount of ink applied to the ribbon would, in the event that the pressure was not sufficient, be
30 too great and render the ribbon gummy. Second, if the pressure were too great, the rolls would operate to iron the ribbon out, or in other words, it would work like an ordinary washing wringer.

The Court: What do you consider the underlying principle of this machine?

A. The application of inks to a ribbon.

Q. Is that the underlying idea? A. Yes.

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John A. Donegan—Direct.

The Court: There are many machines which apply inks to fabrics?

A. Not two-color ones.

The Court: The idea of this machine was to apply to fabrics two colors by some method other than the interleaving method?

A. No. 10

The Court: How did this differ from the other machines which had been patented to apply ink to fabrics? The underlying principles of the machine which was said to be designed by Archbald and manufactured by Tomney, what was its patentable feature?

A. Its patentable feature, as disclosed by the patent, was the application or pressure by two lower rolls to a ribbon and an upper roll. But that wasn't particularly new. 20

The Court: It was particularly new as applied to fabrics?

A. No. The machines known as one-color ribbon machines are old.

The Court: Then the new idea was to apply by pressure two colors at one operation, so that the colors would not intermingle? 30

A. Yes.

The Court: The underlying idea of this machine was to apply two colors without intermingling by pressure?

A. Not only that, the ribbon must be properly impregnated; otherwise it is unfit for use.

John A. Donegan—Direct.

The Court: The idea was getting into the fabric two colors without intermingling?

A. That was one.

The Court: What was the other one?

A. To get them in there properly.

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The Court: The old machine—that is, the machine designed by Archbald—it got them in properly, didn't it?

A. Not as compared with this.

The Court: Then Tomney was to improve on this idea?

A. Yes.

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The Court: What could be patented by Tomney?

A. The adjustment of the lower roll, irrespective of the weight arm.

The Court: Simply that?

A. Simply that. It is in litigation now before the Patent Office.

30

The Court: Your conclusion was that Tomney might, as an improvement on this machine designed by Archibald, patent this specific improvement?

A. Yes.

Q. That machine on which patent was applied for in February, 1914, and in which the ribbon color has been impregnated by the use of the split roll, is that patented at this time? A. No.

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John A. Donegan—Direct—Cross.

Mr. Glueckfield: Objected to on the ground that he is not qualified to say that.

The Court: I will admit it as expert testimony as to whether it is patentable or not.

Q. And you say no, it is not? A. No.

The Court: I will take judicial knowledge that you can't patent a thing where a patent has been applied for. 10

The Witness: The statute says you have to wait two years.

Mr. Hayes: I show you a book that contains the statute governing that.

The Court: I will take judicial knowledge of the statute of the United States.

Cross-examination by Mr. Glueckfield.

Q. Mr. Donegan, the whole manner in which you have described this so-called improvement of Mr. Tomney's on Mr. Archbald's machine is, in fact, merely your theory as to the manner in which it is superior to it? A. No, that is a fact. 20

Q. Have you tested them side by side? A. No, I haven't tested them.

Q. You haven't built machines? A. No.

Q. You know the duty of them? A. Yes

Q. You haven't made ribbons as such? A. No. 30

Q. Have you ever operated Mr. Archbald's machine, or any machine, without this new improvement? A. No.

Q. Have you operated the machine with the improvement? A. No.

Q. Then what you say is merely a guess devised from your knowledge of the science of improvements? A. It is a guess.

Q. It is an opinion? A. Just an opinion.

John A. Donegan—Cross.

Q. Your opinion is based not upon practical tests, but upon your knowledge? A. It is based on my training and my every-day practice.

Q. By the way, Mr. Donegan, you say that you examined the machine at the plant of the Alliance Company? A. Yes.

10 Q. Isn't it true that at first access to the machine was denied you? A. No.

Q. Isn't it true that you asked Mr. Reimer for permission to see it and he refused it? A. No.

Q. Isn't it true, that you made a special request of some of the minor officers and they asked him to see you and he refused? A. No.

Q. Isn't it true that you offered to indemnify them against damages for showing you the machine? A. No, not based on any of those refusals.

20 Q. But is it true then that you made an agreement with the Alliance Company, or with one of its officers, whereby you agreed to indemnify it or them against damage for showing you the machine? A. That is true.

Q. Why did you do that? A. For this reason, they had a machine on renewal and Archbald had written down, had threatened—

30 Q. How do you know that? A. From their statement; Archbald had written threatening letters, threatening to have them figure in the case, and these letters stated that upon the expiration of the contract for that machine, which would be in June or August, he would not renew it. Consequently, it would be out of the market, and I entered into a contract with them whereby I provided that in the event that Archbald would not renew his contract or license for them to use it, I would see they got a machine.

Q. Where did you propose to get it? A. I refuse to answer.

John A. Donegan—Cross.
Charles E. Archbald—Recalled—Direct.

Mr. Glueckfield: I ask the Court to direct the witness to answer.

Mr. Hayes: I object to the question.

The Court: I overrule the question, but not because of the witness' refusal to answer, but because I don't think it is material.

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Q. Had Tomney agreed to supply you any machines? A. No.

DEFENDANTS REST.

COMPLAINANT'S REBUTTAL.

Mr. Glueckfield: I offer in evidence letter of Mr. Hayes to the Alliance Manufacturing Company, dated October 20th, 1916. (Marked Exhibit C-5.)

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CHARLES E. ARCHBALD recalled.

Direct examination by Mr. Glueckfield.

Q. Mr. Archbald, you heard Mr. Donegan explain the details of the improvement he speaks of as made by Mr. Tomney; for the purpose of designation "The Archbald Machine"; you heard him detail that improvement? A. Yes.

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Q. Can you tell us about that? A. Well, I can tell you what the result practically would be, and that in the first place that the idea is impracticable for the reason, in making typewriter ribbons one has to take into consideration the fact that there is unevenness in the thickness of the fabrics; the gauges are different, even with the same cloth, and won't

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Charles E. Archbald—Recalled—Direct—Cross.

work very long, and that if you get a permanent adjustment of the rolls in position, you would have uniform work, whereas an adjustable roll operated by a weight would give you uniform results all the way through, because it would make any allowance for any difference in the thickness of the fabric. This very idea was put up to me by Mr. Reimer
 10 either in September or August when he showed me the same idea exactly and said, "This is something I would like to sell you—an idea like this."

Mr. Hayes: I move that the conversation between the parties be stricken out.

The Court: It may be stricken out.

Q. Is it true that Mr. Reimer offered you the same improvement? A. He did.

20 Q. Did he suggest it to you? A. He did.

Q. Did you act upon it? A. I was well aware of the idea, because it was something that had gone through my mind—a permanent adjustment as having been satisfactory. It is going back to the old principle of operating by thumbscrews, which is not a satisfactory method.

Cross-examination by Mr. Hayes.

30 Q. This new idea as described by Mr. Tomney made the division or the separation of the two rolls permanent, is that right? A. Yes.

Q. Under the old idea this separation was governed by weights. There was an improvement there? A. It took up any differences.

Q. And there was no absolutely safe way of keeping these rolls separate under your idea. You relied entirely upon the weights? A. Yes.

Q. In other words, it was adjustable? A. It was not adjustable.

Charles E. Archbald—Recalled—Cross.

Q. It took up the adjustment. The ink was imparted to that ribbon and was controlled by the movement of these weights according to the thickness of the ribbon as it came through? A. Yes.

The Court: It was an automatic adjustment?

A. It was automatic in the sense that it relied on the ribbon to automatically separate the two rolls properly so that you could govern the amount of ink that would go into the roll. It wasn't automatically adjustable. 10

Q. When you use the word "automatic" you mean that it was first adjusted to the various thicknesses of the ribbon? A. No.

Q. But that the ribbon passing through there would automatically adjust the weights? A. In the operation of the machine when you pass your fabric through, you set your weight at a given point to get a certain inking. You don't know what that inking is. You know the number and every time you want to get the same inking you put it on that number. It is impossible to use a thumbscrew and adjust anything by hand and get uniformity. 20

The Court: The pressure always remains the same?

A. Yes. 30

Q. Suppose a ribbon should run thick in between the ends; what would be the result then? A. It would take up and give you the same inking. It does not vary more than 10/1000.

Q. But you have testified before that there were great variances between the ribbons? A. I am not talking of the same fabric.

Q. I am talking of the same fabrics. Is there any variance? A. There is a slight variance. 40

Opinion.

Filed March 24, 1917.

IN CHANERY OF NEW JERSEY.

MR. ALFRED S. MARCH for complainant.
MR. EDMUND A. HAYES for defendants.

LANE, V. C. (after submission of briefs) :

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I determined the facts at the conclusion of the oral argument and find no reason to change my view. I think that the defendants entered into the contract of December 22, 1914, with full knowledge and as a settlement of an action that had been brought against them in this court to enjoin the disclosure by them of secret processes which the defendant James E. Tomney had acquired while in the employ of the complainant. After the contract had been entered into the defendants deliberately proceeded to violate it. The bill is in the nature of a bill to prevent the disclosure of trade secrets and for a specific performance of the contract. So far as the contract requires the defendants to refrain from manufacturing any machines or parts of machines to use for the production of ink, ribbons and accessories, including carbons, carbon paper, typewriting ribbons, stenciled papers and other duplicating machine supplies, I think that its performance is not enforceable in a court of equity. Taylor Iron & Steel Co. v. Nichols, 73 N. J. Eq., 684. Mandeville v. Harman, 42 N. J. Eq., 185. So far as the bill may seek to enjoin the disclosure of trade secrets relief would be ineffective because whatever secrets there were having been already disclosed. The improvement, the subject matter of the litigation, has been made public by a sale of the machines upon which it is used and by the application for and the grant of a patent. On the

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Opinion.

25th of March, 1916, application was made for a patent covering the improvement in the name of C. E. Archbald, and the patent was granted December 5th, 1916. If the patent is valid the complainant itself has no right to use the improvement without license from the patentee. If the patent is invalid anyone may use the improvement, and the effect of granting relief in this case would be to prevent the defendants only, of all the world, from its benefit. If the contract be valid it seems to me that in an action at law for its breach the damage would be six cents, not because of the difficulty or impossibility of ascertaining the amount of damage but because of the absence of damage. Where such a condition exists a court of equity will not practically enforce specific performance of the contract. The bill will be dismissed without costs. If an appeal be taken I desire that counsel should notify me so that I may have an opportunity of preparing more formal conclusions.

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Amended Bill of Complaint.

Filed February 8, 1918.

IN CHANCERY OF NEW JERSEY.

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

10 The complainant, Pen Carbon Manifold Company, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and duly registered and authorized to do business in the State of New Jersey, and having its principal office and place of business at #65 Mine Street, in the City of New Brunswick, in the County of Middlesex and State of New Jersey, respectfully shows that:

20 1. On November 18, 1916, it filed a bill of complaint, with affidavits and copies of exhibits thereto annexed, praying for relief in the matters and things therein set forth.

30 2. On said eighteenth day of November, 1916, an order was made, temporarily restraining said defendants, in accordance with the prayer of the bill, and after final hearing in this matter had on March 13, 1917, conclusions were filed by this Court in favor of a dismissal of the bill and a denial of the relief sought by the complainant.

40 3. The complainant is engaged in the general business of manufacturing and marketing inked ribbons for use on typewriters, as well as carbons, carbon paper, stencils and similar duplicating accessories; and in connection with said business has formulated certain secret processes for the production of its products, and has designed and produced special and secret machinery to be used by it exclusively in the production of its commodities.

Amended Bill of Complaint.

4. By reason of the said secret formulas and secretly and specially constructed machinery, complainant has been able to produce a special grade of merchandise, not otherwise obtainable in the open market.

5. One of the machines, to wit, a two color typewriter ribbon machine, has since the filing of the said bill of complaint, been patented and letters patent hereon have been issued by the United States Government to Charles E. Archbald, the president and general manager of the complainant. 10

6. The complainant, as specifying the secret processes and machinery above referred to, states that it has designed, and is using, secretly and exclusively, the following named machines:

1. Eighteen-inch carbon paper machine. 20
2. Twenty-six-inch carbon semi and full machine.
3. Feed tension improvement.
4. Eighteen-inch float-feed method carbon paper machine.
5. Wax stencil paper for typewriter use.
6. Secret method of producing hand stencil paper.
7. Single color ribbon machine.
8. Multigraph ribbon machine. 30

all of which machines are more particularly, and in greater detail, described in the exhibits hereto annexed, marked "Schedule I."

7. It is the custom in the trade of the complainant that each person engaged therein designs and constructs his own secret and special machinery for the production of the products.

Amended Bill of Complaint.

10 8. The said defendants are divulging, or are about to divulge, to persons not entitled to receive the same, information relative to the construction of the various machines and parts thereof mentioned above and described in the schedule hereto annexed, and are about to make known to others the secret processes and formulas relative to the use of said machines and the production of typewriter ribbons, carbons, stencils, inks and the like, —whereby the complainant will suffer irreparable injury, and unless the said defendants are prevented and prohibited from so violating their duty in this regard and their agreements in this behalf, which agreements are specially mentioned and described in the original bill of complaint filed herein, and copies thereof annexed thereto, the complainant will continue to suffer great irreparable damage.

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9. The said defendants have, or are about to engage in the work of constructing for persons other than complainant, single color typewriter ribbon machines similar to those in secret and exclusive use of complainant and as described in the schedule hereto annexed; and unless the defendants are prevented and prohibited from so doing, in violation of their duty and agreements, the said complainant will suffer irreparable damage.

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

1. That James E. Tomney and Charles A. Tomney, who are the defendants in this suit, may answer this bill of complaint, without oath, and each statement made therein.

2. That they may particularly set forth and discover fully and completely, item by item, the num-

Amended Bill of Complaint.

ber of designs, patterns, maps, formulas, methods, processes, single color ribbon machines, parts of machines used in the construction of single color ribbon machines, as well as of any of the foregoing enumerated articles and things which they may, or might, have sold or otherwise disposed of to persons other than the complainant.

3. That the said James E. Tomney and Charles A. Tomney may be enjoined and restrained from disposing or transferring in any manner whatsoever, directly or indirectly, either by themselves, or by either of them, or by their, or either of their, agents, attorneys, or assigns, or by any person or persons acting by, through or under them, or either of them, any of the articles and things in the foregoing paragraph mentioned and described, and from constructing or using, either by themselves, or by any agents, servants, employees or attorneys, directly or indirectly, thereunto authorized, any single color ribbon machines, or parts thereof, as herein described and as more fully described in the schedule hereto annexed; and that they may be further enjoined and restrained from imparting or divulging any information whatsoever to any person or persons whatsoever, other than the complainant, concerning any of the articles and things hereinbefore mentioned; and that they may be further enjoined and restrained from using or employing any of the said formulas or methods or processes, or any of said machines, or parts thereof, for the manufacture and production of single color inked ribbons and accessories, including carbons, carbon paper, single color typewriter ribbons, stencil papers, and other duplicator supplies.

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Amended Bill of Complaint.

10 4. That the said James E. Tomney and Charles A. Tomney may be directed and decreed to hold and retain any of the articles and things herein described, or in anywise related thereto, and not herein described, excepting only two color ribbon machines which may now be in their possession, or under their control, until the determination of this Court, and to abide its order and decree in the premises.

20 5. That this complainant shall be decreed to be the owner of all of said property, and that the said James E. Tomney and Charles A. Tomney may be directed and decreed to deliver the same to complainant, subject only to such claim as they, or either of them, may have for actual labor in the construction of said machines, or any parts thereof, in accordance with the said contract of hiring.

6. That a decree may be made herein, directing so far as it may be possible and necessary for the protection of complainant in the premises to marshal the assets and property of the said James E. Tomney and Charles A. Tomney, and that account may be taken thereof.

30 7. That a receiver be appointed by this Court to take, receive and hold in his possession all of said property, subject to the direction of this Court.

8. That the complainant may have such other and further relief as is proper.

ALFRED S. MARCH,
Solicitor for and of counsel with Complainant.

Answer of James E. Tomney.*Filed February 8, 1918.*

IN CHANCERY OF NEW JERSEY.

The defendant, James E. Tomney, answering the amended bill of complaint, filed in the above-entitled cause, says:

1. He admits Paragraph One of said amended bill. 10

2. Paragraph Two is admitted.

3. He admits the nature of complainant's business, as alleged in Paragraph Three, but denies that complainant has formulated certain secret processes for the production of its products, or that complainant has designed and produced special and secret machinery to be used by it exclusively.

4. Paragraph Four is denied.

5. He admits that one Charles E. Archibald has obtained letters patent on a certain two-color type-writer ribbon machine. 20

6. Paragraph Six is denied, as is each and every subdivision thereof, in which machines are particularly described.

7. Paragraph Seven is denied.

8. He denies that he has divulged, or is about to divulge, any information relative to any secret process or formula of which the complainant is the sole owner, and denies that he is possessed of any knowledge of anything secret either in the method of making or in the use of any of the machinery owned by the complainant. 30

9. He denies that he is constructing, or is about to construct, any machinery similar to any machinery which is the secret property of the complainant.

EDMUND A. HAYES,
Solicitor of Defendant, James E. Tomney.

Answer of Charles A. Tomney.

Filed February 8, 1918

IN CHANCERY OF NEW JERSEY.

The defendant, Charles A. Tomney, answering the amended bill of complaint, filed in the above-entitled cause, says:

10

1. He admits Paragraph One.
2. He admits Paragraph Two.
3. He admits the nature of complainant's business, but has no knowledge or information sufficient to form a belief as to complainant having formulated certain secret processes.

4. He has no knowledge or information sufficient to form a belief as to the statements in Paragraph Four.

20

5. Paragraph Five is admitted.
6. He has no information or knowledge sufficient to form a belief as to the statements in Paragraph Six.
7. Paragraph Seven is denied.
8. Paragraph Eight is denied.
9. Paragraph Nine is denied.

EDMUND A. HAYES,
Solicitor for Defendant, Charles A. Tomney.

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Testimony.

IN CHANCERY OF NEW JERSEY.

Continuation of examination, pursuant to adjournment, at the place and in the presence of the court as before

APPEARANCES :

MR. I. BENJAMIN GLUECKFIELD for the complainant. 10

MR. EDMUND A. HAYES for the defendants.

Insert 230

Mr. Hayes: I would just like to say that this contract on which this suit is based is a contract which if in force will tend to make a monopoly in the complainant company. What I mean by that is: that it is a contract which prohibits the defendant company from in any way assisting in making any of the products or machinery used in a certain industry, and I believe such a contract as that is in restraint of trade. And, further, the contract is one which has no termination, or no place in which the contract shall be held to be good; no time is expressed in the contract when it shall terminate; it is a contract without time rather, and it is also a contract without a place designated, and I believe such a contract as that in New Jersey is a contract against public policy. And for those reasons I ask at this time that the bill be dismissed and the injunction dissolved. 20 30

The Court: It cannot be done at this time. It may be done at the conclusion of the case.

CHARLES E. ARCHBALD resumed for

Further direct examination by Mr. Glueckfield.

Q. You are the present general manager of the Penn Carbon Manifold Company? A. Yes.

Charles E. Archbald—Recalled—Direct.

Q. You are familiar with the claims of the company relative to this suit? A. Yes.

Q. Now the complainant company claims certain machines as mentioned in the bill and the amended bill of complaint to be secret machinery. Are you familiar with the machinery described in those claims? A. Yes.

10 Q. Will you name those machines? A. Well, there is an eighteen-inch machine.

Q. Which is used to make what? A. Manufacture carbon paper. There is a Republic rebuilt machine, also for making carbon papers; and there is an eighteen-inch float feed carbon paper machine for making carbon; there is a single color ribbon machine for making ribbons; there is a multigraph ribbon machine for making multigraph ribbons, and there is a wax stencil paper machine for making
20 typewriting stencil paper, and there is a machine for making hand stencil paper, and there are some improvements on the two color ribbon machine.

Q. What have you to say in regard to feed tension improvement? A. Feed tension improvement is embodied in one of those machines.

Q. Are all these machines at present in use in the Penn Carbon Company plant? A. Yes.

Q. How long have you been in the business of ribbon and carbon manufacturing and merchandising? A. Twelve or thirteen years, anyway.
30

Q. To the best of your knowledge are these machines with the improvements you have spoken of used anywhere else in any other plant? A. No.

Q. Who evolved these improvements? A. The improvements are developments that were from time to time made either here or in my factory in Montreal, I mean in the Penn Carbon Manifold Company or in Montreal previous to coming here.

Q. By whom were they developed? A. Developed
40 by me.

Charles E. Archbald—Recalled—Direct.

Q. Do these improvements enable you to produce a part that is not obtainable on the market? A. Yes; there is very high grade goods made on these machines.

Q. Now, with regard to the two color ribbon machine, have you anything to add to your testimony previously given in this suit on that subject? A. Yes, there is an improved wind-up. 10

Q. Now, then, is Mr. James E. Tomney, one of the defendants here, familiar with the machines that you have described and which are mentioned in the amended bill of complaint? A. Yes.

Q. How long was he in your employ? A. Six or seven years, about six or seven years.

By the Court.

Q. Did he get the information with respect to them from you? A. Yes; he never knew anything about carbon paper machines before he came to work for me as a mechanic. 20

By Mr. Glueckfield.

Q. Did you engage him as a ribbon and carbon machine maker? A. No; simply as a mechanic.

Q. To do what? A. Simply to do what he was told; and I may say that previous to Mr. Tomney's being there I had another mechanic that was in exactly the same position that he afterwards took, and this mechanic built several of my previous machines, and I have always kept a mechanic ever since I have been in the business of making changes, as I saw I could benefit the product or decrease the cost by increasing the speed or improving the machines, and that has been my policy right from the start; I have always been a mechanic and spent a great deal of money on experimental and development work on all my machines, and I have a man 30 40

Charles E. Archbald—Recalled—Direct—Cross.

in the same capacity to-day and doing exactly the same thing.

Q. Are you familiar with the standardized or machines generally used in this trade or industry in the making of carbon or ribbons? A. Yes, all that is possible for anybody to see I know about.

10 Q. Is it general or customary in this industry to keep these machines secret in a plant? A. I understand so.

Q. Now tell us wherein your eighteen-inch carbon paper machine that you mention is different from or an improvement upon the machines generally used in the industry. A. I think possibly I might describe each machine as I go along, explaining the features. The eighteen-inch improved machine is a machine that was built prior to the en-

20 Q. So far as you know, are any of the improvements on that machine which you have just described used anywhere else in any other industry or known to anyone but yourself or former employees? A. Yes, that is right.

The Court: Cross-examine on that machine first.

Cross-examination by Mr. Hayes.

30 Q. Is that the machine that is known as the Columbia machine? A. No.

Q. Is it the machine known as the Republic Dodge? A. No.

Q. You built that machine yourself, did you? A. It was built by a former mechanic under my instruction and direction.

Q. In New Brunswick? A. Yes.

40 Q. That machine was the sole product of your mind, was it ever copied from any other machine?

Charles E. Archbald—Recalled—Cross.

A. All the improvements are entirely my product.

Q. And how is the machine itself, is that a copy of any other machine? A. No.

Q. The entire principle of making this carbon paper, as you have just described, is brand new in all details, all the improvements are absolutely new? A. In answer to that I would like to say that there are many different kinds of carbon machine that function in different ways; every carbon machine has to have ink roll and every carbon machine has to have some rolls in order to do the work; I have simply embodied these rolls in position I thought best, and I have run them at speeds I thought best, and I have put these features of improvement in. I may say I have seen prior to that some three or four different machines that are not even recognizable as being the same. 10

Q. Like that machine, are they? Some three or four machines similar to the one you have described? A. No, different. 20

Q. The principle of this machine, the principle of making carbon paper of this machine rather, is that new or was that copied from some other machine? A. There isn't any principle involved in this thing except ink rolls and rolls generally, that is the general principle used by every carbon machine, there is nothing except improvements.

Q. Just tell us what the improvements are? A. I have just recited them a few minutes ago. 30

Q. Just mention the different improvements that you have? A. Every thing I mention in there I have never seen before are my improvements that I have embodied in this machine that I claim.

Q. You mention the fact that you had placed roll of paper four or six feet away from the machine? A. Yes, that is something I never saw before.

Charles E. Archbald—Recalled—Cross.

Q. That was improvement, is that right? A. Yes.

Q. What else was improvement? A. The next feature was the adjustable rod before the feeding roll, I explained that.

Q. That was the second improvement? A. Yes.

Q. Now what else? A. And the next one is the adjustment of the idler before the ink roll.

10 Q. That is the third improvement? A. Yes.

Q. Anything else? A. Yes. The next one is the adjustment of the scraper either closer or far away.

Q. Thumb screw arrangement? A. Yes.

Q. That was new, you had never seen that before? A. No.

Q. You never saw the knife adjusted by means of thumb screw? A. I have seen a knife with thumb screw, but it did not function the same way.

20 Q. In what way does yours function that is different? A. Mine functions with an up-and-down motion and its ability to move nearer and closer to the ink roll. There is no other scraper I have ever seen that has been adjusted exactly that way.

Q. All knives that are regulated by means of thumb screws move up or down according to the way you turn the screws? A. Yes.

Q. That is what yours does? A. Mine does, yes, and keeps the roll always parallel to the ink roll.

30 Q. So does every other knife adjusted by thumb screw in the same way? A. No.

Q. That is the fourth improvement on that particular machine? A. Yes.

Q. And that is all? A. Yes; there is more of that.

Q. On that machine? A. Oh, yes, certainly.

Q. Tell us what they are? A. Well, there is ability to position the large roll after the scraper, either closer or nearer to the scraper, and there is the general adjustability of every roll on that machine,

Charles E. Archbald—Recalled—Cross.

they are capable of being repositioned in any other position.

Q. By means of slides? A. If they are moulded on the rods they can be then turned, the positions can be changed.

Q. Forward or backward? A. Yes.

Q. And that is new? A. Yes, I never saw that before, in every roll adjusted. 10

Q. Did you ever purchase an eighteen-inch carbon machine from the Republic Dodge Machine Company of New York or twenty-six-inch machine?

Mr. Glueckfield: He hasn't described a twenty-six-inch.

The Court: I will permit it.

A. I purchased a machine from the Republic Dodge Company. 20

Q. How many machines? A. Two machines.

Q. Carbon machines? A. Yes.

Q. What was the size of those machines? A. I understand they never were operated, whether that is twenty-inch or twenty-one-inch; I am to-day operating a rebuilt Republic machine, so I have a twenty-six-inch machine and making twenty-six-inch paper on that very machine with my improvements.

Q. That machine that you purchased from the Republic Dodge, that functions exactly the same as your machine that you just described? A. No, I had that all entirely rebuilt and instructed Mr. Tomney step by step to rebuild that machine for me and add the various improvements that were added to that machine. I was going to describe that machine next. 30

Q. That is the improved Republic Dodge machine? A. Yes, call that Republic rebuilt.

Q. Didn't that machine before that start from 40

Charles E. Archbald—Recalled—Cross.

the roll and run over the idler and under adjustable rods? A. No.

Q. And pass over a feeding roll? A. That is too general; that description is too general. I will describe it in actual description so as to make it quite clear. I don't want there to be any misapprehension on that.

