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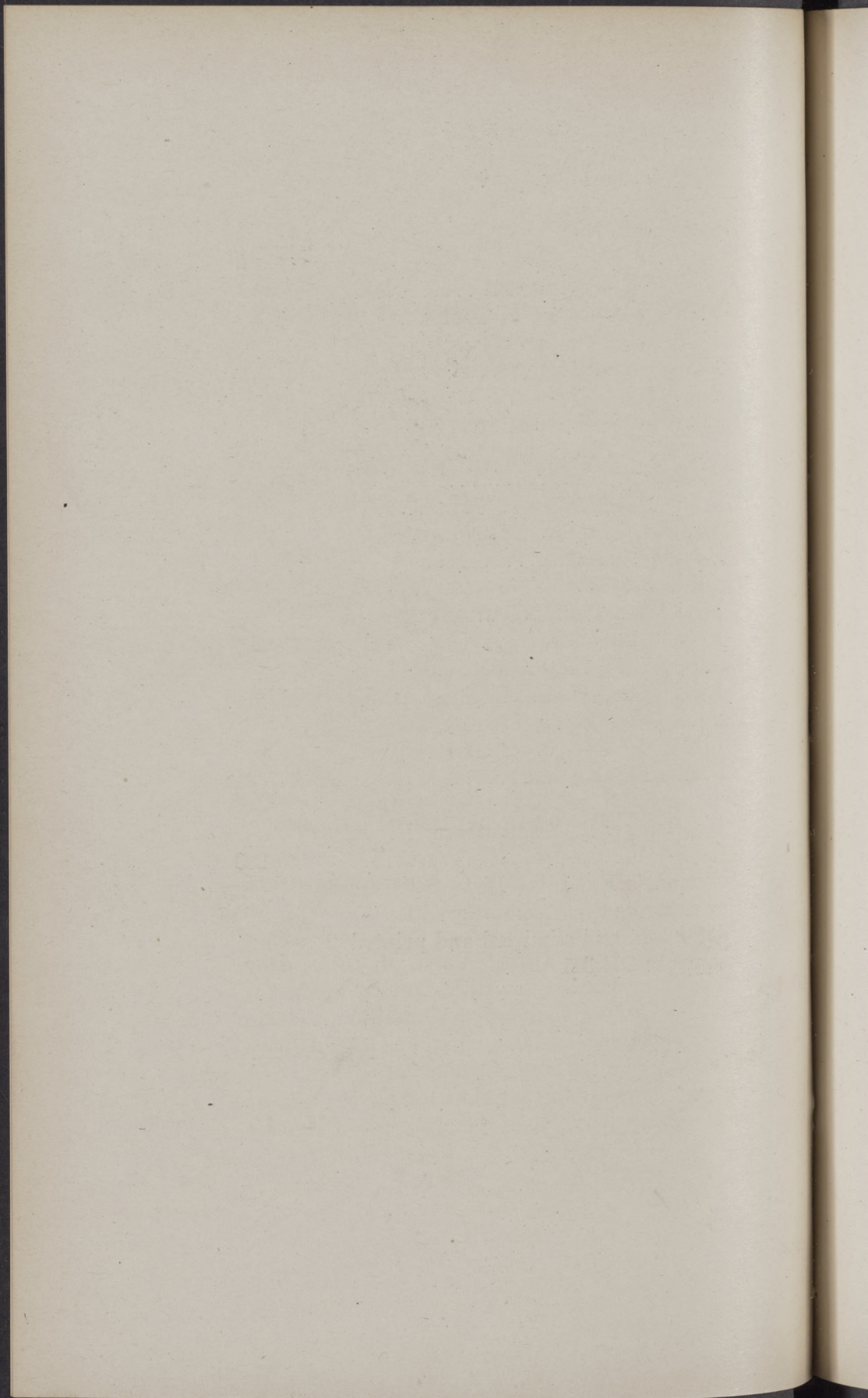
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New Jersey Court of Errors and Appeals

IN CHANCERY OF NEW JERSEY

Between GARDNER VALVE MANUFACTURING COMPANY, and JOHN L. HALYBURTON and AMER- ICAN CAR AND FOUNDRY COM- PANY, Defendants.	}	On Bill, etc. 20
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Bill of Complaint

*To his Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey:*

Humbly complaining, shows unto your Honor 30
your orator, the Gardner Valve Manufacturing
Company, a corporation of New Jersey, located at
Hampton, in the County of Hunterdon, in said
State, that John L. Halyburton, one of the above
named defendants, is the inventor of new and use-
ful improvements in straight-way valves; that he
made application to the Commissioner of Patents
of the United States on or about May fourth, 40

Bill of Complaint

10 nineteen hundred and nine, for the issuing to him of letters patent for said invention, and on or about the twenty-fifth day of October, nineteen hundred and ten, letters patent for said invention were granted to the said defendant, which letters patent are No. 974,055, as by reference to the records of the office of the Commissioner of Patents, in the City of Washington, or a duly authenticated copy thereof, ready to be produced by your orator when and where this Court may direct, will more fully and at large appear.

20 Your orator further shows that prior to the issuing of said letters patent, and prior to the application therefor and while said application was pending your orator, in its corporate capacity and through its stockholders and officers acting for and on its behalf, from time to time, advanced large sums of money to the said defendant, John L. Halyburton, for the purpose of assisting him in the perfection of his said invention and the prosecution of his said application for a patent, and that on or about the thirtieth day of January, nineteen hundred and nine, in consideration of the moneys thus advanced, and in the further consideration of the issuing to him of common stock of
30 your orator, and the advancement of further moneys to the said defendant John L. Halyburton, which advancements were then contemplated and which actually were made, the said defendant John L. Halyburton executed and delivered to your orator the following contract or agreement to assign his right in said invention and in said letters patent when they should be granted by
40 said Commissioner of Patents:

Bill of Complaint

“To the Board of Directors of
The Gardner Valve Manufacturing Co.,

Gentlemen :

I have pending applications for letters patent
of the United States upon a new and novel in- 10
vention for straight-way valves.

I hereby agree that if you will issue to me
7,996 shares of your common capital stock, I will
sell and assign to you such application and the
letters patent when granted and all improvements
I may hereafter make thereon.

Very truly yours,

JOHN L. HALYBURTON.

Jan. 30th, 1909.

Accepted Jan. 30th, 1909. 20

Frank Transue,

E. P. Baylor.”

That Frank Transue, who endorsed said agree-
ment as accepted, was president of your orator,
and the E. P. Baylor whose name is likewise en-
dorsed on said agreement as accepting it was the
chief financial agent of your orator in procuring
the moneys to advance on behalf of your orator to
the said defendant, John L. Halyburton, for the 30
purpose of prosecuting the perfection of his in-
vention and of his application for letters patent
for the same.

Your orator further shows that early in the
year of nineteen hundred and nine, your orator
with the full consent and with the active assist-
ance and co-operation of the said defendant and
at large expense to your orator, had prepared,
printed and circulated an illustrated catalogue 40

Bill of Complaint

with price lists and tabulated data and information, which was styled, "Catalog 1909, Gardner Valve Manufacturing Co.," advertising the Halyburton Valves, and in which your orator was described as "Manufactures of Halyburton Straight-

10 way Valves for power plants, manufacturing and general engineering purposes." And your orator, through its officials and managers, had a distinct understanding and agreement with the said defendant Halyburton that your orator was to engage in the manufacture of said invention of the said defendant and was to have the exclusive rights of the same, and become the owner and controller of any patent rights therefor which he

20 might secure, and that the said defendant was to become the owner of a large part of the capital stock of your orator, as in said agreement above set forth is mentioned.

And your orator further shows that afterwards, arrangements were made for the manufacture of a number of the straight-way valves invented by the said defendant by outside parties pending the making of arrangements for the erection of a plant by your orator for the manufacture of said valves by your orator directly, and money was

30 expended by your orator in the manufacture of a few of said valves under the said defendant's direction.

And your orator further shows that afterwards in or about the year nineteen hundred and eleven, at which time your orator did not know that said letters patent had actually been granted to the said defendant Halyburton, he, the said Halyburton, left Hampton, in the County of Hunter-

40 don, and State of New Jersey, where he then re-

Bill of Complaint

sided, and where your orator had its principal place of business and office, with the understanding on the part of your orator, through its officials, that he would soon return to push forward the matter of perfecting arrangements for the manufacture and sale of his said invention and the completing of arrangements for the erection of a plant by your orator for the manufacture of said invention, and for the assignment to your orator of letters patent when granted, and the issuing to him of his proportion of capital stock of your orator, as above set forth; but your orator shows that it, through its officials, waiting in the expectation that the said defendant Halyburton would return for the purposes aforesaid, did not receive any intimation or notice from him of any change in his announced plans or any intention on his part to do otherwise than ultimately to carry out the arrangement, as aforesaid, until some of your orator's stockholders and officers learned of his relations in the American Car and Foundry Company, as hereinafter set forth. 10 20

And your orator further shows that it first learned that the said Halyburton had acted in disregard of his agreement with your orator early in the summer of this present year, nineteen hundred and fourteen, when your orator received information, through the attention of your orator's officials being called to the catalog issued by the American Car and Foundry Company, located at Berwick, in the State of Pennsylvania, which catalog is entitled as follows: 30

Bill of Complaint

“HALYBURTON VALVES
Patented October 25, 1910

Manufactured by
Valve Department

10 AMERICAN
CAR AND FOUNDRY CO.

Berwick, Pa.
U. S. A.

—
For
POWER PLANTS, MANUFAC-
TURING and GENERAL
ENGINEERING PURPOSES.

20 —
1913
Pocket Edition.”

as by reference to the said catalog, ready to be
produced when and where this Court shall direct,
will more fully appear; that the said catalog con-
tains an illustration of the Halyburton Valve,
which is hereto annexed, and your orator shows
and charges that the said valve so advertised as
30 manufactured by the said American Car and
Foundry Company is the same invention secured
by the said letters patent which the said defend-
ant, for a valuable consideration, agreed to assign
to your orator as aforesaid.

And your orator further shows that the said
American Car and Foundry Company is sending
out letter heads containing a cut representing said
40 valve, and with the following printed thereon:

Bill of Complaint

“AMERICAN CAR AND FOUNDRY COMPANY

Valve Department
Sole Manufacturer under
Halyburton valve patents

10

J. L. Halyburton, Engr.
Sales Mgr.

Berwick, Pa.

Valves and
Fittings.”

Your orator further shows that it does not know what arrangements have been made between said defendant, John L. Halyburton, and the said American Car and Foundry Company for the manufacture and sale of said straight-way valves, but on information and belief charges that some arrangement or contract has been made whereby the said defendant John L. Halyburton is paid by the said American Car and Foundry Company for the privilege of manufacturing and selling said patented straight-way valve, and that the said American Car and Foundry Company may, by reason thereof, claim some interest in the said invention and in the letters patent therefor, but your orator charges that by reason of the premises aforesaid and the agreement given to your orator by the said John L. Halyburton, as above set forth, your orator became entitled to an assignment of the interest of the said defendant Halyburton in said invention and in the letters patent therefor, and that any interest which the said American Car and Foundry Company

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Bill of Complaint

may have acquired in said invention or letters patent therefor was acquired subsequent to the acquisition by your orator of its rights in said invention and letters patent, as aforesaid, and with full notice thereof, and that any rights or interest which the said American Car and Foundry Company may have in said invention or letters patent is subject to the prior and paramount interest of your orator therein.

10 And your orator further shows that the action of the said defendant, John L. Halyburton, in entering into a contract or agreement with the said American Car and Foundry Company for the manufacture and sale of said straight-way valve, and pretending to give to the said company the right to become the sole manufacturers of said valve, is in fraud of the rights of your orator in the premises and in direct violation of the agreement made by the said John L. Halyburton with your orator, as aforesaid, and that he had no legal or equitable right to confer upon the said American Car and Foundry Company the rights and privileges which your orator on information and belief believes that the said American Car and Foundry Company claims in said invention and in the said letters patent.

20 30 Your orator further shows it has ever since the delivery to it of the contract or agreement, as above set forth, stood ready to issue and deliver to the said John L. Halyburton the shares of its common capital stock, as set forth in said agreement, upon the request made by him and upon his tendering to your orator an assignment of his rights in the application for said letters patent and in said letters patent; that said defendant

Bill of Complaint

has never requested that said stock be issued and delivered to him and never tendered himself ready to execute and deliver said assignment, but that the matter was left in abeyance because the defendant so suffered it to remain, and that the whole matter would have been consummated at any time when the said defendant Halyburton would have requested or even suggested that it be done, that he was and still is the vice-president of your orator, and was and still is in a position of influence and power in the organization of your orator, so that he could at any time have said capital stock issued to him in return for his rights in said invention, as he agreed should be done. 10

But your orator charges on information and belief that the said defendant, John L. Halyburton, designedly postponed the consummation of said agreement until he could after having had the advantage of the expenditure of large sums of money by your orator, as aforesaid, in and about perfecting his invention, and to secure the issuing to him of said letters patent, make arrangement with some one else more advantageous to himself and in utter disregard of and in fraud of the legal and equitable rights of your orator in the premises. 20 30

And your orator further shows that it stands ready at any time to issue said common stock to the said defendant, John L. Halyburton, upon the execution and delivery to it of an assignment of the letters patent of said invention of straight-way valve.

And your orator further charges that the manufacture and sale of said Halyburton Straight way Valve by the said defendant John L. Halyburton, 40

Bill of Complaint

and the said American Car and Foundry Company, as aforesaid, is contrary to and in fraud of the rights of your orator in the premises.

10 And your orator well hoped that the said John L. Halyburton would have complied with his obligation to your orator to assign to it his rights in said invention and letters patent therefor, as aforesaid, as in equity and good conscience he ought to have done.

All of which actings and doing of the said defendant John L. Halyburton and the said American Car and Foundry Company, are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator in the premises.

20 In tender consideration whereof and forasmuch as your orator is without adequate remedy in the premises, at and by the strict rules of the common law, and can only obtain relief in this Honorable Court where matters of this nature are properly cognizable and relievable.

30 To the end, therefore, that the said John L. Halyburton and the said American Car and Foundry Company may, without oath, to the best and utmost of their respective knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they and every of them distinctly interrogated thereto, and more especially that they answer and set forth whether any agreement or pretended agreement of assignment of said letters patent has been made by the said defendant John L. Halyburton to the said
40 American Car and Foundry Company, and if so

Bill of Complaint

the date of said agreement or pretended agreement, and the consideration therefor, or whether any other agreement or contract in connection with the manufacture and sale of the Halyburton Straight-way Valve has been made between the said defendants, and if so the nature of said agreement, and the date thereof, and the consideration therefor, and that the said John L. Halyburton may be enjoined from making any assignment of his interest in said invention or in any letters patent to any individual, firm or corporation other than your orator, and that the said defendants may be enjoined from disposing of any interest in said invention or said letters patent to anyone other than your orator, until further order of this Court, and that your orator may have such further or other relief in the premises as the nature of the case may require and shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator not only the state's writ of injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said John L. Halyburton and the said American Car and Foundry Company, their servants, agents and attorneys, restraining them and each of them from assigning or in any wise disposing of the said invention and said letters patent, or any interest therein, to any person other than your orator, until the further order of this Court, but also the state's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said John L. Halyburton and the said American Car and Foundry Company, commanding them and each of them by a certain

Notice of Amendment to Bill

day and under a certain penalty therein to be embraced, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree
 10 therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, etc.

Solicitor and of Counsel
 with Complainant,
 Trenton, N. J.

20

Notice of Amendment to Bill

IN CHANCERY OF NEW JERSEY

30	Between GARDNER VALVE MANUFACTURING COMPANY, <div style="text-align: right; padding-right: 20px;">Complainant,</div> <div style="text-align: center; padding: 0 10px;">and</div> JOHN L. HALYBURTON and AMER- ICAN CAR AND FOUNDRY COM- PANY, <div style="text-align: right; padding-right: 20px;">Defendants.</div>	}	On Bill, etc.
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TAKE NOTICE that the complainant will, at the hearing in the above stated cause, move to amend
 40 the bill filed in said cause, by changing the first paragraph in said bill to read as follows:

Notice of Amendment to Bill

“Humbly complaining, shows unto your Honor your orator, the Gardner Valve Manufacturing Company, a corporation of New Jersey, located at Hampton, in the County of Hunterdon, in said State, that John L. Halyburton, one of the above named defendants, is the inventor of a new and useful improvement in valves, for which letters patent No. 902,291, were granted to said defendant on or about October twenty-seventh, nineteen hundred and eight, and of a new and useful improvement in straight-way valves; that he made application to the Commissioner of Patents of the United States on or about May fourth, nineteen hundred and nine, for the issuing of letters patent to him, for said patent, and that on or about the twenty-fifth day of October, nineteen hundred and ten, letters patent for said secondly mentioned invention were granted to the said defendant, which letters were No. 974,055, as by reference to the records of the office of the Commissioner of Patents in the City of Washington, or a duly authenticated copy thereof, ready to be produced by your orator when and where this Court may direct, and will more fully and at large appear.”

And that application will be made further to amend said bill by inserting in the prayer of said bill, immediately before the prayer for general relief, the following words, to wit: “and that the said defendant, John L. Halyburton, may be decreed to specifically perform the agreement to assign to your orator said two letters patent, in accordance with the terms of said written agreement of January thirtieth, nineteen hundred and nine, or if the Court should determine that such decree for specific performance of said agreement

Answer of American Car and Foundry Co.

for assignment of said letters patent should not be made, that a decree be made that the said defendant, John L. Halyburton, refund to your orator all sums of money advanced to him and paid to him or for him, for the purpose of completing and perfecting said inventions and perfecting the application for letters patent therefor.”

Yours respectfully,

Solicitor and of Counsel
with Complainant.

Service of a copy of the foregoing notice of application to amend, acknowledged this day of February, nineteen hundred and fifteen.

20

Solicitor of Defendants.

Answer of American Car and Foundry Co.

IN CHANCERY OF NEW JERSEY

30	Between GARDNER VALVE MANUFACTURING COMPANY, and JOHN L. HALYBURTON and AMERICAN CAR AND FOUNDRY COMPANY, Defendants.	}	On Bill, etc.
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The answer of the American Car and Foundry Company, a corporation of the State of New

40

Answer of American Car and Foundry Co.

Jersey, defendant, to the bill of complaint of Gardner Valve Manufacturing Company, complainant.

This defendant, answering so much and such parts of said bill of complaint as it is advised it is necessary or material for it to make answer unto, answering says: 10

It has no knowledge of the matters and things set forth in said bill of complaint, except that it admits that the defendant, John L. Halyburton claims to be the inventor of new and useful improvements in straight-way valves, that he made application to the Commissioner of Patents of the United States on or about May 4, 1909; for the issuing to him of letters patent for said invention, that on or about October 25, 1910, letters patent were granted to the said defendant John L. Halyburton, which letters patent are No. 974,055, as by reference to the records of the office of the Commissioner of Patents in the City of Washington, or a duly authenticated copy thereof, will more fully and at large appear, and that it admits that it has issued from its works at Berwick in the State of Pennsylvania the paper called catalogue in the said bill of complaint and therein stated to have been issued by this defendant, which advertises the invention claimed to be secured by said letters patent, and has sent out letterheads containing a cut representing the said valve as stated in said bill of complaint, and that it has made a contract with the said defendant John L. Halyburton—hereafter set forth—whereby the said defendant John L. Halyburton is paid by this defendant for the privilege of manufacturing and selling the straight-way valve claimed to 20
30
40

Answer of American Car and Foundry Co.

10 have been invented by said defendant John L. Halyburton, and that this defendant claims an interest in said invention and the letters patent therefor, and denies that such interest was acquired with any notice of the alleged rights in said invention and letters patent of the said complainant or that the interest of this defendant is subject to any prior or paramount interest of the said complainant therein.

20 And this defendant further answering says that on December 12, 1912, without any knowledge or notice of any claim on the part of said complainant or anyone else, upon said invention or the said letters patent or the said defendant John L. Halyburton, this defendant entered into an agreement with said John L. Halyburton, of which a true copy, marked Schedule A, is hereto annexed and made a part hereof.

30 And this defendant further answering says that by reason of the premises it is a bona fide purchaser for value of any interest in said letters patent as secured by said agreement without any notice or knowledge or any claim adverse to said agreement, and it prays the same benefit and advantage of its position as a bona fide purchaser for value without notice as if it had pleaded the same.

All of which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct; and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

AMERICAN CAR AND FOUNDRY COMPANY,

By Clarence Price,
Vice-President.

Answer of American Car and Foundry Co.

Attest:

Wm. N. Hagar,
Secretary.

(Seal)

COLLINS & CORBIN,
Solicitors for and of Counsel with 10
Defendant American Car and
Foundry Company.

State of New York, }
County of New York. } ss:

The answer of the defendant the American Car and Foundry Company was taken this 30th day of November in the year Nineteen hundred and fourteen, before me, under the common seal of said corporation, as by its seal, thereto affixed, appears. 20

CARL M. HERBERT,
Master in Chancery of New Jersey.

SCHEDULE A

AGREEMENT, made this 12th day of December, 1912, between American Car and Foundry Com- 30
pany, a Corporation of the State of New Jersey, (hereinafter called the "Car Co.") and John Halyburton, of Hadden Heights, New Jersey, (hereinafter called "Halyburton"):

Halyburton is the owner of certain U. S. Letters Patent covering inventions or improvements relating to the manufacture of valves, and of certain application for U. S. Letters Patent relating to the same subject-matter. 40

Answer of American Car and Foundry Co.

SCHEDULE A annexed hereto and made part hereof is a statement of said patents and application for patents now owned or controlled by Halyburton.

10 Halyburton has requested Car Co. to undertake the manufacture of valves, both generally and under the patents now and that may hereafter be owned or controlled by Halyburton and has agreed, if Car Co. shall accede to said request, to give to the Car Co. the right to operate under his patents as hereinafter specified and his services in connection with the exploitation and development of such business.

20 Car Co. is not now engaged in or equipped for such manufacture but is willing to engage therein, and for that purpose to equip its Berwick, Pa. plant a department (hereinafter in this agreement called the "Valve Department") for the manufacture of such articles, and to engage in and continue the manufacture thereof provided the operations of the Valve Department shall result in a satisfactory profit to Car Co.

THEREFORE in consideration of the premises and of the covenants and agreements hereinafter contained Halyburton and Car Co. agree:

30 FIRST: Halyburton agrees to, and does hereby, give and grant unto Car Co. the exclusive right to manufacture, use and sell and to cause to be manufactured, used and sold, articles and devices embodying the inventions and improvements (any and all) covered or intended to be covered by the letters patent and application now owned or controlled by Halyburton (specified in Schedule A annexed) and covered or intended to be covered by
40 any and all letters patent or application there-

Answer of American Car and Foundry Co.

fore that shall hereafter be made, owned or controlled by Halyburton. So long as Halyburton shall remain in the employ of Car Co. (either under this present contract or under any renewal or modification thereof or otherwise) Car Co. shall be under no obligation to pay any sum whether for license, royalty or otherwise soever for the exclusive right so hereby granted it. 10

If hereafter Car Co. shall for any reason discontinue the operation of the Valve Department then it shall re-assign to Halyburton the exclusive right under Halyburton's present and future patents and applications hereinabove by him granted to it.

If Halyburton's employment by Car Co. shall be terminated either at or prior to the expiration of the five-year term hereinafter specified, the exclusive right hereinabove granted to it by Halyburton shall continue—but it shall be on the basis of the payment by the Car Co. to Halyburton of a royalty equal to one-half percent ($\frac{1}{2}\%$) of the net selling price (delivered F. O. B. cars Berwick, Pa.) of all such articles as it shall manufacture embodying the inventions or improvements covered by the said patents and application. 20

Halyburton agrees, as and when requested so to do, to execute and deliver to Car Co. such further instrument or instruments as may be reasonably required by Car Co. for the purpose of record in the Patent Office or elsewhere, evidencing the grant of right under said patents and applications hereinabove made. 30

SECOND: Car Co. agrees to equip, at its Berwick, Pa. plant a department for the manufacture of articles or devices covered by the letters patent 40

Answer of American Car and Foundry Co.

or applications now or hereafter to be owned or controlled by Halyburton.

10 While it is intended that, if conditions warrant, this Valve Department shall undertake the manufacture of all articles embodying the inventions or improvements covered by the patents and applica-
 20 tions now and that hereafter may be owned or controlled by Halyburton, and while Car Co. agrees to use reasonable effort for the development and expansion of the business of the Valve Department, nevertheless its obligation hereunder is limited to the equipment of a department adapted for the manufacture, under Halyburton's Patents, of gate valves running in sizes 2½ inches to 24
 30 inches. It is the understanding also that the operations of the Valve Department shall not be confined exclusively to the manufacture of articles or devices embodying the inventions and improvements of Halyburton, but may be, if Car Co. so elects, extended to the manufacture of other articles—its obligation being that it will, within the limits specified in this agreement, operate said department so as to take care of such demand for articles and devices covered by said patents and applications of Halyburton as shall be created by
 30 its own or Halyburton's efforts.

THIRD: Car Co. hereby employs Halyburton to aid it in connection with the Valve Department so as aforesaid to be equipped and operated by it, for the time, at the compensation, and upon and subject to the conditions hereafter stated, *viz*:

(1) The term of Halyburton's employment shall be for the period of five years (5) from January 1st, 1913. Car Co. shall have the right how-
 40 ever, to dispense with Halyburton's services at

Answer of American Car and Foundry Co.

any time within said five-year term if said services shall not be in all respects satisfactory to it, or if it shall be found after reasonable effort that the valve department cannot be operated on the basis of the return to Car Co. of a satisfactory profit resulting from such operations, or if Halyburton shall fail in the performance of any of the agreements made by him. 10

(2) The services to be rendered by Halyburton shall be (substantially) as selling agent for the product of the Valve Department.

As such selling agent Halyburton shall employ such agents or agencies as to him may be advisable, subject to the condition that such agents or agencies shall at all times be satisfactory to Car. Co. 20

Halyburton shall, during the period of his employment, give Car Co., as such sales manager of the product of its Valve Department, the exclusive benefit of his time, effort and services; and shall not, during said period, engage directly or indirectly in any other business or employment whatsoever.

The prices at which the output of the Valve Department shall be sold shall be as shall from time to time be fixed by Car Co. Prices as so fixed shall be subject to revision not oftener than once every three (3) months, but in any such revision of prices Car Co. shall at all times protect Halyburton with respect to tenders actually made and negotiations actually pending at the time of such revision. 30

(3) Halyburton's compensation shall be as follows: For the year commencing January 1st, 1913, he shall receive a salary at the rate of Two 40

Answer of American Car and Foundry Co.

hundred and fifty dollars (\$250) per month, from which amount he shall defray all expenses connected with his selling agency except expenses incurred for travelling and advertising, which, if and when approved by Car Co., shall be defrayed by it.

10 If, during the year 1913, Halyburton shall have procured and placed with the Valve Department orders accepted by Car Co. for the manufacture of articles embodying the inventions or improvements covered by his patents and applications aforesaid in such quantities and at such prices as, on the basis of the commission of $1\frac{1}{2}$ per cent hereinafter specified, would have been sufficient to produce the equivalent of Two hundred and

20 fifty dollars (\$250) per month during said year; and if, through lack of equipment or otherwise, the Car Co. shall have been unable to fill such orders, then Halyburton shall be entitled, after the expiration of the year 1913, to have continued the said salary of Two hundred and fifty dollars (\$250) per month until such time as the Valve Department shall be so equipped as to be able to produce on orders placed with it by Halyburton and

30 accepted by Car Co., a monthly output of such articles as, on the basis of the said commission of $1\frac{1}{2}$ per cent, would produce for Halyburton in commissions at least Two hundred and fifty dollars (\$250) per month. And for the remainder of the term of his employment Halyburton shall receive as his compensation a commission equal to $1\frac{1}{2}$ per cent of the net selling price (delivered f. o. b. Berwick, Pa.) of articles embodying the inventions or improvements covered by

40 his said patents and applications manufactured

Answer of American Car and Foundry Co.

at the Valve Department and sold to consumers. The commission shall be based on sales actually made and shall be deemed earned when goods sold are paid for. Halyburton shall defray all expenses connected with his selling agency except expenses incurred for travelling and advertising which, if and when approved by Car Co., shall be defrayed by it. Adjustments with respect to amounts due Halyburton as commissions hereunder shall be made monthly. 10

AMERICAN CAR AND FOUNDRY COMPANY,

By (sgd) W. O Dickerman,
Vice President.

(Sgd.) J. HALYBURTON. (Seal)

20

SCHEDULE A

Number.	Title	Granted.
902,291	Valve.	Oct. 27 1908
974055	Straightway Valve	Oct. 25, 1910

Answer of John Halyburton

IN CHANCERY OF NEW JERSEY

10	Between GARDNER VALVE MANUFACTURING COMPANY, Complainant, and JOHN L. HALYBURTON and AMER- ICAN CAR AND FOUNDRY COM- PANY, Defendants.	} On Bill, etc.
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20 The answer of John L. Halyburton, defendant, to the bill of complaint of the Gardner Valve Manufacturing Company, complainant.

This defendant answering so much and such parts of said bill of complaint as he is advised it is necessary or material for him to make answer unto, answering says:

30 He admits that (on October 13th, 1906), the Gardner Valve Manufacturing Company was incorporated, whether it is still a corporation he does not know. He admits that he is the inventor of new and useful improvements in straightway valves; that he made application to the Commissioner of Patents of the United States on or about May 4th, 1909, for the issuing to him of letters patent for said invention, and that on or about the 25th day of October, 1910, letters patent for said invention were granted to him, which letters patent are No. 974,055.

40 He denies that the said complainant in its corporate capacity or through its stockholders or

Answer of John Halyburton

officers acting for and on its behalf or otherwise at any time advanced to him any money for the purpose of assisting him in the perfection of his said invention and the prosecution of his said application for a patent. He admits that he signed the paper writing copied in said bill of complaint and therein styled a contract or agreement, but denies that it was delivered to said complainant or that it was based on any such consideration as is stated in said bill of complaint in that regard; and he submits to this Honorable Court the determination of the legal effect of said paper writing. He admits that at the date of said paper writing Frank Transue was president of said complainant. He denies that E. P. Baylor, as agent of said complainant or otherwise, advanced any money to this defendant for the purpose of prosecuting the perfection of his invention or of his application for letters patent for the same.

He admits that early in the year 1909 there was prepared, printed and circulated an illustrated catalogue with price lists and tabulated data and information, which was styled "Catalogue 1909, Gardner Valve Manufacturing Co." advertising the Halyburton valves and in which said company was described as "Manufacturers of Halyburton Straightway Valves for power plants, manufacturing and general engineering purposes," and that he assisted and cooperated in the preparation thereof. He does not know at whose expense the same was prepared, printed and circulated, but denies that the expense was large. He admits that there was an understanding, but not an agreement, with this defendant, except conditionally as hereinafter stated, that said complainant

Answer of John Halyburton

was to engage in the manufacture of said invention and was to have the exclusive rights of the same and become the owner and controller of any patent rights therefor which he might secure, and that he was to become the owner of some of the capital stock of said complainant. He denies that the said paper writing constitutes such an agreement.

He admits that afterwards arrangements were made for the manufacture of a number of the straightway valves invented by this defendant by outside parties pending the making of arrangements for the erection of a plant by said complainant, for the manufacture of said valves by said complainant, but that no money was expended in such manufacturing by said complainant, the valves having been billed by the manufacturers directly to certain companies who desired to use the same and having been paid for by said companies. He says that the patterns for said valves were made under the direction of the defendant and paid for by him.

He admits that afterwards in or about the year 1911 this defendant left Hampton aforesaid where he then resided and where the complainant's certification stated it was to have its principal place of business and office, but did not in fact conduct any business there or elsewhere, but says that there was no such understanding on his part, or so far as he knows, on the part of said complainant or its officials, that he would return to Hampton aforesaid for the purpose stated in said bill of complaint, or for any purpose, and says that there was no reason for said complainant to expect his return to Hampton aforesaid for such purpose or otherwise.

Answer of John Halyburton

He denies that he gave no notice to said complainant of his plans or intentions. He does not know whether at the time he so left Hampton said complainant knew that said letters patent had been granted.

He admits that in the year 1913 such a catalogue as is referred to in said bill of complaint is issued by the American Car and Foundry Company was so issued, and that the valve therein advertised is the same invention secured by said letters patent. He does not know when the said complainant or any one interested therein first received information of this defendants relations with the American Car and Foundry Company or of the issue of said catalogue. He denies that he ever agreed to assign said letters patent to said complainant, except conditionally as hereinafter set forth. 10 20

He admits that the American Car and Foundry Company has sent out letterheads containing a cut representing said valve and with the notice printed thereon set forth in said bill of complaint.

He admits that a contract has been made between him and said American Car and Foundry Company whereby he is paid by said company for the privilege of manufacturing and selling said patented straightway valves, and that the American Car and Foundry Company claims (and has) an interest in said invention and in the letters patent therefor, but denies that by reason of anything stated in said bill of complaint or otherwise the said complainant is entitled to an assignment of the interest of this defendant in said invention and the letters patent therefor, or that the interest which the said American Car and 30 40

Answer of John Halyburton

10 Foundry Company has acquired in said invention or letters patent therefor is subject to any prior or paramount interest of said complainant therein, or that there is any such prior or paramount interest, and he denies that the said American Car and Foundry Company had any notice of claim by the said complainant in said invention or letters patent.

20 He denies that his contract with the American Car and Foundry Company is in fraud of said complainant or in violation of any agreement made by him with said complainant, or that he had no legal or equitable right to confer on the said American Car and Foundry Company the rights and privileges which he has conferred upon them.

30 He denies that he postponed consummating the arrangement embraced in the said paper writing of January 30, 1909, and says that the delay in such consummation was altogether due to said complainant or those controlling it, and he denies that the said complainant has ever been able to carry out the conditions hereinafter mentioned upon which stock was to be issued to this defendant and his patent when granted was to be assigned to said complainant.

40 And this defendant further answering says that the complainant incorporated for the sole purpose of locating an industry in said Town of Hampton, where said E. P. Baylor resides, and was promoted by him for the benefit of his interests in said town. The capital stock of the proposed company was fixed at \$300,000, in 12,000 shares of the par value of \$25 per share—4,000 shares preferred and 8,000 shares common. Said Baylor

Answer of John Halyburton

agreed that he and his friends in the vicinity of Hampton would take preferred stock to the extent of \$20,000 for cash, which would be placed in bank to the credit of said complainant, and would assist this defendant in placing the rest of the preferred stock, and the paper writing copied in said bill of complaint was signed by this defendant on the express condition that the entire preferred stock contemplated should be disposed of for cash. The subscriptions secured by said Baylor did not exceed \$6,000, and all that was ever raised by said Baylor was \$3,200 in cash and \$61.24 in merchandise. Nothing whatever was raised after August 11th, 1909, and all the money that was raised was spent in promotion expenses. 10

Said Baylor also agreed to secure a manufacturing site from the Delaware, Lackawanna & Western Railroad Company in Hampton aforesaid, and certain concessions from the Central Railroad Company of New Jersey. This was never done, but later said Baylor and others formed a company for the manufacture of silos and acquired said site for that purpose, but this proved a failure and this defendant was never in any way concerned therewith. The enterprise for which said complainant was incorporated was abandoned, and this defendant's application for patent and all papers connected therewith, which had been entrusted to said Baylor for safekeeping, were by him handed over to this defendant who then sought to make his invention elsewhere. In February, 1911, after the attempt to locate an industry in Hampton had been abandoned by all interested, this defendant left Hampton in the hope of finding an opening in some other place. 20 30 40

Answer of John Halyburton

In April, 1911, with the full knowledge and approval of all persons who had become interested in the proposed enterprise at Hampton, he endeavored to start a business in Pennington in this State, and afterwards in Trenton Junction in this State, but without success. On September 30, 1910, the patent was issued to this defendant. This defendant still continued his endeavors to make some business arrangement to render his invention available, and his whereabouts was always known to Mr. Frank Transue, the president of said complainant, and others who had been interested with him in the proposed enterprise at Hampton aforesaid. These persons all knew of this defendant's endeavors to make some business arrangement that would render his invention available to him. Finally, on December 12, 1912, this defendant entered into an agreement with the defendant American Car and Foundry Company, a corporation of New Jersey, a true copy of which agreement is hereto annexed, marked Schedule A, and hereby made a part of this answer. Said American Car and Foundry Company had no knowledge whatever of any claim upon him or upon his invention or the letters patent therefor on the part of said complainant and this defendant says that no such claim did in fact exist.

And this defendant further answering submits that the said complainant in and by its said bill of complaint has not made or stated any case entitling said complainant to any relief against this defendant; and he prays the same benefit and advantage as if he had demurred to said bill of complaint.

Testimony

All of which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

COLLINS & CORBIN, 10
Solicitor for and of Counsel
with the Defendant,
John L. Halyburton.

Testimony

IN CHANCERY OF NEW JERSEY

Between GARDNER VALVE MANUFACTUR- ING COMPANY, Complainant, and JOHN L. HALYBURTON, <i>et al.</i> Defendants.	} 20
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Before: His Honor, VICE CHANCELLOR STEVENS. 30

Mr. Linton Satterwaite and Mr. Robert H. McCarter, for the complainant.

Mr. Gilbert Collins and Mr. Frederick P. Whitaker (of the New York bar) for the defendants.

Transcript of shorthand report of the evidence given upon the trial of the above stated cause, on Wednesday, April 14th, 1915, at Chancery Chambers, Newark, New Jersey. 40

John D. Staples—Direct

JOHN D. STAPLES, sworn:

Direct-examination by Mr. McCarter:

Q. You live where? A. Hampton, New Jersey.

10 Q. Do you hold any position in the Gardner Valve Manufacturing Company? A. Secretary.

Q. I show you a minute book, and ask you if that is the official minute book of that company?

A. Yes, sir.

Mr. Collins: He has proved that to be the book of minutes; that is as far as you can go.

20 Mr. McCarter: Yes, and I am now going to have him read some resolutions, and perhaps offer the entire minute book. I will first offer the entire minute book.

30 Mr. Collins: I object to that, without time to examine it. I do not know whether the proceedings of this company after the alleged contract with Mr. Halyburton, the defendant, are relevant or not, until I examine them; I do not quite like to have the book offered as a whole; I think the usual custom is to prove the book, and then call attention to the parts they desire to read in evidence, and perhaps I would have no objection to that, but I do not like to have the whole book considered as offered until we have a chance to examine it.

40 Mr. McCarter: This is an action for specific performance of an agreement made between a Mr. Halyburton and the complainant company. The object of the offer is to show to the Court the fact of the in-

John D. Staples—Direct

corporation of the company, which indeed is admitted; the fact that certain resolutions were passed prior to the acquiring of the interest, whatever that be, by the American Car & Foundry Company in the patents, which ratify and show an acceptance of the assignment set out in the bill of complainant; and then the further fact that prior to the commencement of this suit a resolution was passed putting the company in an exact position to conform to its side of the bargain that had been made with Mr. Halyburton, by tendering the stock, putting itself in a position on record to tender him the stock that he, under the agreement, was entitled to. There is nothing secret in the thing, and I only offer it as a matter of convenience, and I am only going to read the portions which I think bear an the issues.

The Court: Well, there is no substantial difference between you and Mr. Collins.

Mr. McCarter: No; I have nothing in here to conceal.

The Court: Let the book be marked, and Mr. McCarter will then read such parts of the minutes as he relies upon.

Mr. Collins: Subject to my objection as to its competency.

Marked Exhibit C-1.

Mr. McCarter: I will call the Court's attention briefly to the certified copy of the certificate of incorporation that appears here, in which the incorporators appear to

John D. Staples—Direct

be John L. Halyburton, one of the defendants, for sixteen shares; D. W. Burrell, for twelve shares; E. P. Baylor, for twelve shares; provides for common and preferred stock. The minutes of the organization—

10

Mr. Collins: Won't you state the amount?

Mr. McCarter: Yes. The authorized issue of stock is \$300,000 divided into twelve thousand shares, of the par value of \$25 each.

The Court: Is this a New Jersey corporation?

20

Mr. McCarter: Yes, New Jersey company. Of said stock four thousand shares shall be preferred, and the balance of eight thousand shall be common.

Mr. Collins: And the preferred is of a certain character.

30

Mr. McCarter: The preferred stock may be issued as and when the board of directors shall determine, and shall entitle the holder thereof to receive out of the surplus or net earnings, and the corporation shall be bound to pay thereon, as and when declared by the board of directors, a dividend at the rate of but never exceeding six per centum per annum cumulative from and after the first day of January, 1907, payable yearly, half yearly or quarterly, before any dividend shall be set apart or paid on the common stock.

Mr. Collins: Did you state the date of that certificate of incorporation?

40

Mr. McCarter: I will state it, Judge.

John D. Staples—Direct

October 10th, 1906, filed the 13th of October, 1906, with the Secretary of State. The organizing meeting seems to have taken place in the month of October, 1906, attended by Mr. Halyburton, and the other subscribers to the certificate. Mr. Frank Transue, of the secretary of State office, is elected president; Mr. Halyburton is elected vice-president and general manager; Mr. Baylor is elected treasurer, and Mr. Staples, the gentleman on the stand, is elected secretary, and the minutes are signed by him. A resolution is passed, in accordance with Section 22 of the Corporation Act, making an assessment of one hundred per cent upon the shares of stock subscribed for, and that said subscriptions may be deemed to be made by cash or by property. 10 20

Mr. Collins: Did you give the date of that organization meeting, I have forgotten.

Mr. Satterwaite: 1906 was the year.