10 Q. That was entirely different machine than the one you just described? A. Yes.

Q. The machine you just described is that in your factory in New Brunswick? A. Yes.

Q. That is there now? A. Yes.

Q. And all machines you have just mentioned are in New Brunswick to-day? A. Yes.

Q. That is, the eighteen-inch Republic rebuilt, eighteen-inch float feed and single color ribbon machine? A. Yes.

20 Q. And multigraph ribbon machine and wax stencil machine or type stencil? A. Yes.

Q. They are all in New Brunswick to-day? A. Yes.

Q. When was it you built this eighteen-inch machine you just described? A. It is a long time ago, I think I started it some time about 1907, I think. I worked on it for a long while, maybe it was 1906, I wouldn't be sure, it is eleven or twelve years ago, anyway.

30 Q. When did you come to New Brunswick? A. 1906.

Q. 1906 or 1907? A. 1906, I think it was, might have been early part of 1907, I am not absolutely clear about that, would have to look it up to be sure about it, in 1906 or early in 1907, might have been February.

Charles E. Archbald—Recalled—Direct.

Further direct examination by Mr. Glueckfield.

Q. Tell us the distinguishing improvements upon the Republic rebuilt machine, tell us wherein that machine is improved or has improvements on the standardized machine used for the same purpose?

A. I might describe that on this Republic rebuilt; I practically changed position of everything, nearly every roll on the machine. 10

Q. Why do you call it Republic rebuilt machine?

A. Because I had Mr. Tomney rebuild it for me under my direction and instructions.

Cross-examination by Mr. Hayes.

Q. Don't all machines have a cold roll, all carbon machines? A. It is one of the functions; I won't say all machines, no; I know some machines that does not have cold rolls. 20

Q. Didn't this twenty-six-inch Republic machine that you did not have have a cold roll? A. Yes, but it was positioned in a very different position.

Q. All you did was to change that position? A. No, I did more than that.

Q. You did change the position? A. Yes.

Q. The same roll in a different position? A. No, different roll.

Q. How do you know it was different roll, who made it? A. What? 30

Q. The different roll? A. The cold roll?

Q. Yes. A. The cold roll is not in that position; it is not in the position to-day, the cold roll.

Q. You said on your direct examination that you changed the position of this cold roll, that you put in roll or put in some rod? A. I took the roll formerly used as hot roll and changed the position and used it as a cold roll.

Charles E. Archbald—Recalled—Cross.

Q. Who placed that in the machine? A. Why, I had Mr. Tomney do it; I had patterns made and everything for it.

Q. Do you have those patterns with you? A. No, I haven't the patterns with me, but I can produce them any time.

Q. You have them in your possession? A. Yes.

10 Q. And they were made at the time this machine was changed, is that true? A. At various times; we were a long while doing this work, it operates over a year or two, they were developed one point by point.

Q. You say you then placed this cold roll six inches from the scraper? A. Yes.

20 Q. How far are other cold rolls placed from the scraper? A. I don't know what every machine has in regard to that, but I should imagine that some of them have two or three feet and some of them haven't got them at all.

Q. So that you thought this was a wonderful idea of placing the roll six inches away from the scraper? A. I know the position of that roll was an improvement on this machine.

Q. That was one of the features of this machine? A. That was one of them.

30 Q. Now, this feed tension that you spoke of, would you recognize a picture of that if you saw it, the feed tension roll hand wheels that you spoke of in your direct testimony? A. Yes, I certainly would.

Q. I show you photographs and call your attention to those rolls on the wheels on the side and ask you if that is feed tension similar to the one on your machine? A. No, that is nothing like my feed tension.

Q. Nothing like it? A. Nothing like it at all, it does not function the same way.

Charles E. Archbald—Recalled—Cross.

Q. In what way does this function differ from yours? A. I might say in explanation I recognize that right away as a tension that was gotten up by a concern that makes wall paper machines; I investigated that proposition and I found that it is composed of two sets of rolls and these two sets of rolls are controlled by two gear wheels and a hand wheel, the hand wheel tips up two gears in that shape and reverses the order on the other two; they don't function the same way at all, entirely different. 10

Q. Eliminating the lower pair of rolls, and calling your attention to the upper rolls, and eliminating the superficial cog wheel there on the side, is not that then the same arrangement you have on that machine? A. No.

Q. You say no? A. No.

Q. Mr. Tomney built this feed tension for you, didn't he? A. Yes, under my instructions. He told me about a tension proposition that was used; when I gave him instructions to do it he told me about a tension proposition that had been used in the wall paper factory and he wanted to make it differently from what I told him, and I said, "No, I want it this way or not at all," and I gave him positive instructions what I wanted. Mine was composed of two rods that were not movable, and the centre rod going all the way through, and the centre rod is used as part of its adjustment. There is no centre rod on that at all; it is simply two movable rolls that revolve and it does not operate or function the same way. 20 30

Q. You understand the working of this machine? A. Yes.

Q. In place of the upper rolls your machine has two two-inch shafts? A. Yes, three-inch shafts, not two.

Charles E. Archbald—Recalled—Cross.

Q. In place of these two rolls they have two shafts with a third shaft in the centre? A. There is no shaft in the centre of those rolls.

Q. You say there is not any shaft in the centre? A. No, there was not; I looked at it; I can't see any shafts in the photograph; I looked at it very carefully just now.

10 Q. Just a second, please come here and look? A. That is a bearing, that is not a shaft, that is side bearing, it does not go all the way across the rolls at all, it is simply a side bearing.

Q. How about the square rod for taking out wrinkles on your machine, is that not on their machine? A. Not that I know of.

Q. That machine that you have just described was in the condition that you have described it two years ago? A. I can not answer that because
20 that is a question. Do you mean to say with my improvements?

Q. Yes. A. The machine, I could not say when those improvements were made exactly, but they were completed I should say shortly before Tomney left; I could not say how soon, but somewhere there.

Q. The machine was completed before he left, no improvements put on it since? A. Well, I won't say that.

30 The Court: What difference does it make whether they were or not.

Direct examination by Mr. Glueckfield.

Q. Now, distinguish the special and exclusive improvements that you have on what you call the eighteen-inch low feed machine?. A. The eighteen-inch float feed machine is something totally different from any other principle of a machine; it does

Charles E. Archbald—Recalled—Direct.

not use any ink roll, it uses an ink pan and it uses dope which is placed in the ink pan up to a certain level; the tissue is placed on an adjustable——

By Mr. Hayes.

Q. May I interrupt and ask you if you claim that Mr. Tomney knows anything about this machine? A. Yes, I think so.

10

Q. Do you know? A. Yes.

By Mr. Glueckfield.

Q. Did Mr. Tomney, while in your employ, have access to all the machinery in your plant? A. Yes.

Q. Go on with your answer. A. —adjustable swinging stand controlled by thumb screw adjustment to turn, it is either to the right or left; the tissue then leads under a rod, over another one, and over another one situated close to the edge of the ink pan; the tissue is then guided downwardly to the level of the dope in the pan. There are two levelers under which this tissue passes which hold the tissue in contact with the top of the dope so that the paper floats on top of the hot composition; these two levelers are adjustable up and down so that when the ink runs down slightly you can maintain the contact of your tissue to the dope by turning down these levelers further, or further ink can be poured into the dope pan to raise the level and take the place of the dope that has been run onto the paper. This makes a very different style of carbon paper, which has peculiarities which are contained in no other carbon paper made on any other style of machine. The tissue feeds from the level of the dope over a scraper; this scraper is mounted, partly immersed in the dope and is ad-

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Charles E. Archbald—Recalled—Direct.

10 justable on its edge so that it can present either a larger or a smaller scraper to the tissue in accordance with what is necessary to either coat lightly or heavily; the tissue then leads from the scraper around a square rod to take out and assist the position, the permanent position of the pull of the tissue, and it is wound up, and it then leads direct to the windup. This paper requires no cold roll treatment and has a very fine gloss; it is exceedingly soft, making a very heavy impression, and at the same time is very clean to handle. These are the peculiar features of the carbon paper made on this machine. The windup arm is adjusted with a swinging adjustment similar to the tissue roll adjustment.

Q. Is that all? A. That is all.

20 *Cross-examination by Mr. Hayes.*

Q. Were you afraid if that machine was to get into the hands of any other competitor he would be able to make this different style paper that you have described and thus be a competitor of yours, is that true? A. Yes.

The Court: Yes, of course, he would; that is the very purpose of this.

30 Q. And any person having this machine would then be able to produce the same amount and same grade paper you have just described, is that so? A. Yes.

Q. Then, Mr. Archbald, why do you say in your specifications filed in this case, and in your amended bill, that this machine is only adaptable to a special formulae and process if that is all so that you have just repeated, why do you now say that any person having this machine will be able to be a competitor

Charles E. Archbald—Recalled—Cross.

of yours? A. There is nobody could make this carbon paper at all unless they knew how to make the dope, but the dope, the very same dope has been worked out by other carbon paper manufacturers to my own knowledge, and by running it on their machine they were so close to making it, and did not know it, that if they had that machine that same mixture put into this machine would operate perfectly, and I may say that some of this same mixture— 10

The Court: Don't go any further. The answer is obvious.

Q. Where did you get this machine? A. This machine, originally the first principle of this machine that I ever saw, was a machine that when I went into partnership with a man from London by the name of Elhams, and the first machine that I ever saw was the machine that I arranged to have shipped from London, and when the machine arrived I added two or three small improvements to it, perfected it. 20

Q. How many of those machines did you have? A. Two or three of them, I think.

Q. What did you do with them? A. I have got,— I think there was one of them sold.

Q. You think there was one; do you know whether there was one sold or not? A. Yes. 30

Q. How many were sold? A. There was one sold, I think, to a man in England.

Q. And you have the other two in your factory? A. I think there is one more, I think another one sold.

Q. You had so many you can't remember whether you sold one or two? The third one left in the cellar of the Penn Carbon Manufacturing Com- 40

Charles E. Archbald—Recalled—Cross.

pany? A. I think it was put down there shortly after we had difficulty in getting color.

Q. It is not now in use? A. No, we can't use it until we can get more color.

Q. How long has it been in your cellar? A. I think it was sometime shortly after the war we put it down there, after the war started.

10 Q. It has been there for three years, hasn't it? A. I don't think so.

By the Court.

Q. Where was the other one sold? A. The other one, I think, went to Australia.

Direct examination by Mr. Glueckfield.

20 Q. Are any of those machines with all the improvements you have described, so far as you know, existent anywhere in this country? A. None of these machines are in this country; I particularly provided they should not be, in my contract.

30 Q. Now describe your special improvements or the processes for the making of wax stencil paper for typewriting use. A. The principle in making wax stencil paper is a steam heated pan with the composition melted and a combination of an immersed roll operated by power at variable speeds; the adaptation of power is the principle, or the improvement and secret adaptation of variable speed and power. I may say that all stencil paper has to be made by hand; the Japanese fibrous tissue is only made in Japan that the stencil paper is made from and only comes in sheets, not in rolls; it therefore must be a hand operation, and the only other process that I have ever known about has been a stationary rod situated over the heated wax, the tissue pulls through the immersion and then

Charles E. Archbald—Recalled—Direct.

held up until cooled. The other method, my improved method, is very much faster, much more satisfactory, produces a very uniform product, and it enables me to adjust my coating in accordance with the differences in the Japanese tissues which sometimes come heavier or lighter, and in order to get a certain gauged paper I can get it with my variable speeds where it would be impossible to do it by hand; if you used the hand process, if you pull the stencil through the immersed wax faster you get a thicker coating, and if you pull it through slower you get a coating,—this is really contrary to what one would suppose. 10

By the Court.

Q. What is, that the faster you get a heavier coating? A. Yes, sir; it is not what you would suppose, but it is one of the peculiarities of the thing. 20

By Mr. Glueckfield.

Q. So far as you know, is this method or these methods or processes, improvements that you have just described, used anywhere else? A. No.

Q. Who developed these processes? A. They were developed by me.

Q. And are now used in your plant? A. Yes. 30

Q Do you produce as the result of that any grade of wax stencil that is not otherwise obtainable? A. We think we produce more uniform and better than most people.

Q. How long have you handled or manufactured wax stencil? A. Oh, for twelve or thirteen years, anyway.

Q. Have you handled that pretty steadily during that period? A. Yes.

Charles E. Archbald—Recalled—Direct.

Q. Well, in your opinion, is your wax stencil a better grade or better product than that generally obtainable on the market? A. It is as good as anything on the market that I know of and I think it is quite as satisfactory as anything possible to produce; I have never seen anything produced finer or as fine.

10 Q. Have you seen anything produced as good as yours? A. Everyone thinks their own product is better.

Q. I mean in your opinion? A. In my opinion.

Q. In your opinion yours is better? A. I think so, I think it is most uniform paper made to-day.

By the Court.

Q. You make it quicker? A. Yes, sir.

20 *Cross-examination by Mr. Hayes.*

Q. How many of those machines have you now?
A. Why, several.

Q. Where are they? A. In New Brunswick.

Q. In the factory in New Brunswick? A. Yes.

Q. That is the new improved method I mean? A. I have some still further improved machines.

Q. How does A. J. & Co. make their stencils?
A. I have no idea; I have never seen nor heard
30 of anybody ever telling me anything about it, so I really don't know.

Q. How does Olart make his? A. Olart makes his, as far as I know, the only thing I know is the affidavit that was made by Olart here in regard to it.

Q. You have never seen his? A. No, I have never seen his machine, no.

Q. And your improvement consists in the fact that you are enabled to put on a fixed rate of speed
40 by reason of the use of variable cones? A. Yes

Charles E. Archbald—Recalled—Cross.

Q. That is the important part? A. That is one of them.

Q. Have you ever seen variable cones in use by other manufacturers of paper? A. It is used in everything that I know of.

Q. I said by manufacturers of stencil paper. A. No, I have never seen anything of that kind.

Q. You have got that machine you have just described? A. Yes, I have all the machines. 10

Direct examination by Mr. Glueckfield.

Q. Now, give us, if you will, the distinguishing features and improvements relative to your single color ribbon-making machine, explaining how it differs from the standard or marketable machines?

A. Well, in the first place there is——

Q. You may refer to your notes if you desire. 20

The Court: First, you have got a secret method of making hand stencil paper, haven't you?

Q. Wherein does your method or machinery differ from a lot of others? A. I have never seen hand stencil made by anyone.

Cross-examination by Mr. Hayes.

Q. Your machine then consists of a roll placed in a box containing the wax and on the roll is fastened a handle whereby the roll is revolved in half circle back and forth? A. Half or quarter, any distance you may want to put it. 30

Q. There is no regulator on there? A. I always instruct a person as to just how far; there is no method of absolutely knowing just how far you have to do it except by practice; it is one of these things you have to work in on. 40

Charles E. Archbald—Recalled—Cross.

Q. That is all it consists of, just roll with handle on it? A. That is all.

Direct examination by Mr. Glueckfield.

10 Q. The single color ribbon machine? A. The single color ribbon machine is, first of all it has a tension feeding device and ribbon feeds it, a gauge situated at the top of the roll, and the fabric is brought into contact with the roll in a top position and remains in contact with the top roll until inked.

Cross-examination by Mr. Hayes.

20 Q. Where did you get that machine? A. The first single color machine that I ever bought was from Ross, and it did not function that way at all.

Q. How many of these machines have you now? A. I have one in constant use.

Q. And that is the one that you bought from Ross? A. No, it has all been rebuilt since then.

Q. Who rebuilt it? A. Well, had a good many people on that machine.

30 Q. Where did you buy it? A. I bought it a long while ago, might be ten years ago, I guess; Tomney did some rebuilding on that machine; he put a feed tension on; he also put a heater on for me; I think he put the legs on for me.

Q. Who put the color pan on? A. He did; the color pan is mounted adjustable on the boxes; that is another feature of improvement.

Q. And that machine that you have then is the Ross machine, with the improvements of its feed tension different from other machines, windup of the spool is different from the others, and color box? A. And non-immersion of the fabric.

Charles E. Archbald—Recalled—Cross.

Q. That is by means of the rolls and regulation of the rolls? A. No, the feeding.

Q. That is obtained by running the tape down in through the ink instead of through the rolls? A. I run them through the rolls instead of through the ink.

Q. Between the rolls rather than under through the pans like other manufacturers do? A. I guide it from the guide around the roll in close contact with it all the way around, so that I only have to squeeze it there in place of having to squeeze it at both sides, I force the dope in, the dope rolls out in front. 10

Q. And when was that improvement of applying the ink changed, before it was bought by you or afterward? A. No, I think it was after.

Q. Was that about the same time as the two color ribbon machine was designed? A. No. 20

Q. Before or after? A. I think it was after.

Q. It followed that the same principle applied to the two color machine? A. No, it is not the same principle.

Q. As to the feeding of the ink I am speaking now? A. You mean to say the feeding of the fabric through the rolls are positioned something similar to my two color? Yes.

Q. Yes, they are? A. Yes. 30

Direct examination by Mr. Glueckfield.

Q. Now detail the multigraph ribbon machine, distinguish it from the standardized ribbon machine, if there are any? A. I never saw a multigraph ribbon machine outside of my own. Yes, I did, too; I saw one; I purchased a so-called multigraph machine operated with two rolls and two thumb screw adjustments one inch, and my ma-

Charles E. Archbald—Recalled—Direct.

chine, multigraph machine, has a similar feeding of the multigraph fabric to my single color, it operates between the two tensions, tension feeding device; then it feeds over a rod at the top position of the roll and comes in close contact with the top roll in the same manner as the single color and feeds through the pressure rolls, and thence direct to a rod and then to a windup. The improvement on that machine is the application of two sets of weight levers for inking purposes, one situated at each end of the roll. I may say in starting this machine up it is necessary to take up every time it is started the adjustment of these long rolls to keep them positively parallel to make a perfect inking; they will slightly vary every time you start the machine and it is necessary to correct this either through your weight lever or through the adjustment of your weight lever. All multigraph ribbons, as I understand they are made, I have been told, use interleaving paper; I use none, and I believe that is caused by the fact of the feeding of my fabric through the machine in the way that I do I obtain a ribbon inked to a degree that is equivalent to interleaving and expense of interleaving is saved; I understand everybody interleaves multigraph, everybody I have spoken to interleaves.

Q. Have you ever seen a multigraph machine like yours? A. No.

Q. Do you know of one being in existence like yours? A. Never heard of one like mine.

Cross-examination by Mr. Hayes.

Q. Did you ever see a multigraph machine the same principle as your single color machine? A. No.

Q. In which way does it differ? A. Single color

Charles E. Archbald—Recalled—Cross.

machine has only one adjustment; it is necessary to have two on the multigraph machine.

Q. With that exception the structure is the same?

A. No.

Q. How does it differ? A. There is heater on the single color that is not on the two color, and there is lateral feed on the single color that is not on the multigraph.

10

Q. The principle of applying the ink is identical though? A. The feeding of the fabric is the same.

Q. And the rolls are placed and arranged the same and the supply comes in the same way? A. It has ink pan and has two rolls.

Q. And when was this multigraph machine built?

A. I think that was one of the first machines I had Tomney build for me.

Q. And that was built according to plans drawn by you? A. My instructions; there never were any plans drawn; I never drew any special plans in regard to these machines.

20

Q. You mean that you built machines without having any plans for it? A. Yes, certainly.

Q. That is possible, is it? A. Sure, point by point.

The Court: Was there any plan for the first steam engine? The man went ahead and built it. It is not necessary to have plans for the building of every machine, not if you have an intelligent mechanic.

30

Examined by the Court.

Q. Are you familiar with these specifications annexed to the amended bill of complaint? A. Pardon me; may I just see what they are? Yes, sir.

Q. They were prepared under your direction?

A. I wrote them myself.

40

Charles E. Archbald—Recalled—Cross.

Q. And they indicate the substantial specifications of your machine? A. I think I enlarged a little on this, and others I went into details a little bit more than I did on the other.

Cross-examination by Mr. Hayes.

10 Q. I notice that nothing has been said about the full and semi-colored machine? A. As far as the full and semi-machine is concerned, I did not go into the details of that because that was largely an experimental proposition, and it is not to be used, couldn't ever be built again.

Q. You sold that machine? A. Yes.

20 Q. And of all the machines you mentioned in your specifications, you have all the other machines except this full and semi-colored machine? A. The ones I named; I don't know what ones you are referring to there.

Q. You said you prepared that list yourself? A. Yes.

Q. And that is true, you have all the other machines in your factory? A. All those I have named, yes.

Q. How about the straight and jigger finished machines? A. That machine functions entirely differently from any of the others and nothing that I will build again, so that is not important to me.

30 Q. You sold that machine, too? A. Yes.

Direct examination by Mr. Glueckfield.

40 Q. You spoke at the outset of your testimony about some improvements on the two color ribbon machine which you stated you had not said previously in your testimony? A. I mentioned that some improvement we put out on the two color as well, that was the adaptation of the cones to hold gold lacquered spools, I don't know whether I covered that or not.

G. Willard Rich—Direct.

G. WILLARD RICH, SWORN.

Direct examination by Mr. Glueckfield.

Q. What is your profession? A. I am a lawyer, making a specialty of patents, trade marks, copyrights.

Q. You are a member of the New York bar? A. 10
Yes.

Q. For how long have you been making a specialty of patents, patent rights, and so on? A. I have been in this business about eighteen years.

Q. Are you familiar with machinery and with mechanics generally? A. Yes; that is practically the basis of my profession.

Q. Are you able to draw or describe machinery when necessary? A. I think so; yes.

Q. Are you a graduate of any school of mechanics? A. Yes; my early education was received in 20
Perdue University and also Rochester University.

Q. You are a resident of the city of Rochester, in New York State? A. Yes.

Q. During your work of eighteen years has your experience been such that you have had frequent occasion to examine into and litigate over machinery and patent rights? A. Quite extensively.

Q. Are you familiar with the machinery that 30
Mr. Archbald has in the Penn Carbon Company plant at New Brunswick? A. I have seen it on several occasions; yes.

Q. Are you familiar with each one of them? A. I am familiar with a great many of his machines.

Q. Are you familiar with his eighteen-inch carbon machine? A. May I ask if that is the machine that he calls his little machine? Yes, I am familiar with what I have heard called the little or eighteen-inch machine.

G. Willard Rich—Direct.

Q. Are you also familiar with these machines, the rebuilt Republic with the feed tension improvement in it, the eighteen-inch slide feed method carbon paper machine, the single color ribbon machine, the multigraph ribbon machine and the two color ribbon machine? A. Yes, sir.

10 Q. You have seen all of those? A. I have seen them all.

Q. Are you also familiar with his method of making wax stencils and hand stencils? A. I have observed the girls making wax and hand stencil papers on those so-called stencil paper machines.

Q. You have represented the Penn Carbon Company and Mr. Archbald in litigations, have you not? A. No, I have never represented them in litigation.

Q. Ever represent Mr. Archbald? A. No, sir.

20 Q. You were called in in this case as an expert by Mr. Archbald? A. Mr. Archbald asked me if I had any information relating to this class of work which might be of use to him in this case, and I told him that I thought I knew some facts that perhaps might be beneficial.

30 Q. Are you familiar with the practice of machinery used in this industry by people other than this complainant for the manufacture of carbon paper, ribbons and wax stencils? A. I have visited the different plants of manufacturers making typewriter ribbons and carbon paper and I have seen a number of different types of these machines in operation.

Q. Have you ever seen any machines built for the purposes that I have mentioned that are similar or like Mr. Archbald's machines? A. No; Mr. Archbald's machinery is different from other machines of this class, of these classes, which I have seen, in I might say several different particulars.

G. Willard Rich—Direct.

Q. Have you visited any of the big industrial plants making ribbons and carbons? A. Oh, yes.

Q. More than one of them? A. Yes, I can name several.

Q. You were the attorney, by the way, who procured for Mr. Archbald the patent on a two color ribbon machine, were you not? A. Yes, I filed and prosecuted that application on which that patent was issued. 10

Q. Do you know of your own knowledge, by the way, whether any proceedings have been taken by James Tomney relative to that patent?

Mr. Hayes: I object to that as immaterial and irrelevant.

The Court: I will admit it.

A. My firm received from the patent office the declaration of an interference, which is a letter of advice, stating that one Tomney had filed an application for a patent for the same invention, and that proceeding has only just been commenced, nothing has as yet been done in the matter. 20

The Court: What just does that mean?

A. An interference proceeding, your Honor, is an arrangement whereby the patent office undertakes to determine which of two inventors claiming the same invention is by rights the prior inventor, and to whom the patent should be granted. I can explain that matter that I think suggests the question you are about to ask. Interferences usually arise between applications which are pending; the issues are framed by the fact that both inventors claim the same invention; those claims that are in controversy constitute what are termed accounts for the defence. Now the law provides that if a patent is issued and another man claims that the in- 30

G. Willard Rich—Direct.

vention was made by him he may, upon a proper showing at the patent office, have an interference declared between his application and that patent.

The Court: Filed subsequently to the issuance of the patent, it practically means revocation of the first patent and a new grant?

10

A. Yes, in the event that the second applicant is successful.

Q. What is the intermediate effect of the filing of a patent upon letters that have already been issued? A. A very disastrous one.

Q. Wherein is it disastrous?

Mr. Hayes: I object to the opinion of a witness as to law calling for a conclusion.

20

The Court: I am going to take it, and I will govern myself by the provisions of the law.

30

A. When a patent has been issued the patentee or the owner of the patent is entitled to go into court and bring an action against anyone who may manufacture a machine which comes within the terms of the claims of a patent. Now if an interference has been declared between a somewhat recently issued patent and an application which is pending in the patent office the whole effect of the patent is nullified in the mind of any judge of a Federal court before whom a suit for infringement of the patent might be brought, because here is a contest in the patent office as to the priority of invention.

By the Court.

Q. It has no legal effect, has it, upon the validity of the first patent until it is determined? A.

40

G. Willard Rich—Direct.

No legal effect, your Honor, but no judge would be inclined to render a decision upon a patent which is under question in an interference proceeding in the patent office, where a question of priority should properly be determined.

Q. Let me ask you this. Is it a rule of the patent office, or rather is it the law demonstrated by the patent office, if an invention is invented by an employee while in the employ of an employer does it belong to the employer rather than to the employee? Is that general principle of law demonstrated in the patent office? That is assuming now, of course, other elements that must be present, of course, that there is no agreement between the employer and employee, that the employee is being paid wages and the employee is supplied with material and time by his employer? A. Answering the question under the assumption which you have made, as I understand it, I would say that the patent office is not concerned whether it is a question of an employer or employee. 10 20

Q. Who is? Is that left— A. Just a minute. I think I can answer that question in a few words and supplement that answer. Primarily the patent office officials are interested, of course, in determining who the actual inventor of the subject-matter in issue is, and the relationship of the parties would naturally be very carefully considered if brought out in the evidence taken in the interference proceeding. You perhaps understand that in an interference the parties are given full opportunity to take testimony and examine as many witnesses as they desire, the case then going to the Examiner of Interferences on a printed record, the testimony of the witnesses being taken by deposition. 30

Q. Let me ask you this, as a principle of patent law now, irrespective of what the patent office, 40

G. Willard Rich—Direct.

what the limitations of the patent office is, is it the principle of patent law that an employer is entitled to an employee's invention if invented during the time of the employee at the employer's expense and having direct reference to his employer's business?

10 A. Yes, where there is a direct and distinct understanding to that end between employer and employee.

Q. That the employer should have it? A. Yes.

20 Q. You will find the law is the other way, that it is just the reverse. I think you will find the fundamental law is that the employer is entitled to the invention of his employee where the invention is effected in the employ of the employer with the material furnished by the employer where the invention has direct reference to the employer's business and where there is no agreement to the contrary.

By Mr. Glueckfield.

Q. You say you are familiar with the types of carbon and ribbon making machines generally used in that trade?

Mr. Hayes: I object, because the witness did not say that.