Mr. McCarter: On January 30th, 1909, there appear minutes of a special meeting of the Board, at which Messrs. Baylor, Halyburton and Transue, the three directors, were present, and the minute shows the entry of the following matter: "The secretary presented the following communication received from Mr. E. P. Baylor: To the Board of Directors of The Gardner Valve Manufacturing Co., Junction, N. J. Gentlemen: I beg to advise you that I have advanced from October 13, 1906 to 40

John D. Staples—Direct

10 January 30, 1909 to pay the current expenses of your company, moneys to the extent of \$3200 and in consideration of these expenditures I would be willing to accept an issue of preferred stock of your company to the extent of the moneys advanced. I have annexed to this communication an affidavit to the effect that this amount has been advanced. Very truly yours, (signed) E. P. Baylor, dated January 30, 1909."

20 The record then proceeds: "On motion of John L. Halyburton the Board of Directors was authorized to issue 128 shares of Preferred Stock of the Company to E. P. Baylor, in consideration of the moneys so advanced. At this juncture John L. Halyburton retired from the meeting.

30 "The secretary then presented the following communication received from John L. Halyburton: To the Board of Directors of The Gardner Valve Manufacturing Co. Gentlemen: I have pending applications for letters patent of the United States, upon a new and novel invention for straight way valves. I hereby agree that if you will issue to me 7,996 share of your Common Capital Stock, I will sell and assign to you such applications and the Letters Patent when granted, and also all improvements I may hereafter make thereon—"

Mr. Collins: "Also" is not in the bill.

40 Mr. McCarter: That is what is here. "And also all improvements I may hereafter make thereon. Very truly yours, John L. Halyburton. January 30th 1909."

John D. Staples—Direct

The record further discloses the following motion: "On motion of Frank Transue, the proposition of John L. Halyburton was accepted and the Secretary directed to notify him that when the actual assignments covering all patents issued and applied for at the date of this meeting were made to the corporation there would be issued to him or such persons as he might nominate, common capital stock of this company amounting to 7996 shares. On motion of E. P. Baylor the meeting was adjourned." 10

Q. Before passing on to the further record, Mr. Staples, I will ask you if you have with you the original assignment, a copy of which appears in the minutes? A. I have. 20

Q. Will you produce it?

Mr. McCarter: The answer denies it was delivered to the company; admits the execution of it.

A. (Produced.)

Mr. McCarter: I offer that.

Mr. Collins: I object to this as incompetent. Your Honor sees what it is. It is an offer, agreement—call it what you like —I agree, if you will issue to me so much I will sell and assign, and at the foot of it, "Accepted January 30, 1909. Frank Transue, E. P. Baylor." It appears that those two gentlemen, and Halyburton, the three, were the directors of this company; it is a communication addressed to the board of directors, an acceptance by two members individually; they have now attempted to 30 40

John D. Staples—Direct

10 make an acceptance of it by the board of directors, sitting in their corporate capacity, by this minute that they have introduced; but it lacks the requirement, what has been read lacks the requirement of law with regard to the purchase of property by the issue of stock; there has to be something more than this acceptance of the offer of Mr. Halyburton; there has to be a valuation put upon the property, and an agreement to purchase the property and issue stock therefor, which is lacking here.

20 There is no action by the board of directors valuing these patents at this enormous sum, and the instrument itself that is offered, standing by itself, is incompetent to bind this company or to bind Halyburton. It can only be received, if at all, in connection with the corporate action. Mr. McCarter very well perceived that, but he offered the corporate action first. I submit the paper, as a paper, is incompetent as evidence, and that the corporate action that is there recited on the minutes does not comply with the requirements of our statute.

30 The Court: Well, the minutes do not contain anything but a copy of the offer by Mr. Halyburton; that copy would not bind Mr. Halyburton unless it were shown that the original was lost or missing, and consequently in order to prove the offer legally they have to offer the original paper which is signed by Mr. Halyburton himself. I do not know whether his signature has
40 been proved.

John D. Staples—Direct

Mr. Collins: I will assent to that being his signature.

The Court: Assuming that this is his signature it is his original offer. Now it may be that they will have to show some other things in connection with this offer, they will have to show a valid agreement by something more than the mere action of the board of directors, but this is a step toward proving their case, and it seems to me that the evidence is competent with a view of enabling them to prove their case; I do not see how they could prove their case except in this way; it may be that they will have to go further, it does not prove the contract necessarily, but it proves an agreement; now it may be that that agreement is incapable of enforcement for the reasons you have stated, or for other reasons, but in order that the question may be before the Court at all they will have to prove the formal agreement; the effect of it will be a different matter. I think that paper is unquestionably competent.

Marked Exhibit C-2.

The Court: The word "accepted" may or may not have any effect, but certainly the contents of that paper, before you come to the word "accepted" are a necessary part of their proof.

Mr. McCarter: I call the Court's attention to the resolution which says: "On motion the proposition was accepted."

Q. Where did you get this document. Exhibit

John D. Staples—Direct

C-2. Mr. Staples; did Mr. Halyburton deliver it to you? A. No; this was turned over to the company by the president, Mr. Transue.

Q. At the time of this resolution—A. Mr. Transue had that in his possession, and it was turned over later.

10 Q. You got it later from Mr. Transue? A. Yes.

Q. I notice that by this resolution, which I have just read, the secretary was directed to notify Mr. Halyburton that when the actual assignments covering all patents issued and applied for at the time of this meeting were made to the company there would be issued to him, Halyburton, or such person as he might nominate, common capital stock of this company amounting to 7,996 shares; was any such notice given to Mr. Halyburton? A. I think, yes.

Mr. Collins: Q. You think, yes, A. I have no copy of it.

Mr. Collins: Then I object.

The Court: What is the par of the shares?

Mr. McCarter : Twenty-five dollars.

Mr. Collins: I object to his statement that he thinks a notice was given, of which he has no copy.

30 Mr. McCarter: I did not say it was in writing or not; I asked him if there was any notice given.

A. Notice was given, I can answer that.

Mr. Collins: I object to any evidence of its contents.

The Court: Well, Mr. McCarter will go on and show how the notice was given.

40 Q. You say notice was given to Mr. Halybur-

John D. Staples—Cross

ton? A. Notice was given to him, yes, but I have no copy of the writing.

Q. Was it in writing? A. I couldn't say.

Q. Did you see Mr. Halyburton immediately after the meeting? A. Yes.

Q. Did you tell him of the action? A. Yes, sir. 10

Q. Where was Mr. Halyburton, as a matter of fact, at the time the resolution that I have just read was put and passed? A. He was in Mr. Baylor's office downstairs.

Q. And after the adjournment of the meeting you all got together again, did you? A. Yes.

CROSS-EXAMINATION by Mr. Collins:

Q. Mr. Staples, when was this minute signed John D. Staples, which appears on a separate 20 sheet of paper, pasted on to one of the pages of the book, written? A. Why, immediately after the meeting.

Q. What do you mean by "immediately"? A. Why, it may have been a day or two.

Q. Who did this typewriting? A. Mr. Transue.

Q. And it was pasted in the book within a day or two after January 30th, 1909? A. Yes.

Q. And signed by you at that time? A. Yes, 30 it was mailed to me, and signed by me at that time.

Q. That has not been put in since? A. No, sir.

Q. When you say some notice was given to Mr. Halyburton of what the Board had done, do you know whether or not it was in writing? A. That I could not say.

Q. What is your opinion? A. I told him about it after the meeting, downstairs. 40

John D. Staples—Cross

Q. What is your opinion as to a written notice? A. I couldn't say, I don't know whether one was given.

Q. But you told him of it personally? A. Yes, told him downstairs, personally.

10 Q. You say you received this Exhibit C-2 from Mr. Transue later; when? A. I cannot say.

Q. As near as you can? A. Oh, possibly—I couldn't give any definite answer.

Q. It was years after 1909, was it not? A. Well, I can't say that it was, I don't know; it was after 1909 but I cannot say just when it was received.

Q. You cannot say it was not years after, can you? A. No, I cannot say.

20 Q. It has on the foot of it "Accepted January 30, 1909" and signatures under that; in whose handwriting is "Accepted January 30, 1909"? A. Mr. Transue's.

Q. And the first signature under it "Frank Transue" is in his? A. Yes, sir, that is his writing.

Q. In whose handwriting is the signature "E. P. Baylor"? A. That is Mr. Baylor's handwriting.

30 Q. Do you know when those signatures were made? A. They were signed at the same date the meeting was.

Q. Mr. Baylor is in the coal business, I think at Hampton, is he not?

Mr. McCarter: I do not suppose that is cross-examination; we will admit he is.

A. Yes, he is in the coal business.

Q. He was at that time? A. Yes.

40 Q. You were then and have been since a clerk in his employ? A. Yes, sir.

John D. Staples—Re-direct

Q. What did you tell Mr. Halyburton after the meeting from which he retired? A. I cannot answer that question, I don't remember.

Q. Well, why do you then say you gave him notice of the meeting? A. I couldn't say the exact words, I called his attention to the minutes and read it to him, I couldn't say what I said to him. 10

Q. You said the minutes had not been written until a day or two after? A. They were written on paper and re-copied on the typewriter.

Q. You mean rough notes? A. Yes.

Q. Where are they? A. I cannot answer that; Mr. Transue took them with him.

Q. You do not know what was in those minutes? A. I know they were exact copy of the minutes, because I read them over as soon as they were returned. 20

Q. Now what did you tell Mr. Halyburton? A. I can't say, I can't remember back that far.

RE-DIRECT-EXAMINATION by Mr. McCarter:

Q. You said you had the resolution there or the draft of the resolution, manuscript draft, at the time you spoke to Mr. Halyburton about it?

Mr. Collins: I did not understand him 30
to say so.

A. The original resolution offered.

Mr. Collins: I understood him to say he had rough minutes.

Q. I understood you to say a little while ago that you had, and either read to or showed to Mr. Halyburton, the rough draft of that resolution that has been offered in evidence here, is that right? A. Yes, sir. 40

John D. Staples—Re-cross

Mr. Collins: That is not what you said, is it?

Mr. McCarter: Exactly what he said.

10 Mr. Collins: I beg pardon, I did not so understand it. He said that he had read him the minutes which he had in some rough draft. That is what I understood him to say.

RE-CROSS-EXAMINATION by Mr. Collins:

Q. Who took down these minutes? A. I took them down.

Q. Well, from what, from some verbal statement? A. From the meeting I attended the meeting myself.

20 Q. So you said. Did somebody make a motion? What did you write down; where did you get the data to write down these rough minutes; from a verbal motion by somebody? A. Oh, yes, verbal motion, except those that are marked "resolutions."

Q. I do not know what you mean by that. It says here in these minutes "On motion of Frank Transue the proposition, etc. was accepted"? A. They were verbal motions.

30 Q. So Mr. Transue made a verbal motion, the tenor of which you noted in rough minutes you were keeping? A. That is right.

Q. And Mr. Transue took those rough minutes with him and had this page written in typewriting? A. Yes.

40 Q. And a day or two after brought it back to you and you signed it and pasted it in the book? A. He mailed them back.

John D. Staples—Re-cross

Q. Now there was no resolution offered but a mere motion which was formulated in the rough minutes?

Mr. McCarter: Well, if you make that distinction.

Q. A verbal motion formulated by you? A. 10
From what?

Q. It says here (handing witness book)—A. “Motion of Frank Transue,” is that the one you refer to?

Q. Yes. A. That is a verbal motion.

Q. You formulated it according to the way he stated it? A. Yes.

Q. Is that what you showed Mr. Halyburton, that is your rough minutes? A. Yes, sir.

Q. Why did you do that? A. Because I wanted 20
him to have notice of it.

Q. You were directed by the motion to notify him of something that it stated; didn't you understand that to be a written notice? A. It does not say so.

Q. I am asking you what you understood? A. I didn't understand it to be no such thing, if I did I would have written it out.

Q. Do you say you did write it, or not? A. I don't remember writing it, if I did he has a copy 30
of, if I wrote it.

Q. Did you read those minutes to him, or did you simply say to him “Your offer has been accepted”? A. I don't know.

Elsworth P. Baylor—Direct

ELSWORTH P. BAYLOR, sworn:

Direct-examination by Mr. McCarter:

Q. You live where? A. Why, Hampton, New Jersey.

10 Q. Have you always lived there? A. Yes, sir.

Q. What is your business? A. Lumber and coal.

Q. Where is Hampton? A. Fifty-six miles from New York, and I suppose about fifty-one from here, along the Central Railroad of New Jersey and the D. L., & W.

Q. In Hunterdon Conuty? A. Yes.

Q. When did you first meet Mr. Halyburton?
A. In August, 1906.

20 Q. At that time did he state anything to you with regard to an invention of his, the straight-way vales? A. He came to Hampton in company with Mr. Morton and Mr. Lepper and a gentleman by the name of Woodward I think; he was then simply looking for a site to manufacture, that is all he wanted, that is all he said anything about.

30 Q. How soon after that visit did you become acquainted with the fact that he claimed to be the inventor of a valve? A. Very soon.

Q. What statement did he make, touching his invention, to you? A. Well, he said he had a good valve.

Q. Did he undertake to define the characteristics, its mechanical features, to you? A. Not to any great extent; I wouldn't know anything about it anyway.

40 Q. Did he express any view of the value of this invention? A. Oh, yes, he said it had great value.

Elsworth P. Baylor—Direct

Q. Did he undertake to put in dollars and cents the value?

Mr. Collins: Objected to as immaterial.

A. I don't know what was said about that.

The Court: I think that his statement as to its value is evidence against him; it may not be evidence against the company, but as he is a defendant, it is evidence against him. 10

Mr. Collins: Well, the witness says he doesn't remember anything that was said.

Q. What I want to get at is, was there anything said by him touching the value of this invention, and before coming to that perhaps I will ask you this: did he say anything as to how for the invention had been patented? A. He told me, yes, that he had the patent at that time. 20

Q. He had the patents at that time? A. Yes; a little later he told me he didn't have them.

Q. Was there anything characteristic of this valve, that he spoke of, that gave it, as he said, a peculiar value? I want to get this before the Court, because subsequently you acquiesced in a resolution issuing a large amount of stock, and the question is how you got at the value of this valve? A. Well, he said it would develop into a very valuable proposition, and develop our whole community, and for that reason we went into it, from an industrial standpoint. 30

Q. Well, I am not asking you whether you went into it from an industrial standpoint, or whether it would develop your whole community, but what I am getting at is, it appears by the resolution already in evidence that a large amount of stock, 40

Elsworth P. Baylor—Direct

- seven thousand nine hundred and some shares twenty-five dollars a share, was ultimately passed, to be issued as an equivalent for the complete transfer of these patents; how did you reach that figure? A. What was he to get?
- 10 Q. The number of shares he was to get; how did you reach a value? A. What determined his value in the thing?
- Q. Just pay attention to my question. Did you draw up figures and have him come down to 7,996? A. There wasn't anything of that kind done at all; he fixed it just as he wanted it.
- Q. The figures 7,996 were his figures? A. Yes.
- Q. When did he reach his figures? A. When the company was organized, I think.
- 20 Q. Now there had been issued or subscribed for forty-four shares by the subscriptions to the certificate of incorporation? A. Yes.
- Q. That added to the 7,996 share completed the whole authorized capital stock, did it not? A. Yes.
- Q. At whose suggestion was the authorized capital stock of \$300,000 fixed? A. By his own.
- Q. By his own? A. Yes.
- 30 Q. Did he say anything with regard to the relation between the amount \$300,000 and the ultimate value of these patents; did he say anything about that? A. He said that he wanted the number of shares so that he would control the company.
- Q. And did he say anything about the value of the patents? A. All he ever said was that were very valuable, that is all he said.
- 40 Q. After you got acquainted with him, and the fact that he had this invention or this patent,

Elsworth P. Baylor—Direct

how soon did the formation of the company follow? A. After he came to Hampton you mena?

Q. After you got into this patent question? A. Well, he came there in August, and I think the company was organized in October.

Q. At whose suggestion was the formation of the company? A. I cannot remember about that, it is too far back. 10

Q. I see that you and Mr. Halyburton and a Mr. Burrell signed the certificate of incorporation; under whose legal supervision was the certificate of incorporation prepared? A. Frank Transue.

Q. He is an assistant in the office of the Secretary of State? A. Yes, and a lawyer.

Q. And a friend and acquaintance of yours? A. Yes, worked for me some time. 20

Q. Who was the counsel of the company? A. Frank Transue.

Q. I notice that at a meeting held on the 30th of January, 1909 a communication from you to the company was read, stating that to pay the current expenses of your company you had advanced moneys to the extent of \$3200. Do you recall that communication? A. Yes, very well.

Q. Was that in fact true? A. Yes, sir.

Mr. Collins: Objected to, that is calling for a conclusion. Under the law, stock of a corporation of New Jersey can be issued only for cash, and here they issue it to him, it is said for the current expenses of the company, so the resolution states. If they are going to stand upon that stock issue as having any bearing in this controversy, which seems to me doubtful, they must state what his expenses were, and then we 30 40

Elsworth P. Baylor—Direct

may judge whether or not this stock issued to him was within the statute. The recital in that document is that he advanced for current expenses.

The Court: Who had advanced?

10 Mr. Collins: This gentleman, and that he thereupon had some stock issued to him; he only subscribed for, I forget how many shares, and now they issue him more, and say that it was done to reimburse him for the current expenses of the company, and Mr. McCarter's question is: had you advanced for the current expenses of the company this money. I submit that is not proper. If it is relevant to this controversy he must state what they were.

20 The Court: The question is whether or not this company got the money.

A. Ninety-five per cent of it, your Honor, went to—

Q. Wait a moment.

Mr. Collins: That is exactly my point. I think it will develop, if your Honor should rule that he must state what it is, that the company did not get it.

30 The Court: Well you can cross-examine, if this witness states on direct-examination that he gave to the company a certain amount of money to pay the expenses of the company, you have the right to cross-examine on that.

Q. How did those advances happen to be made? A. Mr. Halyburton had no means, and I suppose that probably ninety per cent, eighty-five per cent went to his own personal expenses, keeping him, etc, and so on.

40

Elsworth P. Baylor—Direct

Q. Wait a minute you talk too fast? A. I will go slower.

Q. How did the expenses happen to be advanced by you, just state the circumstances? A. How did I happen to do it?

Q. Yes. A. To keep the thing going until Mr. Halyburton could raise sufficient money to carry out his proposition. 10

Q. His proposition was what? A. To raise a lot of money and build a plant at Hampton.

Q. After you got the plant built what would be manufactured in the plant? A. Valves.

Q. This agreement of January 30, 1909 was part of that plan? A. Yes, to protect us, in a way.

Q. When did you commence making your advancements? A. October 3d, 1906. 20

Q. Have you the dates and the amounts you advanced? A. I have them right here, if they will allow me to use them.

Q. Yes. A. October 3d, 1906—

Q. Just run down the list? A. I advanced for some time at the rate of \$25 a week—not \$25 a week, I advanced \$25 for every other week, and Mr. Lepper advanced \$25.

Q. You advanced \$50 a month to Halyburton? A. Yes, at first. 30

Q. That was salary to him? A. Yes.

Q. And what was he to do for this salary? A. He was to go on and raise money to build a plant.

Q. Go on with your advancements? A. I paid October 3d, 1906, I paid the month of October, \$50; December I paid—well, I paid more than that in December. 40

Elsworth P. Baylor—Direct

Q. State what you paid? A. I paid \$100 in December, \$105.

Q. For the same purpose? A. Yes, same purpose.

Q. Go on? A. And in January I paid \$50; in
10 February I paid \$80; March \$100.

Q. All for the same purpose? A. Oh, yes, handed to Mr. Halyburton; In April, \$105; in May \$100; June it looks like \$70; July, \$150; August; \$75; September, \$55; Now let me see, September \$100; about \$100; in October about the same thing; November about the same thing, and it went on that way until August 1st, 1908, at about the same rate, when \$2237 were advanced.

Q. Then down to August, 1908, you had given
20 to Mr. Halyburton? A. \$2237.50.

Q. And he was in the employ of the company as general manager? A. Yes.

Mr. Collins: I object, he has not said so; there is nothing of the kind in the minutes.

Mr. McCarter: I beg your pardon, you are mistaken about that.

Mr. Collins: Nothing has been read.

Mr. McCarter: Yes, general manager.

30 Mr. Collins: And Mr. McCarter is leading the witness too much. This was nineteen hundred and six, and this minute—which I had forgotten—was in nineteen hundred and eight, August twenty-sixth, nineteen hundred and eight. What I object to at present is the leading character.

(After some discussion.)

40 Mr. Collins: I was about to make an objection, and I suppose it is up to me to

Elsworth P. Baylor—Direct

speak. I have not made the objection to
 the relevancy, but I have said that if rele-
 vant the evidence that is being introduced
 here is incompetent, and I am criticising
 my friend Mr. McCarter's questions as
 leading and putting in the mouth of the wit- 10
 ness things he has not said. Mr. Baylor
 said that he had advanced money, so much
 a month, to Mr. Halyburton for him to
 raise money to build a plant there in Ham-
 pton some such expression as that, and Mr.
 McCarter frames a question to say: was
 this given to him as salary as general
 manager, and my ear did not happen to
 catch the "general manager" before, but
 when I looked at the book I found that was 20
 in 1908, and these payments were made in
 1906 and 1907, and I think the question
 should not be leading.

The Court: If it is all material to show
 the lending of money either to Mr. Haly-
 burton or to the company, the witness
 should state just what he did. What did
 you do, did you have a transaction with
 the treasurer of the company, or did you
 have a transaction with Mr. Halyburton 30
 direct?

Mr. Collins: Your Honor notices that
 some of the payments were before the com-
 pany was formed.

By the Court: Q. Was that the fact? A. I
 was treasurer of the company, Mr. Halyburton
 was vice president and general manager;
 the money was advanced of course to aid him in
 carrying out his schemes, plans, whatever you 40

Elsworth P. Baylor—Direct

might call them, and it was charged up to the company; he used it to pay his personal expenses, etc.

By the Court: Q. It came out of your pocket? A. Yes.

10 By the Court: You handed it to Mr. Halyburton? A. Yes.

The Court: Now we understand the fact; what the legal inference may be is a different question.

Mr. Collins: I move to strike out that part of the answer that speaks of him as general manager at a time prior to his being general manager.

20 The Court: I do not know whether he was general manager before it appears on the minutes or not.

Q. Mr. Baylor, what efforts, so far as you know, at that time was Mr. Halyburton making toward the securing of the necessary capital for this factory to be constructed? Did he pretend he was making efforts? A. Yes, he said he was, was going around to see different people, he said he had all sorts of promises, was going to get it, in fact he told me on one or two occasions it was practically settled.

30

Q. In August, 1908, do you recall any transaction that occurred about then? A. I remember very well the whole thing. In August, 1908, I told Mr. Halyburton that I advanced \$2337.50, that I thought it was about time we had some security, and would not go any further, I said to him "You failed in all your undertakings, you haven't been successful, you never raised a dollar"; he said the trouble was this, he never had

40

Elsworth P. Baylor—Direct

any of the valves made, consequently they were not on the market, and he simply could not get capital to go on with his scheme to build the plant and manufacture the valves, he said if he could only raise about three thousand dollars he could have some catalogues gotten out—and there is the catalogue—and have some valves made, then he would go to some manufacturer and have them to manufacture them and he would sell them; of course he was general manager, and he would sell them to the trade, and the difference between the selling price and cost price would be turned over to the Gardner Valve Manufacturing Company, and then in case—I told him, I said, “I think I can raise the money for you, I think I can raise it for you, if you will show some disposition on your part to raise something.” The understanding was this, I agreed to put up two thousand dollars, the first two thousand dollars; I then said to him if he showed a disposition to raise five hundred, all right, we will go ahead; he told me he saw his brother-in-law, and in fact he promised to put up the five hundred; then I talked to Mr. Transue and he said he would put up five hundred; that made the three thousand dollars; then he agreed to sign that agreement, which you have there, turning the valves over to the company.

Q. Had he made any oral agreement previous to that?

Mr. Collins: Objected to as irrelevant.

A. Not prior to that time, that was all; the faith that I—

Q. Wait a minute. Prior to August, 1908 had there been any oral understanding or arrange-

Elsworth P. Baylor—Direct

ment with Mr. Halyburton as to the rights that the company when formed would have in these patents? A. I cannot remember about that. Just put that question again, will you?

10 Q. (Question read.) A. I don't remember anything, no, I can't remember anything.

Q. What was said in August, 1908, at the time you had this talk about his assigning to the company his interest in these patents? A. That took place just outside of my office, and he then and there agreed to sign that agreement. I told him I was a man of moderate means, I couldn't go on with this thing unless I had some protection, he hadn't done anything he agreed to, hadn't been able to carry out his promises that he made, and
20 he said he would sign that agreement.

Q. Was the agreement then in writing? A. No, not yet.

Q. What did he say he would do? A. He said he would sign.

Q. Sign what? A. An agreement protecting us in a way.

Q. After that conversation did you advance any more moneys? A. Yes, I commenced to advance on September first on the \$2,000.

30 Q. You spoke of a catalogue; was it at that time that he spoke of the necessity of a catalogue? A. Yes.

Q. And was a catalogue then and there prepared? A. Yes, gotten out by the Hobson Printing Company of Easton.

Q. I show you catalogue, is that it? A. That is the catalogue.

40 Mr. McCarter: I offer that in evidence. Marked Exhibit C-3.

Elsworth P. Baylor—Direct

Q. Under whose direction was this catalogue prepared? A. Gotten out by Mr. Halyburton.

Q. Do you know when it was gotten out? A. Why, soon after that, he started right away to work on to it.

Q. That is right after August, 1908? A. Yes, 10
right away.

Q. Who paid for the expense of this catalogue? A. I paid for the catalogue, sir.

Q. How much? A. Something like \$190, I think.

Q. Now what other expenses did you meet personally in this matter after that time, after August, 1908? A. Well, I gave him \$32 a week to live on, I gave him—whatever the bills were I paid him until my \$2,000 was paid up; there was 20
something paid out for a machine, he sent to Jersey City and bought a lot of stuff, I don't know just what it was, to make blue prints out of, etc, and I paid all of those bills.

Q. Well, have you a list of your payments there? A. I guess I have got it right here.

Q. The total payments thus made and in that manner and for that purpose aggregate how much A. The total amount I turned over to the company? 30

Q. Yes? A. \$4242.50.

Q. How did it happen that the delay between August, 1908, and January, 1909, when the paper was actually delivered to the company, ensued?

A. Mr. Transue drew the agreement, and it was put off for some reason or other from time to time; I spoke to him several times; he said any time will do for that, but it was finally signed 40
January 30, 1909.

Elsworth P. Baylor—Direct

Q. You were present at the meeting? A. I was there, yes.

Q. At that meeting who had the document? A. Mr. Transue, Mr. Halyburton, Mr. Staples.

Q. Was it signed then and there? A. Yes, in
10 my office.

Q. And given to whom? A. Mr. Staples was secretary of the meeting; after they got through they turned the papers over to Mr. Transue to take them to Trenton and copy them in the minute book; if I remember rightly that is how it was done.

Q. You spoke of the fact that Mr. Halyburton desired this additional money in August, 1908 for the purpose of having some valves manufactured.

20 A. Yes.

Q. Were any such valves in fact manufactured?
A. He had one manufactured by the Chester Engineering Company of Chester, and he told me that he sold it to the Westinghouse, Church, Kerr & Company of New York City and it was working fine. I paid something like two hundred dollars on it I think, I have it right here, he told me that is what it was going to cost; Chester Engineering Company, one payment of \$100, and another
30 payment of \$87; I paid \$187.38 for that particular valve.

Q. Did he tell you about any other valves he had manufactured? A. Not at that time.

Q. Later? A. Later on he had some made in Philadelphia, that I did not pay for; but this particular valve, he told me it was in Brooklyn somewhere, I have forgotten just now where it was. and working fine, but after he had left Hampton I found out the valve never left the works in
40 Chester.

Elsworth P. Baylor—Direct

Q. As I understand it then, to summarize, the payments you made, aggregating some four thousand dollars, were either to cover his personal expenses and living expenses—A. That is what they were.

Q. —or for the catalogue? A. Yes.

10

Q. Or for the valves? A. Yes.

Q. Or for engineering or other details for the company? A. Yes; there was twenty dollars paid out on account of one patent to Monroe & Curtis of Troy, New York; I believe there is a letter here concerning that.

Q. When did he state that the patent had not been secured; you have told us that he first said it had been secured? A. Oh, that was some time, I had known him some time, possibly, oh, six 20 months, or something of the sort, after I met him, that was probably some time in 1906, I cannot just recall the time but some time in 1906.

Q. When did you make a payment on account of patent expenses? A. This one patent I paid for that was in September, 1908, September 15, 1908, September 21st.

Q. 1908? A. Yes.

Q. Did you make any other payments on account of patents? A. Not that I know of; I was 30 giving him money all the time.

Q. After the agreement of January 30, 1909, was made what then transpired in the way of his going on and completing his patent, and when if you know, were you first aware that he had actually gotten his patent? A. Well, the patent was not granted until 1910; I did not find that out until after he had gone away.

Q. When did you first learn that patent had 40

Elsworth P. Baylor—Direct

actually issued to him? A. Well, one patent was granted, I learned that some time in 1908, when I paid for it, the Patent Monroe & Curtis got out; the other wasn't gotten out until 1910, I don't know when that was gotten out.

10 Q. When did you first learn about it? A. Some time later on, I don't know just when.

Q. After 1909 he busied himself in having some valves manufactured? A. Yes.

Q. What next did he do? A. He had some manufactured, and he was selling them to the Standard Oil Company possibly some to the Gulf Refining Company, I don't know just where he put them, I don't know much about them; I paid until August, my agreement was carried out in
20 August, 1909; then there was \$500 due from his brother-in-law, that he said his brother-in-law was going to put up when we entered into this agreement in 1908; he told me his brother-in-law and his wife had a muss, and she had the money and wouldn't put it up; he didn't come along with the \$500; then he came along with Mr. Transue, and he was to pay \$500, but I understood he paid some additional, on one occasion he told me he
30 paid fifteen or sixteen hundred dollars and later some more, I don't know just what, but it is more that he agreed to.

Q. Where has this gentleman been living? A. Hampton.

Q. Did he move there? A. Yes.

Q. About what time? A. Moved there some time in 1907.

Q. Did he continue to reside there? A. Yes.

40 Q. Until when? A. Until he left in March, 1911.

Elsworth P. Baylor—Direct

Q. You say he left; did you know where he went when he left? A. Didn't know anything about his going away to stay, he told me he was going to Philadelphia; he had been gone then over two weeks.

Q. On apparent business of the company? A. 10
He said he had been trying to raise money to build the plant.

Q. You say he went away in 1911? A. Yes.

Q. Did you make any effort to find where he was? A. After a month or two I commenced to look around; I learned he was in Philadelphia.

Q. When did you next see him? A. In June, 1911 I went to Philadelphia to see him.

Q. What statement did he make to you at that time touching the company, and his interest in it? A. Well, I told him that I understood he was 20
trying to get money to build a plant at Pennington; he said that was all off, that the people over there wouldn't put up any more money, or something of the sort; he told me he was trying to raise money at Pennington to locate the plant there; and he couldn't do anything with those people over there; they wouldn't put the money, but he now had it fixed up that, I think the United State Pipe Company, or the Standard Pipe Com- 30
pany of Philadelphia was going to manufacture the valves at Bristol, Pennsylvania; I told him I had no interest in a plant at Bristol, that I went into this thing to get the works at Hampton; well, he said he would settle with me; I said if they wanted my interest in the company they could have it, if that was the case; that was the last time I seen him, and the last time I ever heard from him. 40

Edward F. Baylor—Cross

Q. How was your attention brought to the fact that the defendant, the American Car Foundry Company, was interested in this thing, how did that reach you? A. Why, a young man in our town by the name of Wademan.

10 Q. Well, you got gossip or information about it? A. Yes.

Q. And you followed it up? A. Right away quick, yes.

Q. And you found the fact to be what? A. That after a time, some six weeks, I located him at Berwick, Pennsylvania.

Q. Had he given you any notice at all? A. None whatever.

20 Q. Had he given you any notice of the assignment, that is set up in the answer of the Car and Foundry Company, having been made by him? A. Never gave me any notice of anything.

Q. When did you first become aware of the existence of that document? A. When we started proceedings against them.

Recess.

30 CROSS-EXAMINATION by Mr. Collins:

Q. You talk rather rapidly and it is hard to follow you, so pardon me if I go over some of the same ground again. Try and speak slowly. A. All right, sir.

Q. You are a business man in Hampton? A. Yes.

Q. Coal, and something else, I have forgotten? A. Coal and lumber.

40 Q. And was so in 1906, and had been for years before that? A. Yes.

Edward F. Baylor—Cross

Q. And have continued to be so until now? A. Yes.

Q. The first you ever knew of John L. Halyburton, I understood you to say, was when he came there some time in that summer of 1906 looking for a site? A. Yes.

Q. You became acquainted with him? A. Yes. 10

Q. You had a desire to have a manufacturing establishment erected in Hampton? A. Yes, sir.

Q. And you and he talked it over as to whether his valve was of such a sort that it might do to have a factory built there for it; is that right? A. Yes, I talked it over with all of them, the three that were there.

Q. With all? A. Mr. Lepper, Mr. Halyburton and Mr. Woodward, I think. 20

Q. Lepper came with Halyburton? A. Yes, sir.

Q. And Mr. Woodward? A. Yes.

Q. Now the result was that in October, 1906, the corporation, Gardner Valve Manufacturing Company, was formed? A. Yes.

Q. The name "Gardner" was the name of some noted engineer who passed away; that was the reason that name was suggested? A. I think Mr. Lepper's name was John Gardner Lepper; I always thought that was where it was taken from. 30

Q. Is it not a fact you were told there was a noted engineer named Gardner? A. John Gardner Lepper, and I suppose he was the noted engineer.

Q. No, but a man named Gardner? A. John Gardner Lepper.

Q. Were you not informed there was a man named Mr. Gardner in former years, years before, well known in engineering circles? A. I cannot recall that. 40

Edward F. Baylor—Cross

Q. Very well, that is unimportant; I just wanted to know where the name came from; they suggested it any way? A. I believe they did, yes.

10 Q. You began to advance money to him right away; your list shows dates prior to October, does it not? A. No, sir; I don't think so; I will look; I have a memorandum here of the cash advances, I cannot remember about that, but I can give you the date in a minute; the first money I advanced was October third.

Q. And the next? A. The first October 3d, 1906; the next October 20, 1906.

Q. That was the day the company was formed? A. October 20th.

20 Q. Where did you get the memorandum from which you are reading the dates of your advances? A. Why, that is a copy of the ledger that was kept.

Q. Your own ledger? A. Yes.

Q. You had jotted down from your own ledger these accounts? A. Yes.

Q. Is that ledger in existence? A. I believe it is here.

30 Q. It is here? A. I am not sure, I think so; Mr. Staples is here, he has the books; I am not sure, but I think it is here.

Q. And on that ledger these advances are charged to John L. Halyburton? A. I think it is the Gardner Valve Manufacturing Company.

Q. You think so. Are you sure? A. Well, now, the ledger is right there.

Q. You are not sure which it is?

Mr. McCarter: I suppose the best evidence is the book.

40 Mr. Collins: I am testing his memory.

Edward F. Baylor—Cross

Q. You are not sure which it is? A. Well, from the looks of the memorandum it is the Gardner Valve Manufacturing Company.

Q. From the looks of what memorandum? A. I have a true copy of it here; I didn't copy it myself, it was copied by one of my clerks.

Q. You don't remember about it? A. No, I didn't look at that. 10

Q. Now, Mr. Baylor, you have given us a list of payments down to, I think, some time in August, 1908? A. Yes, sir.

Q. And then you stopped? A. Then I had paid all that I had agreed to.

Q. Then you made no advances since August, 1908? A. One advance, and I charged it up to him personally; he asked me one Sunday for a loan; he wanted to go to New York; he said he had no money; I loaned him ten dollars, and he said he would pay it back on his return; that is not included in this account, and he never mentioned it thereafter. 20

Q. The amounts advanced by you, according to the minutes of January 30, 1909, was \$3,200. A. Yes, that was paid to August, no, to January 1st, 1909.

Q. Up to January 1st, 1909? A. Yes, up to January 30, 1909, I had advanced \$3,200. 30

Q. What do you mean by saying that altogether it is \$4,000? A. I advanced \$1,200 after that.

Q. To whom? A. To Mr. Halyburton and the company.

Q. To Mr. Halyburton? A. Yes, and the company?

Q. And the company? A. Yes, it is all the same, it is the advances to the company, he used it. 40

Edward F. Baylor—Cross

Q. Well, that is a question for the Court to determine. You gave it to Halyburton? A. No, paid to him in cash out of the treasury.

Q. Out of your own pocket, didn't you? A. Same thing, I handed it out of my pocket.

10 Q. Your own money, was it not? A. Yes, sir.

Q. Was this \$1,200 advanced at one time? A. No, it was advanced in payments, just the same.

Q. Let us hear them? A. Didn't I give that to you

Q. No, sir, you did not. A. Well, just wait, I will give it to you.

Q. I think you stopped August, 1908. A. Now that \$3,200 was advanced to—

20 Mr. McCarter: Answer the question. He is asking you what you advanced after January 1st, 1909. Now, just answer that.

A. \$1,042.24.

Q. What was it for? A. I advanced to January 30, 1909, \$3,200.

Q. Give us the dates and amounts after August, 1908? A. Then you have it to August 28th, \$2,237.50.

30 Q. That is right? A. All right. I advanced in September—do you want them in the payments I made them?

Q. Yes. A. September 1st, \$32.00; September 8th, \$32; September 15th, \$32; September 15th, Chester Engineering & Machine Company \$100.

Q. The \$32.00 that you have spoken of each time was for living expenses? A. Yes, etc., traveling expenses I would suppose.

Q. He could do what he pleased with it? A. I don't know what he did with it.

40 Q. The amount to the Chester company was for the making of a valve? A. Yes.

Edward F. Baylor—Cross

Q. Proceed. A. September 15th. Chester Engineering Machine Company, \$100. September 21st, Monroe & Curtis, Troy, New York, \$20, payment on account of valve patent.

Q. They are a firm of lawyers? A. Firm of patent lawyers I believe.

Q. Twenty dollars? A. Twenty dollars.

Q. Did you pay it to him? A. I made the check to Mr. Halyburton; he endorsed it and turned it over to Monroe & Curtis.

Q. Your check was to the order of Halyburton? A. Yes.

Q. And he endorsed it to Monroe & Curtis? A. Yes. On September 24th, well, that is a little bill of forty cents, I think, printing, something of that sort. September 29th. John L. Halyburton, \$32, no, September 22d. John L. Halyburton \$32, and 20
29th, \$32; October 6th, John L. Halyburton, \$32; October 12th, freight on something, 25 cents; October 13th, express, 30 cents; October 13th, John L. Halyburton, \$32; October 20th, John L. Halyburton, \$32; October 27th, John L. Halyburton, \$32; November 2d, Chester Engineering Company \$87.38, another payment on the valve; November 5th, John L. Halyburton, \$32; November 10th, John L. 30
Halyburton, \$32; November 17th, John L. Halyburton, \$32; November 25th, John L. Halyburton, \$32; December 1st, John L. Halyburton, \$32; December 8th, John L. Halyburton, \$32; December 15th, John L. Halyburton, \$32; December 22d, John L. Halyburton, \$32; December 29th, John L. Halyburton, \$32; January 6th, John L. Halyburton, \$32; January 7th, Keuffel & Essex people, that was for what they use for mak- 40

Edward F. Baylor—Cross

ing blueprints, etc., of Jersey City, \$9.82; W. J. Daub, \$2.

Q. Did you pay those blueprint people direct, or did you give Halyburton the money? A. I think the checks are here; I am positive I paid them direct.

10 Q. You did pay them direct? A. I am positive I paid them direct; I think we have the checks here.

Q. Pause when you come to the \$3,200. A. W. J. Daub, \$2; January 12th, John L. Halyburton, \$32; January 20th, John L. Halyburton, \$32; January 21st, file case, 40 cents; January 27th, John L. Halyburton, \$32; \$3,162.45.

Q. What is? A. What I paid up to that time.

20 Q. \$3,162.45 up to the end of January? A. No, here it is carried off by my bookkeeper, \$3,200, that was I guess a mistake on my part, \$3,200, I misspoke myself.

Q. After that give the dates. A. That is January 30th, when the meeting was held, yes, January 30th, when the meeting was held. On February 2d, \$32, John L. Halyburton. February 4th, some kind of a sign, \$3.50; February 4th, Express, \$1.14; February 9th, telephone, 50 cents; February 10, express 66 cents; February 10th, John L. Halyburton, \$32; February 18th, John L. Halyburton, \$32; February 24th, John L. Halyburton, \$32.

Q. Go on. A. 'Phones, \$1.12.

Q. 'Phone? A. Telephone, \$1.12.

Q. That is listed as telephone calls? A. I suppose so, yes, it is marked "'Phones."

Q. Did you give that money to Halyburton, or is that part of your regular 'phone bill? A. I suppose I paid the bill.

40

Edward F. Baylor—Cross

Q. You used to telephone to Mr. Transue, long distance 'phone a great deal? A. Yes.

Q. Proceed. A. Lumber, something used there, I don't know what it is, \$2; March 2d, William Lawbach, \$2.76; March 6th, John L. Halyburton, \$32; on the 9th, John L. Halyburton, \$32; on the 16th, John L. Halyburton, \$32; on the 23d, John L. Halyburton, \$32; 30th, John L. Halyburton, \$32; 20th, express 25 cents; 25th, H. P. Company, \$8.55, the Hudson Printing Company, that printed the catalogues, \$8.55; on the 20th, \$179.15, Hudson Printing Company, they printed those catalogues. April 8th, John L. Halyburton, \$32; April 13th, something here, I don't know what it is \$2; April 16th, John L. Halyburton, \$32; April 19th, express, 85 cents; April 20th, John L. Halyburton, \$32. May 3d, John L. Halyburton, \$32; May 7th, John L. Halyburton, \$32; May 14th, John L. Halyburton, \$32; May 15th, express, 40 cents; May 15th, express, 30 cents; May 22d, express \$2; May 22d, John L. Halyburton, \$32; May 29th, John L. Halyburton, \$32. June 5th, John L. Halyburton, \$32; June 8th, express, 25 cents; June 12th, John L. Halyburton, \$32; June 15th, express, 30 cents; June 19th, John L. Halyburton, \$32; June 30th, John L. Halyburton, \$32; July 3d, John L. Halyburton \$32; July 10th, John L. Halyburton, \$32; July 17th, John L. Halyburton, \$32; July 24th, John L. Halyburton, \$32. August 1st, John L. Halyburton \$32; August 9th, Keuffel & Essex, there were two bills paid to those people that got out the blueprint material, etc., one bill of \$2.97, and another of \$2.25. That makes a total of \$4,242.24.