30 Q. I ask him now if he did.

The Court: Do you say that?

40 Q. Are you familiar with the types of machinery used generally in the carbon and ribbon making industry? A. Yes, as I understand the question, but I think I should add that so far as my knowledge in this matter goes there is no general type of machine; every factory that I have visited employs different machines or machines having different

G. Willard Rich—Direct.

characteristics which have been evolved from the experience of the individual manufacturers or owners of those machines.

Q. Now state whether or not in the various plants operating in this industry that you have visited secrecy as to the manufacture of the products and use of the machinery was maintained? A. Each of these plants has been operated with what I would call the greatest secrecy. 10

Mr. Hayes: I move that answer be stricken out.

The Court: Why?

Mr. Hayes: Because he is testifying to what he has been told.

Q. Have you observed how the Penn Carbon plant at New Brunswick has been operated with reference to secrecy? A. I have; yes, sir. 20

Q. And how is it operated?

Mr. Hayes: When, may I ask?

Q. Well, is it operated secretly as to the use of machinery? A. The processes? It is. There are "No Admittance" signs posted conspicuously in several places that I recall, and when I first made Mr. Archbald's acquaintance, and on the very first occasion of my call at his factory he told me of the efforts he had made— 30

Mr. Hayes: I object.

The Court: I will permit it.

A. (Continuing) to keep knowledge as to what he was doing and the way in which his machines were operated from being disclosed to others.

Q. Now, Mr. Rich, from your knowledge of machinery in general,—pardon me, were you finished

G. Willard Rich—Direct.

with that answer? A. I might add to that that I was sworn to secrecy in regard to Mr. Archbald's process and machinery, which I think was quite effective so far as I am concerned.

10 Q. Now with your knowledge of machinery in general, as you have testified, and with your knowledge of the various types of machinery used in this industry, and with your familiarity of machinery used by the Penn Carbon Company, what have you to say as to the superiority, if any, of the Penn Carbon machinery over these others that you have seen?

20 Mr. Hayes: I object to that question, the reason being, in the first place, Mr. Rich is not qualified as a mechanical expert; in the second place I believe counsel did not hear his answer, as to the generality of his answer, because Mr. Rich said all machines were different, and he did not find any regular line of machinery.

The Court: That is just exactly the object of the question.

30 Mr. Hayes: The witness has not qualified yet; he has not shown he has made examination of the other machines, and, further than that, the vital part of my objection is he is not qualified as a mechanical expert.

The Court: I will overrule the question, he has not qualified as an expert, and on the ground that it is immaterial.

Q. Have you anywhere else seen the kinds and type of machinery and improvements that you saw in the Penn Carbon Company plant?

Mr. Hayes: I object to that as being immaterial and irrelevant.

William Anderson—Direct.

The Court: I will not permit that, because it has been answered once; he said he had not; it was answered before without objection.

No cross-examination.

WILLIAM ANDERSON, sworn.

10

Direct examination by Mr. Glueckfield.

Q. What is your business? A. My business?

Q. Yes. A. I worked for Mr. Archbald in the same business.

Q. What is your trade or occupation? You are a mechanic by trade, aren't you? You work in the ribbon carbon plant of the Penn Carbon Company?

A. Yes.

20

Q. Are you familiar with the processes and modes of making ribbons and carbon? A. Yes.

Q. How long have you been in that line of work? A. Nine years, over nine years.

Q. How many plants have you worked in besides the Penn Carbon Company plant during those nine years? A. Three.

Q. What are the names of the others besides the Penn Carbon? A. Columbia Ribbon & Carbon of New York; H. M. Storms & Company of New York, and the International Carbon Company of Brooklyn.

30

Q. Are these three that you have named large representative companies in this trade? A. Yes.

Q. Now tell us whether any of the improvements and adjustments that you have seen on the ribbon and carbon machinery in the Penn Carbon Company plant are similar to any of those that you saw in any of the other three plants?

40

William Anderson—Direct.

Mr. Hayes: I object to that question on the ground that he must show that he has seen some of those,—I would like my cross-examination not to be limited,—I think you first ought to show there was such machinery in use up there in the Penn Carbon where he is now engaged.

10

Q. Does the Penn Carbon Company, where you now work, make ribbons and carbons? A. Yes, sir.

Q. Do you work at it? A. Yes.

Q. Did you also work at the making of ribbons and carbons at the other three plants you have mentioned? A. All except the first one, and only made ribbons at the first one.

Q. You made only ribbons, but you made ribbons and carbon in the other two? A. Yes.

20

Q. Have you seen in any of the first three mentioned plants any of the improvements and adjustments either as to the making of ribbons or carbons that are present in the Penn Carbon Company plant? A. No, sir, I have not.

Q. Now tell us whether or not in the operation of the machines the adjustments and improvements that you found in the Penn Carbon Company plant there is any advantage over those that you used in the other plants? A. There is every advantage.

30

Q. In what way or ways? A. In the way of handling and making of the ribbons and paper.

Q. Do you get greater or less speed? A. Greater speed.

Q. What about quality of the work produced? A. Better on the ribbons, there is less pressure and the cloth is not damaged.

Q. And as to carbon paper? A. You can make it more uniform and keep it uniform.

40

*William Anderson—Cross.**Cross-examination by Mr. Hayes.*

Q. What kind of ribbon machine is used in the Penn Carbon? A. Single color.

Q. Are there more than one machine, do they have more than one machine up there? A. Single color and two-color.

Q. Do they have two colors now in use to-day? 10
A. Yes.

Q. And single color? A. Single color.

Q. Anything else? A. Single color multigraph machine.

Q. What is the name of that machine that is in use up there, single color? A. All I know is by single color machine.

Q. Did you ever see a machine like that before?
A. No, sir.

Q. What kind of a machine did you work on in the Columbia? 20

Mr. Glueckfield: I object to that question; the answer of this witness that it is different should stand; he may have been pledged to secrecy and should not be compelled to divulge what he learned in another plant.

The Court: I am not going to compel him to disclose any secrets of the Columbia Company. 30

Q. Were you pledged to secrecy in the Columbia?

The Court: I don't care whether he was pledged to secrecy or not; he owes a duty to his employer not to disclose trade secrets, if it is trade secret, and I am not going to have him disclose it here. The general testimony of the last witness on the stand is

William Anderson—Cross.

that all the apparatus used in the manufacturing of carbon ribbons are secrets; that is the way the testimony stands to-day. If it is a standard make machine you may answer then. The machinery you were working on at the Columbia, was that a standard make machine?

10 A. No, sir.

By the Court.

Q. Did it have any name? A. No name.

Q. Was it a special made machine? A. Special made machine.

By Mr. Hayes.

Q. Was it made by Charles Ross of Brooklyn?
20 A. It was not.

Q. You know who it was made by, do you, without telling me who? A. Yes.

Q. And how about the other place, Storms & Company, and the International, were you bound by secrecy there? A. I was, yes.

Q. And do you know the name, do you know whether or not either of those manufacturers used a standard machine for manufacturing typewriter ribbons? A. Storms used one Mayer machine, and
30 the other two were not.

Q. How about the International? A. They also used a Mayer machine.

Q. Did they use any other secret machine? A. Yes.

Q. And this machine at the Penn Carbon is not either a Mayer or Ross nor a Republic Dodge, is that true? A. That is true.

Q. Did the Columbia people have a Republic Dodge machine when you worked there? A. I

William Anderson—Cross.

can't just say whether it is really a Republic Dodge, but it is a machine the same thing really.

Q. It is the same thing, Republic Dodge, the machine they got in the Penn Carbon? A. No, Columbia.

Q. The Columbia was a machine like the Republic Dodge? A. Yes.

Q. You know the Republic Dodge machine? A. 10
I know the Republic Dodge machine.

Q. In what way does this machine that is in use now differ from the Republic Dodge? A. They differ in the tension device, adjustment, the coating device.

Q. And what else? A. Regulation of coating device.

Q. Its tension and regulation of coating? A. Yes.

Q. Anything else? A. Regulation roll to uniform the paper. 20

Q. We are not speaking of the carbon now, we are speaking of the ribbon. A. I am speaking of the carbon machine; isn't that what you are speaking of?

Q. In what way does this machine that is in use at the Penn Carbon now differ from the machine known as the Ross machine in the Columbia? A. The ribbon machine you speak of?

Q. Yes, ribbon machine now. Do you know whether the Ross machine is ribbon machine or not? A. The Ross machine is known to me as ribbon machine. 30

Q. Is there any difference in the two machines? A. Yes.

Q. What is the difference? A. The Ross machine has big Columbia ink fountain with a lot of ink lather down through it, and you must fit the ribbon through that lather and up through the rolls, and it takes up such a big supply of ink you are 40

William Anderson—Cross.

forced to use very heavy pressure to squeeze out again and damage the ribbon a whole lot; if you don't use the very best grade material you will spoil a lot of it.

By Mr. Glueckfield.

10 Q. Finish your answer. How does this one differ? A. This machine has a feeding device at the top that the ribbon only goes under the top roll, then runs over a gas heater and winds up and only requires half the pressure that the old Ross machine does.

By Mr. Hayes.

20 Q. This principle would run through those rolls like that, do you mean? A. That is carbon machine, isn't it?

Mr. Glueckfield: Before the witness is asked the question counsel ought to indicate what he is saying, what kind of machine is this, is it a machine that is used in this work at all?

Q. Speaking of the rolls, you say that runs through the rolls, does that look like it there?

30 Mr. Glueckfield: I object to the question.
The Court: I will overrule the question unless you identify that machine as having something to do with this industry, unless you tell what it is.

Q. Is the spool windup that you use in the Penn Carbon the same as you used in Storms & Company? A. No, sir.

40 Q. You stated that the carbon machine you used up there was a different machine than the one the Columbia used? A. It is, yes.

Louis Marcellina—Direct.

Q. And it is different than the International used? A. It is different from the International.

COMPLAINANT RESTS.

Mr. Glueckfield: I would like to have Mr. Rich come in as associate counsel for the purpose of cross-examining any witness on the part of the defendants, especially technical matters which may be introduced by the defense, about which I do not feel qualified to examine. 10

The Court: Have you any objection?

Mr. Hayes: No, sir.

The Court: I will permit it, but I am not going to let this disintegrate into a fight.

20
 LOUIS MARCELLINA, a witness sworn on behalf of the defendant, testified concerning the construction of certain machines used in the typewriter industry. He offered a sketch of a machine which he said he had made. It was found that it was not true that the sketch was his. He confessed to perjury in this respect and was held in contempt of court and sentenced.

30

40

Albert Ernst—Direct.

ALBERT ERNST, SWORN.

Direct examination by Mr. Hayes.

Q. What is your business? A. Manufacturing carbon paper and ink ribbons.

10 Q. How long have you been engaged in that business? A. I have been in for myself in the neighborhood of twenty to twenty-two years.

Q. You have a factory where? A. Brooklyn, New York.

Q. Do you know Mr. Archbald, president of the Penn Carbon Manifold Company? A. I do.

Q. Have you ever had any business dealings with him? A. I have.

20 Q. In what way? A. Well, at the time our factory burned out I bought three different carbon paper machines from him.

Q. Did you ever visit Mr. Archbald's factory? A. I did.

Q. Did you see there the machines used by him for the manufacture of carbon paper and ribbons? A. Well, I saw some of them; I don't know whether I saw all of them.

Q. Did you see a carbon machine, machine used for making carbon paper? A. Yes.

30 Q. Will you describe that machine?

Mr. Glueckfield: I object to that unless it be fixed as to time.

The Court: Give the time when it was.

Q. When was it? A. January, 1913.

Q. Describe the machine as you saw it? A. I don't know,—I am not a good hand for describing machinery.

Albert Ernst—Direct.

Q. It was a machine used for making carbon paper, was it? A. Yes, the average carbon machine, there is very little variations in them.

Q. Was this an average carbon machine? A. Just about the average.

Q. Do you have any machines in your factory like that, the machine you see there (indicating)?

A. Well, I don't exactly recall exactly what his machine was. 10

Q. What kind of machines do you have in your factory? A. Well, we have carbon paper machines now; we have three that we are using and two that we are not using, two that we bought from Mr. Archbald.

Q. Will you describe the machines, if you will? Are those machines secret that you are using? A. No, sir.

Q. Do you know whether or not the trade in general use secret machinery for production of carbon paper to-day? A. I don't believe they do to-day. I have had invitations from any amount of manufacturers to visit their factories and I have visited and went through fully a half dozen. 20

Q. Will you describe the machinery used for the production of carbon papers in those factories that you have just stated you saw, and also in your own factory, just describe to the Court the course that the paper takes from the time it is raw material until it comes to finished carbon paper, that is, from the mechanism of the machine, as far as you are able to do it? A. One of our machines, for example, runs, starts at the bottom, the paper, and then runs across what we call an ink roller, and then it crosses an equalizer which distributes the ink. 30

Q. Does it have a knife? A. We have a knife for it which we do not use.

Albert Ernst—Direct.

Q. Have you seen machines used with knives?

A. I had one before I burned out which was burned out in the fire.

Q. Is there any advantage in the roll of the raw material as to where that should be placed with reference to the machine, as to whether it should be close or far away, or up or low?

10

Mr. Glueckfield: This witness I do not think has qualified as an expert on the relative values of machines; in fact, he admits he cannot describe a machine.

The Court: He is engaged in the business.

Mr. Glueckfield: He may be able to tell one part from the other.

The Court: Find out what his experience has been in the practical operation of the machines.

20

Q. During your twenty or twenty-two years' experience in business have you had any practical experience in using machines, of the building of machines or the changing of the rolls, or in any wise constructing machines for this purpose? A. I have with the aid of machinists instructed machinists what to do and how to do it.

30

Q. From your experience have you found there is any advantage to be placed where the raw material is located with reference to the machine? Do you understand that question? A. I don't quite thoroughly understand it.

The Court: What machine are you now referring to?

Q. Carbon machine, eighteen or twenty-six-inch carbon machine Speaking now when the paper is placed on a roll and fitted up and rolled through

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Albert Ernst—Direct.

this machine, should that roll of paper be close to the machine or far away from the machine, or up high or down low, is there any advantage in having it in any particular spot? A. No particular advantage; it can be placed in different positions as long as the tensions are properly worked.

Q. You have equipments on your machines for putting a proper tension on the paper? A. We have. 10

Q. Now just describe how the paper goes from the time it starts off? A. The paper goes over the ink roller first and then it hits the equalizer, which takes off the surplus ink, and leaves just a proper coating which is wanted, and then it goes over a chilled or hot roller, as the case may be, as the manufacturer wants it. In making dull finish carbon we would not run it over the chilled roller right away; we would run it over hot rollers all the way, and in making a bright or gloss finish carbon run it over the chilled roller. 20

Q. Is there any advantage in having a roll that can be adapted for either cold water or steam? A. All rolls are equipped both ways, to my knowledge; all of our rolls are equipped both ways and always have been.

Q. From this course you say the paper runs over an ink roller; does it pass anywhere for the purpose of creating a tension before it comes to the ink roll? A. We have the tension attached to the roll; our carbon machine has the tension attached right to the roll where the paper is. 30

Q. And that is the machine that is in general use, to your knowledge, throughout the typewriter industry? A. In the different factories I have visited it is.

Q. How about the ribbon machines? What kind of ribbon machines do you find in general use,

Albert Ernst—Direct.

single color ribbon machines? A. Well, there is variation on that; some manufacturers use two rubber, some use one rubber and one steel, some two rubber and some two steel.

10 Q. Just before you answer that question, please, will you tell me in what way you regulate the speed at which the carbon paper is to be fed into the machine to the ink roller, is that by the tension on the roll? A. That is done by the wind-up rollers.

Q. You were speaking of steam rolls? A. Yes.

Q. Those were the rolls through which the ribbon passes? A. That is where it passes when it is finished.

Q. After the coating is applied? A. Yes, after the coating is applied.

20 Q. How is the color applied to the ribbon? A. Some manufacturers run it through the ink itself, and others have different apparatus for just spreading the amount they want on it, and running it through the rolls afterward.

Q. Did you see ribbon machines at Mr. Archbald's factory when you called there? A. I don't recall seeing one.

Q. Do you have a multigraph ribbon machine in your factory? A. I do.

30 Q. Have you ever seen other multigraph ribbon machines? A. I have.

Q. Tell the Court the construction of those machines? A. Practically the same as ribbon machine, except the size is larger.

Q. And does it make any difference in your opinion as to whether a hard rubber roll is used or two steel rolls? A. Well, we have always ourselves believed in the two steel rolls.

40 Q. How is the fabric brought from the friction feeding device to the pressing roll? The pressure rolls are the steel rolls you say? A. Yes.

Albert Ernst—Direct—Cross.

Q. You say you have from your roll of fabric—how do you bring your fabric from that roll so that it evenly hits the pressure roll? A. We, ourselves, put it through a lather into the ink and then we use—we have tension on the roll where the cloth is on, and then we have the different weights for the steel rollers to regulate the amount of ink that we want to stay in the cloth.

10

Q. Explain how the weights work? A. We work them with a lever.

Q. That makes leverage that makes the rolls? A. Either tight or light, just as we want them.

Q. Have you ever seen any machines whereby the ink is fed in another way than by running through a lather? A. I have, but I never closely examined the device.

Q. Do you know how it is fed into there without running through a lather? A. Well, I know of one concern that supposedly makes one of the best ribbons, they have a coating device on them that just coats the ribbon before it reaches the rollers.

20

Q. Have you ever seen any machines whereby the ribbon is run through the two rolls, the lower roll is the roll that supplies the ink? A. Yes.

Q. And have you such a machine as that, yourself? A. No, I don't like it.

Q. Where have you seen those? A. Why a man, Mr. Pembroke had them, I was interested in his company and he moved them to New Brunswick.

30

Q. And who else? A. That is the only one that I know of.

Cross-examination by Mr. Glueckfield.

Q. Don't you know that Mr. Pembroke was in the employ or interested in the Penn Carbon Company plant? A. No; I have heard it since; it may

40

Albert Ernst—Cross.

be; he was not at the time I was interested with him, no.

Q. You know that he was at some time in this same company? A. I don't know he was interested in it; no, I understood he worked there.

Q. He worked there; yes, you knew that? A. Only here lately.

10 Q. Who told you that Pembroke worked there?
A. Mr. Bartlmez.

Q. He also worked for Mr. Archbald? A. Yes.

Q. Now, you described a certain method in the operation of the machine; isn't it a fact that the process which you described is exactly that of the patented Mayer machine which anybody can buy on the open market? A. For coating carbon paper?

Q. Yes. A. It was in use before Mayer ever got his patent.

20 Q. Isn't it a fact that the same machine, whether it is the Mayer device originally or not, is now the Mayer patented machine? A. The one I described with the one equalizer, but not the one with the knife.

Q. Then the only difference between the Mayer patented machine and the other one you spoke of is merely the difference of the knife? A. Difference of the knife.

30 Q. You don't know of any other machines used in this industry having any other improvements?
A. Well, I don't know as it is necessary to have any other improvements.

The Court: Strike that out. Answer the question.

Q. Do you know of there being any other machines with other improvements?

40 The Court: Or alleged to be improvements.

Albert Ernst—Cross.

A. What kind of improvements do you mean?

Q. (By the Court) Any, any difference? A. Well, that would depend; improvements is a broad term; in what respect.

Q. (By the Court) Any difference? Strike out the word "improvements," and use "difference." Do you know of any? A. Any what?

Q. (By the Court) Any machines used for the same purpose; different from those that you have described? A. I know of other machines, but I can't describe them. 10

Q. Can you describe the differences in the machines that you have described? A. Well, I have a machine myself that I use a brush coating on.

Q. Is that a secret device of your own? A. No, sir.

Q. Do you know what process or machinery or improvements on machinery the Penn Carbon Company use? A. I do not. 20

Q. Now, did I understand you right when you said that you color your ribbons by immersing them, bringing them down a lather, is that right? A. Some of them.

Q. You don't know what method the Penn Carbon Company plant uses? A. I do not.

Q. Isn't it true that the machines which Mr. Archbald sold you was a rebuilt Waldron machine and two Mayer machines? A. They were those machines with supposed improvements of Mr. Archbald's which he never delivered. 30

Q. And how long ago was that? A. 1913.

Q. Then would you call the machines, which he sold you, a partially rebuilt Waldron and two partially rebuilt machines of the Mayer type? A. That is all you could call them.

Albert Ernst—Cross—Redirect.

Charles G. Ross—Direct.

Redirect.

Q. The machine on which you say you use scraper or knife, how far do you have that knife from the cold roller? A. Matter of two or three inches.

10

CHARLES G. ROSS SWORN.

Direct examination by Mr. Hayes.

Q. What is your business? A. Building machinery, color machinery, paper and typewriting ribbon machinery.

20 Q. How long have you been engaged in that business? A. Since 1889.

Q. Where is your factory? A. Brooklyn.

Q. Do you build carbon machines? A. Yes.

Q. And do you understand the construction of those machines? A. Yes.

Q. And you can describe one of those machines now to the Court? A. Yes.

30 Q. And do you know that the machine that you are going to describe is a machine in general use in the carbon paper industry? A. Which machine do you want described?

Q. Do you know of more than one carbon paper machine? A. They are all worked on the same principle, very little difference in them, the only difference the way they are constructed, the way the rolls are placed horizontally and placed in different manners, different types.

Q. Is there any special advantage in the placing of these rolls? A. Not particularly, no.

40

Charles G. Ross—Direct.

Q. Did you build the machine known as the Republic Dodge machine? A. No.

Q. Did you ever have one of those machines? A. Yes.

Q. What did you do with it? A. Sold it to the Republic Dodge Company.

Q. Did you ever sell Mr. Archbald any machines? A. Yes. 10

Q. Carbon machines? A. No, sold him ribbon machines.

Q. Have you a photograph of a carbon machine in your possession? A. Yes.

Q. Will you turn to that, please? Describe in detail the method in which that machine is constructed and the course the paper takes from the time it is raw material until it comes out a finished product, so that that gets on the record. A. This photograph which I have here was a photograph taken in Detroit of a machine that was built by the Dravis Company or for the Dravis Company by a man that had been with the Columbia Company, and they utilized that machine for a number of times and went out of business, and I bought it from the Receiver; it was photographed by an old carbon paper man that was with me to see machines, Mr. Butterworth, February, 1910. 20

Q. Just tell us by looking at that photograph where the paper starts, mentioning rolls, idlers, scrapers, knives, whatever may be on there; just tell us what happens to the paper from the time it starts off. 30

Mr. Glueckfield: I don't think this witness is qualified to answer that question unless he has seen that machine in operation.

The Court: I will let him answer.

Q. Have you ever seen it operated? A. Operated it right in my shop. 40

Charles G. Ross—Direct.

Examined by Mr. Glueckfield.

Q. Was there ink in the machine at the time you ran it? A. No, there was ink in it at the time when I saw it.

Q. At the time you operated it was there ink in it? A. No.

10 Q. Then you don't know just how the finished product would come out through the operation of that machine? A. Yes, I do, because I saw it running at Dodge's place.

Q. After it had passed out of your hands? A. Yes. The roll of paper is put on this spindle here and carried on these rolls, carried over that small roll there, and this acted as a guide roll; then there was a roll that fed the ink up out of the fountain; this is the fountain here (indicating), and carried 20 it up and supplied it to the paper; then the paper passed up over this top roll and over these guide rolls and came down here and was relaid on this relaying uproll; this fountain was raised and lowered by lever mechanism, and we afterwards changed that; there is a later photograph of the same machine with additional fountain feed on, which was put on at the request of Mr. Dodge and Mr. Perry; that is the final machine as it was sent to the Dodge Company, and they used it for a long 30 time with two fountains, one fountain there and one there (indicating); that made double and single carbon. This lever operated those fountains up and down, raised and lowered. This, your Honor, shows feeding inside (indicating); that shows the finish inside with the roll on there, finished paper rolled up on that roll.

Q. (By the Court) Have you not on that machine what you call knife? A. Yes, scraper knife, what 40 they sometimes call a doctor knife; that was for

Charles G. Ross—Direct.

spreading and gauging the thickness of the coat of material on it; then I have made them also with brush, made them also with felt-covered roll, and made them with rubber rolls, the coating, and the knife was the level of or the height of the coat.

Q. How far is that knife from the roll of the machine? A. That is adjustable.

Q. Can that be placed any distance? A. That the operator does; he regulates that to suit any thickness or amount of coat he wants to apply on the paper. 10

Q. This is the finished roll? A. That is the finished roll; that is the finished machine that was delivered to the Republic Dodge Company.

Q. Do you know are there any machines like that in existence to-day? A. I understand the Columbia Ribbon, Columbia Carbon Paper Company use them. 20

Q. Do you know whether anyone has them now? A. I know of very similar machine in use; there has been a good many different kinds made and copied from these machines; sometimes they take and put these rolls all down on a level instead of raising them up that way.

Q. And no matter where they change the roll it is the same principle? A. Yes.

Q. And is there any special advantage in the changing of the position of these rolls? 30

Objected to.

The Court: I will admit it.

A. I don't think there is, because I have seen both different styles, four or five different styles of machines all operated successfully.

Charles G. Ross—Direct.

Examined by the Court.

Q. Are all these machines built to order practically in the typewriter paper making business?

A. The typewriter business is a limited business and we don't carry them; we only build them as they are wanted, called for; ribbon machines are occasionally carried over, ribbon machines in stock.

10 Q. You are in the business of building those machines? A. Yes, and sometimes we get an order for one and build two and have it lying there and someone else comes along and we make a very quick delivery.

Q. Then each manufacturer has his own ideas how these machines should be built? A. Little modifications, but the principle is all the same.

20 Q. Aren't there modifications that each manufacturer desires to put in his particular machine usually? A. Well, some differ in the design, but no difference in the operation or the result.

Q. The difference in the design is due to what, not because he wants it to look a little different from the other machine, is it? It is because he thinks it operates a little different, isn't it? A. Not always.

Q. Why, because of his æsthetic taste as to its looks? A. Yes, sir.

30 Q. Do you expect me to believe a manufacturer alters his machines and insists on certain elements merely because of the looks? A. The elements are all the same but the position of the parts.

Q. He places the parts in different positions because he thinks he can get a better result by placing them in different positions? Doesn't he, in some instances? A. Yes, sir, in some instances.

Q. In all instances so he thinks? A. Yes, I will admit that, yes, he thinks so.

Charles G. Ross—Direct.

Further direct examination by Mr. Hayes.

Q. Is it indicated on that photograph you have how the paper, the feed tension is placed on the paper? A. Yes, there is little tension there, little brake on there, you can operate that with screw friction.

Q. Is it also indicated there how the knife may be, as you say, raised or lowered? A. I think so; I will point it right out to you; little set screws here, bearing the knife runs on. 10

Q. Show us the knife. A. The knife is in here; that black line across there, it is sort of three cornered affair, make it turn to different angles around, some of it is round, so to get different effects on it; then again we would build knife with regular holder blade there and then put thin blade on the scraper blade and that will be adjustable up and down with sliding bearings. 20

Q. Do you make the roll so it may be used either as hot roll or cold roll? A. Yes, hollow roll.

Q. And the statement that the machine is new invention in that it has roll adapted for cold water or steam is not true? A. Sir?

Q. A statement that a machine is new in that it has roll adapted to cold water or steam is not true? A. No.

Q. How long do you know that those machines were used? A. Rolls have been used for hot and cold for fifteen years by A. P. Little. 30

Q. How about adjustable rod on that machine, have you any adjustable rods? A. That is on the ribbon machine?

Q. No, it is on the carbon machines. A. There are probably five or six adjustments on those little rods adjusting bearings of the different rolls, adjusting the tension and guiding the paper. 40

Charles G. Ross—Direct.

Q. Any other idler the paper ran over before it is inked? A. Yes.

Q. Is that indicated on that? A. Yes, little rolls you see at the top here are idler rolls for carrying the paper.

(Photographs marked 1, 2, 3 and 4 for Identification.)

10

Q. You say you build single color ribbon machines? A. Yes.

Q. How are they constructed? A. I have got drawing of them here if you want to see it? I sold two of these machines to that gentleman there, one in 1903 and one in 1907.

Q. Who do you mean, Archbald? A. Archbald, yes. These are the two rolls, squeezing rolls, and the ink passes down in a fountain, brass fountain, over some little idlers, come down in the ink, then come up through the squeezing rolls, then out on the rolling out outfit; then the tension of the rolls was regulated by rockelar arm which are underneath the machine or table on which it sets, and then a lever with weight on it, which caused this upper pressure here on these rolls, forced the bearings up, bringing the tension on the rolls, not in the ribbon, while the weight compensated for that and don't increase the pressure, kept the pressure uniform.

20

30

Q. How is that ink applied, by running through? A. In these machines it was done by carrying down into the fountain, and many other machines that are used, and a good many others used by carrying ink with the roller..

Q. Have you seen those machines with the ink applied by the roll revolving? A. Yes.

Q. Is that something new? A. No, been used for a number of years.

40

Charles G. Ross—Direct—Cross.

Q. Is there any difference in the winding up of ribbon by means of tin spool or hard iron core?

A. I have used wooden and iron cores both and then made little machines for winding ribbons up on tin spool; they send them out on that, they are shipped out on it.

Q. That is done all at the one time, colored and wound up on the tin spool at one time? A. They can do it; they generally run it up on large reels, then run it over on whatever lengths as the orders call for. 10

Q. Is that a new idea, to wind the ribbon up direct from the ink on the thin spools? A. No.

Q. How long do you know that has been in existence? A. I have seen them doing it for the last ten or twelve years in different places.

Q. Have you ever had any multigraph machines? A. Wide ribbons? 20

Q. Yes. A. This is drawing of multigraph machine or for making wide ribbons.

Q. Is that the same principle? A. The same principle as the other single color.

Cross-examination by Mr. Glueckfield.

Q. Isn't it true that the ribbon machine which you described here before consists of about two or three parts put together one after the other? A. The what? 30

Q. Isn't it true that the process or the machine, ribbon machine which you described, consists really of two or three separate machines put together? A. No.

Q. Well, one machine. A. One machine.

Q. No separate parts put together, no separate machines put together? A. All machines are built of separate parts put together.

Charles G. Ross—Cross.

Q. Isn't the machine that you described a composite of two or three machines? A. No, sir.

Q. Do you know how Mr. Archbald's machine is, whether it is one separate machine or two or three machines put together? A. I don't know anything about Archbald's machines, only what I sold him.

10 Q. How long ago did you sell Mr. Archbald machines? A. Sold him one in 1903 and one in 1907.

Q. Any more after that? A. He skinned me out of the last one and I never sold him another one.

The Court: That may be stricken out. Answer the questions, and no more.

20 Q. I show you some correspondence here that passed between you and Mr. Archbald in November, 1906, and ask you if that relates to the sale of that machine in 1907, look especially at this little slip here? A. Yes.

Q. Now, if that ribbon machine consisted of one machine why did you list each part separately that way? A. The saturating machine is one machine, and there it is; that is the coating machine.

The Court: Strike that out. Repeat the question. The witness will answer the question.

30 Q. (Question read) Do you understand the question now? A. No.

Q. Let me ask you this way: You say the ribbon machine which you describe is one integral machine, is that right? A. Yes.

Q. Not two or three machines put together? A. Yes.

40 Q. Why, then, when you sold Mr. Archbald a machine, did you bill him as part of several different machines, which, when put together, would make the one? A. Because some of the original

Charles G. Ross—Cross.

machines we built we built all these parts in one, and when we built this machine, we built it so they could take the reeling-up part and use it for some other purpose; if they wanted to repair it, they could take the reeling-up part and use that; but we did at one time build them all in one piece, just simply a matter of convenience for the user.

Q. Isn't it true when you sold him the first machine in 1903 the same thing occurred as in 1907? 10

A. We sold machines before 1903.

Q. I am not asking you that, sir; the machine that you sold Archbald in 1903 was sold to him in the same manner as the machine in 1907? A. Yes, the same manner.

Q. Did you consider these machines when you sold them to Archbald secret, or didn't you? A. No, they were no secret.

Q. What did you mean then when you wrote in a letter to Mr. Archbald, "We could not show you any of the machines in operation, as the people running them are so very close and will not admit anyone to their works"; what did you mean when you wrote that in that letter? A. I just meant they wouldn't let them in. 20

Q. I am asking you why you told Mr. Archbald that there was secrecy about the operation of these machines when you say now there was no secrecy. How do you reconcile that conflict? A. Because they wouldn't permit other people going through their factory. 30

Examined by the Court.

Q. Why? A. Because I suppose they didn't want them to see what they were doing.

Q. See what; didn't want them to see what? A. A good many people think their factories are private, and they want to keep them private. 40

Charles G. Ross—Cross.

Q. They didn't want them to see the kind of machines they were using, did they; isn't that the real reason? A. No.

10 Q. That is not the reason? A. No, they didn't want them to see them operating, but they knew they could come to my place and see the photographs at any time; any of these gentlemen could have come there and seen them just the same as Mr. Moody and Mr. Little and other gentlemen came there in the business and saw these photographs.

Q. Why call Archbald's attention to the fact that there was some secrecy about it? A. Because he wanted to go into someone else's factory, and I had no control of those factories.

Further cross-examination.

20 Q. Isn't it true when Mr. Archbald bought the first machine from you he bought it blind; you wouldn't even show him a drawing? A. No, that is not true.

Q. What were the circumstances of the first sale? A. Mr. Archbald came there, and we showed him the photograph and showed him the drawings.

Q. You showed him the drawings where? A. At my office.

30 Q. Did he see the machine in operation? A. We didn't operate it there.

Q. Did he see the machine there? A. I don't know whether we had any in stock or not at that time.

Q. You didn't show him any? A. I can't tell you; sometimes we had them there.

Q. You don't know whether you showed him one in 1903 or not? A. I don't remember; I showed him photographs of machines we had made.

40 Q. So that at best, so far as your recollection

Charles G. Ross—Cross.

goes to-day, all that Mr. Archbald saw was the drawing or the photographs, however, in 1903? A. Saw drawing and photograph both.

Q. Now, you describe old machine which you sold to the Republic Dodge Company; you say they ran it along time; how long did they run it, do you know? A. The Dodge?

Q. Yes. A. I don't know; I didn't follow the machine up. 10

Q. Why do you say they ran it for a long time successfully? A. Because Dr. Dodge told me they did.

Q. You didn't hear this Mr. Marcelini testify this morning that they used the machine for a short time because it didn't run successfully? A. No, sir, I didn't hear that.

Q. You don't know that Mr. Marcelini himself operated the machine? A. I don't know. 20

Q. You were only guessing, weren't you, when you said they were running it for a long time successfully? A. That is what Dr. Dodge told me.

Q. You don't know they discarded the machine in a short time? A. Dr. Dodge told me they operated the same machine before they bought this one.

Q. I show you this blue-print with the name Charles Ross & Son on it? A. I took the photograph myself. 30

Q. That is the one issued by you? A. Yes.

Q. What do you say this is blue-print of? A. That is blue-print of the same type of machine, only wider roll; that roll is an inch and a half wide; this is about eight inches wide, ten inches wide the dimensions given here.

Q. As a matter of fact, isn't this blue-print merely a duplication of what there is here without the fountain? A. Without the fountain. 40

Charles G. Ross—Cross.

The Court: Take this explanation. The first blue-print referred to is the one produced by the witness to-day; the second blue-print referred to is the one attached to the affidavit of Mr. Archbald.

10 Q. Now, of how much of this machine referred to in the blue-print attached to Mr. Archbald's affidavit is the blue-print produced by the witness or represented by the blue-print produced by the witness? A. Practically all but the base and the roll.

Q. And the fountain? A. And the fountain; the fountain is not here.

Q. Is the latter in your blue-print produced by you? A. No, the latter is in here.

Q. Is the reeling-up machine in this blue-print produced by you? A. No.

20 Q. The reeling-off machine, is that in the blue-print produced by you? A. No; we built some of them with larger base and all on one base; we did this so the operator when he wanted that could make up his rolls in advance.

Q. So that actually this blue-print which you brought in court it represents in round numbers about one-fifth of the completed machine; is that right? A. No.

30 Q. How much of it does it represent? A. It represents the whole saturating machine.

Q. Where is your fountain then? A. The fountain; I didn't bring that here; you have got that in the picture, the photograph of the actual machine when it is operated.

Q. Have you got a photograph here of this machine? A. No, but I can bring one, bring you two-color ink machine here, too, if you want it.

Q. Explain just what you mean by saturating part of the machine. A. The ribbon goes down in

Charles G. Ross—Cross.

a bath, is completely submerged; on the other method they ran it over a roll, and then get your ribbon on the roll carrying it up from the fountain; that is the same method used in printing, printing press.

Examined by Mr. Rich.

Q. All that is shown on that large blue-print before you, which you produce to-day, is the two pressure rolls and the base and parts supporting those rolls; is that right? A. It shows a complete machine, drivers, mechanism, pulleys and everything; it shows just what you have got in the photograph. Didn't I give you a photograph some months ago of those machines? You came to me and wanted them for some other case; you were going to send me \$50 and never done it.

The Court: That may be stricken out, and if there are any more voluntary remarks made by you, you will spend a short time in the Essex County jail for contempt of court. I have warned you over and over again. You will go right from here to jail if there are any more voluntary remarks made by you.

Q. Now, Mr. Ross, take your pencil and indicate on that large blue-print before you, which is the blue-print you produced to-day, the reeling-off machine? A. That is not here; that is the reeling-off roll.

Q. I thought you stated that the blue-print which you produced to-day shows the entire machine? A. It shows the entire saturating machine for applying the ink, with the exception of the fountain.

Q. And a few other exceptions. Now, take your pencil then and indicate on that blue-print where

Charles G. Ross—Cross.

the reeling-up machine is located. A. That is not on this, but I can bring you another one, if you want it, with all those details on.

10 Q. Now, where is the reeling-off machine located with reference to the apparatus shown in the blue-print which you produced to-day? A. It will be located in this machine, just in front of the rolls ready to pass in. You mean reeling off or rolling up, which?

Q. Reeling off. A. That will be on one side, and the other, that is immaterial.

Q. Where is the reeling-up machine located with reference to the parts shown in this blue-print, large blue-print, that you produce to-day? A. Right opposite the reeling-off roll.

20 Q. Then, in such a machine we would have arranged upon the table or bench the reeling-off machine? A. You could have it right on the same machine; I have got other views here of the machine showing that.

Mr. Rich: I move that last answer be stricken out.

The Court: It may be.

30 Q. Then, Mr. Ross, we would have on a bench, a table, the reeling-off machine which supports the supply roll of ribbon; next comes the pair of rollers with the ink font, by which the ink is supplied to the ribbon, and lastly, we would have the reeling-up machine; these three parts which I have designated being in the order named? A. Yes.

Q. As shown in this blue-print of the photograph which is attached to page 17 of this affidavit in the case? A. Yes.

40 Q. Now, when you speak of immersion you mean that the ribbon is carried into the ink tank or pot down into the body of the ink, then is brought up

Charles G. Ross—Cross.

and put through the pair of rolls shown in that blue-print before you, which is the blue-print you produced to-day? A. In this instance, yes.

Q. And you mentioned a multigraph machine, and I understand from your testimony that in inking wide ribbons used on the multigraph machine, these ribbons are immersed into the body of the ink before they pass through the pair of rollers, such as the rollers shown in that blue-print you produced to-day? A. In this particular machine, yes. 10

Q. Now, you mentioned making hot and cold roll for a man by the name of Little, do you mean A. P. Little? A. Yes.

Q. Did you make any other parts of the machine? A. I made Mr. Little two machines the same as you have got photographed there, two sides.

Q. Are you speaking now of the carbon machine or inking machine? A. I made steam-heated rolls and water-cooled rolls for grinding his colors. 20

Q. The hot and cold rolls you spoke of were grinding rolls? A. You can use that both ways.

Q. And not rolls you use either in carbon paper machine or in ribbon making machine? A. Some of the people take those same rolls and made ribbons with them.

The Court: What is the grinding machine? 30

Mr. Rich: Grinding machine is entirely different type of machine; it has a pair of rollers that run together.

Q. You are not a carbon paper manufacturer, are you? A. No.

Q. You are not a typewriter ribbon manufacturer? A. No, sir.

Charles G. Ross—Cross.
William T. Reimers—Direct.

10 Q. And you know, as a matter of fact, do you not, that very often manufacturers having special machinery designed for them and built for them by concerns such as yours, are in the habit of making certain changes and alterations in them after those machines reach their own factories? A. Not that I know of; I don't know any of these were altered.

Q. You know as a matter of fact, do you not, that manufacturers, who are having special machinery built for them, very frequently may have one part made in one factory and another part made in another factory? A. I have heard of that being done, yes.

Q. The hot and cold roll that you made for Little were for grinding machines?

20 The Court: He said that.

Q. And you were never in Mr. Little's factory, were you? A. Mr. Little's? No.

Q. (By Mr. Glueckfield) Have you ever seen any of these papers or affidavits in this case? A. No.

Q. (By Mr. Glueckfield) Describing the working of this machinery? A. No, sir.

30

WILLIAM T. REIMERS, SWORN.

Direct examination by Mr. Hayes.

Q. What is your business? A. Manufacturer of typewriter ribbons.

Q. You have a factory where? A. 85 Nassau Street.

40 Q. How long have you had experience in manu-

William T. Reimers—Direct.

facturing typewriter ribbons? A. Actual manufacturing?

Q. Yes. A. A year and two months.

Q. How long have you been engaged in that line of business, other than as a manufacturer for yourself? A. About fifteen or sixteen years.

Q. You were connected with the Penn Carbon Manifold Company at one time? A. Yes.

10

Q. Did you hold an office there? A. Yes.

Q. What was your office? A. Secretary.

Q. And you were also a stockholder in that company? A. Yes.

Q. And do you know the rules and regulations under which employees were engaged by the Penn Carbon Manifold Company? A. Yes.

Q. As to whether or not there was anything which they were under a direct contract not to divulge? A. I don't believe there was any contract existing.

20

Q. Are you familiar with the type of machinery used by the Penn Carbon Manifold Company in manufacturing typewriter ribbons? A. Yes.

Q. I call your attention to a single color machine, what is the name of that machine that was used by the Penn Carbon Manifold Company? A. That had a name, the single color machine, I believe, it was a Ross machine.

Q. Have you ever seen any other machines similar to the one used by the Penn Carbon? A. No, sir.

30

Q. What kind of machine are you using now? A. You mean outside of the Penn Carbon Company's plant?

Q. Yes. A. I have got a machine at the present time, single color machine that is manufactured along the same lines; instead of dipping the cloth down through the ink it is brought over through

40

William T. Reimers—Direct.

a pan, the lower roller turns in a pan and carries the ink up to the cloth.

Q. Isn't that the same way the Penn Carbon applies their ink? A. If I recall correctly at the time I was there, the cloth was drawn down through a well.

10 Q. But in your machine, now, in what other respect does your machine differ from the one the Penn Carbon used? A. None, I should say.

Q. No other difference? A. No.

Q. How about the one you are now using, a carbon machine? A. No.

Q. Have you ever seen any carbon machines in use other than the ones used by the Penn Carbon? A. Yes, I was through two other places where they had carbon machines, but I can't say that I could recall off-handedly, it was some years ago; it was
20 through the Union Ribbon and Carbon Company plant, I was taken through there as a visitor.

Q. The only machine then, that you know of, is the single color ribbon machine, and you say that you have a machine in use which is similar to the one owned by the Penn Carbon, except the difference that your machine applies ink by means of the roll revolving in a well and bringing the ink up to the ribbon, then the ink is forced on the ribbon in what way? A. With two steel rollers.

30 Q. What have you to say as to a multigraph machine, are you familiar with the machine used for that purpose? A. I have seen the multigraph machine in the factory of the Penn Carbon.

Q. Have you ever seen any anywhere else? A. Yes, I have seen one down in Philadelphia.

Q. The same as the Penn Carbon? A. It is run something similar to the Penn Carbon; I believe, though the upper roller is rubber, the other roller being steel.

William T. Reimers—Direct—Cross.

Q. Was there any other difference? A. No, other than the weights on the Penn Carbon machine are under the machine and the one in Philadelphia are over the machine, leverage weights.

Q. How long ago is it you saw the one in Philadelphia? A. About seven months ago, I should say.

Q. That was in public use and was supposed to be secret? A. I can't say as to that; I think it had been shown to me without any hesitation.

Q. Were you with the Penn Carbon when they obtained the Republic machine, which was afterwards rebuilt? A. I was with them, yes.

Q. Do you know what changes were made in that machine? A. No, I can't say that. I can tell you much about the carbon machines, Mr. Hayes.

Cross-examination by Mr. Glueckfield.

Q. Were you with the Penn Carbon Company at the same time Marcelini was there? A. Yes.

Q. And Dugan? A. Yes.

Q. And Thomas Patrizzio? A. Yes.

Q. Are you interested in the outcome of this suit? A. No, sir.

Q. Did you have any arrangement with Mr. Tomney for him to supply machines to you which were similar to the machines that the Penn Carbon Company used? A. No, sir.

Q. You were soliciting trade from the customers of the Penn Carbon Company within the past year or two to sell them machines, weren't you? A. Yes, sir.

Q. Did you expect to get these machines you were offering to sell from Mr. Tomney?

William T. Reimers—Cross.

Mr. Hayes: I object to that as immaterial.

The Court: I will admit it.

Q. Did you? A. Will you repeat that question?

Q. (Question read.) A. Yes.

10 Q. I show you a letter written to you by Edmund A. Hayes in behalf of J. E. Tomney, and ask you whether you received that letter? A. I have had that letter, yes.

Q. You yourself turned it over to Mr. Archbald, didn't you? A. No, sir.

Q. Where did Mr. Archbald get it, do you know? A. That is beyond me, sir.

20 Q. During the exchange of correspondence you were arranging or seeking to arrange practically to back Mr. Tomney's selling agent of these machines, weren't you? A. Yes.

Q. You knew he was under agreement not to make these machines? A. I was not quite sure about the arrangement.

Examined by the Court.

Q. You knew there had been a written agreement made, didn't you? A. I knew there had been written agreements, yes.

30 Q. What did you mean a moment ago in reply to the question that you were not interested in the outcome of this suit? A. I meant as far as I was personally concerned; what I meant was this, some time ago I had a machine of the Penn Carbon Company's make on lease; that machine was taken away from me, although I might have been able to have it to-day had I given certain testimony; the machine was taken away from me on the first of June and I was interested in the Tomney machine; at the

William T. Reimers—Cross.

present time I have arranged my own machinery, so I am not particular whether I have a Tomney machine or not; I have taken and rebuilt my own machine for making two color ribbons.

Further cross-examination.

Q. You are not an actual mechanic yourself, are you? A. Pretty near. 10

Q. Did you rebuild this machine you speak of personally or have someone do it for you? A. Personally; I haven't got a mechanic in my place, but my ideas are my own.

Q. (By the Court) Who did the rebuilding? A. As far as the rebuilding is concerned, I had one of the mechanics bore two holes through the frames and I adjusted the backs to the machine myself.

Q. Did Mr. Tomney do any work on that? A. 20
Mr. Tomney has never been in the shop.

Q. Did he ever do any work on it anywhere? A. Absolutely not.

Q. In New Brunswick? A. Absolutely not.

Q. I asked you a moment ago whether or not you did solicit sales of machines such as the Penn Carbon Company are using from customers of the Penn Carbon Company, did I understand you to say no? A. From customers of the Penn Carbon Company? 30

Q. Yes. A. I don't quite get you when you say customers.

The Court: He said yes, that is what his answer was.

Q. I show you a letter purporting to have been written by you addressed to the Peerless Carbon and Ribbon Company, Toronto, and ask you if you wrote that letter? A. I did.

William T. Reimers—Cross.

(Marked 5 for Identification.)

(Offered in evidence and marked Exhibit
C-14)

Mr. Hayes: I object. The witness is not here as a party to the suit.

The Court: I will admit this letter.

10

Q. The machine that you are referring to in your letter of November 6, 1916, is a machine manufactured by Condit, wasn't it? A. Yes.

The Court: I will admit it.

20

Q. When you spoke in your letter of a competitor located in New Brunswick, who was asking in the neighborhood of \$550 or \$600 for his machine, you mean the Penn Carbon Company, don't you? A. Yes.

Q. What do you mean when you speak in your letter of offering a machine, whereby you will be doing away with iron cores; kindly explain what you mean by that? A. Why, yes, the iron cores was to do away with the iron cores and use what is known as an L. C. Smith spool or wooden spool.

Q. You mean by that a gold lacquered tin spool? A. Yes.

30

Q. How was that fastened to the machine, this spool of which you speak? A. That machine I have never seen yet, simply known of the facts.

Q. Then you don't know how it was to be fastened? A. No.

Q. Tell us where you got this information about the machine and the idea of doing away with iron cores? A. In discussing it with Mr. Tomney it was developed it was quite feasible to put the L. C. Smith spool on there and wind these up.

40

William T. Reimers—Cross.

Q. How long ago did you have this conversation with him? A. I should say shortly after I started in business, about ten or eleven months ago.

Q. I show you another letter purporting to have been sent by you to the Peerless Company of Toronto, Canada, and ask you if that was one which you sent? A. It was.

Q. And when you say in this letter you regret your inability to comply with the request as to folders, and saying you cannot sell them two-color machines, it was because of the injunction that had been issued in this court as to Tomney, is that right? A. I am not familiar with that. I learned from Mr. Tomney it would be impossible, due to a restraining order, for him to make the machine at the present time, and I wrote my customer to that effect. 10

Q. At any rate, you were going to get the two-color machines from Tomney? 20

The Court: He said that; what is the use of reiterating?

(Letter offered in evidence and marked Exhibit C-27)

Q. Have you ever obtained from Mr. Tomney any felt washers such as go in the construction of a two-color ribbon machine? A. No, sir. 30

Q. Obtain them from anybody else connected with the Penn Carbon plant?

Mr. Hayes: I object to that.

The Court: I admit it.

A. We were out of felt washers, and upon my arrival at the factory one morning I was informed by one of the men at the shop he had some few washers to fit the machine. 40

William T. Reimers—Cross.

Q. Do you know where he got them? A. I asked him where he obtained them and he said Frank Bartlmez had given them to him.

Q. You know who Bartlmez is, don't you? A. I do.

Q. He is the man who was employed until recently in the Penn Carbon Company plant? A.
10 Yes.

The Court: Is there any secret alleged in respect to these washers?

Mr. Glueckfield: They are of special cut and not patentable; we will show they were practically stolen from the plant.

Q. Were you ever shown a set of stencil samples, wax stencil samples and ink samples that were supposed to have come from the Penn Carbon Company plant? A. No, sir.
20

Q. Is a man by the name of James Dugan in your employ now? A. Yes.

Q. He is your practical man around the shop, isn't he? A. Yes.

Mr. Hayes: I object to that as being immaterial to this issue.

Q. He is your practical man around the shop now, isn't he, operating the machinery? A. Yes, he operates the machinery.
30

Q. And was formerly an employee of the Penn Carbon Company plant? A. Yes.

Q. The same applies to Thomas Patrizzio? A. Yes.

Q. He is now in your employ? A. Yes.

Q. Formerly in the employ of the Penn Carbon Company? A. Yes.
40

William T. Reimers—Cross.

Q. You said before that you had gone into business about eleven months ago, is that right? A. No, about thirteen months ago.

Q. Prior to that time you knew nothing about the making of ribbons and carbon paper, did you?

A. Well, I have been around the Penn Carbon Company's plant for about three and a half or four years.

10

Q. You knew nothing about the technical part of the work, I mean the actual mixing of dopes and preparation of tissue and getting out the finished product?

Mr. Hayes: I object.

The Court: I will admit it.

A. As I said before, I have been around the plant for three and a half or four years, and usually if I see anything I,—I was not employed as a mixer of colors, if that is what you mean.

20

Q. Isn't it a fact that you were enabled better to go into business by yourself in the manufacture of typewriter ribbons and carbon through the fact that you employed Dugan and Patrizzio, former employees of the Penn Carbon Company? A. Not necessarily. As a matter of fact my plant was all equipped before I had Mr. Dugan or Mr. Thomas Patrizzio in the place.

Q. Isn't it true that at the time when Mr. Archbald rented to you the two color machine he made an express stipulation that you were not to permit the operation of it by any present or past employees of his? A. He never made any such stipulation other than asking me verbally who was going to run it; I told him at the time I was undecided who should run it, that I had two or three in mind.

30

Q. You were at one time more or less interested in seeing Mr. Archbald prevail in this suit, weren't you?

40

William T. Reimers—Cross.
James E. Tomney—Recalled—Direct.

The Court: Now, why go into that? You can ask him whether he made any statements contrary to what he made here on the stand, at any time.

10

JAMES E. TOMNEY recalled:

Direct examination by Mr. Hayes.

Q. It is alleged in the bill of complaint that the complainant company is possessed, the complainant claims what is known as an eighteen-inch machine. Will you tell the court what you know about that machine, whether you have done any work on it, and, if so, what was the nature of the work done?

20

A. I never done anything on the eighteen-inch machine only straighten the knife, that is all, to make an even coating on the carbon paper.

Q. What is that eighteen-inch machine, carbon machine, isn't it? A. Carbon machine.

Q. Do you know the name of it? A. Well, that was built there in the Penn Carbon factory itself, you know; it is just a make-shift machine.

30

Q. I show you paper marked for identification No. 4, and ask if that is the machine, the eighteen-inch carbon machine? A. It is on the same principle; it is what is called Republic Dodge machine or Cumberland machine.

Q. What kind was it they had up there, in what way did it differ from that machine? A. It differed this way. It was base of an Elms machine, and there is six or eight uprights three-quarter iron shafting and the footings were all bolted into that shafting to hold these rolls; there was nothing

40

James E. Tomney—Recalled—Direct.

in this machine and this eighteen-inch machine different only in the construction of the uprights.

Q. The placing of the uprights? A. The placing of the uprights, yes; everything else was the same.

Q. Then how about the twenty-six-inch machine, what have you to say as to that? A. This is twenty-six-inch machine here.

Q. Is that the same construction as the eighteen-inch? A. Yes. 10

Q. Are those machines in the Penn Carbon factory today? A. These two are, eighteen-inch and twenty-six.

Q. Where is the feed tension; does that apply to this machine? A. Well, the feed tension is applied on this front roll here, raw material, and the wind-up is the tension that pulls everything through the machine, see. That is what I put on extra, that one up in front here (indicating). 20

Q. That is in addition to that machine? A. In addition.

Q. Just tell us what additions are on that machine that do not appear in that? A. Well, I don't see anything.

Q. You just said there is two rolls you put up in front. A. That went on the front of the machine here (indicating).

Q. Is that where you got your idea of it? A. Yes, Janeway & Carpenter's. 30

Q. How long did you work for Janeway & Carpenter? A. I was master mechanic there from 1907 to 1910.

Q. And that feed tension you applied on that twenty-six inch machine was applied from your knowledge of the tension used in the Janeway & Carpenter factory? A. Yes, used single and double, four rolls and two rolls; some machines only had single rolls; others had four. 40

James E. Tomney—Recalled—Direct.