Q. What year is that? A. 1909.

Edward F. Baylor—Cross

Q. I notice that in the certificate of incorporation you subscribe for twelve shares \$25 each, that would be \$300. Was that money paid to Halyburton? A. I didn't pay anything at that time.

10 Q. Then you did not pay anything? A. Not at that time, no, not in that way.

Q. So that you never have paid for the subscription to the stock? A. Well, I don't know. I have taken a number of shares of stock, I paid for a number of shares of stock, I don't know whether I paid for those particular shares or not.

Q. Has any other stock been issued to you? A. No.

20 Q. Than the twelve shares? A. Why, I have the stock here of one hundred, and I forget how many shares.

Q. Oh, yes, the \$3,200? A. \$3,200, yes.

Q. Has any stock been issued to you except for the \$3,200 that was ordered issued January 30th, 1909, and the twelve shares, original subscription? A. The only stock that was issued to me January 30, 1909 was the \$3,200.

Q. When were the twelve shares issued? A. I don't know, I don't think I ever got the twelve shares.

30 Q. You never paid for them and never got them? A. No, I never paid for those twelve shares.

Q. The only stock that was ever issued to you were the preferred stock, equaling \$3,200, January 30th, 1909? A. I won't say that, possibly one or two shares issued to me for services, of the common stock, I am not sure; I cannot answer that question; at the time the company was inaugurated, now it strikes me, one or two shares were
40 issued to me for services rendered, I am not sure.

Edward F. Baylor—Cross

Q. There was no other stock down to January 30th, 1909, issued to anybody, was there? A. Not that I know of; there were a few shares issued at the time, but I cannot tell; the secretary can tell you about that.

Q. If they were issued at the time of the organization they were nominally for services rendered? A. I would suppose so, yes. 10

Q. Mr. Transue, I suppose, had some stock, because he appeared at the organization meeting?

Mr. McCarter: I do not think this is cross-examination; it is mere guess on the part of this gentleman, he did not keep the stock book; he does not know what Mr. Transue got or did not get; I do not see how it affects this matter at all. 20

A. I don't object to his asking the question.

Mr. Collins: I want to show what this company was, I want to show who composed it.

The Court: The objection is that it is not cross-examination; it is a matter of defense.

Mr. Collins: It is possible that that is correct.

Q. Well now, Mr. Baylor, there seems to have been no meeting of the company held from January 30th, 1909 to July, 1914; is that correct? A. Yes, sir, I think it is, yes. 30

Q. And no business was ever transacted by the company, was there? A. Oh, yes, Mr. Halyburton was doing business for them all the time.

Q. What do you mean by that? A. He was writing for prices on this and that, and buying this and that and the other thing, that I paid for as long as I paid out any money. 40

Edward F. Baylor—Cross

Q. You are speaking of the payments you just detailed to us? A. Yes, I paid money direct to those people, that is billed to the Gardner Valve Manufacturing Company.

10 Q. You are speaking of the payments you have been detailing to us? A. Yes, I am speaking of the same payments, of course.

Q. There never was any site procured? A. No.

Q. And never was any building erected? A. No.

20 Q. Is it not a fact that at the time you and Halyburton arranged to incorporate the money, and the capital stock was fixed at \$300,000, at \$25 par value, four thousand preferred and eight thousand shares of common, that you said that you and your friends in the vicinity of Hampton would take preferred stock to the extent of twenty thousand dollars for cash? A. Yes, sir, there is my letter to Halyburton, I think in 1907, a copy of which is here, and I suppose he has, makes that very clear, we were to take twenty thousand preferred stock of that company conditioned upon his being able to raise his part of it first, namely, eighty thousand dollars; I think you will find the letter here; my proposition was conditional, that is the whole thing, when you are asking the question, the proposition was conditional.

30 Q. Well, the entire arrangement was conditioned upon the entire preferred stock being raised, was it not, of which you were to raise twenty thousand?

Mr. McCarter: One moment.

40 The Court: Well, the entire arrangement is somewhat ambiguous, I do not understand myself what that means.

Edward F. Baylor—Cross

Q. Was it contracted between you and Halyburton that he was to have the common stock, except the forty-four shares, conditioned upon the raising of the preferred stock, of which you were to raise twenty thousand?

Mr. McCarter: One moment. The agreement is in writing, and I do not think they can even by cross-examination undertake to modify the agreement that way; we could not do it, and I don't suppose they can. 10

Mr. Collins: I want to show just what this arrangement was.

The Court: Is it not a matter of defense?

Mr. Collins: I will tell you why I am asking this gentleman, it is for the purpose if he states differently, of contradicting him. 20

The Court: Well, it seems to me it is a matter of defense; it is not cross-examination. I will overrule this on the ground that it is not cross-examination; it is a matter of defense.

Q. You did not raise the \$20,000? A. It was conditioned upon—

Q. Please answer the question. A. No, I did not raise the \$20,000. 30

Q. And no money that you know of was raised by your friends or yourself beyond the items that you have given here this morning?

Mr. McCarter: Objected to.

A. None of the money that was subscribed for was paid to Mr. Halyburton because of the proposition; that makes it all very plain.

Q. Please answer my question. 40

Edward F. Baylor—Cross

Mr. McCarter: I object to the question as not being cross-examination.

The Court: I think it is open to the same objection.

Mr. Collins: Your Honor overrules it?

The Court: Yes.

10

Q. I wish to keep within your Honor's rule, if I transgress it is through ignorance. You said that you gave Halyburton money for living expenses and to go about and try to raise money for the erection of a plant; that was your expression as I recall it; how much was he to raise?
A. Eighty thousand dollars.

Q. And he failed to do so? A. Yes, sir.

Q. Did not raise any? A. Didn't raise anything.

20

Q. And the enterprise was abandoned, was it not?

Mr. McCarter: I object.

A. No, it was not abandoned.

Q. Why, nothing was done? A. It was not abandoned as far as I was concerned in the company; he didn't raise his money that he got the money on, that is all.

Q. You spoke in your testimony of his trying to establish a plant at Pennington? A. That was after he left Hampton.

30

Q. Yes, but you knew that fact? A. I knew that, yes.

Q. You knew he was endeavoring to interest persons in his patent, and to erect a plant at Pennington and other places, you knew of it, did you? A. Yes.

Q. The Pipe concern in Philadelphia? A. Some Pipe company, yes.

40

Edward F. Baylor—Cross

Q. Wasn't there another one in Pottstown? A. I don't remember about that.

Q. You spoke about the Pipe company? A. United States Pipe Company or Standard Pipe Company, that was located at Bristol; he told me that himself.

Q. You say he left Hampton in the early part of 1911? A. Yes, March. 10

Q. You kept track of him, knew where he was, didn't you? A. I expected him home all the time, for at least two months or six weeks.

Q. After he didn't come back you kept track of him, you knew where he was? A. I commenced to look him up.

Q. You knew where he was? A. I learned he was in Philadelphia. 20

Q. You knew where to communicate with him? A. Yes.

Q. There never was any tender of stock made to him, was there, as far as you know? A. Are you referring to the common stock?

Q. Yes. A. Tender of that?

Q. Yes. A. I can't answer the question.

Q. You don't know of it? A. I didn't do it myself.

Q. You never demanded him to assign the patent? A. I asked him on several occasions when he would fix the thing up; he said, "Oh, we can do that most any time." 30

Q. When was the last of those occasions? A. Probably early in 1911.

Q. Before he left Hampton? A. Yes, before he left Hampton.

Q. When did you first learn that he had made some arrangements with the American Car & 40

Edward F. Baylor—Cross

Foundry company? A. In May, in the latter part of May 1914.

Q. From whom did you learn it? A. From a man in our town by the name of Wademan.

10 Q. When was the catalogue printed, which has been offered in evidence? A. In 1908 I think it was, it was right after the agreement of August 1908, started then.

Q. It is marked on the back "1909." A. Well, probably as late as that; it started when we had that agreement and agreed to raise the three thousand dollars, he commenced to work on it right away.

20 Q. He commenced to get material for it? A. Yes; that was in August, 1908 when we had our meeting, when we had the understanding about that, and about the three thousand dollars to be raised, that is when he commenced on the catalogue, right after that; he worked on it that fall and winter.

The Court: This meeting was held in 1909.

Mr. Collins: He is speaking about a verbal understanding in August, 1908.

30 Mr. Satterwaite: This was a reduction to writing of the previous meeting.

A. I think it was in August, 1908 we had the understanding that the three thousand dollars was to be raised, yes, that was August, 1908, I am sure of that.

Mr. Collins: I have subpoenaed Frank Transue to bring with him letters, all the letters that have been sent him by Mr. Baylor. Have you got them here?

40 Produced.

Edward F. Baylor—Re-direct

Q. I show you a batch of letters, purporting to be sent by you, signed by you, and addressed to Frank Transue; will you kindly just identify and see if they are all your letters?

Mr. McCarter: I have no doubt they are; of course I do not suppose because he wrote letters to Mr. Transue that that would make those letters evidence. 10

Mr. Collins: That is another question. I am simply identifying them.

A. Yes, those are mine.

Mr. Collins. Now, with the Court's permission I will put this rubber band around them.

RE-DIRECT-EXAMINATION by Mr. McCarter: 20

Q. In reply to Judge Collins you said that after Mr. Halyburton left Hampton you knew where he was. How long did your acquaintance with his movements continue? A. Up to June, 1911.

Q. After that did you lose sight of him? A. Lost sight of him.

Q. When did you first re-find him, so to speak?

A. Not until May, 1914, when Mr. Wademan told me he was located somewhere in Pennsylvania. 30

Q. Did you make any effort to ascertain his whereabouts in the meantime? A. I sent Mr. Staples to Philadelphia several times, and I went to Bristol that fall?

Q. For the purpose of finding out? A. Yes.

Q. You could not find out where he was? A. No, the deal was off, and they didn't know where he was. 40

Clifford B. Fowler—Direct

RE-CROSS-EXAMINATION by Mr. Collins:

Q. I think you must be a little mistaken about the time in 1911. I show you a letter purporting to be by you to George R. Allen, of October 4th, 1911. Do you not say in that letter, addressed to
 10 Mr. Allen: "You will be more apt to find Halyburton going to the offices of the West End Trust Company of the Whitehall Tatum Company; I think he visits the latter place very often." A. This was in October?

Q. Yes. A. I never saw him, and don't know his whereabouts after June. This don't say I knew his whereabouts; I didn't know then, but he had been in Philadelphia and visited those places prior to the time I saw him in the latter
 20 part of June.

Q. So that in October, 1911, that is where you thought he could be found? A. He had been there before that, prior to June. I wrote a number of letters to Mr. Transue trying to find out his location; he was attorney for the company, and I supposed my friend, and I tried to look him up from that source.

30 CLIFFORD B. FOWLER, sworn:

Direct-examination by Mr. McCarter:

Q. You live where? A. Easton, Pennsylvania.

Q. What business enterprise are you connected with? A. Hudson Printing Company.

Q. I show you Exhibit C-3, which is the catalogue of the Gardner Valve Manufacturing Company, and ask if the Printing company to which
 40 you just referred printed that? A. They did.

Clifford B. Fowler—Direct

Q. Were you with them at that time? A. Yes, sir.

Q. Who brought the matter to the concern, on behalf of the Gardner Valve Manufacturing Company? A. Mr. Halyburton.

Q. What dealings—

Mr. Collins: One moment. Perhaps I should have objected when he asked the question. 10

Mr. McCarter: Well, I do not object to that.

Mr. Collins: I think he had no right to use this conclusion, who brought it to him on behalf of the Gardner Valve Manufacturing Company, which would imply knowledge of the witness which he has not got. 20

Q. Who brought it to you? A. Mr. Halyburton.

Q. Did you see anybody connected with the Gardner Valve Manufacturing Company about the printing of this catalogue, other than Mr. Halyburton? A. No, he is the only one I dealt with.

Q. How many times do you suppose you saw him in connection with the matter? A. Why, I should say maybe from three to six times, somewhere around there. 30

Q. At Easton? A. At Easton.

Q. What did he say, if anything, at the time this matter was up between you and him, touching the Gardner Valve Manufacturing Company, or who were connected with it; just tell his Honor anything you can recall that was stated? A. He told me that Mr. Baylor was back of the proposition, and that Mr. Baylor would see that the bill was 40

Clifford B. Fowler—Direct

paid, and I believe that Mr. Baylor confirmed that later in some way.

Q. Have you any present recollection how early it was that you first saw him about this? A. No, I have not.

10 Q. Are you able to tell us how long it took to get this in shape, and when in fact it was completed? A. I couldn't tell that without looking on the records or our books.

Q. No, I do not suppose you could. A. But I will say that it dragged along for some time, because Mr. Halyburton stated he had to make all those drawings in there himself, and he was getting them out as fast as he could.

Mr. McCarter: Now, where is that check?

20 The Court: I presume there is no doubt but that he paid it, is there?

Mr. Collins: I don't know whether he paid it direct, I do not know the fact; no doubt that Mr. Baylor advanced the money, but I do not know how he paid it, yes, he did pay it direct I am informed, but I think it might be good to have the date of it.

30 Q. I show the witness a bill, Hudson Printing Company, in account with the Gardner Valve Company, Junction, New Jersey. Do you recognize that as the bill of your concern for this job? A. Yes, sir.

40 Q. I show you check dated March 20, 1909, to the order of the Hudson Printing Company for \$179.25, which seems to be slightly less than the amount of that bill; please look at that and see if that is the check which paid the bill in whole or in part, and whether it is endorsed by your company? Were there two payments? A. This is

Clifford B. Fowler—Direct

for another account, other than that; that covers something else.

Q. Is it included in this? A. No, the catalogue is not on that, that is a different proposition.

Q. Did the Hudson concern receive that check from Mr. Baylor, and is that endorsed by your concern? A. That is my signature on the back of it, yes, sir, as treasurer. 10

Q. Is the catalogue included in this bill that I show you? A. Yes, it is, I beg your pardon.

Q. There was some extra work besides? A. Yes, various other items included in that.

Mr. McCarter: I offer that check and bill in evidence.

Mr. Collins: I object to the bill; not the check. The bill cannot be any evidence. How the Hudson Company saw fit to make that debit is unimportant. 20

Mr. McCarter: Who they trusted.

Mr. Collins: No, he has told who came there, who he said was behind it, and how it was paid.

The Court: I think the evidence is competent.

Mr. Collins: Well, I object to the bill as irrelevant and incompetent; not the check. Marked Exhibits C4 and C5. 30

Mr. Collins: That is E. P. Baylor's individual check?

Mr. McCarter: Yes. Check dated March 20, 1909. Hudson Printing Company, \$179.25. Signed R. P. Baylor. Endorsed "Hudson Printing Company, C. B. Fowler, treasurer."

Q. Please look at this Exhibit C-5, and tell us 40

John Gardner Lepper—Direct

if you can from that when the catalogue was completed? A. Well, according to the record here it is January 19th, 1909.

Q. Completed? A. Yes, completed.

10 CROSS-EXAMINATION by Mr. Collins:

Q. The first item on the bill, Exhibit C-5, is September 1, 1908, is it not? A. Yes, sir.

Q. And in October there are some etchings, 1908? A. Yes.

Q. Did those etchings have to do with the catalogue? A. I believe they did, yes.

20 JOHN GARDNER LEPPER, sworn:

Direct-examination by Mr. McCarter:

Q. Where do you live? A. Bridgeport, Connecticut.

Q. What is your profession or business? A. Mechanical engineer.

Q. Have you devoted your entire business life to mechanical engineering? A. Yes, sir.

30 Q. When did you become acquainted with Mr. Halyburton? A. In 1899.

Q. And when did you first become acquainted with the character and nature of the valve known as the Halyburton Strightway valve, about? A. In the summer of 1906.

Q. What investigation did you make concerning that valve? A. I looked over the entire set of working drawings for the full line of valves that he had at that time.

40 Q. Had he at that time applied for a patent? A. He had applied for one patent.

John Gardner Lepper—Direct

Q. And what conclusions did you reach with regard to the feasibility and value of the valve, for which he had applied for a patent?

Mr. Collins: Objected to as irrelevant and immaterial.

The Court: Well, on the value.

Mr. Collins: I know that is the reason of it, I am not unaware of that, but I do not think that is permissible evidence. 10

The Court: If you attack the transaction as nothing founded on consideration it may be premature to put this evidence in now, and if you object to it on that ground I will hear Mr. McCarter, but if you do not object to it on that ground it might as well go in now as any other time. 20

Mr. Collins: I do not object to it as to the order of time, but it seems to me—and I may be wrong in the conception I have of it—that this case is not to be tried, from the point of view of either side, by proving what the value of the patent right was. You see the transaction has got to be taken as it is, under the statute, and it fails in essentials I think.

The Court: Well, it is the practice of the Court to let in evidence that is doubtful and deal with it afterwards, and I think we better take that course with this evidence, it will go in subject to your objection. At present I do not quite see its relevancy myself, but I do not suppose it will take very long, and can easily be stricken from the record if it is not valuable. 30

John Gardner Lepper—Direct

Q. (Question read). A. I concluded that the Halyburton valves were about as fine a set of valves as I ever came across; I told Mr. Halyburton so at the time.

10 Q. Go on. A. So far as the financial value goes, why that was taken up at a later time. Do you wish me to state about that?

Q. Yes, complete that, and then we will take up the other matters? A. I should think that the patents, did think so at the time, and discussed it with Mr. Halyburton, that the patents and the designs that he had were fully worth the stock issue of the company, which was \$300,000.

20 Q. When did you have that discussion with Mr. Halyburton? A. Why, that was just before the organization of the company.

Q. You, I think, became a director of the company, did you not? A. Yes.

Mr. Collins: When was that? A. I think it is recorded that I was secretary at one time there.

Q. I notice that the certificate of incorporation is signed not by you but by Mr. Burrell. Did he act for you in that matter? A. He acted for me at that time.

30 Mr. Collins: One moment. I object to that.

Mr. McCarter: I only want to show that Mr. Lepper was in this thing from the start; he was unable to attend the organizing meeting, and so he had what I will call a dummy—although a pretty substantial one—act for him in the thing, and he was subsequently elected a director, and Mr. Burrell was simply an *alter ego* for him, who was unable to be present. Is that right?

40

John Gardner Lepper—Direct

A. That is correct, sir.

Q. Now, did you bring to the attention of Mr. Baylor the views you had with regard to the value of these patents for these valves? A. Yes.

Mr. Collins: I object to that as irrelevant, immaterial and incompetent.

10

The Court: Well, on the same principle I will allow the evidence to go in.

Q. Did you become interested in this Gardner Valve Company? A. Do you mean financially?

Q. Personally interested, yes, sir, financially?

A. Yes, I became interested to the extent of putting up some money to help support the proposition.

Q. When did you make your first contribution, about? A. About October, 1906.

20

Q. I show you two letters, dated respectively October 4th and November 11th, 1908; please look at them and see if they were written to you by Mr. Halyburton; were they? A. Yes, sir, that is Mr. Halyburton's handwriting.

Mr. McCarter: I would like to offer them in evidence and read them.

Q. To what extent did you contribute in cash to this enterprise, and how and to what extent did you contribute in services, and under what circumstances?

30

The Court: What is the object of this testimony?

Mr. McCarter: Well, my view was, your Honor, that these gentlemen entered in and put their money into this enterprise on the faith and understanding of the agreement that this patent should be assigned to the company, and that agreement, first in word

40

John Gardner Lepper—Direct

10 of mouth and later submitted to writing, was actually made, and it has never been carried out; they advanced money on the faith of it; they were not advancing money to a mere Gardner Valve Company; they were advancing money to a Gardner Valve Company on the theory that the Gardner Valve Company would own the Gardner Valve patent, that is the Halyburton patent, and it would create what I would think would be an estoppel in the matter.

20 Mr. Collins: I object to it; in the first place it has already been proved that there were no subscriptions to stock, no stock issued, and all that I find on the minutes—and that is away down in 1914—is one share issued to this gentleman, one share of stock \$25 for services rendered; and I may say, in passing, that I do not find that he was ever elected director of the company. But what I am getting at is this, I do not understand anything was advanced by this gentleman, except to Halyburton, and that I take it is irrelevant. Now, the question was adroitly framed: to what extent did you invest in
30 this enterprise, and how; if they mean to include in that what they gave to Halyburton it is irrelevant.