Q. And that is the tension that is referred to in the schedule? A. Yes.

Q. Is that the only other improvement on that machine now? A. That is the only improvement I put on it.

10 Q. It was the only improvement that was on there when you left that place? A. In the knives there I made different arrangements; they sent this part of the knife up to Rochester on another case. The brackets that held this are familiar to Mr. Rich; they were not in the factory there, and I made the changes in this, and it had similar things from Waldron & Janeway & Carpenter's; it done the same thing, only it was a little different, that is all.

20 Q. Do you know anything about the eighteen-inch float feeding method of making carbon paper? A. I only seen that run once; that was set up to sell to a man in England; put that in the cellar about three years ago.

Q. It has not been used for the past three years? A. No, never were used.

Q. Did you ever do any work on it? A. No, never was used at all.

30 Q. The wax stencil paper for typewriter use, did you ever have to do any work with any of the machinery used for that purpose? A. There is no machinery attached to it; it is just box with brass roll in it; had to clean that roller off with sand-paper, take that dead wax off about every week or two.

Q. That is all the work you ever did on that? A. That is all I ever done on that.

Q. How about the hand stencil paper? A. Well, that was no machine at all.

40 Q. Did you ever have anything to do with that? A. No.

James E. Tomney—Recalled—Direct.

Q. Single color ribbon machine? A. Well, anything ever that was done with that single color I done it; that was a regular Ross machine.

Q. It was a regular Ross machine when you went there? A. Yes, I chipped Ross' name off it; there was two of them; one he shipped to Australia.

Q. Who do you mean? A. Mr. Archbald; and the other one was kept in the factory. 10

Q. Of the Penn Carbon? A. Yes, kept in the factory; there isn't any names on it now, they are chipped off, "Charles Ross & Sons."

Q. Have you ever seen any other single color ribbon machines like the one in use in the Penn Carbon other than in that factory? A. I have seen them on the same principle; I never seen the Ross machine any other place, but I knew they were there; there was one in the Columbia and one in H. M. Storms Company, and I heard later A. P. Little had two of them. 20

The Court: Strike that out.

Q. What changes did you make on that Ross machine? A. Well, there was no changes really at all only to make it all in one piece; where the reeling-up attachment was that was separate piece, but it was all one machine; joined them all in one, took one of those arms at the reel-up end and bolted it on the side frame. 30

Q. And multigraph ribbon machine, was that the same? A. Well, it is the same principle; I designed that from what they call embossing machine; it is identically the same thing, design and everything. That was built in 1913 in the winter.

Q. The same as the color ribbon machine, wasn't it? A. Yes, the same design.

Q. Did the Penn Carbon Manifold Company have 40

James E. Tomney—Recalled—Direct—Cross.

a multigraph ribbon machine in their factory when you went to work for them? A. No.

Q. And was the machine which you produced copied after any machine that you had ever before seen? A. I copied it from the embossing machine at Janeway & Carpenter; I have got the picture there.

10 Q. Is that it? A. Yes, that is an emboss machine, that is twenty-six inches long.

Q. Has this machine the same principle as the multigraph machine? A. They have even got these screws on the top.

Q. The machine that is in use now? A. In the Penn Carbon, yes, and they have got the rods in here; they have got them screws up here for the adjustment of the top roll, identically the same thing; there is where I copied it from.

20

Mr. Hayes: I ask that that photograph be marked in evidence, photograph of a machine which the witness copied the other machine from.

(Marked Exhibit D-5).

Cross-examination by Mr. Glueckfield.

30 Q. You are not a ribbon and carbon maker? You are a machinist by trade? A. A what?

Q. You are not a maker of ribbon and carbon machines, are you? A. Anything that comes up.

Q. You are a general machinist? A. General machinist.

Q. Since the issuance of the injunction in this suit in November of last year you have been working on machinery in general in different places?

40 A. I have been experimenting, experimenting with the New Brunswick Refrigerator Company.

James E. Tomney—Recalled—Cross.

Q. You were not precluded from making a living since this injunction? A. I am not making as good a living as I would.

Q. You are not making as much money, you mean? A. Yes.

Q. While you were employed in the Penn Carbon Company plant you had access to the entire plant? A. Yes.

10

Q. You could have gone anywhere in the plant you wanted, you were not excluded? A. No.

Q. And while there you saw all the machines made in the place? A. All the machines? He only had two or three machines when I was there.

Q. How many did he have when you left? A. Well, I built one which he says he sold, and I built ten two-color machines, and I altered two Charles Ross machines.

Q. Now just what do you mean when you say you altered them? You practically rebuilt them, didn't you? A. No, there is nothing rebuilt on it; I just took arm roll off on the big part of it and attached it to the side frame, the same as I made my two-color machine.

20

Q. That is all that you did? A. That is all that was done with it.

Q. Having so little work to do how did you manage to keep busy, if that is all you did in the machinery? A. There was odds and ends came up; I did a little of everything, made duplicators and such as that.

30

Q. Now you speak of duplicators, how much time did you spend on duplicators? A. Not very much.

Q. About a day a month? A. Sometimes not that, and some other times I would spend two months.

40

James E. Tomney—Recalled—Cross.

Q. Two whole months? A. Yes; I would make forty-eight to fifty of them.

Q. Do you recall how many you built altogether?
A. About sixty or seventy.

Q. Over how long a time? A. Taking three years.

Q. The average then would come out about how much a month at that rate? A. Maybe two or three.
10

Q. How long did it take to make a duplicator?

The Court: Is there any use wasting time in that?

Q. You spoke of the device which you saw used in the Janeway & Carpenter wall paper plant; have you ever seen the principle, if you call it that, used in the carbon or ribbon machine industry? A. No, I never did; I seem similar to it laying up in the storehouse of the Penn Carbon.
20

Q. (By the Court) I think I have asked you this question before, but for fear I might not have, I want to ask you now, do you say you acquired no information that was secret or no information as to any secret machines when you were in the employ of the Penn Carbon Company? A. No, there was no such thing; the formulas were secret, that is all; the machines were not secret; the formulas were.
30

Q. (By the Court) Then why in the world did you sign this contract? A. This man, and he knows it, come after me two or three times; he told me it cost him \$5,000; I never built the machine; he come right down in my shop there in Water Street and asked me to go to agreement with him, he would keep these machines and have a settlement. Now what was I going to do?

Q. (By the Court) What were you going to do?
40

James E. Tomney—Recalled—Cross.

You might fight him in court. A. If it was going to cost me \$5,000 what was I going to do? I haven't got \$5,000.

Q. (By the Court) You had counsel then, didn't you? A. Yes.

Q. (By the Court) Who did you have? A. Mr. Hayes.

Q. (By the Court) Did you consult with your counsel before you signed this agreement? A. I did. 10

Q. (By the Court) Did you tell counsel Mr. Archbald stated it would cost \$5,000? A. I think I did.

Q. (By the Court) Your counsel didn't tell you it would cost \$5,000? A. No; if he brings it from one court to another it will. What is he doing now?

Q. (By the Court) He is doing it now because you deliberately broke your agreement. A. He was the first one that broke it; he said he would keep those machines and he sold those machines. 20

Q. (By the Court) In this agreement you state in so many words the formula is secret; in the agreement you state it was; why did you state it? A. They was secret if it was kept right in his place.

Q. (By the Court) Why did you enter into an agreement with him not to manufacture any typewriter ribbons or any typewriter ribbon machine? A. I thought everything was going the way it was there or I wouldn't need to do that; why did he deliberately go and sell those machines and get six or seven hundred dollars? 30

Recross-examination.

Q. When he made this agreement with you and discontinued the suit against you and gave you the order for the ten machines what did you think he was going to do with the ten machines? A. If he

James E. Tomney—Recalled—Cross.

kept them machines he could have the run of the country on two color ribbons.

Q. Did you suppose he was going to stick them all in his plant? A. I did think so, yes.

Q. Did he say anything that made you think so? A. Yes; I built him two machines, and he told me not to build any more just then.

10 Q. Didn't you know as a matter of fact Archbald had sold one or two of these machines before this agreement was made? A. No, it was me sold it; I sold it.

Q. Whose machines were they? A. Mine, that is whose they were; I sold them.

Q. Weren't they taken out of the plant of the Penn Carbon Company? A. No, they were built right in my shop; nothing was ever built in his plant; built in my shop.

20 Q. Did you get payment direct from Mittag & Bolger in payment for machines you say you sold to them? A. That machine was sold, but this trouble came up and it was settled by me signing this contract, and I didn't sell any; he was going to keep this machine; he wasn't going to let any one have any.

Examined by the Court.

30 Q. You realized when you signed this contract, didn't you, that it referred to other machines and other processes than the two-color machine then under discussion? A. I did in a way, but I didn't think that amounted to anything.

Q. The language prevented you from manufacturing any machines for the purpose of making typewriter ribbons and carbon. Why did you sign such broad agreement as that if there wasn't anything secret about the business at all? A. Well, as I

James E. Tomney—Recalled—Cross.

say, that two color ribbon machine was secret then; the other things were not secret.

Q. Why did you include other machines then, why did you agree not to manufacture other machines, why did you agree not to manufacture any machines or stencils, or anything else of that kind? Why did you do that? A. I don't know.

10

Further cross-examination.

Q. You wanted to get rid of that law suit, didn't you? A. I did want to get rid of it, yes, because I wanted to settle because I had no money to go ahead with it; I am sorry I done it now.

Continuation of examination, pursuant to adjournment, on July 17, 1917, at the place and in the presence of the Court and counsel as before.

20

JAMES E. TOMNEY resumed.

Further direct examination by Mr. Hayes.

Q. You are familiar with the single-color ribbon machine in use in the Penn Carbon? A. Yes.

Q. I show you photograph and ask you if that is photograph of single-color ribbon machine, and, if so, what machine it is, and whether it is similar to the Penn Carbon machine? A. This machine was made by Mutchler of Rochester. Now, my Mayer machine, single-colored ribbon, was bought by Mr. Archbald some place in Pennsylvania and brought to his factory and sold to Mr. Reimer. Now, this pan, the pan is on a hinge, you can take the pan completely out and lay it one side to clean the

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James E. Tomney—Recalled—Direct.

machine or swing it up and put another pan in, and the roll revolves on that pan. This is a roll of paper here (indicating); this here is extra piece put in since (indicating).

Q. Indicating the white mark on the machine?

A. Yes, it runs up here and through this here, two rolls.

10 Q. Indicating the heavy part of the machine?

A. That is the course of the ribbon, and it winds up in here; one of those cores I have got on the bench over there; this is weights, and instead of having it underneath it is on top; two pressure pins press this top roll down on this bottom roll. That is similar to the Charles Ross machine or the two-color machine I designed, only the weight is on top instead of bottom; that is the only difference in the machine, does the same work, and everything
20 else.

Q. The only difference in that photograph and the machine that Mr. Archbald has in the Penn Carbon factory the weight instead of being overhead is underneath? A. Yes.

Q. But in the Penn Carbon machine it forces the lower roll up whereas in the other machine it forces the lower roll down? A. Yes.

30 Q. I show you blueprint and ask you what that is print of and where you procured that? A. This is machine that I set up when I made them for John Waldron & Company, worked on different parts in 1896 and 1900; then I took charge and set up Janeway & Carpenter wall paper factory.

Q. Set up all the machines in that factory? A. All the machines, I set up six of these; this is what they call embossing machine, the same as this multigraph machine, the same thing, there is where I designed multigraph machine from. Got this screw
40

James E. Tomney—Recalled—Direct.

in; I got drawing over there where Mr. Archbald says there never was drawing. The pin runs up underneath and raises this bottom roll up to meet that top roll, everything just the same as this machine only this is larger machine, it has roll, this is five feet high.

Q. When does that blueprint bear date? A. July 24, 1907.

10

Q. And it is from that design that you copied the multigraph machine and the two-color machine and the single-color machine? A. No, I never made single color, we never made single color.

Q. You copied the other machines from that? A. Yes.

Q. And you have worked on that same machine fifteen or sixteen years ago? A. Yes.

Q. And have constructed six of them? A. No; I set up six of them in Janeway & Carpenter's and twenty-four printing machines.

20

Q. And which were the same construction as that? A. No, printing machine is different, that is like carbon machine.

Q. And it was from your experience in those machines that you constructed and designed a machine that were in use in the Penn Carbon? A Two-color and the multigraph, yes.

Q. And this machine which is photographed here you know whether or not that is in use, and, if so, where? A. Yes, that is in use, I seen that yesterday in the Alliance Manufacturing Company, make single-color ribbons on it.

30

Q. Alliance Manufacturing Company of New York? A. Yes.

Q. Have you ever seen it before yesterday? A. Yes. I packed it up to take to the Alliance Manufacturing Company from the Penn Carbon Manufacturing Company.

40

James E. Tomney—Recalled—Direct.

Q. How long ago was that? A. Last March or April, I won't say sure; March or April, I think, that is a year ago.

Q. Are these rolls used in machines? A. This is the reel I generally put on the two-color in here; that winds the ribbon up, see. This is carbon on this spindle here to wind up the ribbon as it goes
10 from the machine; that is tension belt on there; when the roll gets large it goes slower, it slips; now, up in the Penn Carbon I put these on; those come from H. M. Storms & Company; they use them down here instead of using that roll. This is core, just the same; they put that on there and wind the ribbon up on those because they have maybe a hundred or two hundred of them around and only got a dozen of these cores, and they lay them around and put these on, either one of the
20 two, instead of using those iron cores; that is the only difference.

Q. Did you ever see these before? A. I seen them, but I never seen them on the machine, no.

The Court: The first article that the witness is talking about is an iron core; the second article that the witness is talking about is tin spool.

30 A. They are the two that go on the machine that are made nowadays. Referring to tin spools, that is only Penn Carbon, other people don't put them on; they put iron cores on.

Q. You say Storms use those? A. Yes, H. M. Storms, he puts them on the machine, every machine he has got has them on; the idea came from a fellow named Anderson that is working for the Penn Carbon now.

James E. Tomney—Recalled—Cross.

Q. Is there anything else you want to elaborate on that? A. No.

Cross-examination by Mr. Rich.

(Photograph offered in evidence and marked Exhibit D-9).

(Blueprint offered in evidence and marked Exhibit D-10). 10

Q. When you entered into the contract with Mr. Archbald, which has been referred to at various times during your testimony, you turned over to him, did you, all your patterns and drawings and measurements and records and everything of that nature which you possessed? A. The drawings and stuff, no; I kept them until September or October; he paid me \$400 to turn all over where he could make one-color ribbon machines and sell them; he wanted me to sign a contract for two-ribbon machines, two one-color ribbon machine, and I wouldn't do it. 20

Q. You have no measurements now in your possession? A. Not of that machine, no.

Q. Of any machine? A. Of what machine?

Q. Of any machine involved in this controversy? A. No, sir. 30

Q. Or drawings? A. Is two color represented in this?

Q. Is two color involved in this case?

Mr. Hayes: I object to that.

A. There is improved machine of mine, that is the only drawings I have got, you haven't got that, you don't know what it is; I got that drawing, that is actual size.

James E. Tomney—Recalled—Cross.

Q. (By Mr. Hayes) This is something that is not a part of that? A. No.

Mr. Hayes: I don't think that should be interrogated upon.

Mr. Rich: I am not going to.

10 Q. And you turned over all patterns? A. Patterns, drawings, everything else, and I got receipt for them from Mr. Archbald, everything.

Q. You mentioned, I believe it was yesterday, something about machine at the factory of the Columbia Ribbon and Carbon Manufacturing Company—you never saw that machine? A. No, never was in the place. Yes, I was in their office; I was not in their factory.

20 Q. What have you to say about those felts you mentioned? A. These felts went between each roll; it was not necessary to have them in anyway; I had to finish up ten machines and I always got these felts, and all the felts I had went with the machine, none left over; if I needed any I cut them out with scissors.

Q. You got some felts of Mr. Bartelnez? A. Yes, got a few.

30 Q. You got them after this suit was started? A. No, you are wrong there, I got them to finish up my machines.

Q. Well, now, what machines do you refer to in that? A. Ten two-color ribbon machines.

Q. Now, fix the date on which Mr. Bartelnez gave you those, the last felts you received from him? A. Oh, that was about in September or October, September, I guess, about September, I believe.

Q. Nineteen when? A. 1916. I think he knew those felts were coming down.

James E. Tomney—Recalled—Cross.

Q. You were not in Mr. Archbald's employ at that time? A. I was finishing up the ten machines, I had four finished, though.

Q. Why didn't you get those felts of Mr. Archbald? A. I never got them of him; I always made them or got Bartelnez to give me them for the machines.

Q. That is when you were in his employ you made the felts? A. Why, wasn't I making them machines home? Was I in his employ then? 10

Q. That is exactly what I am trying to determine, why it was you obtained these felts from Mr. Bartelnez where you were working? A. I left his shop in October some time and wouldn't go back; we had a disagreement because I wouldn't contract work with him; every other contract he wanted me to make one of these machines, that is Republic Dodge machine, he wanted me to make for \$250. 20

Q. Now, the two-color ribbon machine which you made was the one that went to Mittag & Volger, was it not? A. That was the first improved, yes, went to Mittag & Volger, that is the one they got the patent on now.

Q. Well, now, you seem to differentiate in your mind between that and some other machine; what previous machine had you built? A. Well, one that was made out of scrap went to S. S. Stafford, an old machine I fixed up and put this division in where this improvement was and sold to S. S. Stafford in 1913 or 1914, I ain't sure which. 30

The Court: This examination has reference to the two-color machine?

A. Two-color machine, yes, sir.

The Court: That has been all gone into.

James E. Tomney—Recalled—Cross.

Q. Now, the next machine was one that was sold to Carpenter & Bedell? A. That is a Ross machine, Charles Ross of Brooklyn, New York.

Q. And the next machine was one that went to Canbonun? A. A copy of the Charles Ross machine.

10 Q. What is that machine? A. That is a copy of the Charles Ross machine made for Charles Ross, the casting; I never made the whole machine, I only put that partition in.

20 Q. Now, what was the difference between these last two machines I have mentioned, the Carpenter & Bedell and Canbonun and the Mittag & Volger machine which you mentioned first? A. The Mittag & Volger machine had all improvements onto it, lateral movement, the pins to pull the backs out, lateral movement on the guage,—well, I got the drawing in my pocket, if you want to look at the specifications of the patent, that will show you what it is, where you got the specifications drawn wrong where the machines won't work if you made it according to the specifications, I can show you right on it.

Mr. Glueckfield: I object to that part of that answer and move it be stricken out.

The Court: It will be stricken out.

30 Q. Mr. Ross, who was called here yesterday as a witness, visited you not long ago in New Brunswick, didn't he? A. No, he never was to my place; I didn't know Mr. Ross until two months ago; I was introduced to him by a man in New York; he went to New Brunswick, there is where you got the reference from, he was to another place.

40 Q. Now, this photograph which you referred to this morning, Exhibit D-9, was taken when? A. When did I send that to you, Mr. Hayes?

James E. Tomney—Recalled—Cross.

Mr. Hayes: I don't remember. Just to the best of your knowledge when was it taken?

A. Four or five weeks ago, I think, maybe a little longer, it isn't over two months.

Q. What, if any, difference is there in this machine as shown in this photograph, Exhibit D-9, and that machine as it was at the time when it left the factory of the Penn Carbon? A. The only difference is this lateral movement, friction feed or tension. 10

Q. Take this pencil and mark the part to which you refer with a proper letter or character. A. This part here (indicating), that was not on there. (The part enclosed in a circle marked A.) Everything else was on the machine, nothing different.

Q. Everything else was on the machine with the exception of part A when that machine left the factory of the Penn Carbon? A. The bench was not on it. Oh, yes, this extra weight was on; that was taken off; that was not on; that was about two months ago. That belongs to the two-color machine that was sent back to Archbald. If you are referring to this this comes off, and semi-ink don't go on. This was made by me. 20

Q. (By the Court) This part A was not made by you? A. No, that was taken off, and semi-color machine that Archbald sold to Reimer, and they took that off, Reimer took that off about six months ago, longer than that, and put it onto this machine, that is what you were referring to, and this weight was of the two-color, that was shipped back to Archbald first of June. 30

Q. When did you see this machine, last machine shown in Exhibit 9? A. Yesterday.

Q. And the photograph was made a month or five weeks ago? A. Maybe a little longer, two 40

James E. Tomney—Recalled—Cross.

months, I ain't sure, I guess it is about two months ago; yes, I think it was made a week or so before that machine was shipped to Archbald; go to Fulton Street and they will tell you.

10 Q. This machine shown on photographic Exhibit D-9, then, with the exceptions of parts A and B, is the machine as it was at the time when it left the factory of the Penn Carbon Manifold Company? A. Yes, that is the machine. Excuse me, may I say something? If you see that machine today, instead of the weight there they have got a pail full of water to make extra weight.

20 Q. Now, this machine which you have referred to as the embossing machine shown in this blueprint, Exhibit D-10, is a type of machine used in wall paper manufacturing? A. Yes, it is calender, that is all it is, a calender, that is what you call a ribbon machine or multigraph machine, a calender, two rolls, that is all it is.

Q. And you said that this was rather ponderous and stood about five feet high? A. There it gives the dimensions, twenty-four-inch rolls long, twelve inch in diameter, twelve and a third, paper rolls.

Cross-examination by Mr. Glueckfield.

30 Q. You say the wall paper machine pictured there and multigraph machine and ribbon machine are simply calenders? A. I say you can use them the same way as mills or calenders in rubber works, or anything, they are all the same principle; there is nothing different.

Q. There is nothing really new about them, is there? A. No,—well, they are new making ribbons; there is nothing new, no.

40 Q. If the thing is so simple and it constitutes merely a mill, so called, an old theory or principle,

James E. Tomney—Recalled—Cross.

Charles E. Archbald—Recalled—Direct—Cross.

why have you applied to have it declared a patent in your favor? A. I am only asking for the partition, that is the only part that is patentable on the dividing role.

Q. And haven't you declared against the patent?

A. Yes.

Q. And you know the patent is for the whole machine, don't you? A. No, it is not, that don't apply to the whole machine, that belongs to Ross, that machine; no one has got the right to that.

DEFENDANTS REST.

CHARLES E. ARCHBALD recalled in rebuttal:

Direct examination by Mr. Rich.

20

Mr. Glueckfield: On behalf of the complainants, I want to introduce in evidence the photographic negative of the Ross apparatus showing the three machines known as No. 110 ribbon saturating machine, No. 112 reeling-up machine and 113 reeling-off machine.

(Marked Exhibit C-8).

Q. I hand you, Mr. Archbald, three photographs and ask you to say what they are. A. These three photographs are my eighteen-inch machine.

30

Q. Please letter them A, B and C. A. (Witness marked photographs A, B and C.)

Cross-examination by Mr. Hayes.

(Photographs to which the witness has just referred are offered in evidence and marked Exhibits C-9, C-10, C-11 and C-12).

40

Charles E. Archbald—Recalled—Cross.

Q. This photograph portrays the machine in running condition showing the paper and the steam pipes? A. Yes.

Q. And indicating a large wheel at the bottom of photograph A, marked Exhibit C-9, I ask you what that wheel is for? A. This one here (indicating)?

10 Q. Yes? A. That is a drive; this here swings out, and there is an interleading out, and if you want to interlead a carbon it is very soft, number one here swings around and permits interleading paper to be put on here,—I don't know whether that shows.

20 Q. So that that then can be considered as superfluous for the use of this other machine unless you want to interlead, is that right? A. No, this is the drive to drive the jigger brushes for vibrating the coating here when it is heated by the ink roll and goes over the scraper hot and is reheated here, there are two jigger brushes that go across these vibrators.

Q. Are they shown on here? A. No, they are not shown on here.

30 Q. When you are not putting the jigger finish on this here is not used? A. This outside wheel, there is a drive-wheel that drives from below the floor, that is fastened on to that.

Q. That is not in use when the paper is being finished what they call jigger finish? A. It has different felt on.

Q. So that is superfluous when this machine is being used for the ordinary production of carbon paper? A. No, it is not superfluous, because you can make carbon, without it you couldn't make.

Q. (By the Court) It is superfluous unless you can make some kind of carbon? A. Unless you are

Charles E. Archbald—Recalled—Cross.

making jigger finish you don't require to use it, that is what I mean.

Q. What do you call that roll that is marked O on photograph A, Exhibit P-9? A. That is wind-up roll.

Q. Has the machine known as the Republic machine a wind-up roll? A. Every machine has a wind-up roll.

10

Q. And is it located in the same place as that roll there? A. Well, I wouldn't like to say that, although if I put measurement on, scale on—I wouldn't like to say, if you say at the end of the machine, yes.

Q. And roll marked M on the same exhibit, what is that roll for? A. This one here, M, that is used for heating and for chilling, both.

Q. That is known as the heating or chilling roll? A. Sometimes called hot cylinder, sometimes cold roll.

20

Q. Is that on the Republic machine? A. No, Republic machine was never fitted for hot and cold water; I piped it up that way myself.

Q. Is it on the Ross machine? A. What do you mean by the Ross machine?

Q. The machine made by Ross which he testified to yesterday? A. I don't know the machine; I don't think I saw that; if you show me a drawing I will be glad to tell you what I know about it.

30

Q. Where is your color roll there? A. What do you mean by color roll?

Q. The roll that imparts the carbon to the paper? A. The ink roll is right in here.

Q. How is that located differently than on the Republic machine, in what respect does it differ? A. You mean at the start of the machine as compared with the other machine? All ink rolls are

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James E. Tomney—Recalled—Cross.

placed in position at the start, then the work is done afterwards.

Q. Is that in a different position, the roll on your machine, from the one on the Republic machine?

A. Yes, there is no comparison at all in distances, anything of that kind, they are all entirely different, there isn't a single measurement the same
10 on the Republic machine.

Q. Outside of the measurement does your machine contain all the parts of the Republic machine, speaking of the rolls, the hot and cold roll, the wind-up rolls? A. No, I couldn't say that; it has everything necessary for my purpose.

Q. Would you say that your machine does not contain everything that the Ross or Republic machine does? A. I won't say that either.

Q. Will you say that the Republic machine contains things that yours does not? A. No, I don't
20 think the Republic machine contains anything that mine does not.

Q. Will you indicate, please, on this photograph marked for identification No. 3 what rolls and where are they differently located on your machine, what rolls are contained on yours and where are they differently located on your machine from that? A.
30 What is this? Charles Ross & Son Company, is it? There is no paper in this, or anything to guide me.

Q. Let me ask you this, then, if you can point them out, indicating roll in white on photograph for identification 3, I ask you if that roll answers the same purpose as the roll marked O on your Exhibit No. C-9? A. I never saw this machine, but it looks like a wind-up to me; I never saw this and can't identify it because I never saw this, as far as I know; I never knew Ross built a machine of that kind.

Charles E. Archbald—Recalled—Cross.

Q. Did you sell a Republic Dodge machine to some manufacturer in Japan? A. No, not that I am aware of.

Q. I also indicate now or ask you rather first if it is not true that your machine, photograph of your machine is not on a larger scale than the one marked Charles Ross & Son? A. I don't know the size of this, so I can't say that.

10

Q. Indicating roll M I ask you if that does not correspond with the large dark roll in the center of the Ross machine? A. I can only see a roll in there; I don't know how it is mounted; I don't know the position or distance from the ends; I haven't the slightest thing to go on to identify anything there.

Q. Have you ever examined a Republic machine stripped before it was set up? A. I don't think so.

20

Q. Well, can you tell us whether or not this machine as indicated on exhibit for identification, photograph marked for identification 3, tell us whether or not that is the same machine as portrayed in your photograph? A. No, it is not the same machine, I can say that.

Q. Is it the same machine with wheels and superfluous attachments used for the making of jigger finish? A. No; I don't see any adjustments of any kind here; I don't see adjustments, rolls, I don't see adjustments, anything.

30

Q. Will you point out, please, in what respect, if any, your machine differs in the location of rolls from the exhibit which you have in your hand? A. Well, I don't know the size or distances of these rolls; I can't point out the distances on those things.

Q. Will you point out one roll that your machine contains that this machine does not contain? A. I should think I could do that without much trouble;

40

Charles E. Archbald—Recalled—Cross.

there is no paper feed in here at all, is there? There is no way of telling any of these rolls here whether this can roll similar to that, it don't show it here; it don't show any roll here as far as I can see.

The Court: Lower left-hand corner.

10 Q. Doesn't show any roll where? A. It doesn't show any roll there as far as I can see.

Q. I ask you if it is not true that that bar there is the same roll which you have indicated? A. No, I am positive it is not; I see here a cone that would tell me right away, two cones that holds the tissue roll; I would identify that as being the tissue roll, now that I see those two cones, I should certainly do that.

20 Q. Is that not obtained by reason of placing back your roll of paper, placing it back, as you say, five or seven feet? A. It is there because it is on the machine; there is no other reason for it other than I have got it there to do the work I am arranging for it; it could be taken off and placed somewhere else if one wants to change the machine; there is where it is on my machine, there is where it stays.

30 Q. I ask you whether or not if the roll tissue was placed here that would eliminate that roll, wouldn't it? A. If you did away with this and put the tissue in there?

Q. Yes. A. I should say that would be obvious.

40 Q. Show me another roll on your machine that is not on this one, meaning identification 3? A. I don't see how the paper is threaded on this thing at all; there is nothing here to tell me what rolls it goes over, but here is roll here I should think; I should say there is another roll in here (indicating), adjustable roll, that this machine does not contain, it looks that way to me.

Charles E. Archbald—Recalled—Cross.

Q. Where is that? A. Adjustable roll P, that looks to me to be a roll that that machine does not contain; this does not show any piping, it does not show this machine was ever set up for use, it does not show any hot and cold attachments, it does not show anything on it, or any water attachments.

Q. Is that roll P an idler or is that a roll? A. In photograph A the roll P is adjustable and revolves. 10

Q. I ask you now if on the same Exhibit 3 whether or not this roll here is not the same roll as indicated there?

The Court: On the right-hand corner.

Q. On the right-hand corner? A. I wouldn't think so, no.

Q. What is the purpose of roll P? A. This one here (indicating), the purpose of this here? 20

Q. Yes. A. Primarily it is put there for the purpose of taking differences in the slackness on either side of the roll, it brings the paper up straight where it otherwise would not come to show straight; it also gives a better grip to this roll for pulling purposes, leading it directly over the top here; that is my opinion in regard to it and the reason why I put it in there.

Q. Show me another roll, if there is one on yours, that is not on this one. A. Put it the other way and I could probably tell you. 30

Q. These two posts face the same position, don't they (indicating)? A. Yes, they do.

Q. Any other rolls in their mechanism on your machine that is not contained in that one? A. Yes, there is a lot of mechanism there, there is a whole lot of these adjustments here, adjustments in the scraper, that I don't find on this, adjustments to 40

Charles E. Archbald—Recalled—Cross.

the idler roll, this revolving roll here I don't see on that machine.

Q. Point out the adjustment on your picture, the adjustment of the scraper? A. Here it is, right here (indicating), there is the lateral adjustment and here is the other adjustment; here is the lateral adjustment right here, and there is the other (indicating).

Q. Indicating how? A. T is my adjustment up and down.

Q. Show your lateral adjustment? A. This is it right here, K.

Q. I show you another paper marked identification 1, and ask you if that there marked A is not the lateral adjustment? A. What is this? What am I looking at now?

The Court: I don't know where you are going to get with all these photographs.

Q. Is that not the lateral adjustment on that machine?

The Court: Suppose it is.

Q. The two machines are similar.

The Court: I suppose they are, in some respects.

A. Is this the roll you refer to here (indicating)?

Q. Yes. A. What do you say that is?

Q. Lateral adjustment. A. No, that is swinging arm here, that is swinging arm, just as I explained here; we haven't got that on our machine at all.

*Charles E. Archbald—Recalled—Direct.**Further direct examination by Mr. Rich.*

Q. What have you to say with regard to the arm which was just described by one of the defendants in regard to the inability to operate this machine if the scraper was adjusted laterally? A. The facts are I have had that in half a dozen different positions at various times and in every case I was able to run the machine; those are the facts. 10

Q. Well now, briefly summarizing the various features of adjustment to which you have referred in describing this machine, let me ask you to state just why you have provisioned for both the longitudinal and vertical adjustment of many of the parts?

Mr. Hayes: That is not material.

The Court: I overrule it, not for that reason, but because it has all been gone into before on direct examination. The effect of his testimony is to practically put in evidence what he has said in his schedule annexed to the amended bill. 20

Q. I hand you a photograph of another machine and ask you to state what that is? A. This is a machine that was originally purchased from the Republic Dodge Company by the Penn Carbon Manifold Company and taken to the factory of the Penn Carbon Manifold Company and set up in the form in which it was purchased. We endeavored to run the machine and were unable to do so, and we then started in to rebuild this machine. 30

Q. (By the Court) Is that what is known as the twenty-six-inch machine? A. That is what is known as the twenty-six-inch machine. 40

Charles E. Archbald—Recalled—Direct.

The Court: What is the use of going all over that again? It was described very fully, the difference between this machine and the Dodge.

Q. You have not changed the ink roll on that machine, have you? A. No, the ink roll is just the same as it always was.

10 Q. (By Mr. Hayes) So that the changes you have made on that machine consist of your replacing the knife and putting an adjustment on the knife and putting in the rolls in your machine so as to eliminate spaces where your paper would run for a long distance without any roll, and thus give a chance to wrinkle, you have eliminated all that by additional rolls. A. That is not my explanation. My explanation, I thought I made it as clear as possible,—there is also here three rods showing, we had to make up the tension, and this here is moved
20 by the hand wheel, and as you turn it around there you increase your tension, you can get tension on this paper, over this paper, only turning a little you strike this roll a little more, you strike third roll, you get a finer adjustment on your tissues that way than any other possible way.

Q. So that is the completed Republic machine as rebuilt by you? A. Yes, that shows the rebuilding there all the way through.

30 Q. And what have you to say as to this (indicating that machine) before your made your alterations and repairs, identification 4? A. It didn't look like that; there is a similarity in design, but it certainly did not look like that.

Q. Well, is there any difference from the paper which you hold in your hand, identification 4, and identification 2? A. Yes, I would say there is a difference there; yes, there is quite some difference, I would say that.

Charles E. Archbald—Recalled—Direct.

Q. Is there any difference then between your machine and either of those photographs 2 and 4? A. Undoubtedly there is a lot of difference.

Q. Would you say that your machine was the same as either of these photographs 2 or 4 before you rebuilt it? A. No, I wouldn't say that they were the same.

Q. You don't claim that your machine was like either of these photographs? A. No. 10

(Photograph offered in evidence and marked Exhibit C-13.)

Mr. Rich: May I ask this for the purpose of facilitating the argument on the summing up, just briefly ask the witness to identify these photographs and be able to refer to them on the argument?

The Court: Yes. 20

Examined by Mr. Rich.

Q. What is that photograph? A. This is single color Ross rebuilt machine.

(Offered in evidence and marked Exhibit C-14.)

Q. And this photograph is what? A. This is multigraph machine. 30

(Offered in evidence and marked Exhibit C-15.)

Q. And what is this photograph? A. This is the two-color ribbon machine.

(Offered in evidence.)

Objected to.

The Court: Let it be marked.

(Marked Exhibit C-16.) 40

Charles E. Archbald—Recalled—Direct.

Q. Have you photograph of the eighteen-inch float feed machine? A. No, I didn't have one with me.

Q. What are these? A. These are the stencil papers made on the stencil paper machine, the wax part of it here made on the stencil paper machine, called type stencil paper.

10

Mr. Rich: The one first referred to by the witness as type stencil sheet offered in evidence.

Mr. Hayes: I object.

The Court: What is the purpose of offering those in evidence?

Mr. Rich: As a matter of argument to be presented to you in summing up.

(Marked Exhibit C-17.)

(Another specimen offered and marked Exhibit C-18.)

20

Q. When Mr. Ross was on the stand he made a statement about selling a machine to you and having illustrated photographs, showed photographs and drawings to you of that machine; what have you got to say on that subject? A. Well, I positively know that when I wanted to buy a machine originally, I think it was away back in 1903, I went to see Mr. Ross and he told me that he had a machine to manufacture ribbons, he didn't show me any cuts, he simply made a bald statement, told me how much the machine would cost, said he could not show them in operation, they were kept secret in all plants, but if I wanted a machine to make ribbons he would sell me one; I didn't even know how much it weighed, what size it was or what it looked like, and I bought the machine positively blind. When I saw him to buy my second machine at a later date naturally he was then quite willing to

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Charles E. Archbald—Recalled—Direct.

show me cuts and drawings, having one of the former machines in my possession.

Q. What is the agreement between you and Mr. Reimer with regard to your letting him have a machine if he operated it under certain conditions?

The Court: Is that the Alliance Company?

Q. Yes. A. When Mr. Reimer first came to me and made suggestion about buying a single-color machine which I had purchased from the concern in Chichshinni I told him that I did not care to sell any machine to him whatever of any kind, that if he intended to go into the business in competition with me that I felt before doing so I wanted to know who he was going to associate himself with and who was going to make his goods. I know that he had no information or knowledge of the manufacture of my line other than what he had obtained by information which I gave him as a salesman to better fit him to sell goods for me, and I knew at the time that it might possibly so turn out that he would take some of my employes or use some of my past employes. He assured me of the fact that he had a man who had been in the business before who had worked for another company, and he was going to associate himself with him and that he had all the information and everything pertaining to the manufacture, and on those terms I permitted him to purchase a second-hand Chichshinni single-color machine; I also sold him a second-hand grinder and afterward rented him a two-color ribbon machine, and what was my surprise two weeks after to find that he had employed Mr. James Dugan, one of my past employes, who had information, formulas and other secrets of the Penn Carbon Manifold Company which he had agreed not

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Charles E. Archbald—Recalled—Direct.

to divulge to anyone, and these have been used by the Alliance Manufacturing Company to compete with me or the Penn Carbon Manifold Company in my business. I may say that the machine, the Chichshinni machine was never set up by me in the plant; it was a machine which I thought nothing of; it had no gear drives, it had nothing on it of
 10 any kind that would lead me to suppose that it was anything like a machine such as I had in my factory, and when he took it, from the photograph to-day I should say that he has made a number of alterations, and I will be glad to specify those alterations generally or separately.

Cross-examination by Mr. Hayes.

Q. You say you purchased two machines from
 20 Mr. Ross? A. I think the machines I purchased from Mr. Ross were two 110 ribbon saturating machines, two 113 reeling-off machines, and two 112 reeling-up machines.

Q. You purchased two of those, two of each? A. Two of each of those, yes.

Q. And the first time you didn't know what kind of machine it was you were getting? A. No.

Q. And you bought them, as you say, blind? A. Yes.

30 Q. The second machine was the same as the first one? A. Yes.

Q. But on the second machine you insisted on getting photographs and prints, etc., didn't you? A. No, I don't think so; I think he showed them to me voluntarily; he knew that I knew them.

Q. This exhibit No. C-8 is picture of the machine that you purchased from Ross? A. Yes, sir.

40 Q. And tell us when you obtained that, was it the first or second machine? A. One was 1903 and the other I think was 1906.

Charles E. Archbald—Recalled—Cross.

Q. When did you get those photographs? A. I think it was some time in 1906.

Q. Why did you want photograph of the machine when you already had the original machine?

A. I didn't ask him for it, he enclosed it with his letter.

Q. And you say you had agreement with Reimer that he was not to employ any of your old help or any of your present help? A. Yes. 10

Q. And you entered into a lease? A. I simply told him that I did not propose to quote him any prices whatever if he was going to employ any one that had formerly been in my employ or was at present in my employ.

Q. Did you have a written lease with him concerning two-color machine? A. Yes.

Q. It was under written agreement that he was not to employ, you entered into that lease? A. Yes. 20

Q. Was it made a condition of the lease that he was not to employ any of your old help? A. No, I took his word for it, there was not anything in writing.

Q. You wouldn't take his word for it? A. At the time I did, he was to have the machine, I rented it to him straight on a lease.

Q. Under written lease? A. Under written lease, yes. 30

Q. It never occurred to you that you could embody that in the agreement? A. No, I thought he was straight, that anything he said I could rely on.

Q. This exhibit No. C-15 is what machine? A. Multigraph machine.

Q. And this Exhibit C-16 is single-color machine? A. No, two-color machine.

Q. What is that (indicating)? A. This is single-color machine. 40

Charles E. Archbald—Recalled—Cross.

Q. Exhibit C-14 is the single-color machine? A. Yes.

Q. This is the reconstructed, referring to C-14, reconstructed Republic machine? A. No, that is single-color ribbon machine, rebuilt Ross machine.

Q. And what is that machine there that this plan here does not show?

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Mr. Rich: I object to the form of the question.

(Last photograph referred to marked 5 for identification.)

Q. Do you recognize that, identification 5? A. I never saw the machine with the width roll, but there is similarity between this and the Ross machine so far as having two rolls and tight and loose pulley, and the uprights that hold the rolls, I should say there was a similarity in that, but it seems to lack several things which are on the rebuilt machine inasmuch as it does not show any feeding.

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Q. (By Mr. Rich) When you speak of rebuilt machine identify it? A. Rebuilt Ross machine, C-14; there does not seem to be any ink tank here, and there does not seem to be any means of mounting the ribbon fabric.

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Q. Was there an ink pan on the Ross machine that you bought? A. Yes, but it wasn't anything like this ink pan.

Q. In what way would it differ? A. The ink pan on the Ross machine had a lather in it and fed the ribbon down through the lather and submerged it in the ink and brought it up and passed it between the roll; I don't see any heater on this machine, that is on the rebuilt machine; I don't see any arrangement for winding up on this machine.

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Q. Indicating the upper part of the paper marked

Charles E. Archbald—Recalled—Cross.

identification 5, I ask you if there is any difference in the construction shown in the upper half of that paper as in the machine photograph you have there?

A. I have just explained the differences just now.

Q. Is there any difference as to rolls, the pulley and the adjustment described? A. What adjustment?

Q. This adjustment here? A. No, I don't see 10
anything about the adjustment, to my knowledge, but there is adjustment here.

(Photograph marked 5 for identification offered in evidence and marked Exhibit D-5.)

A. (Continuing) I want to add that I don't see any method of fitting the ribbon on that machine at all.

Q. Now referring to the Exhibit C-15 and blueprint marked Exhibit D-10, I ask you if that machine as shown on Exhibit C-15 is the same as 20
that blueprint? A. No, I wouldn't think so, a good many things lacking there, I recognize this; I saw this in the Janeway & Carpenter place, it is anything from eight to ten feet high and I don't know how wide.

Q. Are the wheels, the rolls and gears and the other parts of this machine as portrayed on your Exhibit C-15 the same as in this Exhibit D-10? A. 30
No, I don't think so; these two things here I don't see.

Q. Do you know that they are unnecessary in this kind of machine, that they are only used in embossing machine? A. I don't know anything about this machine, I have never seen it in operation.

Q. See if you can indicate these two screws on the photograph, see if they are on that blueprint there; does that look like them there? A. Those 40
are only cap screws to hold the cap on.

Charles E. Archbald—Recalled—Cross.

Q. The roll, are those rolls there the same relative position as these rolls here? A. One roll on top of the other?

Q. Yes? A. It looks that way; I don't know whether these are the same size or not, I don't know what these are, or anything else.

10 Q. Regardless of the size, they are in the same position? A. One roll is on top of the other.

Q. Is there anything there that is equivalent to the roll on your machine? A. That roll on my machine?

Q. Is their roll so placed to be similar in position as to the upper right-hand roll on Exhibit D-10? A. I don't see your roll there at all.

Q. Can you point out any differences on those two machines without standing on size? A. Yes, I should say so.

20 Q. And eliminating the two iron pipes? A. What do they do with this machine? I don't know how they feed this, your Honor, I am not in a position to say.

Q. (By the Court) That is not carbon paper machine, is it, or rather ribbon machine?

Mr. Hayes: No, wall paper.

30 The Court: I am not going to permit a lot of machines used for other purposes to be put in this case.

I will direct that the testimony be written out at the expense of one-half to each side, then counsel may submit the argument on written briefs.

Opinion.*Filed Nov. 30, 1917.*

IN CHANCERY OF NEW JERSEY.

Mr. ALFRED S. MARCH for complainant.

Mr. EDMUND A. HAYES for defendant.

LANE, V. C.

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Since this case was tried upon the original bill an amended bill has been filed and a further hearing had.

It now appears that the complainant is engaged in the manufacture of typewriter ribbons, carbon papers and stencils. That this class of business is limited and restricted. That although there are certain essentials of every machine used in the various processes, yet most of the machines used are made to order and those used in each factory have their peculiar variations from what I shall call the standard forms. These variations or improvements are designed to accomplish a certain, and to the mind of the manufacturer, a better result. I am satisfied from the evidence that although the machines used by the complainant may be fundamental, the same as machines used by other concerns, yet there are certain improvements and adjustments invented by Archbald, the president and general manager of the company, not used by others which tend to produce a result which the company considers better than the result produced by other manufacturers.

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The defendants are mechanics not engaged regularly in the business of manufacturing machines used by the complainant concern and its competitors. Sometime prior to 1912 the defendant, James E. Tomney, was employed by the complainant.

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While in its employ he was put to work by Archbald upon the construction of a machine designed by Archbald for the purpose of impressing upon typewriter ribbons two colors by pressure. The method theretofore used was what is known as the interleaving method. The impressing of one color by pressure upon typewriter ribbons had been used
10 before. The difficulties to be overcome in the impression of two colors was the prevention of intermingling of the colors. Archbald worked out a design which overcame this and imparted it to Tomney, who did the mechanical work. One of the first machines was completed sometime in February, 1914. Between the years 1912 and 1914 experiments had been going on which resulted in the completion of the machine in February, 1914. That
20 machine was sold to Stafford of New York. The information with respect to the design was obtained by Tomney while in the employ of the complainant, and he was under an implied obligation, irrespective of contract, not to disclose it. The complainant discovered sometime in the year 1914 that the defendant Tomney and his son, either as a partner or as an employe, were offering to construct machines of similar type for sale. Whereupon a bill was
30 filed in this Court on December 14th, 1914, the object of which was to prevent the disclosure of the secret. This suit was settled by the making of a contract between Tomney and his son and the complainant dated December 22nd, 1914, under which Tomney and his son contracted to deliver for the complainant ten machines along the design of Archbald at a certain price. In this contract the following language is contained: "Party of the first part specially covenants, promises and agrees from the date of these presents not to make, manufacture

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or produce, themselves,—or allow or authorize, directly or indirectly, any one acting for them, to make, manufacture or produce any machines, or parts of machines to be used for the production of inked ribbons and accessories, including carbons, carbon papers, typewriter ribbons, stencil papers and other duplicating supplies, except the above mentioned ten two-color ribbon machines mentioned in clause I preceding, which are to be made by the parties of the first part personally.” There then follows a provision that help, however, may be employed but upon the approval of the complainant. Then a clause as follows: “Party of the first part (that is Tomney) especially covenants, promises and agrees that the above mentioned ten two-color typewriter ribbon machines shall be made and produced by the party of the first part, in secret, at premises # Water Street, New Brunswick, N. J., with doors locked; and that at all times no persons, except the parties of the first part and the representatives of the party of the first part, and such extra help as may be hired under approval of the party of the second part in writing, as above mentioned, shall be allowed in said premises where said machines are being constructed, * * * it being hereby specially stipulated that such property shall be kept secret at said premises * * * or at such other place as the party of the second part may agree upon in writing, until the delivery of the tenth machine.” And the following provision: “Parties of the first part further specially covenant, promise and agree to and with the party of the second part that said machines and methods of making the same, including all patterns, maps, measurements, accessories, formulas, processes and information and other memorandum in reference to any machines,

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patterns, maps, measurements, formulas and processes used in any way for the production of inked ribbons and accessories, including carbons, carbon papers, typewriter ribbons, stencil papers and duplicating supplies, shall be kept private and secret at all times; and under no circumstances shall the same be divulged to any person or persons, without
10 the consent of the party of the second part in writing, under seal, first had and obtained."

"The true object of this agreement being to forever settle the rights of the said party of the second part in reference to said machines, patterns, maps, measurements, formulas and processes, and to declare the same as the secret property of the said party of the second part, together with the special rights to use the same under secret methods and
20 processes." * * * That all machines made or produced by the party of the first part, or anyone claiming under them, * * * as well as all formulas, methods, processes, patterns, maps, measurements, information and accessories, connected with the said machines, or used in connection with the production of said commodities shall belong to, and be the property of the Penn Carbon Manifold Company."

The consideration for the making of this agree-
30 ment was the discontinuance of the Chancery suit brought by the complainant and the payment of certain sums of money by the complainant to the Tomneys. The contract was fully carried out on the part of the complainant. At the same time that the contract was entered into there was executed a bill of sale by the defendants to the complainant transferring to the complainant the goods and chattels described in the schedule annexed located at the place where the machines were built, including
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“all formulas, methods and processes of every nature whatever for the production of inked ribbons and accessories, including carbons, carbon papers, typewriter ribbons, stencil papers and other duplicating supplies.” “3. Also all other patterns, maps, accessories, measurements, memorandum and information for the construction of certain machinery used in connection with certain formulas, methods and processes for the production of inked ribbons and accessories, including carbons, carbon papers, typewriter ribbons, stencil papers and other duplicating supplies.”

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It is specifically admitted in the bill of sale that the property referred to in the schedule was owned and controlled by the complainant and had been for sometime past, and that the Tomneys had become possessed of the same with reference to the connection of Tomney as an employee of the complainant, and that the machine had been constructed from the information derived in such capacity. And again in the bill of sale it is said that the object was to forever settle the question of the ownership of the parties as well as certain improvements then pending. On the 2nd day of October, 1916, a supplemental agreement was entered into between James E. Tomney and the complainant, by the terms of which the agreement heretofore referred to was specifically recognized and certain conditions were provided with respect to delivery and payment. The ten machines were finally delivered and several of them, at least, were sold by the complainant to various concerns, some in Canada and Mexico and some in this country. The machine is of such a nature that any mechanic of ability upon once seeing it and its operation might reproduce it.

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Application was made for a patent by Archbald. The patent was granted, but a notice of interference was filed by Tomney. The matter has not yet been disposed of in the Patent Office. When the ten machines were delivered certain plans and drawings were turned over to the complainant. Within a couple of days thereafter, the defendants immediately produced plans and drawings of a precisely similar machine claiming, however, that there was an improvement. The improvement consisted of an apparatus which would keep the rolls a certain distance apart at all times, whereas the complainant's machine was so operated that the pressure of the rolls was governed by weights. The defendants thereupon offered to sell these machines to, among others, the Alliance Company, whereupon the original bill of complaint was filed to enforce the terms of the contract. There is no doubt that the defendants deliberately intended to violate their contract. That the alleged improvements which they made upon the machine were no improvements whatever. I can see nothing new in the apparatus designed to keep the rolls continually apart a certain distance. The design of the complainant permitted an automatic adjustment of the rolls so that the fabric in passing through, no matter what its thickness would be subject at all times to the same pressure, the object being to impress the ink upon the ribbon by the use of the rolls, and the thing to be accomplished, of course, was to have an even pressure. I believe, as Archbald states, that the alleged improvement of the defendant was merely going back to what he calls the thumb screw method.

After the final hearing on the original bill, I came to the conclusion that the bill should be dismissed, because under the case of Taylor Iron and

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Steel Co. v. Nichols, 73 N. J. E., 684, and Mandeville v. Harmon, 42 N. J. E., 185, it would be inequitable and against public policy to restrain the defendants from manufacturing any machines, or parts of machines, to use for the production of inked ribbons and accessories, and that to enjoin them from manufacturing this particular machine would be ineffective, because the so-called secret had been disclosed by the sale of the machines by the complainant to others. Thereupon an amended bill was filed, setting up that the defendant, James E. Tomney, did, while in the employ of the complainant, discover secrets with respect to other machines, formulas and processes. Testimony was taken upon the amended bill, and I find it to be a fact that the complainant had used in its business machines other than the two color machines, improved or supposedly improved, by it, and which were by it kept secret, as well as processes for the making of stencil paper. Tomney had the run of the shop, and the information which he acquired with respect to these machines was acquired through his employment with the complainant. In view of the fact that most of the machines used by the complainant were rebuilt, I think there were at least six or seven of them used in different work, and that various improvements were made upon them by the complainant, it was, of course, extremely difficult to enter into a contract, the terms of which would protect the complainant and yet permit Tomney to manufacture any machine, or parts of machines, to be used for the production of inked ribbons and accessories, including carbons, carbon papers, typewriter ribbons, stencil papers and duplicating supplies. And it was for this reason that the agreement was made in the broad language it

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was. No other language could be used which would properly protect the complainant. The restraint imposed upon the defendant is not more than reasonably required to protect the interests of the party in favor of whom it is given. The agreement differs from that considered in *Taylor Iron and Steel Co. v. Nichols*, 73 N. J. E., 784, in that it

10 does not require the defendant to either work for the complainant or remain idle. The building of these machines is not the only trade that the defendants know. The defendants are ordinary mechanics, and prior to the employment of the defendant, James E. Tomney, by the complainant, the building of typewriter ribbons and carbon machines was not a part of their business. It is not to-day, except in so far

20 as they can induce competitors of the complainant to order machines built by them along the lines of those used by the complainant. Nor is the case within *Mandeville v. Harmon*, 42 N. J. E., 185, where the injunction sought was to prevent a physician from exercising his profession. Tomneys are not sought to be enjoined from pursuing their trade, but merely from making certain machines which they never made prior to their connection with the complainant. The public are not injured

30 to an extent sufficient to render the contract void as in restraint of trade. I had thought that the fact that, so far as the two color typewriter machine is concerned, a patent had been applied for, and the fact that the machine had been sold to an outsider and might be copied by any mechanic was sufficient to prevent relief with respect to this particular machine. I have reconsidered my determination. The evidence is that a notice of interference has been filed against the patent and its

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validity has not yet been sustained. There is no evidence whatever that anyone else is attempting to manufacture a similar machine. Even if the patent should be held invalid, and therefore the so-called secret be disclosed, so that anyone might use it, yet it would seem to me until someone did use it, the Tomneys ought to be bound by their contract. If, at some subsequent time, it appears that the complainant has given up the manufacture of carbons and ribbons and the use of these machines, or that others are manufacturing them, then it seems that relief might be granted to the defendants through a bill of review or some other appropriate proceeding. The remedy at law is wholly inadequate. It is utterly impossible to estimate or even guess at the damage which may be caused to the complainant by the manufacture of these machines by the defendants. No one could hope to guess at the damage that might be occasioned to its business through the use by others of the machine.