The Court: Well, I will let this evidence go in, and then deal with it afterwards.

Q. (Question read.) A. The cash payments amounted to \$572.77, directly to Mr. Halyburton, from whom I have receipts signed the Gardner Valve Manufacturing Company, per J. L. Haly-
40 burton.

John Gardner Lepper—Direct

- Q. Let me see those receipts. A. (Produced.)
- Q. Vice president in each case, "Per J. L. Halyburton, vice president." A. Vice president, yes.
- Mr. Collins: In some cases, not all.
- Mr. McCarter: I will have this marked.
- Marked Exhibit C-6. 10
- Q. Go on. A. I paid \$26.23 for miscellaneous office expenses, in addition to these items, and services, \$276.00.
- Q. What was the character of services that you rendered?
- The Court: It seems to me that that is a matter that has no sort of bearing on the case, the character of the service; if they question the service they can cross-examine. 20
- Q. Did you have any understanding or arrangement with Mr. Halyburton with regard to the patents and the Gardner Valve Company? A. I had no written arrangements.
- Q. No, I did not say "written." A. I had a verbal understanding.
- Q. Just tell us what that was, and when it was.
- Mr. Collins: I shall object to his stating his idea of the result of the understanding. Let him state what was said by each. 30
- The Court: What was said.
- Q. What was said by Mr. Halyburton to you, or in your presence, with regard to these patents? A. Mr. Halyburton promised me a certain amount of stock in the company for services rendered, and agreed in my presence, stated quite frequently that he would assign the patents to the Gardner Valve Manufacturing Company.
- Q. About when were those statements or prom- 40

John Gardner Lepper—Cross

ises in your presence to assign the patents to the Gardner Valve Manufacturing Company made? Of course I do not want the day of the week, and the exact date of the month, but as nearly as you can. A. I think he spoke of it frequently during the year 1907, just when I cannot say.

10 Q. Where did you live at this time? A. I lived in Hoboken, New Jersey.

Q. Were you in personal touch with Mr. Halyburton during all the interim between the time that you have been referring to and the commencement of this suit? A. Oh, no, no.

CROSS-EXAMINATION by Mr. Collins:

20 Q. This batch of receipts marked C-6 do not seem to be in the handwriting of the man who signed John L. Halyburton; are they, except as printed and except as in your handwriting? A. Those are my writing, sir.

Q. They speak of general expenses of office 95 Liberty Street, office expenses and rent of office; was that your office, 95 Liberty Street? A. No, no.

30 Q. What was 95 Liberty Street? A. 95 Liberty Street was an office we took to build up this Gardner Valve Manufacturing Company.

Q. Who is "we"? A. Mr. Halyburton and myself occupied the office, sometimes I would be in, most of the time out.

Q. Was it desk room in somebody else's office? A. No, it was our own office.

Q. You mean you got an office for \$25 a month in Liberty Street? A. Quite easily.

40 Q. I did not know what they were over there. And you were there in charge a good deal of the

John Gardner Lepper—Cross

time, you say, and the purpose was to build up this valve business? A. That was Mr. Halyburton's purpose; I wasn't doing anything with that particularly, I done the other work, my own engineering work.

Q. Was that your own office too? A. Why, you might call a portion of it mine. 10

Q. Did you pay rent for your own part of it? A. If my memory is correct I was working somewhere else at the time, part of that time at least in employment in some concern, and what little I occupied the office was probably by courtesy of Mr. Halyburton.

Q. Then you did not pay any rent yourself? A. I don't believe I did.

Q. Did you have any other office? A. No. 20

Q. You say that Halyburton agreed that he would let you have some of the stock of the Gardner Valve Manufacturing Company for services you rendered him; is that right? A. Yes.

Q. When was that? A. Why, I don't remember, I think I have a letter here from him which states something like that.

Q. Give us the date (handing witness paper)? That may help you to give the date. A. October 4th, 1908, this letter is written. 30

Q. Well, I want to know when it was that he told you that he would give you some of the stock of the Gardner Valve Manufacturing Company for services? A. He told me that frequently during the year of 1907 as near as I can remember.

Q. Now, how much stock was he to let you have? A. Why, it tapered off from about fifty thousand dollars down to a very small quantity. 40

John Gardner Lepper—Cross

Q. What were the services that you were to render, the services you speak of that you have told counsel were charged up at two hundred and what? A. Two hundred and seventy something, yes, that was part of them, and whatever services I could render in influencing anybody to help out in the matter of raising money, I suppose, although that wasn't part of my affairs to any great extent, I had an opportunity occasionally to speak to somebody.

10 Q. What were these services for which you charged \$279?

Mr. McCarter: Didn't your Honor cut that out?

Mr. Collins: He said it might be for me to cross-examine.

20 A. That was engineering work.

Q. Of what character? A. Designing; I laid out the factory plans for the factory out at Hampton, and some valve work, designing valves.

Q. The factory never was completed? A. No.

Q. Did Halyburton tell you to do that? A. Undoubtedly.

Q. Did Halyburton have you make the design, do the designing work on the valve? A. Yes.

30 Q. Was not the valve already invented? A. Some of them.

Q. What was the designing work that you did?

A. I got out a very large electrically operated valve, which was not in his former list.

Q. It had to do with the operation of his valve; is that what you mean? A. Well; included the valve design.

Q. His valve is called a straightway valve; I take it that means that the liquid goes straight through in a bowl? A. Yes.

40

John Gardner Lepper—Cross

Q. Counsel asked if you were a director of this company; I do not find it in the minutes; I think you said you were; are you sure of that? A. Why, somebody told me I was at one time, that is all I know about it; I never attended a meeting, never served; it seems to me I was listed there at one time as secretary. 10

Q. Yes, it says so, in the meeting of October, 1906. A. I wasn't in direct communication with them at that time.

Q. The minutes are signed by Frank Transue as secretary pro tem. Well, what is your special branch of engineering? A. Why I am specializing now in glass bottle machinery.

Q. At the time, 1906, 7 and 8? A. Well, I covered quite a variety at that time; I had a general engineering office just prior to Mr. Halyburton's arrival. 20

Q. How old are you? A. Forty-six.

Q. Have you any degree? A. No.

Q. You are not a graduate of any institution? A. No.

Q. Well, had you any special experience in valves? A. Yes, I had quite a little experience in valves, in the ship yards.

Q. What do you mean? A. Designing valves for steamships. 30

Q. What investigation, if any, had you made of the prior state of the art of valve making, prior to Halyburton's invention? A. I was familiar with valves through the various positions I had held prior to that, factory superintendent and other positions.

Q. Had you made any study of prior patents? A. I was employed in the United States Patent Office for a little while. 40

John Gardner Lepper—Cross

Q. When? A. And was in the patent business in Washington.

Q. When? A. Oh, when I first started in business.

Q. When was that? A. About twenty-five years ago.

10 Q. How long were you in the patent office?
A. I was there about eighteen months I should say.

Q. And what patent business were you in in Washington? A. Writing specifications and making drawings.

Q. In somebody else's office? A. No, I was in business for myself.

Q. What did you call yourself? A. By my own name.

20 Q. No, I mean your business, what did you style yourself, how did you style yourself? A. Why, that was all, just J. G. Lepper.

Q. Didn't you advertise in any particular line of business, patent solicitor, or something of that kind, what was it you styled yourself? A. No, just J. G. Lepper.

Q. Well, if you wrote specifications you did so for people who employed you, didn't you? A. 30 If I had a letter head it simply stated that I made patent office drawings and wrote specifications.

Q. You were not an engineer at that time? A. Could hardly be when I was only starting in the business.

Q. Now, my question that I asked you was whether you had made any investigation of patents connected with valves, prior to your becoming acquainted with Mr. Halyburton? A. No, 40 I don't know as I had.

John Gardner Lepper—Re-direct

Q. How did you assume to have knowledge of the value of Mr. Halyburton's valve? A. Because I had enough general engineering experience around power plants and factories to understand the value of valves.

Q. Did you say you valued the invention at \$300,000? A. Yes. 10

Q. How do you arrive at that? A. Because it would easily make that much money.

Q. How? A. The valves were superior to other makes, have many features that are far superior to other makes.

Q. How do you get at the figures you put on it? A. Well, I don't know as I can go into details on that subject; the valves certainly have an earning capacity that would warrant that. 20

RE-DIRECT-EXAMINATION by Mr. McCarter:

Q. Mr. Lepper, just to pursue a moment the line of inquiry Judge Collins has been pursuing, what factory experience have you had; you spoke of that. A. Why, I have been superintendent of three manufacturing plants, and master mechanic of another, and secretary and superintendent of one up in Connecticut. 30

Q. Now, these letters that I showed you, I do not know whether they included or not this type-written one signed by you, to Mr. Halyburton; is that a copy of one you sent him, to which this letter is a reply? A. Yes, sir.

Mr. McCarter: Have you the original of that letter, Judge?

Mr. Collins: No. You did not demand it. 40

John Gardner Lepper—Re-direct

Mr. McCarter: No. I did not know of its existence. Is there any objection?

Mr. Collins: Is it a letter to which one of them refers?

Mr. McCarter: Yes.

10

Mr. Collins: Well, let Mr. Halyburton look at it. See if you recall it, Mr. Halyburton. Yes, that is all right; then we will suspense with the notice to produce the other one.

Mr. McCarter: We will offer the three letters.

Mr. Collins: We object to them as irrelevant, immaterial and incompetent.

Marked Exhibits C-7, C-8 and C-9.

20

Mr. McCarter: Letter of September 20th, 1908, from Mr. Lepper to Mr. Halyburton:

“Dear Halyburton:

30

“I have remained silent for some time with the idea in my mind that you would see the folly of your ways, and write me a few lines in reply to the dozen or so letters I have written you in the past several months, but I see that I have been laboring under a grievous error in expecting anything.

40

“The question in my mind is: Does my connection with you personally, and with the enterprise which you are, I suppose, still working on, entitle me to the courtesy of one reply to a dozen letters? If it does not, then I plead guilty to some impatience in the matter. If it does so entitle me to respect, then you must be aware that you

John Gardner Lepper—Re-direct

are violating the usual customs in vogue among good business men as well as among good citizens who supposedly hold due regard for each other.

"I wrote Mr. Baylor some time ago, and he reported that you were very busy. It is impossible for me to imagine anyone so entirely absorbed with business cares as to forget the duty he owes to those who have been so closely allied with him in business and in daily life as I was with you. 10

"I feel that I am entitled to a line from you stating what progress you have made, if any, or, in case you have given up the original fight for money, what you have in mind for the future. 20

"I trust you will accept this letter in the light that I have written it, and let me hear from you at the earliest convenient date.

"Sincerely yours,

"J. G. LEPPER."

"Junction, N. J., Oct. 4th, 1908.

"Mr. J. G. Lepper, 30
c/o E. P. Lynch Co.
Real Estate Trust Building,
Philadelphia, Pa.

"My dear Lepper:

"I received your letter of September 30th. It sounds quite serious. The dozen or more letters which you state you have written me must have miscarried with the exception of three. These letters merely 40

John Gardner Lepper—Re-direct

10 asked if I was alive, and if so how were things going. In answer to the first question, I was not sure whether I was or not, and did not want to tell a lie. There was absolutely nothing doing, so nothing to write about, and a letter that says nothing is disgusting.

“Just now, however, I have a little to write about. There was no show of getting the money for a plant, or of doing anything else that required money. So as a last resort I am trying to bring about something like this I have talked it over with Baylor and Transue and I think they will do it.

20 “They are to put up sufficient money along with my brother-in-law to pay for drawings, pattern and catalogue of a line of high pres. and steel valves. I am to do all the work at present in connection with the business. After the catalogue is complete I will get orders and have the valves built outside; we furnish drawings and patterns, and the parties who make the valves at a specified price, bill them direct to the parties they are for; we receive the difference between the selling price and the price of manufacture. If I can show

30 that we can hold our own this way, Baylor and Transue will raise the money for a plant next year.

40 “Preferred stock certificates will be issued to them for this money, and the half share of common that goes with it. At the same time preferred stock will be issued

John Gardner Lepper—Re-direct

for the cash you put in, and common for services rendered as you figured it out. One of my patents has been granted and will issue next month. When I assign this patent to the company I receive common stock for it. The idea is not to issue any more stock than what is necessary at present to run the business, so as to keep down the tax. 10

“Transue will be president. I will be Vice President. Baylor, treasurer, and J. D. Staples, secretary. (You will be on the board of directors.) I think if this goes through we can make something out of it. You had better send me your cousins name so that a certificate can be made out for that. Will write you later how things go. 20

“Sincerely yours,
“J. L. HALYBURTON.”

The next letter is dated November 11th, 1908.

“My dear Lepper:

“Yours of the 8th received. I had been wondering whether you were still in Philadelphia. We are making headway with the valve business. I am having a seven inch steel valve for superheated steam built at Chester. It will be finished next week. It is to go in the Edison Power plant in New York. I will probably be in Philadelphia next week and will look you up. I have been busy getting out a catalogue, and it goes to the printer tomorrow. I would like 40 30

John D. Staples—Direct

10 to have had you on this job, as I think you would have made a neater job of it; however, I think it will be the slickest valve catalogue out. We will issue the stock at the first of the year, and I can then invite you to pay us a visit. I have taken a house here, and we move the first of December.

20 “My son, Fred, is working at High Bridge, and is getting along nicely. How did the election strike you. Things are certainly looking up all over the country, and I hope some of it will come your way. I know the guy that is in charge of the Nelson office in your building. He is thoroughly N. G.”

There are some personal matters that I will not read. That is on the letter head of the Gardner Valve Manufacturing Company, Junction, New Jersey. Halyburton Improved Straightway Valves. Frank Transue, president. J. L. Halyburton, vice-president and manager. J. D. Staples, secretary. E. P. Baylor, treasurer, etc.

30

JOHN D. STAPLES, re-called:

Direct-examination by Mr. McCarter:

Q. What is that book you hold in your hand?

A. One of the original entry books of E. P. Baylor.

40 Q. When payments were made by Mr. Baylor from time to time on account of what we have

John D. Staples—Direct

called here the Gardner Valve Manufacturing Company how were such payments entered up in that book? I think they are all surrounded by blue, are they not? A. Yes.

Mr. Collins: I object to that question; in the first place it is immaterial, irrelevant and incompetent as against either defendant, and also that the book itself would be the best evidence. 10

The Court: As I understand it he is offering the book with a view of showing how the charges were made, whether they were made to the company or whether they were made personally to Mr. Halyburton.

Mr. Collins: Now, then my objection is as to the book, that it is irrelevant, immaterial and incompetent. 20

The Court: I will let the evidence go in.

A. Let me have one of the others to answer from, in my own handwriting.

Q. Well, come and get it; that is the book you brought out. Over what period does that book which you hold in your hand extend? A. From June 30, 1909, to August 12, 1909.

Q. Now, do you find any entries in there— 30

Mr. Collins: Is that the same one I looked at?

Q. Yes. Now, do you find any entries in there of charges, or credits for payments made to the Gardner Valve Company?

Mr. Collins: I had supposed when the book was first shown him that it was an earlier date. This is not until after this alleged agreement, and I think that it is 40

William Carter Dickerman—Direct

not evidence, not competent evidence; the earlier one is the one, the \$3200 of investments.

The Court: Why do you not begin at the beginning?

- 10 A. Your Honor, I have the books here from the time this agreement was consummated, September 1st, 1909, to the present time, I have the ledger here.

WILLIAM CARTER DICKERMAN, sworn:

Direct-examination by Mr. McCarter:

- 20 Q. You live where, Mr. Dickerman? A. I live in New Rochelle.

Q. Are you connected with the American Car & Foundry Company? A. Yes, sir.

Q. In what capacity? A. One of the vice-presidents.

Q. Do you know Mr. Halyburton? A. Yes, I do.

- 30 Q. Were you the gentleman or officer of that company with whom the negotiations were pursued leading up to the execution of the contract between the American Car & Foundry Company and Mr. Halyburton, a copy of which is attached to the answer of the defendant? A. The major part of the negotiations.

- 40 Q. Did you have anything to do with the preparation, or the authorization of the preparation of a catalogue, which I show you, entitled or labeled on its front "Halyburton Valves. Patented October 25, 1910. Manufactured by the

William Carter Dickerman—Direct

Valve Department, American Car & Foundry Co. Melweek, Pa. Junction U. S. A., etc.” A. It is simply part of a general appropriation made for the development of the valve business.

Q. (Question read.) A. I did.

Q. You did? A. Yes.

Q. You had seen, hadn't you, the catalogue marked Exhibit C-3, or a duplicate of it? A. I had seen that, yes, or one like it. 10

Q. How early in your negotiations with Mr. Halyburton had you seen the catalogue Exhibit C-3, or one like it? A. I cannot answer that positively.

Q. Well, as near as you can? A. Well, it was some time during the course of the negotiations; the negotiations were somewhat prolonged. 20

Q. Who drafted the contract, a copy of which is attached to the answer, between the Car Foundry Company and Mr. Halyburton, you or your counsel? A. Counsel. I made certain notes and certain recommendations which were, to a very large extent, incorporated in that contract.

Q. And all that, I take it, succeeded the time when you did see the catalogue of which the one I have just shown you is a duplicate, namely, Exhibit C-3? A. Well, it may or may not, I am not positive on that point. 30

Q. Did you not investigate from the catalogue, of which Exhibit C-3 is a copy, the details and characteristics and features of the valve that Mr. Halyburton was interested in? A. Not from the catalogue.

Q. Well, you did examine the catalogue, didn't you? A. I saw the catalogue.

Q. Yes, and saw the features? A. They are em- 40

William Carter Dickerman—Direct

bodied in the catalogue, but not of necessity did I form my conclusions from the catalogue.

Q. But you did see the features as displayed in the catalogue; you examined the catalogue?

A. I saw the catalogue, yes.

10 Q. Can you state when the negotiations, about when those negotiations commenced? A. To the best of my recollection they continued over a period of the last nine months of 1912.

Q. So that, roughly speaking, they would extend from say some time in April to practically the close of the year? A. That is my recollection, they were dragged somewhat.

Q. I see the contract is dated the 12th of December, 1912; it would be some nine months anterior to that? A. Yes.

20 Q. Did Mr. Halyburton speak to you of the Gardner Valve Company? A. I don't know, I presume that he did, I wouldn't swear to it.

Q. Did he have any plans and drawings of the valve to show to you? A. He had certain plans, as I recollect it, and he met our engineers; I think my understanding of the mechanism was very largely based on the drawings shown in the patents which he presented.

30 Q. At that time was there more than one patent? A. As far as my recollection goes there were two.

Q. And those are the two that are specified in the schedule attached to your contract? A. Yes, they are.

Q. You understood that the patents covered the valve referred to in the catalogue that he showed you belonging to him, or which he
40 brought to you, you understood it was that valve

William Carter Dickerman—Direct

Exhibit C-3? A. Well, I understood that the main principles were embodied there.

Q. Well, did you understand, Mr. Dickerman, that there was any difference between the valve in the patent, and the valve in the catalogue C-3? A. I didn't know of any.

10

Q. Do you know who introduced Mr. Halyburton to you or your concern? A. Oh, absolutely.

Q. Who was that? A. Well, we put an advertisement—we went into the valve business for this reason—

Q. No, I didn't care for all that, I was asking you how you got acquainted, that is all. A. He replied to an advertisement that we put in the Iron Age.

Q. Well now, did he on the first occasion that he met you produce that catalogue, or was that earlier, I mean C-3, or was that later? A. I should say it was later.

20

Q. What purpose did he have in showing you the catalogue C-3? A. I don't know, I don't know what his purpose was, I could not read his mind.

Q. That was left with you? A. Which?

Q. The catalogue? A. I presume it was.

Q. Well, did you express any curiosity to ascertain or inquire of him anything about the Gardner Valve Company, whose name appears, Gardner Valve Manufacturing Company? A. I didn't make any specific inquiries in regard to the Gardner Valve Company.

30

Q. Well, did you learn from Mr. Halyburton anything about the Gardner Valve Manufacturing Company? A. Only in a general way.

40

William Carter Dickerman—Cross

CROSS-EXAMINATION by Mr. Collins:

10 Q. What did you learn in a general way? A. Ha'yburton came to me and told me that he had these valves, that they had been patented, that he had been endeavoring to put them on the market in various ways; that the panic of 1907 had come along; it was impossible to raise money; and there had been a complete failure on his part to market the valve, and consequently he considered he was free to negotiate with us, and he was there in answer to our advertisement.

Q. What did he tell you about the ownership of the patents? A. He told me that they were vested in him.

20 Q. Did you have any idea or suspicion that any other person or corporation had any interest in those patents? A. Not the slightest.

Q. Did you have a search made in the Patent Office? A. I did.

Q. With the negative result that there was nothing? A. That the title was entirely clear according to the records.

30 Q. Had you any idea or suspicion that the Gardner Valve Manufacturing Company had any interest in these patents, or either of them? A. Not the slightest.