Having come to the conclusion that the agreement referred to was based upon a valuable consideration executed upon the part of the complainant, and that it is not unreasonable either as against public policy preventing a person from earning his livelihood or because in restraint of trade, and that the remedy at law is inadequate, I will advise a decree in favor of the complainant.

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Amended Final Decree.*Filed April 1, 1918.*

IN CHANCERY OF NEW JERSEY.

ON BILL, &C.

10 This cause coming on to be heard at the last regular term of the Court of Chancery, held at the Chancery Chambers in the City of Newark, in the presence of Alfred S. March, of counsel with the complainant, and Edmund Hayes, of counsel with the defendants, and the pleadings and proofs having been read, and the arguments of the respective counsel having been heard and considered, and it appearing to the Court that the complainant is entitled to the relief sought and prayed for by it in its bill of complaint,

20 It is thereupon, on this 28th day of March, 1918, ORDERED, that the decree heretofore made on the 5th day of February, 1918, be amended to read as follows, to wit, it is thereupon by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED, and the said Chancellor, by virtue of the power and authority of this Court, doth hereby ORDER, ADJUDGE AND DECREE that the temporary restraining order heretofore made in this cause be and the same is hereby
30 made perpetual, and that the said defendants, James E. Tomney and Charles A. Tomney, and each of them, and their and each of their agents, attorneys, servants, employees, representatives and assigns, do absolutely desist and perpetually refrain, and they are hereby restrained and perpetually enjoined from disclosing in any manner whatsoever, to any firm or firms, person or persons, corporation or corporations whatsoever any information relative to, or concerning, or appertaining to the design, construction,
40 use and operation of certain machines, to wit:

Amended Final Decree.

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- (1) Two color ribbon machine;
 - (2) Eighteen inch carbon paper machine;
 - (3) Twenty-six inch carbon semi and full machine;
 - (4) Eighteen inch float feed method—carbon paper machine;
 - (5) Single color ribbon machine;
 - (6) Multigraph ribbon machine; 10
 - (7) Feed tension improvement;
 - (8) Hand and type-stencil machines;

all particularly described in the bill of complaint and amendment thereto filed herein, and any and all other machines, devices, improvements, appliances and accessories of every nature, kind and description whatever, used or designed for use in the inked ribbon, carbon and stencil industries, and any part, parts, patterns, designs, prints, photographs, drawings or descriptions thereof, and the various secret formulas and processes employed by said complainant in the manufacture of wax and hand stencil paper, inked typewriter ribbons, carbons, carbon paper and other duplicating supplies and accessories, all as particularly described in said bill of complaint and amendment thereto. 20

And it is further ORDERED, ADJUDGED AND DECREED, that the said defendants, and each of them and their, and each of their, agents, attorneys, servants, employees, representatives and assigns, absolutely desist and refrain, and they are hereby perpetually restrained and enjoined from designing, constructing or producing any machines, or parts of machines, as above mentioned or alluded to, or used, or designed for use for the production of inked ribbons and accessories, including carbons, carbon papers, typewriter ribbons, stencil papers, and other duplicating supplies, or disclosing to any person or per- 30

Amended Final Decree.

sons, firm or firms, corporation or corporations whatsoever, the means or methods of designing and constructing any of the said foregoing mentioned machines, or any part or parts, or any patterns, thereof, and from divulging to any person or persons, firm or firms, corporation or corporations whatsoever any information relative thereto or concerning the secret formulas and processes of the
10 said complainant for the manufacture of its products above enumerated, or any of them, and the secret method or methods of constructing, using and operating any of said machines, or any part or parts, or patterns thereof, and from selling, assigning, transferring or in anywise disposing of, directly or indirectly, to any person or persons, firm or firms, corporation or corporations whatsoever, any such machine or machines, as above enumerated,
20 mentioned or alluded to, or any parts, patterns, drawings, photographs, measurements, or designs thereof, or any information or data in anywise connected therewith, or relating thereto, or to any of the secret formulas and processes in use by the said complainant for the making of its duplicating products above mentioned, and as more particularly described in the bill of complaint and amendment thereto filed herein, and from carrying away, removing or destroying any such machine or machines, part or parts, patterns, photographs, designs and drawings thereof, or any of them, and
30 from using, or employing, or allowing any others to use or employ, any of the same, and from using, or in anywise employing, directly or indirectly, any of said secret machines, formulas, processes and methods for the production of inked ribbons, carbons, carbon papers, typewriter ribbons and stencil papers.

Amended Final Decree.

And it is further ORDERED, ADJUDGED AND DECREED, that the said defendants, James E. Tomney and Charles A. Tomney, be and they are hereby required to deliver to the said complainant any and all patterns, photographs, drawings or designs of any of said machines, together with any and all raw or finished part or parts of any of said machines, and all other tangible and informative writings, documents, designs, scrolls, and the like, relative to the design and construction of any of said machines, or the use and operation of the same, or to any of the secret methods, formulas and processes used and employed by said complainant in the construction of all of said machines and manufacture of its products, and that the said complainant shall, if it elects to require and accept delivery of all of the said foregoing mentioned articles, pay for the same at the time of delivery such price as shall be fixed therefor by this court, and for the purpose of ascertaining the value thereof a Special Master shall, upon proper application, be appointed to take proof and report accordingly;

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And it is further ORDERED, ADJUDGED AND DECREED that the said defendants pay to the complainant the costs of this suit to be taxed, and that execution issue therefor according to the practice of this Court.

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Respectfully advised,

MERRIT LANE,
V. C.

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**On Petition of Appeal from a Decree
of the Chancellor, Advised by
Vice-Chancellor Lane.**

Filed October 10, 1918.

*To the honorable Court of Errors and Appeals in
the last resort of all causes:*

10 The amended petition of the defendants James
E. Tomney and Charles A. Tomney, the appellants
in the above-stated cause, respectfully shows that
your petitioners find themselves aggrieved by a final
amended decree made in the Court of Chancery by
His Honor Edwin Robert Walker, Chancellor of
the State of New Jersey, bearing date the Twenty-
eighth day of March, in the year of Our Lord, One
Thousand Nine Hundred and Eighteen, and respect-
fully advised by Vice-Chancellor Lane, wherein the
20 Pen Carbon Manifold Company was the complain-
ant, and James E. Tomney and Charles A. Tomney
were the defendants, in this respect, to wit, that the
decree adjudges:

30 (a) "That the said defendants James E. Tomney
and Charles A. Tomney, and each of them, and their
and each of their agents, attorneys, servants, em-
ployees, representatives and assigns, do absolutely
desist and perpetually refrain, and they are hereby
restrained and perpetually enjoined from disclos-
ing in any manner whatsoever, to any firm or firms,
person or persons, corporation or corporations,
whatsoever, any information relative to, or con-
cerning, or appertaining to the design, construction,
use and operation of certain machines, to wit:

- (1) Two color ribbon machine;
- (2) Eighteen inch carbon paper machine;
- (3) Twenty six inch carbon semi and full
40 machine;

*On Petition of Appeal from a Decree of the
Chancellor.*

- (4) Eighteen inch float feed method-carbon paper machine;
- (5) Single color ribbon machine;
- (6) Multigraph ribbon machine;
- (7) Feed tension improvement;
- (8) Hand and type-stencil machines;

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all particularly described in the bill of complaint and amendment thereto filed herein, and any and all other machines, devices, improvements, appliances and accessories of every nature, kind and description whatever, used or designed for use in the inked ribbon, carbon and stencil industries; and any part, parts, patterns, designs, prints, photographs, drawings, or descriptions thereof, and the various secret formulas and processes employed by said complainant, in the manufacture of wax and hand stencil paper, inked typewriter ribbons, carbons, carbon paper and other duplicating supplies and accessories, all as particularly described in said bill of complaint and amendment thereto." Excepting therefrom so much thereof that restrains and enjoins the defendants from giving any information or divulging any of the secret formulas and processes of the said Company for the manufacture of its products more particularly described in the said bill of complaint.

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(b) "That the said defendants, and each of them and their, and each of their, agents, attorneys, servants, employees, representatives and assigns absolutely desist and refrain, and they are hereby perpetually restrained and enjoined from designing, constructing or producing any machines, or parts of machines, as above mentioned, or alluded to, or used, or designed for use for the production of inked

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*On Petition of Appeal from a Decree of the
Chancellor.*

ribbons and accessories, including carbons, carbon papers, typewriter ribbons, stencil papers, and other duplicating supplies, or disclosing to any person or persons, firm or firms, corporation or corporations whatsoever, the means or methods of designing and constructing any of the said foregoing mentioned machines, or any part or parts, or any patterns, thereof; and from divulging to any person or persons, firm or firms, corporation or corporations whatsoever, any information relative thereto, or concerning the secret formulas and processes of the said complainant for the manufacture of its products above enumerated, or any of them, and the secret method or methods of constructing, using and operating any of said machines, or any part or parts, or patterns thereof." Excepting therefrom so much thereof that restrains and enjoins the defendants from giving any information or divulging any of the secret formulas and processes of the said Company for the manufacture of its products more particularly described in the said Bill of Complaint. "And from selling, assigning, transferring, or in anywise disposing of, directly or indirectly, to any person or persons, firm or firms, corporation or corporations whatsoever, any such machine or machines, as above enumerated, mentioned or alluded to, or any parts, patterns, drawings, photographs, measurements, or designs thereof, or any information or data in anywise connected therewith, or relating thereto, or to any of the secret formulas and processes in use by the said complainant for the making of its duplicating products above mentioned, and as more particularly described in the bill of complaint and amendment thereto filed herein, and from carrying away, removing, or destroy-

*On Petition of Appeal from a Decree of the
Chancellor.*

ing, any such machine or machines, part or parts, patterns, photographs, designs and drawings thereof, or any of them, and from using, or employing, or allowing any others to use or employ, any of the same; and from using, or in anywise employing, directly or indirectly, any of said secret machines, formulas, processes and methods for the production of inked ribbons, carbons, carbon papers, typewriter ribbons and stencil papers." Excepting therefrom so much thereof that restrains and enjoins the defendants from giving any information or divulging any of the secret formulas and processes of the said Company for the manufacture of its products more particularly described in the said Bill of Complaint. 10

(c) "That the said defendants James E. Tomney and Charles A. Tomney be and they are hereby required to deliver to the said complainant any and all patterns, photographs, drawings or designs of any of said machines, together with any and all raw or finished part or parts of any of said machines, and all other tangible and informative writings, documents, designs, scrolls and the like relative to the design and construction of any of said machines, or the use and operation of the same, or to any of the secret methods, formulas and processes used and employed by said complainant in the construction of all of said machines and manufacture of its products, and that the said complainant shall, if it elects, to require and accept delivery of all of the said foregoing mentioned articles, pay for the same at the time of delivery, such price as shall be fixed therefor by this court and for the purpose of ascertaining the value thereof, a Special 20 30 40

*On Petition of Appeal from a Decree of the
Chancellor.*

Master shall upon proper application, be appointed to take proof and report accordingly." Excepting therefrom so much thereof that directs the defendants to return any and all machines, parts, patterns, designs and drawings, the property of the Complainant.

10 And the petitioners hereby appeal from the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in the following respect :

1. That mechanical ideas are not secret processes or formulas and the right to prohibit their use by others can only be enjoined by an Equity Court after application has been made for a patent, or letters patent obtained, and then only in the Federal
20 Court, where matters of this nature are cognizable.

2. That secret processes and formulas are only protected by a State Equity Court when they are of such nature that no other means of protecting them are provided for by law, but this has no relation to mechanical inventions where a means is afforded through the patent office.

3. That the Court of Chancery cannot restrain a
30 violation of an agreement not to divulge any secrets in connection with mechanical inventions, as a remedy is afforded the inventor to protect same through the Patent Office.

4. That Letters Patent on the two color ribbon machine having been granted Mr. Archibald, and it not having been shown that the complainant acquired any rights to said patent from said Mr. Archibald, no one but Mr. Archibald was entitled to
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*On Petition of Appeal from a Decree of the
Chancellor.*

secure injunctive relief of restraining the manufacture or use of said invention.

5. That Letters Patent having been granted to Mr. Archibald upon the two color ribbon machine, the Court of Chancery of the State of New Jersey had no jurisdiction to entertain any injunctive relief for a violation or infringement of the use or manufacture of said invention. 10

6. That Mr. Archibald, by applying for and receiving letters patent upon the two color ribbon machine, had published to the world his invention, and it was, therefore, manifestly an error for the Court of Chancery to restrain the defendants from disclosing any information in respect thereto, as it was then a public record. 20

7. That it was not within the jurisdiction of the Court of Chancery to determine that the defendants' improvement on the Archibald patent was no improvement whatever.

8. That the final decree is drastic and contrary to law, inasmuch as the injunction should only have precluded the defendants from engaging or manufacturing in such of the eight enumerated mechanical devices as were used, possessed or manufactured, or has ever been used, possessed or manufactured by the complainant, and the restraint beyond this limitation was manifestly unlawful. 30

9. That the contract between the complainant and the defendants, the violation of which was restrained in the terms of the final decree, and the decree itself is unlawful, on the ground that it is in restraint of trade. 40

*On Petition of Appeal from a Decree of the
Chancellor.*

10. That there was no proof that there was any attempted violation by the defendants of any of the eight enumerated mechanical devices, except one, viz., the two color ribbon machine upon which letters patent had been granted to Mr. Archibald, and it was unlawful and contrary to equity for
10 the Court of Chancery to restrain the defendants in respect to the other seven mechanical items.

11. Conceding that, with the exception of the machines for the manufacture of typewriting ribbons, the complainant had trade secrets with respect to the other seven enumerated items, the record shows that there was no violation of the contract, or any attempt to manufacture or disclose any of these seven items, and it was error for the Court to an-
20 ticipate their disclosure and retain jurisdiction of the case by reason of this anticipatory injury to complainant's alleged trade secrets.

12. That the evidence is clear and conclusive that all these mechanical ideas were claimed by the complainant to have been conceived by Mr. Archibald, and no right to their use, or otherwise, by the complainant were established or proven that they
30 were in actual use in the factory of the complainant, so that the complainant has not established any property rights in said alleged mechanical ideas or inventions.

13. That it was unlawful for the Courts to decree the transfer by the defendants to the complainant of all such personal property that they had in their possession on the ground that this mandatory direction was not predicated upon the violation of any covenant wherein the defendants agreed to de-
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*On Petition of Appeal from a Decree of the
Chancellor.*

liver such property, and the complainant had established no right, title or interest thereto.

14. That the general terms of the injunction order are so broad that it precludes and prohibits the defendants, or either of them, from ever applying for any letters patent upon any basic claim or improvement conceived by them, upon any of the eight enumerated devices, and to this extent the said decree is contrary to law and in restraint of trade, and denies to the defendants the enjoyment of personal liberties. 10

All of which the said final decree should have so decreed.

Your petitioners further pray that the said parts of the decree be reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as this Court shall deem meet. 20

EDMUND A. HAYES,
AUGUST C. STREITWOLF,
Solicitors for and of Counsel with
Appellants, James E. Tomney and
Charles A. Tomney.

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Exhibit C-1.

Exhibit C-1 is the record in a prior suit between the parties. The complaint alleged that the Pen Carbon Manifold Company was engaged in the manufacture of secret machinery for the production of its inked ribbons and accessories, and that James Tomney had been employed by the company and had inspected the secret machines and had imparted the information to Charles A. Tomney, and that the two Tomneys were engaged in manufacturing machines similar to the ones made by the Pen Carbon Manifold Company. The answer of the Tomneys denied that the Pen Carbon Manifold Company was possessed of any secret machinery, but admitted that they were engaged in making machinery to be used for the manufacture of inked ribbons and accessories. This suit was discontinued at the time the agreement and bill of sale, marked Exhibit C-2, were entered into, and the making of the bill of sale and the execution of the agreement by said James E. Tomney and Charles A. Tomney constituted the consideration moving to said complaint for the discontinuance of the action.

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Exhibit C-3.6

MANUFACTURERS OF TYPEWRITER RIBBONS

ALLIANCE MFG. CO., INC.

85 Nassau Street
New York

Phone 2388 Cortlandt

January 29, 1917.

10

Peerless Carbon & Ribbon Company,
Toronto, Canada.

Att. of Mr. N. C. Forbes.

Gentlemen:—

Replying to your letter of January 22nd, would say that we are very sorry to inform you that we cannot quote you on a two color machine at this time.

20

Regretting very much our inability to comply with your request as to photos, etc., we remain,

Yours very respectfully,

ALLIANCE MFG. CO., INC.,

W. T. REIMERS,

President.

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WTR/C

Exhibit C-4.

STATE OF NEW JERSEY

DEPARTMENT OF STATE.

10 I, S. D. DICKINSON, Secretary of State of the State of New Jersey, do hereby certify that the Penn Carbon Manifold Company, a Corporation organized under the laws of the State of New York, has complied with all the requirements of an act entitled "An Act concerning Corporations (Revision of 1896)," and that the business of said corporation to be carried on within the State of New Jersey is such as may be lawfully carried on by corporations incorporated under the laws of this State for similar business.

20 IN TESTIMONY WHEREOF, I have here-
(Seal) unto set my hand and affixed my Official Seal at Trenton, this First day of March, A. D. 1907.

E. D. DICKINSON,
Secretary of State.

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Exhibit C-3.7

MANUFACTURERS OF TYPEWRITER RIBBONS

ALLIANCE MFG. CO., INC.

85 Nassau Street

New York

Phone 2388 Cortlandt

November 6, 1916.

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Peerless Carbon & Ribbon Co.,
 Adelaide Street,
 Toronto, Canada.

Gentlemen:—

We are sending you herewith a sample of typewriter ribbon cloth, inked with one of the latest improved machines for making typewriter ribbons.

You have probably had samples from a competitor located in New Brunswick who is asking in the neighborhood of \$550.00 or \$600.00 for his machine. The machine that we are putting out is a very much more improved machine, and has all the latest devices, such as, anti-crushing, perfect setting, doing away with iron cores, and is positively an up-to-date ribbon maker. On this machine we can quote you net price of \$400.00, F. O. B., New York City.

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If you are interested in this machine, would thank you to advise by return.

Hoping to be favored with an early reply, we remain,

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Yours very respectfully,

ALLIANCE MFG. CO., INC.,

W. T. REIMERS,

President.

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ADDENDA

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October 20, 1916.

Alliance Mfg. Co.,
85 Nassau St.,
New York City.

Gentlemen:-

Your letter of October 19th to J. E. Tomney, of this City, has been handed me with a request that I reply thereto.

Mr. Tomney is prepared to enter into an agreement to manufacture and sell to you twelve two-color typewriter ribbon machines, at a price of \$350. each., f. o. b. New Brunswick. The agreement will be ready for signature on Tuesday next, at 10:30 o'clock.

I will provide in the agreement that Tomney will deliver these machines to you one each calendar month, commencing January 5, 1917; that he will give you the exclusive right of the sale of these machines throughout the United States and territories; that he will not manufacture any similar machines for sale in the United States or territories; that you will pay on the signing of the agreement 10% of the contract price; that on the 5th day of each calendar month, you will forward to Tomney, upon notification that machine is ready for delivery, 45% of the contract price of each machine; that on receipt of the machine and upon examination, you will, within 3 days, forward balance of consideration money for each machine; that upon the expiration of the contract and the delivery of the 12 machines, to you, you are to have the first option of again obtaining the exclusive sale of these machines at a price to be agreed upon.

The President and Secretary of your Company will call at my office on Tuesday next, at 10:30 o'clock, with the seal of your corporation, when Mr. Tomney will be prepared to enter into this contract with you.

Yours very truly,

Ed. A. Hayes,

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ANSWER TO AMENDED PETITION OF APPEAL

The answer of the above-named respondent to the amended petition of appeal of the above-named appellant:

This respondent, not acknowledging all, or any, of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a final amended decree was, on the twenty eighth day of March, last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said amended petition, as is therein stated; but as to the substance and terms thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said final amended decree is agreeable to equity, and it prays that the same be affirmed with costs to be adjudged to this respondent.

Alfred S. March
Solicitor for and of counsel
with Respondent.

ANSWER TO AMENDED PETITION OF APPEAL

The answer of the above-named respondent to the amended
petition of appeal of the above-named appellant:
This respondent, not acknowledging all, or any, of the
allegations which in the said petition of appeal are contained,
but true, for answer thereto, nevertheless, says and admits,
that a final amended decree was, on the twenty eighth day of
March, last past, made and entered in the Court of Chancery,
in the cause for that purpose mentioned in the said amended
petition, as is therein stated; but as to the substance and
tenor thereof, this respondent prays to refer thereto when the
same shall be produced. And this respondent is advised and
believes that the said final amended decree is agreeable to
equity, and it prays that the same be affirmed with costs to be
judged to this respondent.

Alfred S. March
Solicitor for and of counsel
with Respondent.

MR. GLUECKFIELD: I want to ask your honor, in view of the fact that the testimony here, or rather since the filing of the amended bill was ordered by your honor to be sealed, that your honor make a ruling to exclude every one from the court except counsel and parties, for this reason, Mr. Archbald, of the complainant company, is about to give testimony which is vital to the complainant company's business, as vital as anything can be. There are persons here in court, not only persons against whom action is going to be taken in time, but even a competitor, one competitor of the complainant company; they may hear testimony which may be prejudicial to the company's interest, and for that reason I ask that all witnesses be excluded from the room and called in when wanted.

THE COURT: Any objection?

MR. HAYES: No, sir.

THE COURT: All parties will be excluded from the court room except the parties and their counsel.

MR. ALBERT: I wish to ask your honor, in view

of the fact that the testimony here, or rather since the thing

of the amended bill was ordered by your honor to be

that your honor made a ruling to receive evidence from the

court except to read and write, for this reason, in fact,

of the complaint copy, is about to give testimony which

is vital to the complaint copy's business, as vital as

anything can be. There are persons here in court, not only

persons against whom a bill is going to be taken in time, but

even a competitor, the competitor of the complainant company,

and they hear testimony which may be prejudicial to the com-

pany's interest, and for that reason I ask that all witnesses

be excluded from the room and called in to the

THE COURT: Any objection?

MR. ALBERT: No, sir.

THE COURT: All parties will be excluded from the court room

except the parties and their counsel.

New Jersey Court of Errors and Appeals

Between
PEN CARBON MANIFOLD COMPANY,
Complainant-Appellee,
and
JAMES E. TOMNEY and CHARLES
A. TOMNEY,
Defendants-Appellants.

On Appeal from a
Decree of the
Chancellor.

BRIEF OF APPELLEE

The Facts

In the petition of appeal filed herein (p. 220, fol. 10) the appellants set forth fourteen grounds in respect to which they contend that the decree of the lower court is erroneous, but in the brief only two points are argued. The writers assume that the appellants intended thereby either to abandon the other twelve points, or else that they have endeavored to condense them into the two points argued.

The attention of the Court is respectfully directed at the outset to the fact that the present appeal is not from the entire decree of the Court below, for, by the notice of appeal (p. 1, fol. 30) so much of the decree as restrains and enjoins the appellants "from giving any information or divulging any of the secret formulas and processes of the said complainant, for the manufacture of

its products, more particularly described in the bill of complaint," is accepted. The bill of complaint specifically mentions the following "secret processes and machinery," which it is using "secretly and exclusively" (p. 87, fol. 20) :

1. Eighteen-inch carbon paper machine.
2. Twenty-six inch carbon semi and full machine.
3. Feed tension improvement.
4. Eighteen inch float-feed method carbon paper machine.
5. Wax stencil paper for typewriter use.
6. Secret method of producing hand stencil paper.
7. Single color ribbon machine.
8. Multigraph ribbon machine.

The appellee is, and for a great many years has been, engaged in the business of manufacturing typewriter ribbons, carbon papers, stencils, inks and other duplicating and typewriter supplies and the construction of special and secret machinery for the production of these commodities. During the early part of the year 1912, the appellant, James E. Tomney, entered into the employ of the appellee as a mechanic, or general machinist. (p. 32, fol. 10; p. 52, fol. 30; p. 170, fol. 30.)

The various machines used by the complainant are constructed in its plant at New Brunswick and are of exclusive design and construction (p. 30, fol. 35; p. 31, fol. 10; p. 94, fol. 30; p. 118, fol. 35; p. 122, fol. 40), by reason of which it is able to produce a superior and more marketable quality of merchandise. (p. 31, fol. 10.)

It is the custom of the ribbon and carbon manufacturing industry for each manufacturer to design and perfect his own special, exclusive machines, whose nature and operation is at all times kept most scrupulously secret (p. 118, fol. 30; p. 119, fol. 1; p. 126, fol. 20). The testimony last referred to is proof of the fact that this Company likewise maintains specially designed and secretly operated machinery, and that it zealously guards all information in relation thereto.

These various machines were conceived by Charles E. Archbald, the Company's president and general manager, and constructed under his direct supervision and instruction. (See folios last above mentioned). Mr. Tomney was apprised by Archbald of the secrecy surrounding the construction and operation of the various machines, and bound him (Tomney) to secrecy regarding any information that he would thereafter acquire while in the employ of the Company (p. 32, fol. 10).

Tomney continued in the employ of the Company for some time, and then left, presumably with the intention of re-engaging in the general machinery business. Shortly thereafter, however, he and his son, Charles A. Tomney, the other defendant-appellant herein, began the construction of some of the machines which are used in the Company's factory, and whose construction and operation James E. Tomney learned from Archbald in the manner above set forth. The Company thereupon instituted in the Court of Chancery a proceeding similar in every respect to the present proceeding (Ex. C-I, p. 224).

The first action proceeded only to bill and answer. Edmund A. Hayes, the attorney for the Tomneys in the present litigation, represented the Tomneys and filed the answer, but subsequently the defendants, through their said attorney, Edmund A. Hayes, seeking to be relieved therefrom, besought the complainant to settle the differences existing between them, the defendants having the benefit of his (Hayes) counsel and advice in the drawing and execution of the bill of sale and agreement. (p. 173, fol. 10.)

As a result of the negotiations which ensued both Tomneys executed a bill of sale to the Company, wherein and whereby all question relative to the ownership of all corporeal and incorporeal items of property mentioned in the schedule annexed to the bill of sale (pp. 13-16, inc.) were settled and determined between the parties, the true object and intent of the bill of sale being set forth by the parties in the following language (p. 15, fol. 37):

"And the object of this bill of sale is to forever settle the question of ownership between the parties hereto to said commodities and rights incidental thereto; as well as certain litigation now pending between the parties in the Court of Chancery, in which the said party of the second part is mentioned as complainant, and the said party of the first part, as defendant, therein."

In addition to, and concurrently with, the execution of the bill of sale, the parties entered into written agreement (Schedule B, p. 17), whereby the Tomneys agreed to renounce any right they had, or might have, in the machines, designs, formulas, etc., involved in this proceeding. As declarative of the minds of the parties at the time of the execution of the agreement and bill of sale, the following clause, quoted from the former, was embodied therein (p. 19, fol. 30);

"The true object of this agreement is to forever settle the rights of the said party of the second part (the complainant Company) in reference to said machines, patterns, maps, measurements, formulas and processes, and to declare the same as the secret property of the said party of the second part, together with the special rights to use the same under secret methods and processes."