Q. Or any interest in the inventions? A. Not the slightest.

Q. Did he say anything about whether or not that company was in business? A. He told me that all his previous negotiations had fallen through, and that he was absolutely free to negotiate.

William Carter Dickerman—Cross

Q. Did he speak of more than one concern? A. Well, I gathered that—

Mr. McCarter: No, no.

Q. Just what did he say, as to whether he referred to one or more than one? A. He spoke of a number of efforts.

Q. That is what I want to know, a number of efforts, but can you recall what his language was? A. Well, he told me that he had attempted to organize a company, and that he had been unsuccessful, that the people had not raised the money, and that he had been forced to abandon the plan, and later on tried to market the valves himself; then he had another scheme by which he could get someone to manufacture and he would sell on commission, and during this time he done a large amount of experimental work, which he told me he paid for.

Q. Did he say whether or not there was any company that was then manufacturing his valves? A. To the best of my recollection he said that there was no one, that is to say, that he told me that the valve was being manufactured to his order, and by his order, but that a concern, manufacturing concern, or an institution organized to manufacture or vend, he said, had no existence of that character.

Q. Did he say whether or not any valves were being manufactured under that catalogue and prospectus, C-3? A. Not under that catalogue.

Mr. Collins: I want to call Mr. Dickerman as my own witness.

Mr. McCarter: Well, I will just ask him a question first.

William Carter Dickerman—Re-direct

RE-DIRECT-EXAMINATION by Mr. McCarter:

10 Q. You spoke of his stating that he was free to negotiate with you. He told you, didn't he, that the Gardner Valve Manufacturing Company of Hampton Junction, New Jersey, U. S. A., whose name appears on the fly leaf of this catalogue, a copy of which you say you had, had had some arrangements with him with regard to this valve? A. He told me that they had started, had organized a company with the idea of manufacturing the valve, and that the proposition had fallen through.

Q. Did he say he made some deal with them in regard to it? A. He told me he made some deal.

20 Q. And he told you that was ended? A. That was ended.

Q. Did you ever write to the Gardner Valve Manufacturing Company of Hampton Junction, New Jersey, U. S. A., to ascertain whether he was telling you the truth? A. I did not consider it essential.

Q. You did not do it? A. No.

Q. Did he tell you what kind of an arrangement he had had with them? A. No, he did not.

30 Q. Did he tell you he made an agreement to assign the patent to them? A. No, he did not.

Q. Was it before or after he had told you that that you made the search in the Patent Office or caused the search to be made; I do not suppose you made it? A. Why, after I had had several interviews with Halyburton, or probably simultaneously, at the first interview he presented to me these patents and I glanced through them, and simultaneously with my investigations of

40

William Carter Dickerman—Re-cross

the man I started an investigation on the part of our Patent Department to determine whether the patents were free and clear; my feeling was that if the man proved to be what he represented himself to be, and that the patents were clear and the mechanical features were capable of manufacture in our plants, that it might be a profitable arrangement for us to go into. 10

Q. It is a good valve, is it not? A. I think it is going to be.

Q. When did you first meet Mr. Transue? A. When did I?

Q. Yes. A. Well, I met Mr. Transue, oh, I should think two or three months ago, for about ten minutes.

Q. Had any of your associates, so far as you were aware, met Mr. Transue prior to the interview you just referred to? A. Not to my knowledge. 20

RE-CROSS-EXAMINATION by Mr. Collins:

Q. Mr. Dickerman, had you any information as to whether the Gardner Valve Manufacturing Company was a going concern and actually engaged in manufacturing valves? A. No, I thought it was a dead horse. 30

Q. Had you any reason to suppose it was a factory manufacturing valves?

Mr. McCarter: I think that is immaterial.

The Court: Well, you are now calling rather for the conclusion of the witness's mind.

Mr. Collins: This paper here, this catalogue says "Halyburton Valves, Gardner 40

William Carter Dickerman—Re-direct

valve Manufacturing Company” and on the fly-leaf “Manufacturers of Halyburton Straightway Valves.” Now, I have a right to prove that his information was that there was no such company.

10 The Court: Yes, his information derived from Mr. Halyburton; you did not put your question in that form.

Q. What did he say to you on that subject? A. He said they were not manufacturing.

Q. Were not manufacturing anything, you mean? A. Yes.

Mr. McCarter: Oh, that is not right, Judge.

20 Mr. Collins: Well, he said manufacturing. I didn't know whether you meant valves, or anything.

A. I meant anything.

Q. Whether or not they had a factory?

Mr. McCarter: Please let him say what he said.

A. I don't think I inquired that far.

Mr. Collins: Now, I want to make him my own witness, while he is here.

Mr. McCarter: Just a moment.

30 Further RE-DIRECT-EXAMINATION by Mr. McCarter:

Q. Did you make any inquiries at Trenton, or have your law department to ascertain the status of the corporate existence of the Gardner Valce Manufacturing Company? A. It didn't seem to me—

40 Q. No, I didn't ask you that. A. No, I did not.

Q. You did not? A. No.

William Carter Dickerman—Direct

Mr. Collins: Now, I will examine him as my own witness.

DIRECT-EXAMINATION by Mr. Collins:

Q. Do you always, in dealing with patents, have searches made at Trenton?

10

Mr. McCarter: Objected to as immaterial.

The Court: Well, whether he always does it or not is a matter of no consequence; he says he did it in this case.

Q. What is your custom as to having searches made when you are purchasing patents?

Mr. McCarter: Objected to as immaterial.

The Court: I shall assume it is his custom to be careful about dealing with what he has no personal knowledge of. 20

Mr. Collins: Do you allow it or disallow it, your Honor?

The Court: No, I will overrule it.

Q. Now, Mr. Dickerman, I show you the agreement, copy of which is annexed to the answer.

Mr. McCarter: This is part of your case now, as I understand.

Mr. Collins: Yes. 30

Q. That is your signature for the American Car & Foundry Company, is it not? A. Yes.

Q. You saw Mr. Halyburton sign this? A. Yes.

Mr. Collins: I offer this in evidence.

Marked Exhibit D-1.

Q. What has your company invested, under this contract?

Mr. McCarter: Objected to as immaterial. 40

William Carter Dickerman—Direct

The Court: I think the question is proper.

A. We have invested to date approximately ninety-six thousand dollars, and have about eight thousand dollars more under appropriation.

10 Q. Will you state in what way? A. The expenditures were made in development work, putting in the necessary machinery, altering the buildings, making the patterns, the drawings and experimental work, and in accumulating a stock of the valve parts.

Q. You spoke of the valve department I think; is that a special department of your company?

A. It is.

20 Q. Constituted because of this contract? A. Absolutely.

Q. Had no valve department before? A. No.

Q. Has it yet become profitable? A. No, it has not.

Q. Are you a practical man yourself? A. I am supposed to be.

Q. Are you a mechanical engineer? A. Mechanical engineer.

Q. By profession? A. By profession.

30 Q. You regard this straight-way valve of Halyburton's as a good one? A. Yes, I do.

Q. Have you yet progressed so as to make a practical test of it? A. I think we have reached the point now where we are about ready to put it on the market.

Q. You have not yet been able to do that? A. We put it on the market in a small way, with rather unsatisfactory results.

40 Q. Have you or not, your company, made improvements on the valve? A. We made very material improvements.

William Carter Dickerman—Cross

Q. Of what character?

Mr. McCarter: Objected to; I cannot see that that is material, your Honor.

(After some discussion.)

The Court: I think I will exclude the evidence, because it seems to me to be irrelevant at present. 10

Adjourned until June 10th, 1915, at 10 a. m., Chancery Chambers, Newark, New Jersey.

SECOND DAY

Before His Honor VICE CHANCELLOR STEVENS. 20

Mr. Linton Satterwaite and Mr. Robert H. McCarter, for the complainant.

Mr. Gilbert Collins and Mr. Frederick P. Whitaker (of the New York bar) for the defendants.

Transcript of shorthand report of the evidence given upon the trial of the above stated cause, on Thursday, September 16, 1915, at the Chancery Chambers, Newark, New Jersey. 30

WILLIAM CARTER DICKERMAN, recalled:

Cross-examination by Mr. McCarter:

Q. Mr. Dickerman, you stated in your evidence on page 110 that your company up to date had in-

40

William Carter Dickerman—Cross

10 vested approximately ninety-six thousand dollars on the project in connection with the exploitation of this valve, and that those expenditures were made in development work, putting in the necessary machinery, altering the buildings, making the patterns, the drawings and experimental work, and in accumulating a stock of the valve parts. Are you able to tell us, without too much trouble, how much of that ninety-six thousand dollars was for accumulating a stock of the valve parts? A. We to date have practically accumulated no stock; we started in—

20 Q. Kindly answer my question. You said on page 110 that you had spent ninety-six thousand dollars on this business, and that that sum of expenditures was made in development work, putting in the necessary machinery, altering the buildings, making the patterns, the drawings and experimental work, and in accumulating a stock of the valve parts. My inquiry is how much of the ninety-six thousand dollars was spent for accumulating a stock of the valve parts? A. I should estimate that possibly ten to twelve thousand dollars.

30 Q. Well, is that a guess, or is that based on any knowledge? A. It is an estimate; I have not gone into that because we have scrapped that stock, it is an actual loss.

Q. You spoke of always having searches made at Washington; the purpose you had in always having searches made at Washington was to ascertain whether the proposed dealer with you in patents was not the owner, was it not? A. That was the idea, see whether there were any—

40 Q. Other interests. A. Other interests filed there.

John D. Staples—Direct

Q. Do you recall meeting Mr. Halyburton and Mr. Transue at a ball game in Philadelphia, 1913?

A. I do not.

Q. Or at any other time? A. Save the time that I testified to in the Hotel Adelphi.

Q. I am asking you if you recall meeting them at a ball game? A. Never. 10

JOHN D. STAPLES, re-called:

Direct-examination by Mr. Satterwaite:

Q. You have already testified you are the secretary of the complainant company. You are also employed by Mr. Baylor? A. Yes. 20

Q. In what capacity? A. Well, we will make it clerk, we will say clerk.

Q. And you are familiar with his business affairs, as such employee? A. Yes, sir.

Q. How long have you been in that employ? A. About eighteen years.

Q. Do you remember Mr. Halyburton coming to Hampton? A. Oh, yes.

Q. Did you hear any conversations between him and Mr. Baylor with reference to a valve which he was inventing or had invented? A. I heard several conversations. 30

Q. Did you in the year 1908 hear any such conversations? A. Yes.

Q. Where? A. In Mr. Baylor's office.

Q. At Hampton? A. At Hampton, the only office he has.

Q. About what time in the year? A. Well, I heard conversations at different times during the year. 40

John D. Staples—Direct

Q. Early in the year? A. Well, it continued all through the year.

Q. Did you hear any conversation with regard to raising money to exploit the valve? A. Yes, sir, I did.

10 Q. What was that conversation? A. The conversation in reference to raising money was that Mr. Baylor was to raise a certain amount and Mr. Halyburton a certain amount and Mr. Transue a certain amount, to have valves manufactured and put on the market.

Q. Do you remember what the amounts, respectively, were? A. Mr. Baylor, two thousand; Mr. Transue, five hundred; Mr. Halyburton, five hundred.

20 Q. Can you place about what time in the year 1908 such a conversation as that took place? A. Well, it was some time during the fall, late in the summer.

Q. After that did you hear any more conversations between them in reference to that arrangement? A. I heard conversations between Mr. Halyburton and Mr. Baylor in reference to Mr. Halyburton not being able to raise his part of it.

30 Q. What did Mr. Halyburton say about it? A. He said that he couldn't raise it on account of some trouble that his brother-in-law had had.

Q. Had he said anything about his brother-in-law previous to that time? A. He said that his brother-in-law was going to put up the money for him, or loan him the money, and he was going to put up all the stock that he held in the Sweet Doyle Company as collateral for him.

40 Q. How much was he to raise? A. Five hundred dollars.

John D. Staples—Direct

Q. When did you hear this conversation; you say he said that he could not get it from his brother-in-law? A. That was some time later, I can't recall just exactly the time, it was quite a while later.

Q. What further was said then between you? 10
A. Well, that was after Mr. Baylor quit putting his money up, and I understand Mr. Transue then kept putting money up for him.

Q. What did Mr. Baylor say to Mr. Halyburton, and Mr. Halyburton to Mr. Baylor, then, with reference to the advancement of the money? A. Mr. Baylor said that he put up all he cared to, and that he was through putting up the money.

Q. Anything said about security? A. Not at that time. 20

Q. Did you hear any conversation in which anything was said? A. The only security I heard in reference to the money was that Mr. Halyburton was to assign everything to the company for the moneys that were put up as a protection.

Q. When was that said? A. That was said before the money was put up; about the time, along about the latter part of August or first of September Mr. Baylor started to put up his share of the two thousand dollars. 30

Q. What year was that? A. 1908.

Q. You say Mr. Baylor said that he put up all the money he cared to; do you know whether or not he did put it up? A. Yes, I know he did put it up.

Q. You know that of your own knowledge? A. Yes.

Q. And that amount was? A. Two thousand dollars. 40

John D. Staples—Direct

Q. Now did you have any conversation with Mr. Halyburton at the time you were elected secretary of the company with regard to what the company was to get? A. Yes, sir.

10 Q. What was said? A. Well, in this way, that everything was to be assigned to the company, and I was to receive stock for my services as secretary.

Q. You say you were; who said that? A. Mr. Halyburton told me that himself.

Q. You say he said that everything was to be—
A. Everything was to be assigned to the company.

Q. What was he talking about? A. This patent, patent rights, and all drawings, and everything.

20 Q. In the year 1909 did you hear any further conversation between Mr. Halyburton and Mr. Baylor with reference to this matter? A. I cannot recall any specific conversation, but I heard several different, on different matters in reference to the company.

Q. Do you remember when Mr. Halyburton left Hampton? A. Yes, sir, I do.

Q. When was that? A. In the spring of 1911.

30 Q. What was he doing between January, 1909 and 1911, when he left? A. Why, he was trying to raise sufficient money to locate the plant in Hampton, and also having some valves made on the outside, so he said.

Q. What did you hear him say about making valves outside? A. He said that he was having a valve made at Chester by the Chester Engineering Company for superheated steam, that Westinghouse, Church, Kerr & Company was to place with the Brooklyn Edison Company.

40 Q. When was it he said that? A. I cannot recall the date of it.

John D. Staples—Direct

Q. What year? A. It was in 1910, latter part of 1909 or early part of 1910 as near as I can remember.

Q. Then he left, you say, Hampton early in the spring of 1911? A. 1911.

Q. Did you personally hear anything of him after that, where he was? A. The last I heard from him, I didn't hear from him personally, only through Mr. Baylor. 10

Q. Did you do anything with reference to finding out where Mr. Halyburton was, after he left in 1911? A. Only at the instigation of Mr. Baylor, he sent me to Philadelphia and to Chester at different times.

Q. Did you go there? A. Yes; I went to the Nelson Valve Company and to Eynon & Evans. 20

Q. And your purpose of those visits? A. Trying to locate Mr. Halyburton if possible, find out what he was doing.

Q. You went at the request of whom? A. Mr. Baylor.

Q. You say you went to Chester? A. Yes, I did.

Mr. Collins: Fix the time.

Q. What was the time of these visits to Philadelphia? A. I went to Philadelphia in 1911, and again in 1912. 30

Q. What time in the year? A. The latter part of 1911, in the fall, and in the spring I think of 1912.

Q. When did you go to Chester? A. During the same period, I went from Philadelphia one day on to Chester.

Q. Did you find Mr. Halyburton in either of those places? A. No, sir.

Q. Did you find anything at Chester? A. I 40

John D. Staples—Direct

found a valve there that Mr. Halyburton had had manufactured there.

10 Q. Prior to your visit to Chester, and prior to Mr. Halyburton leaving, had you heard any specific conversation with Mr. Halyburton with reference to this specific valve at Chester? A. I had no personal interview with him, but I heard him say in my presence—

Mr. Collins: I object.

Q. (Question read.) A. Yes, I had heard it.

Q. What was it?

20 Mr. Collins: Objected to as irrelevant, what conversation he overheard with Mr. Halyburton in 1911, conversation he overheard with respect to the valves at Chester, I do not see the relevancy.

The Court: I cannot tell whether it is relevant or not until I hear what the evidence is. Any admission on the part of Mr. Halyburton I suppose is evidence.

Mr. Collins: But this is in regard to a particular valve at Chester.

30 Mr. McCarter: I think the Court and counsel ought to be apprised of our thought about that, it was not a mere bolt from the sky; you see this company was formed with the intention and expectation undoubtedly, if they got the capital, of building a plant, and manufacturing these valves; the trouble was that Mr. Halyburton did not raise the money he expected to raise and so, as appears from the evidence, they rather modified their plan and undertook to have some valves made outside, and

40 it is with regard to this valve at Chester,

John D. Staples—Direct

to indicate that that was carried out to a certain extent by Mr. Halyburton, that this evidence is offered. I think it is quite material.

Mr. Collins: It seems to me it is irrelevant.

Q. (Question read.) A. I heard Mr. Halyburton tell Mr. Baylor that the valve had already been placed in the Brooklyn Edison plant and it was working fine. 10

Q. Subsequent to that conversation you found that valve at Chester? A. Yes, sir, I did.

Q. Do you know what became of it? A. It is there yet, for all I know.

Mr. Collins: I move to strike out the testimony now given. 20

The Court: Well, I will have to pass upon the relevancy of the evidence hereafter.

Mr. Satterwaite: I think it goes to show the general representations.

The Court: I will admit it now, and if it is not relevant it will be disregarded when I come to consider the case, but it will go in now subject to John Collins' objection.

Q. On any of these visits which you have mentioned, these trips, did you get any trace of Mr. Halyburton? A. None whatever. 30

Q. Did you subsequently go anywhere in search of Mr. Halyburton, and where, if you did so? A. I went in 1914 to Berwick.

Q. Pennsylvania? A. Pennsylvania, yes, sir.

Q. At whose instance? A. Mr. Baylor's.

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

Q. Have any coversation with him? A. I did. 40

John D. Staples—Direct

Q. Have any conversation about the Gardner Valve Company? A. Yes, sir.

Q. What was it?

Mr. Collins: Objected to as irrelevant, a conversation he had in 1914 with Mr. Halyburton.

10

The Court: Was this before or after the arrangement with the company?

Q. What time in 1914 was it? A. The first day of September, 1914.

Mr. Collins: The agreement with the American Car & Foundry Company was December 12, 1912.

20

The Court: I do not see how a conversation with Mr. Halyburton at that time will affect the defendant company. It will go in as evidence against Mr. Halyburton, but not as evidence against the defendant company.

Q. (Question read.) A. The conversation in reference to the Gardner Valve Manufacturing Company?

30

Q. Yes. A. He asked me how they were getting along at Hampton; I told him all right; he said he received notice of a stockholders' meeting and he mailed it to Frank, which meant Mr. Transue, he told me that Frank had told him that Senator Large and Mr. Baylor were looking it up, and Mr. Baylor was about the only one that was against him.

Q. Did he say anything with reference to the American Car & Foundry Company? A. He did.

Mr. Collins: Same objection.

40

Q. During the period covered by these visits in search of Mr. Halyburton, to which you have

John D. Staples—Direct

testified, were there any letters written by you?

A. Several letters written by me, dictated by Mr. Baylor.

Q. Having for their purpose the inquiry as to Mr. Halyburton's whereabouts? A. Asking as to his whereabouts.

10

Q. Do you know when the last of such letters were written, about? A. The last one that I recall was in the early part of 1914, along about March or April.

Q. Who was that written to?

Mr. Collins: Objected to on the ground of calling for the contents of a paper not produced.

A. Mr. Transue.

The Court: This is mere description, I understand; they are not seeking to put in evidence the contents of the paper, they are merely seeking to describe the letter.

20

Q. To whom was that letter written? A. Mr. Transue.

Q. The president of the company at that time?

A. Yes, at that time.

Q. Did you, as far as you recall, go to any other places than you have mentioned in search of Mr. Halyburton or knowledge of him? A. Not that I can recall at the present time.

30

Q. How came you to go to Berwick at the time you went there? A. Mr. Baylor sent me there.

Q. Do you personally know whether your steps were directed toward Berwick, rather than somewhere else, by reason of any information received?

Mr. Collins: Received by him?

Q. By you or by Mr. Baylor, do you know personally?

40

John D. Staples—Direct

Mr. Collins: Object as to any information received by Mr. Baylor.

A. My steps were directed toward Berwick.

The Court: Does not that call for the contents of some paper?

10 Mr. Satterwaite: I will withdraw that question and put it in another form that I think will not be objectionable.

Q. Did you go to Berwick, when you went there, in consequence of information received from anyone? A. Yes, sir.

Q. From whom?

Mr. Collins: Objected to.