Archbald received no greater rights and privileges under the settlement that he would have under a decree of the Court of Chancery had he pursued his suit and refused to settle, that is, provided his legal position was correct, and there can be no doubt as to his being entitled to protection for his original ideas and secret processes. There is no dispute that the secret processes belonged to Archbald, and hence, the papers drawn at the time of the settlement of this litigation merely more *clearly defined these already existing vested rights*. In any event, the papers of settlement can be considered surplusage, except the contract for the construction of the additional machines, which had no particular bearing on the set-

tlement, as this could have been drawn at any time. The drafter of the bill of sale and agreement had in mind that Tomney should not be recognized as the owner of any of Archbald's secret processes, and the special qualifying clauses were inserted in these papers for that purpose. *If these secret rights and processes are Archbald's original ideas and belong to him, he was, and is, equitably entitled to legal protection, independent of any agreement.*

The consideration moving to the Tomneys for the execution and delivery of the bill of sale and agreement was the two-fold agreement on the part of the complainant to discontinue the action then pending and to permit the Tomneys to construct for it ten typewriter ribbon machines at a stipulated price (p. 17, fol. 10).

The covenants embodied in the schedule to the bill of sale and those incorporated into the agreement form the basis of the present suit. The Tomneys clearly recognized the existence of the Company's property rights in the various machines, patterns, formulas and processes and intended by the delivery of the written instruments permanently and unequivocally to abandon any possible, or alleged claim they might have therein.

During Tomney's employment at the Company's plant, he had access to, and was familiar with, all of the machinery, designs and processes used by the Company (p. 95, fol. 10; p. 105, fol. 10; p. 171, fol. 10). By the admission embodied in the schedule to the bill of sale (p. 15, fol. 25), and that contained in the clause of the agreement above quoted, Tomney is bound to the declaration that he obtained his information regarding the design and construction of the various machines from Archbald.

Some short time after the ten machines were constructed, the Tomneys endeavored, contrary to their written agreements, to construct similar machines for persons other than the complainant (see Ex. C-5, p. 81; this exhibit—a letter from Mr. Hayes, attorney for the Tomneys, addressed to the Alliance Manufacturing Co.,

a competitor of the complainant, offering to manufacture and deliver certain machines like the complainant's at a certain price, was erroneously, or inadvertently omitted by appellants from the printed record, but a typewritten copy is to be annexed thereto). The complainant thereupon filed a second bill of complaint, seeking to restrain the defendants from carrying out their expressed intention and to enjoin them from further breach of the subsisting agreements. This suit culminated in a decree, advised by Vice-Chancellor Lane, granting the complainant the relief prayed for and holding the defendants to their contract.

The main contention of the appellants appears to be that the Court has restrained them from designing and constructing entire machines, whereas, they should have been enjoined only from in anywise imparting information relative to those improvements on certain basic fundamental machines which Archbald conceived and which Tomney executed under Archbald's instruction and supervision. The fact is, however, that, by the re-construction and improvements of the various basic machines by the Archbald ideas, the former have become essentially transformed into new creations. The operative principles in respect to the Company's present machines are as different from the basic machines as the modern "Leviathan is different from the basic Fulton's 'Clermont' or Watts' even more basic tea kettle. Each improvement, however small and insignificant, so alters the design, construction and operation of the machine and so transforms the latter into a different machine, that it cannot be considered in a divisible light, but must be taken in relation to the whole machine and its transformative effect thereon. (p. 118, fol. 30; p. 126, fol. 20; p. 119, fol. 1).

The appellants contend that "the machines are standardized and their basic principle is common property the world over;" and that, therefore, anyone can make them "so far as they do not infringe on a patented improvement to the basic principle." The fact is, however,

that the machines with which Tomney became acquainted at the appellant's plant are not matters of common property the world over, and are not known to persons other than those directly connected with the operation of the plant, nor is the Company obliged to make its industrial secrets public through resort to the patent office. It has a perfect right to retain its secrets for itself and, through its ability thereby, to produce a better grade of merchandise (p. 31, fol. 10) to compete favorably in the open market and to profit accordingly. It may be true that the nucleus of any one of the appellee's machines involves a basic or fundamental proposition, but so do also all new or improved machines. If the mere employment of a basic principle renders a minutely improved machine "common property the world over," then no inventor would be secure in his invention, nor indeed, would there be further use of patent laws. Every machine is based upon some fundamental proposition, whether it be of steam, electricity, or other motive power. The gasolene engine, for instance, is a basic fundamental proposition. It is inconceivable that every possible machine which can be devised, constructed and operated with the employment of that basic principle will be "common property the world over." In short, while certain basic principles are utilized in the appellee's machines, as in all machines the world over, they are so different from the original construction and operation as to be in nowise similar to the latter.

The appellants accept a decree of injunction to the extent of the machines and improvements which "are claimed and proven to be the distinctive, or original ideas or secret processes of the complainant, or Charles E. Archbald." (See paragraph 3, p. 3 of the appellants' brief.) It is submitted that, the lower Court having found as a fact upon evidence legally admitted, that the various machines enumerated in the decree (p. 213, fol. 10) are, in their present form, just such machines and improvements as the appellants contemplate in the fore-

going reference, the decree and injunction should be affirmed.

The points raised by the appellants are two-fold, viz:

1. "The restraint imposed upon the defendants is more than was reasonably required to protect the interests of the complainant;" and
2. "The negative covenant in the contract, without limiting it to the property right of the complainants in the machines, is in restraint of trade."

As to Point I

The appellants commence their argument with the assertion that the defendants did not attempt to manufacture any other but the two-color ribbon machine, which has been patented since the institution of this suit. The evidence is, however, clear that the defendants not only attempted to manufacture the two-color ribbon machine (p. 57, fol. 20), but all "typewriter ribbon machines" (p. 27, paragraph marked 12; p. 29, fol. 27), which include, inter alia, the single color ribbon machine. It is not necessary, therefore, to show an actual attempt on the part of the appellants to manufacture or divulge information concerning every machine used by the appellee, but it is sufficient to show that an attempt has been made to construct and divulge information in relation to one or more classes of those machines.

In support of this point, the appellants cite as authorities the ruling cases of *Mandeville vs. Harman*, 42 N. J. Eq., 185; *Steinberg vs. O'Brien*, 48 N. J. Eq., 370; *Taylor Iron & Steel Co. vs. Nichols*, 73 N. J. Eq., p. 685; *Brewer vs. Marshal*, 19 N. J. Eq. pp. 537-547; but none of these cases is strictly applicable to the facts in the case at bar. In all these cases the injunction sought would tend to prevent the defendants from earning a livelihood and would result in the public's deprivation of their particular skill and ability. In the *Steinberg* case the defendant would have been precluded from earning a

livelihood in the only calling at which he was adept. Likewise, in the important Taylor-Nichols case, the defendant, having made steel manufacturing his life's study and occupation, would have been precluded from in anywise benefiting thereby and would have prevented the public's profiting by his knowledge; so in the Harman case the complainant sought to prevent the defendant's practicing as a physician.

In the case at bar no such injury, personal or public, would, or could, possibly result. The defendants are general machinists (p. 170, fol. 30; p. 52, fol. 30) by occupation, and not ribbon and carbon machine makers. The making of the last mentioned machines is merely incidental to their general knowledge and ability. In fact, the defendants are now engaged, or were between the entry of the restraining order and final decree, engaged in some kind of mechanical or machine work at another plant in the City of New Brunswick. (p. 170, fol. 35.)

The Vice-Chancellor distinguished the present case from the cases cited in the following language:

"The restraint imposed upon the defendants is not more than reasonably required to protect the interests of the party in favor of whom it is given. The agreement differs from that considered in Taylor Iron and Steel Co. vs. Nichols, 73 N. J. Eq. 784, in that it does not require the defendant to either work for the complainant, or remain idle. The building of these machines is not the only trade that the defendants know. The defendants are ordinary mechanics, and prior to the employment of the defendant, James E. Tomney by the complainant, the building of the typewriter ribbon and carbon machines was not a part of their business. It is not to-day, except insofar as they can induce competitors of the complainant to order machines built by them along the lines of those used by the complainant."

As the Court observes (p. 210, fol. 25) the complainant does not seek to enjoin the Tomneys from pursuing their

trade of general mechanics or machinists, but merely from making certain machines which they never made prior to their connection with the complainant and whose design, structure and operation they learned at first hand from the complainant.

It is submitted that under these circumstances, the case sub judice is not governable by the decisions cited by appellants. Concededly, such restraint of trade or the right to labor as is partial and reasonable is legal (*Sternberg vs. O'Brien*, supra), and, since the test to be applied in determining whether restraint in any given case is reasonable is to consider whether fair protection is given to the party who seeks it, without interfering with the interest of the public, the decree of the lower Court is properly within the rule.

The appellants cite also the case of *Albright vs. Teas*, 37 N. J. Eq., p. 171, as authority for their allegation that "non-patentable improvements * * are not the subject of an exclusive right or property, but are common property open to all the world," etc.

The fact is, however, that *Albright vs. Teas* is not an authority for any such proposition. The decision in that case, to quote from the syllabus, is that "a non-patentable invention, or improvement, is not the subject of an exclusive right or property, but is common property, open to all the world;" but it does not attempt to distinguish between patentable and non-patentable inventions or improvements. There was admittedly no question relative to the non-patentability of the inventions or improvements involved in that suit, the court having to deal with improvements which were concededly non-patentable. Thus the case at bar is distinguished from the *Albright* case in that there is here no testimony or proof of any nature whatsoever to the effect that the inventions and improvements claimed by the appellee to be its own are not patentable. Certainly, the mere reluctance on the part of the complainant to make its secret information public by securing a patent which will serve it no purpose, cannot

be tortured into a legal conclusion that the improvements are therefore, non-patentable.

It may well be that all others would have the right to construct and operate machines similar to the complainant's if they had knowledge thereof, but the fact remains that only these defendants have that knowledge which they acquired during the existence of a fiduciary relationship and under an agreement not to divulge.

Counsel for appellants quote from the decision in the Taylor Iron & Steel case, *supra*, at p. 8 of the brief and endeavor to show that the reasoning therein applies with equal force to the case at bar. The differentiation, however, is patent. As observed above in the Taylor case, the restraint, if enforced, would preclude the defendant in anywise utilizing his knowledge of the steel industry, both as regards his own knowledge before his connection with the Taylor Company, and the secret knowledge he acquired while in the latter's employ. In the case at bar, however, the defendants would not, if the decree is affirmed, be in anywise restrained from plying their trade as general machinists—they would be enjoined only from making and operating the kinds of machinery whose design, construction and operation they learned at the Company's plant under an agreement not to divulge. This initial agreement was more solemnly and formally ratified and confirmed by the defendants' execution of the contract forming the basis of this suit (p. 17, schedule B). The defendants have not claimed, nor is there any proof that they were at any time possessed of any of the information concerning the machines and processes involved in this suit, until communicated to them by Archbald for the complainant Company. The agreement, therefore, has a two-fold significance—first, as a ratification of a pre-existing agreement, and second, an agreement of limited hiring. The bill of sale in question (p. 13, schedule A) is not, because of its name, to be considered in the nature of a grant or sale of any tangible or intangible property. In the light of circumstances and

the clauses specially embodied therein, it must be considered in the nature of an anticipatory quit-claim deed for any possible rights which might at any future time, however, remote, be set up by the defendants in relation to the machinery in question.

As to Point II

It is conceded that, as the court said in *Brewer vs. Marshal* and in *Sternberg vs. O'Brien*, *supra*, any self-imposed contractual restraint will not be enforced unless confined to reasonable limits, it is submitted that the case at bar falls exactly in the latter classification.

In the *Trenton Potteries* case and in the abundant authorities cited therein it is held that no general rule as to reasonableness of restraint can be laid down, but that each case "will be considered and determined on the facts attendant upon the particular transaction."

See also 24 L. R. A. (N. S.) 930.

It is submitted that it was unnecessary to express either time or space in the present agreement, because the latter does not compare with the usual agreement as to the nature of the restraint. In this case, as distinguished from all of the cases cited by appellants, the defendants were not surrendering any right which they had, but on the contrary, were merely agreeing to do that which was already their common law duty to do, to wit, preserve and keep intact the individual exclusive industrial secrets of their employer. Sound public policy demands the enforcement of that duty.

But even if the facts were not as stated in the preceding paragraph, *Carll vs. Snyder*, 26 Atl. Rep. 977 (following the decision in this Court in *Richardson vs. Peacock*, 26 N. J. Eq., 40, 28 N. J. Eq., 151, and 33 N. J. Eq., 597), is authority for the proposition that in a proper case the mere failure to specify any limit of time does not render an otherwise valid agreement invalid. And since the defendants are not precluded by the enforcement of

the agreement to either work for the complainant, remain idle, or abandon their occupation for another form of employment, the failure to limit the territory for the operation of the agreement is of no consequence.

Thus it is submitted that the case at bar falls easily within the rule expressed in all of the cases cited, to the effect that a contract in restraint of trade will be enforced where the restraint is no more extensive than is reasonably required to protect the interests of the party in favor of whom it is given, and not so large as to interfere with the interests of the public.

Brewer vs. Marshall, *Supra*.

Sternberg vs. O'Brien, *Supra*.

In considering the case at bar, the circumstances must be contrasted with practically all of the cases cited by appellants. The latter represent the usual line of cases, where one has sold his business and good will to another, or where one, having some special and exclusive knowledge or skill, agrees for a definite, or indefinite, time to apply that knowledge and skill only in the interest of his employer. As hereinbefore observed, the defendants were hired by the complainant as general machinists, and not as ribbon and carbon machine specialists, so that whatever knowledge they acquired during the employment is the undisputable property of the complainant Company.

In conclusion, it is submitted that because of Archbald's connection with the complainant as president and general manager and owner, his acts and his knowledge regarding the construction and operation of the machines and processes in question are the acts and knowledge of the complainant. It is a matter of fundamental common law that inventions and improvements conceived and executed by an employee in the course of his employment are the property of his employer.

The decree of the Chancellor should be affirmed in its entirety, with costs, both as to that part thereof to which

the notice of appeal is directed, as well as that part thereof which it expressly excepts from the appeal, for the reasons stated in the opinion of Lane, V. C.

Respectfully submitted,
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Solicitors for and of counsel
with the Complainant-Appellee.

New Jersey Court of Errors and Appeals

Between
PEN CARBON MANIFOLD COMPANY,
Complainant-Appellee,
and
JAMES E. TOMNEY and CHARLES
A. TOMNEY,
Defendants-Appellants.

BRIEF OF APPELLANTS

The Facts

The Defendant, James E. Tomney, a machinist, entered the employ of the complainant early in March, 1912 (p. 32, fol. 10). The complainant at this time was a manufacturer of carbon papers, typewriter ribbons, stencil papers, and other typewriter accessories (p. 30, fol. 30), and the machinery used for their manufacture was claimed by the complainant's president, Charles E. Archibald, to be his exclusive design (p. 30, fol. 30; p. 31, fol. 10), although he qualifies this later by claiming only certain distinctive parts to the mechanical operation of these machines—other parts of these machines being common on all machines of a similar nature (p. 203, fols. 20, 30, 40).

The complainant contends that Mr. Tomney verbally agreed with Mr. Archibald, its president,

that he would not divulge outside the factory anything that was made there, but no proof was offered as to when this agreement was made or the consideration of it (p. 32, fol. 10). Mr. Tomney denied that he ever made such an agreement and Mr. Archibald, the president, admitted that other men in his factory saw the machines (p. 43, fol. 30), and that any mechanic could duplicate the machine after seeing it (p. 44, fol. 10; p. 61, fol. 1; p. 54, fol. 30; p. 70, fol. 1; p. 72, fol. 30; p. 73, fol. 1 and p. 74, fol. 20). No other proof in support of this agreement was offered. After Mr. Tomney left the employ of the complainant, he and his son, who are the defendants to this action, commenced the manufacture of machinery for the production of inked ribbons and accessories, and in the year 1914, this complainant filed a Bill in the Court of Chancery seeking to restrain these defendants from manufacturing machinery for the production of inked ribbons and accessories, claiming that they were the secret process and formulas of the complainant. The defendants filed an answer to this Bill. The suit was thereafter settled by the defendants making an agreement and bill of sale with the complainant (Schedule B, p. 17), which is the basis of this suit, wherein the defendants in consideration of the covenants in the agreement contained agreed to manufacture as the servants, employees and agents of the complainant ten two-color typewriter ribbon machines according to the ideas and instructions of Charles E. Archibald, president of the complainant company, for a certain price, etc., and the defendants further covenanted that they would not make, manufacture or produce, from the date of the agreement, themselves—or allow or authorize, directly or indirectly, any one else acting for them, to

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make, manufacture or produce any machines or parts of machines to be used for the production of inked ribbons and accessories, including carbons, carbon papers, typewriter ribbons, stencil papers and other duplicating supplies, except the ten two-color typewriter ribbon machines (p. 18, fol. 10).

It is to be noted by this Court that the above covenant did not refer to such machines as was formerly made by the complainant or to the distinctive features of such machines which were claimed to be the original or secret ideas of the president, Mr. Archibald, or the complainant, but that no machine of any kind for the production of the articles mentioned was thereafter ever to be made by the defendants, and this covenant did not limit the period of time or the territory within which the covenant was to be confined.

It is then proven that after the manufacture of the ten two-color ribbon machines for the complainant, the defendants were attempting to manufacture a machine for the production of a two-color typewriter ribbon and upon their learning of this situation the complainant filed its Bill of Complaint in this Court (p. 204, fol. 30). After a hearing before the Vice Chancellor Lane, he dismissed the Bill, and his opinion appears on page 84 of the record; before a final decree was entered the complainant applied and obtained leave to file an Amended Bill, and upon a further hearing, the Vice Chancellor filed a second opinion which appears on page 203 of the record, and a final decree was entered in favor of the complainant from which the defendants appeal to this Court.

These defendants at no time have resisted, or now resist, an injunction restraining them from making any machines or parts of machines for the

production of the articles enumerated, which machines or parts are claimed and proven to be the distinctive or original ideas or secret processes of the complainant, or Charles E. Archibald, and to that extent, consent to a decree of injunction, but beyond such restraint, these defendants claim that the complainant has no property right or exclusive use or interest to those parts of such mechanism which is common to all of such machines, and that the injunction in said final decree in its application is in restraint of trade and void (p. 84, fol. 30; p. 85, fol. 1). When the Vice Chancellor concluded to amend his final decree, counsel for the defendants appeared before him and urged him to limit the restraint as indicated, but counsel for the complainant insisted upon a restraint to cover the full negative covenant of the agreement, and the amended final decree is so worded (p. 212).

The two-color ribbon machine, as claimed by the complainant to be the secret process of Mr. Archibald, was patented by Mr. Archibald (p. 45, fol. 30; p. 85, fol. 1), and is the only machine which the complainant claimed the defendants were attempting to make in violation of the agreement (p. 49, fol. 30; p. 58, fols. 20-30). If the defendants infringed the Archibald Patent, Archibald's remedy and not the complainant's, was in the Federal Court. By applying for and obtaining letters patent, the patentee published to the world his ideas of the mechanical features of his machine, although the agreement providing for the manufacture of these ten machines was clothed with covenants to prevent any one learning the mechanical parts of this machine.

To sustain the decree herein, without limiting it, or defining its scope, in its full comprehensive sense means that these two defendants are pre-

cluded from ever making or selling any machines for the production of the articles mentioned, and that they cannot at any time become the beneficiaries of any original patentable ideas of their own, perfecting any improvement in the production of such merchandise.

If the complainant, or Mr. Archibald, have any original distinctive ideas or secret processes for the production of these items, such originality affect only a minor detail to the general operation of the machines for all the machines are standardized and their basic principle is common property the world over (p. 203, fols. 15-35; p. 97, fol. 10; p. 99, fol. 138; p. 107, fol. 20; p. 110, fol. 40; p. 111, fol. 30 to fol. 2 on p. 112; p. 112, fol. 20; p. 114, fol. 10; p. 115, fol. 11; p. 116, fols. 10 to 30). As common property, any one can make them so far as they do not infringe on a patented improvement to the basic principle. It is respectfully contended that the defendants cannot be restrained from doing something which is a common right, and common property throughout the world and which every one else is permitted to do (p. 203, fols. 20, 30 and 40); also that there is not such a thing as a secret process or formula to a mechanical device, and if there were, the same should not be protected by this Court, as a means is already afforded through the patent office for such protection, and more so in this case when it was proven that the machines were sold by the complainant to competitive companies and thereby published (p. 207, fol. 30).

POINT I

The restraint imposed upon the defendants is more than was reasonably required to protect the interests of the complainant.

The evidence is clear that the defendants at no time ever attempted to manufacture any other machine except the two-color ribbon machine which was fully protected by the Archibald Patent. The Court below tried to justify taking jurisdiction of this feature of the controversy, because the defendants had filed an interference to the patent in the United States Courts, which had been granted, and in the opinion, at page 210, the Court says:

“I had thought that the fact that, so far as the two-color typewriter machine is concerned, a patent had been applied for, and the fact that the machine had been sold to an outsider and might be copied by any mechanic was sufficient to prevent relief with respect to this particular machine. I have reconsidered my determination. The evidence is that a notice of interference has been filed against the patent, and its validity has not been sustained. There is no evidence whatever that anyone else is attempting to manufacture a similar machine. Even if the patent should be held invalid, and therefore the so-called secret disclosed, so that anyone might use it, yet it would seem to me until someone did use it, the Tomneys ought to be bound by their contract.”

The patent had not only been applied for but

had been granted (p. 45, fol. 30; also par. 15, Amended Bill of Complaint, p. 87, l. 8), and the interference proceeding should not have been considered by the Court below in reaching its conclusion—it was entirely collateral to the controversy before the Court. The interference controversy was clearly without the scope of the power and authority of the Court of Chancery, and if the defendants infringed the Archibald Patent, Archibald had his remedy in the Federal Court. To this extent the decree in the case is not only an assumption of an authority not possessed by the Court, but manifestly gives the complainant relief which is only cognizable in the Federal Court on Archibald's application.

In *Manville vs. Harman*, 42 N. J. Eq., p. 185, the Court held that the restraint must only be such as is necessary to afford a fair protection to the interest of the party in whose favor it is given, and not so large as to interfere with the interest of the public.

See also:

Steinberg vs. O'Brien, 48 N. J. Eq.,
p. 370;

Taylor Iron & Steel Co. vs. Nichols, 73
N. J. Eq., p. 685;

Brewer vs. Marshal, 19 N. J. Eq., pp.
537; 547.

In considering the case of *Taylor Iron & Steel Co. vs. Nichols* with the case at bar, there is this difference which should be considered. In the case quoted the defendant was in possession of the secret formulas and processes for making manganese steel—not the machinery for the manufacture, but the compound which the complainant could not protect, whereas, in the case at bar we

are dealing exclusively with mechanical devices that can be protected by patent applications provided the mechanism contains any new features. ~~No~~ patentable inventions are not property rights.

In the case of *Albright vs. Teas*, 37 N. J. Eq., page 171, at page 172, Vice Chancellor Van Fleet held:

“As to non-patentable improvements, I think the legal effect of the covenant is equally certain. They are not the subject of an exclusive right or property, but are common property, open to all the world, and the complainants have the same right now to use them that they would have, had they been formally assigned to them. An assignment would add nothing to their right nor exclude others from the exercise of the same right.”

In the case at bar the defendants seek only the same right to the use of the machines as might be enjoyed by others but the restraint in the case at bar denies them this right which is common to all.

In the *Taylor Iron & Steel* case, *supra*, Mr. Justice Swayze held:

“The contract not only forbids Nichols to disclose any secret of the complainant, but also any knowledge he might have relating to the process of making steel that may have been used in complainant’s works, whether matter of common knowledge or not, and requires him to hold inviolate, not only the secrets of the complainant, but his own secrets, if he had any, and treatment or processes, whether secret or not.”

The case at bar has the same identical effect as above quoted. If this reason was objectionable to enjoining Nichols, the same reason applies to the case at bar with much more force for the reason that the processes of making manganese steel are not patentable or discernible upon inspection like a machine which can be protected and the ideas of construction conveyed by inspection.

The restraint therefore should be limited in its application so that the complainant might be protected only to the extent of covering such features of their machines which are their sole original ideas, and not heretofore used by anyone else and common property.

POINT II

The negative covenant in the contract, without limiting it to the property right of the complainants in the machines, is in restraint of trade.

In the case of *Brewer vs. Marshal*, 19 N. J. Eq., page 537, Chief Justice Beasley held at pages 546 and 547, that if a covenant restrains traffic in an article of merchandise in the market, it is a plain contract

“against trade and traffic, and bargaining and contracting between man and man.”

“That it is the rule that all general restraints of trade are illegal, has never been doubted since the famous opinion of Lord MacChesfield, in *Mitchel vs. Reynolds*, reported in 1 P. Wm., 191. * * * The law will not permit any one to restrain a person from doing what his own interest and public welfare re-

quire he should do. Any deed, therefore, by which a person binds himself not to employ his talents, his industry, or his capital, in any useful undertaking in the kingdom would be void * * * *it has been repeatedly held that such an agreement will be void, unless it be reasonable, and that no agreement can be reasonable in which the restraint imposed on the other party is larger than is necessary for the protection of the other.*"

In *Mandeville vs. Harman*, 42 N. J. Eq., p. 185 (cited with approval in the Court of Errors in *Trenton Potteries Co. vs. Oliphant*, 58 N. J. Eq., p. 507), the Court held that the test to be applied in determining whether a restraint is reasonable or not, is to consider whether the restraint is only such as is necessary to afford a fair protection to the interest of the party in whose favor it is given, and not so large as to interfere with the interest of the public; also that a restraint that endures for the life of a promissor, is reasonable or not, is an undecided question in this State, and such restraint is not, therefore, enforceable by injunction.

In the case of *Althen vs. Vreeland*, 36 Atl. Rep., page 479, Vice Chancellor Emery held:

"No case has been referred to in which a restraint, general both as to time and space, has been held reasonable or legal."

In the case of *Steinberg vs. O'Brien*, 48 N. J. Eq., page 370 (cited with approval in *Taylor Iron & Steel Co. vs. Nichols*, 73 N. J. Eq., p. 685), the Court refused to restrain a negative covenant which extended for a period of one year.

In the case of *Trenton Potteries vs. Oliphant*,

58 N. J. Eq., page 507, at page 518, the Court held:

“It is next to be considered whether the contracts in question, thus construed, were reasonably required for the protection of appellant, and to what extent, if any, they should be enforced under the proofs in the cause.”

In the case of *Taylor Iron & Steel Co. vs. Nicholas*, 73 N. J. Eq., page 684, the Court held a contract in restraint of trade will not be enforced unless the restraint is no more extensive than is reasonably required to protect the interests of the party in favor of whom it is given, and not so large as to interfere with the interests of the public.

See also:

Marvel vs. Jonah, 81 N. J. Eq., p. 369;

and

Owl Laundry Co. vs. Banks, 83 N. J. Eq., 230.

In the case at bar the contract is void because the covenant continues for the life of the defendants, and is not limited as to time or territory.

All cases are in accord that even where the restraint is co-extensive with the interests of the party in whose favor it is given, it must be reasonable as to time and territory affected, for otherwise it is repugnant to public policy and void.

See:

Albright vs. Teas, 37 N. J. Eq., p. 171;

Athen vs. Vreeland, 36 Atl. Rep., 479;

Steinberg vs. O'Brien, 48 N. J. Eq.,
370;

Manville vs. Harman, 42 N. J. Eq., 185.

POINT III

**The decree of the Court of Chancery should
be reversed with costs.**

Respectfully submitted,

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