The Court: I will let you state that:

A. At Mr. Baylor's direction.

20 Q. (Question read.) A. Yes.

Q. Whom? A. From Mr. Baylor, and also from Mr. Waidman.

Q. Who was Mr. Waidman? A. He is a man living in Hampton, that is all I can tell you.

Q. When Mr. Halyburton left Hampton did his family go with him? A. No, not at that time.

Q. How long did his family remain there? A. I cannot say positively, but quite a while.

30 Q. A year? A. I would say pretty close to it, A. I cannot state the positive time.

Q. Do you recall any event that happened in his family of importance, while they were there, that would help you to fix the date? A. In Halyburton's family?

Q. Yes. A. The marriage of his son is all.

Q. The marriage of his son? A. Yes.

40 Q. Do you recall when that was? A. I couldn't state the positive date, no.

Argument

Q. Did Mr. Halyburton return there at the time of the wedding? A. He did not.

Not cross-examined.

Mr. McCarter: We now offer in evidence the catalogue prepared and issued by the defendant, the American Car & Foundry Company, pocket edition, 1913. 10

Mr. Collins: I would like to have indicated for what purpose the document is offered. It has already been proved by Mr. Dickerman, and the agreement with Mr. Halyburton is in evidence, and the fact that they have such an agreement to manufacture valves; I cannot take the time now to run through the whole thing, and I do not see the object. 20

Mr. McCarter: It was referred to by us, and shown to Mr. Dickerman when he was made our witness, and asked if they got out this catalogue, they said they did, and it was so similar to the one that we got out that I then asked him if he had seen ours, he said he had, etc. Now it seems to me it ought to be marked; it has been used by Judge Collins to make some correction that appears in the notes, and there are some statements in here from time to time that I think are important, made by the American Car & Foundry Company, concerning the value and the great importance of these valves; for instance, they say on page 10 that the Halyburton valve is the most perfectly designed from an engineering and 30 40

James W. Glassey—Direct

mechanical standpoint of any of the valves on the market, and I think we ought to have that marked.

10 Mr. Collins: I think that the explanation of counsel justifies the objection. Certainly that book issued by the defendant cannot be taken as evidence of such facts as he recites. The testimony already in evidence by—I forget now whom, Mr. Dickerman having been called by both sides—is to the effect that they spent a great deal of money, not having yet been able to market the valves, it appears this morning they scrapped the stock that accumulated—
20 they hope it will be good, but it had not yet been established and developed, and it seems to be an attempt to bring in, in an indirect way, the supposed large value of this patent by this advertising publication, which is not legal.

The Court: Well, it is a declaration by the defendant company, and I presume it is evidence for that reason; you may argue that evidence of this sort is not as a rule worth very much, but still it is their
30 declaration.

Marked Exhibit C-10.

Complainant rests.

JAMES W. GLASSEY, sworn:

Direct-examination by Mr. Collins:

40 Q. What is your age, place of residence and occupation? A. Age is forty-eight; place of resi-

James W. Glassey—Direct

dence is Philadelphia, Pennsylvania; occupation is superintendent of one of the departments of Whitehall Tatum Company, glass manufacturers, Philadelphia.

Q. Do you know a Mr. Looney? A. Mr. Wesley A. Looney is my brother-in-law.

10

Q. Where does he live?

Mr. McCarter: What on earth has that to do with this case?

Mr. Collins: Well, you do not object to it, do you?

Mr. McCarter: Only I would like to know what it is about. This gentleman is called out of time, and therefore we have not the advantage of knowing what it is about, and I think we should know the 20 purpose of asking about Mr. Looney.

Mr. Collins: Mr. Looney cannot be produced, he does not live in this State, and I am calling this witness to testify to a conversation between Halyburton, Looney and himself; there is nothing secret about it.

Admitted.

Q. Where does he live? A. He is at present in Texas; his home is in Pittsburg, Pennsylvania. 30

Q. Did Mr. John L. Halyburton have a conversation with you and Mr. Looney with respect to the Gardner Valve Manufacturing Company?

Mr. McCarter: I object. I do not see how a conversation between Mr. Halyburton and Mr. Looney and this gentleman, Mr. Glassey—whether it was concerning the Gardner Valve Manufacturing Com-

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James W. Glassey—Direct

pany or any other company—in our absence, in the absence of any of the complainants or the complainant here, is competent.

(After argument.)

10

The Court: As I understand it, the case sought by Mr. McCarter is a case at law and we all understand that *Naumberg vs. Young* is the leading authority on that point and must be followed, but when you come to the specific performance of a contract in equity the rule is somewhat different; you cannot add, even in equity, to a contract and then get a specific performance of the contract as supplemented by the parole evidence; but there are cases, as I understand the law, in which by way of defense you may show that it would be inequitable to grant specific performance; the evidence of circumstances going to show that it would be inequitable to allow a specific performance, is a recent one and on that principle it seems to me that this evidence is admissible; at all events if not admissible it is not so clearly inadmissible that I ought to reject it at this time; it will go in subject to objection, and if it comes within the case of *Naumberg vs. Young* it will be excluded from consideration. On the other question, I think Mr. Collins is limited to statements made by the agent in the execution of his duty, and as to that I cannot say until I hear the

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30

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evidence; if it does not turn out that these

James W. Glassey—Direct

were statements made by Mr. Halyburton in an effort to secure subscriptions to stock I shall overrule it.

Q. (Question read.) A. He did.

Q. When? A. First in the spring of 1910, and a number of times afterwards. 10

Q. When was it?

Mr. McCarter: Now.

The Court: Well, the first conversation might be competent, and the second might not I do not know.

Q. What was the first conversation? A. Mr. Halyburton came to Philadelphia and told us that he was going to—

Mr. McCarter: Just a moment, please.

A. Told me— 20

Mr. McCarter: Your Honor, this you see is after the agreement which is January 30, 1909. Now can it be possible that the force and effect of that agreement can be modified by some conversation between Mr. Halyburton and this gentleman in 1910. If there was come conversation as to a transaction before this agreement became operative it might go to show some condition precedent, but can it be possible, after Halyburton has bound himself in black and white by the agreement dated January 30, 1909, for him to go out to somebody else, and in a talk undertake to bind us by something that he says concerning the agreement. 30

The Court: I want to hear what the evidence is, it will not do any harm, and if it 40

James W. Glassey—Direct

is not of the character I have indicated I am going to overrule it at once.

A. Mr. Halyburton was there.

Mr. McCarter: No. no. The question is, what was said.

10 A. Mr. Halyburton told me that he was going to try to locate a plant at Hampton, New Jersey for the manufacture of the Gardner valves, and that there was to be one hundred thousand dollars raised, and there was a Mr. Baylor was to raise part of it, and he was there in Philadelphia to see if he could not raise the balance. I, personally, together with my brother-in-law, Mr. Looney, put in, advanced the sum of \$1875, not all at one time, but several times.

20 Q. What were you to get for it? A. With the idea that—

Mr. McCarter: One moment.

The Court: What was said.

A. If he succeeded in raising this one hundred thousand dollars, and they would start that plant I was to get sufficient preferred stock to equal the amount of money that I gave to him; if they did not succeed in raising this one hundred thousand dollars why the thing was off: I took
30 my chances with that idea, and gave him the money.

Q. For preferred stock? A. With the idea that—

Mr. McCarter: Won't you let him testify, please.

A. With the idea that—

Mr. McCarter: No, no.

A. I gave him the money with the understand-
40 ing—

James W. Glassey—Direct

Mr. McCarter: No.

The Court: Well, you have already stated what the arrangement was; I do not see why it should be repeated.

Mr. Collins: I wanted to make sure, to clinch it, that this \$1875 was under that arrangement. Was the company named? 10

A. The Gardner Valve Manufacturing Company.

Q. You say you did this, or you and Mr. Looney together? A. I personally gave half of it.

Q. Who gave the other half? A. Wesley A. Looney, my brother-in-law.

Q. Did you ever receive the preferred stock, in any certificate? A. I never did.

Q. You said this was at different times until 20 the aggregate of \$1875 was made up. During what period? A. From the spring of 1910 until the latter part of 1912, I cannot tell you exactly what month, the latter part of the year.

Q. Was anything said at the original agreement as to what would happen if the one hundred thousand dollars of preferred stock was not raised?

Mr. McCarter: Same objection.

The Court: You may answer the question. 30

Q. And what was it?

The Court: He has already stated where the money would go.

Mr. Collins: If he said that, I was not clear.

The Court: That is the way I understand it.

A. Yes, I stated that.

Q. Do you or Mr. Looney make any claim— 40

James W. Glassey—Direct

The Court: Well, that will not do. He has stated the agreement, and he has stated that he never got his preferred stock.

Recess.

10

Q. Did you or Mr. Looney make any claim for stock in this company?

Mr. McCarter: I object. Certainly I do not suppose he can tell us what Mr. Looney claims, who is out in Texas.

The Court: He can tell what he himself claims.

Q. Do you yourself? A. I do not.

20 Q. Do you know from Mr. Looney whether he does or not?

Mr. McCarter: I object.

Mr. Collins: What Mr. Looney told him.

The Court: That is not evidence, that is pure hearsay.

Mr. Collins: Mr. Looney himself, the person who has the right to claim it, has told the witness that he does not.

30 The Court: But he is not bound by it; if he told a member of the company that would be a different thing.

Mr. Collins: Mr. Glassey is a member.

Mr. McCarter: Never had a share of stock.

Mr. Collins: Well, but he was a subscriber.

The Court: I think you have gone as far as you can.

40

Mr. Collins: Well, I offer to prove it.

James W. Glassey—Direct

Q. Now, you say you saw Mr. Halyburton at various times, 1908, 1909, 1910, 1911 and 1912, I understood you. A. No.

Q. What did you say? A. Beginning of 1910.

Q. Down to when? A. The latter part of 1912 and since then.

Q. Where was he to be found?

10

Mr. McCarter: Objected to as immaterial.

Mr. Collins: I shall follow it up by a letter from Mr. Baylor, Mr. Baylor writing to a gentleman says that the recipient would be apt to find Halyburton going to the West End Trust Company or the Whitehall Tatem Company. Now, I want to prove by this gentleman—it is Baylor's hand writing—that Mr. Halyburton's headquarters were at the West End Trust Company in Philadelphia, so that he could readily be found.

20

The Court: I will let you show that he was there.

Q. Where was Mr. Halyburton to be found during those years? A. In the City of Philadelphia, where he located permanently.

By the Court: Q. Where could he be found? A. He could be found most any time, frequently at the West End Trust Company, and most any time on Chestnut Street in the principal hotel, say, Greens, or the hotel on Tenth Street, Dooners' above Chestnut Street, where we frequently met, and I saw him several times a week during the spring of 1910, and several times a week in the fall of 1910, and frequently during 1911, that

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James W. Classey—Cross

is, two or three times a week, on the main streets of Philadelphia, Chestnut Street or West End Trust Company, where I frequently made appointments with him to meet me, and other prominent places in Philadelphia.

10 Q. What about the Whitehall Tatem Company? A. He has met me quite often there; that is the company I am with.

Q. Oh, that is the company you are with. A. Yes.

CROSS-EXAMINATION by Mr. McCarter:

Q. What position have you, and did you have, with Whitehall Tatem & Company during the year 1910 to the present time? A. I am superintendent of one of the departments of their office, Philadelphia office, and still have that same position.

Q. In the Philadelphia office? A. Yes.

Q. You are not in the manufacturing department then? A. Not in the manufacturing department sense, we do manufacture some things there, but our main plant is down at Millville, New Jersey, and we have several plants, manufacture rubber at Keyport, New Jersey, and—

30 Q. Now, I am not asking you for that long story. I say you are not the superintendent of the manufacturing department? A. No.

Q. What are your functions? A. Superintendent of the sundry department, order department, and also manufacture some few items in my particular department, getting out of the orders, having charge of all the shipments, having employment of all the help outside of the office.

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James W. Classey—Cross

Q. Did you say that Mr. Looney was a brother-in-law of yours? A. Yes.

Q. When did you see Looney last? A. About three months ago.

Q. Where was that? A. Philadelphia.

Q. You have not seen him since? A. I have 10
communicated with him since but I haven't seen him, he has been in Texas most of the time, and California, he has not been in Philadelphia since that time that I saw him.

Q. That is, to your knowledge he has not? A. I know for a fact that he has not, because he is connected with the family, and he comes and spends the time with me when he does come there, most of the time he is in Philadelphia.

Q. That is the only reason you know that? A. 20
Yes.

Q. You say that you put up personally nine hundred dollars with this man Halyburton; had you known him long? A. I met him in the spring of 1910, not before that.

Q. And your subscription was made how soon after you met him? A. Very shortly afterwards; I made the first subscription, and a number of times afterwards, not all at one time.

Q. Did you subscribe personally for a certain 30
number of shares? A. No, not for a certain number of shares; I gave the amount of money with the idea that—

Q. No, no. A. Not a certain amount of shares.

Q. You did not subscribe then for any given amount of shares? A. No, I did not.

Q. Halyburton asked you for money, didn't he? A. He asked me for money for a specific pur- 40
pose, for the promotion of this company

James W. Classey—Cross

Q. Did you take receipts from him? A. I have no receipts, no.

Q. How many shares did you subscribe for? A. I haven't any particular number of shares; the idea was that—

10 Q. No, no, I do not want any idea. I want to know how many shares you subscriber for.

Mr. Collins: Well, the witness simply used the word "idea"—

Mr. McCarter: One moment.

Mr. Collins: He simply used the word "idea" to mean what was said; he has a right to tell what was said.

Q. The question is, and I think it is a plain question and one that you can answer, how many
20 shares did you subscribe for? A. I didn't subscribe for any certain number of shares.

Q. You took no receipt? A. I took no receipt.

Q. Was Mr. Looney present at the time—were you present when Mr. Looney made his arrangement too? A. I have been on some occasions, other occasions I have not been.

Q. How many shares did he subscribe for, in your presence? A. He didn't subscribe for any certain number of shares in my presence.

30 Q. In what sums did you pay what you did pay in this matter? A. Generally about a hundred dollars.

Q. Some times less? A. There may have been a couple of cases of fifty dollars.

Q. Did he repeat this story or rigmarole that he told you when you made these advances?

Mr. Collins: I object to "rigmarole."

40 Q. Well did he repeat this story on each of

James W. Classey—Cross

the occasions that you made these advances? A. It wasn't necessary to repeat it.

Q. I don't ask you what was necessary. Did he do it in fact? A. Well, I knew what he wanted it for.

Q. Oh, no, Mr. Glassey. The question is whether he did repeat this story each time? A. I don't say each time, but he did several times repeat the same idea. 10

Q. You had known him a month when you put up some money on this account. A. Only known him a month.

Q. Did you know anything about him before that? A. Oh, I knew a lot about him.

Q. From whom had you learned? A. From my brother-in-law, Mr. Wesley A. Looney. 20

Q. Did you personally know anything about the valve, did you study the valve? A. I am not competent to know much about the valve, no.

Q. Did you study the valve? A. I wouldn't know much about it if I did study it.

Q. Well now, you insist upon arguing with me. A. No, I did not study the valve.

Q. I suppose you saw this catalogue, didn't you? A. I have, yes.

Q. He left one with Mr. Looney, and he left one with you, didn't he? A. I have seen this catalogue, and I did have one. 30

Q. He gave you one? A. Yes.

Q. Did he tell you anything about the Gardner Valve Manufacturing Company? A. He told me about what I have told you, yes, that this was a company to be located—

Q. I didn't ask you what he told you; I asked 40

James W. Classey—Cross

you if he told you anything about the Gardner Valve Company. A. Yes.

Q. You read this cover? A. I must have read it.

10 Q. Did he tell you that the Gardner Valve Manufacturing Company owned the patents? He did, didn't he? A. Now, I want to answer your question honestly.

Q. Certainly, I suppose you do. Did he tell you that the Gardner Valve Manufacturing Company owned the patents? A. He told me that—

Q. You can answer that yes or no, cannot you?

A. He didn't tell me the Gardner Valve Manufacturing Company then owned the patents.

20 Q. Did he tell you that he had agreed to assign them to them? A. Yes, when this hundred thousand dollars had been subscribed.

Q. Now, over how long a period did these advancements of these small amounts continue, from 1910 to 1912? A. From the spring of 1910 until 1912.

Q. Have you ever had back the money from him? A. I have not.

30 Q. When did you first announce to him that you were willing to abandon your interest, if you had any, in the Gardner Valve Manufacturing Company? A. In the latter part of 1912 when I saw that the thing could not be, the money could not be raised, as far as I could find out.

Q. Did you ever ask him for the money back?

A. I haven't asked him for the money back, no.

40 Q. So that since 1912 to the present time you have never asked for that money? A. Can I explain?

James W. Classey—Cross

Q. Answer the question? A. I haven't asked him for the money, no, not directly for that particular money.

Q. I do not suppose the specific bills or the check that you gave him, but I mean you put up nine hundred dollars on this thing? A. Yes. 10

Q. You never asked to have that nine hundred dollars returned to you? A. Not returned to the present time, no, sir.

Q. Have you ever asked for his note? A. No, I have not.

Q. Well, have you ever made any demand? A. Yes, if you will let me explain. Mr. Halyburton's recommendation came to me through my brother-in-law, in whom I have implicit confidence, a man of wide business experience, and he told me that Mr. Halyburton would make a success of this thing. 20

Q. You are not answering my question. Did you ever make any demand to Halyburton for the amount of the nine hundred dollars, or any part thereof? A. I haven't made any demand on him, no, sir.

Q. Or any request, if you will. A. No, nor any request to the present time, no, sir. I am trying to answer you honestly. 30

Q. Yes, very good. Mr. Looney was connected with the Gulf Cooperage Company, the Pittsburg Company? A. They are only a subsidiary company of the Gulf Refining Company.

Q. Do you think that answers my question? Was he or not connected with the Gulf Cooperage Company the Pittsburg Company? A. He may be connected.

Q. Was he?

James W. Classey—Cross

The Court: If you do not know, say so.

A. I don't know. I know there is a Cooperage Company connected with the Gulf Refining Company, where they make their barrels.

10 Q. Was Mr. Looney connected with the Gulf Refining Company? A. He was, and is connected with the Gulf Refining Company.

Q. And was at this time? A. He was at that time.

Q. Were all your payments to Mr. Halyburton in the presence of Mr. Looney? A. Oh, no.

Q. Did you and Mr. Looney agree to let him have an equal amount? A. Yes.

20 Q. How do you know Mr. Looney has paid the eight or nine hundred dollars? A. Because he has told me that he has.

Q. Who has? A. Mr. Looney has told me.

Q. That is all you know about it? A. Yes, although he has paid him some of the amounts in my presence.

Q. When was the last advance made by you; 1912? A. I should suppose early in the fall of 1912.

30 Q. So that for a period of two years you were, as you contend, subscribing for this stock? A. In the event of it being—

Q. One moment. And paying in, by dribblets of fifty or a hundred dollars, money which finally reached the amount of nine hundred dollars, and you never had a scrap of paper to show for it?

A. That is exactly so; I took it as a purely speculative venture.

40 Q. Without anything to show for it whatever?
A. Yes.

James W. Classey—Cross

Q. Did you ever make any request for any stock of the company? A. If the money would have—

Q. You need not argue with me. Did you ever write—you say you had one of the catalogues—did you ever write—A. No, because I understood— 10

Q. One moment. A. No, I did not.

Q. You say you had one of those catalogues in your possession, did you ever write to Hampton, New Jersey, which is said to be the home of the company? A. I did not.

Q. Now you concluded in 1912, you say, to abandon your position as stockholder, if you were a stockholder? A. I concluded the thing wasn't a success, and I was willing to sink what 20 money I put in it.

Q. Did you ever inquire whether the money, as you say you did put in it, reached the company? A. No, I did not.

Q. You and Halyburton saw a great deal of one another, didn't you? A. We met frequently, yes.

Q. Went out evenings together? A. No, we didn't go out evenings together; I may have met him of an evening in a business way; but we 30 didn't go out evenings together, not socially.

Q. Your principal acquaintance with him on the streets of Philadelphia or at the West End Trust Company was during what period? A. From the spring of 1910, until probably well into the fall of 1912; he may not have been there all that time, but that covers the general period.

Q. Can you say that you saw him in Philadelphia during the year 1912? A. Why, yes. 40

James W. Classey—Cross

Q. Where? A. Why, on Chestnut Street.

Q. Met him casually? A. Met him casually and met him by appointment, he would call me up on the 'phone and I would meet him.

10 Q. Where would you meet him? A. We frequently would meet at Thompson' restaurant on Chestnut Street between 7th and 8th.

Q. By appointment? A. Yes.

Q. Did you have occasion to write to him during this period? A. Why no, because I understood—

Q. Never mind, don't argue with me. A. I would telephone him.

20 Q. Where would you telephone? A. He was then stopping up with a brother-in-law on Diamond Street, later on with another relative at Haddon Heights, New Jersey.

Q. Haddon Heights? A. Yes.

Q. When was he to Haddon Heights? A. The latter part of his stay of this period that I mentioned, that is, I should suppose he was there mostly in 1912; the early periods he was in Philadelphia, but the latter part of his visit he was at Haddon Heights; that is where I understood his home was, or where he was stopping.

30 Q. That is all you know about it? A. Yes.

Q. Was there a place where he had headquarters in Philadelphia where you could find him without being called by him and making an appointment, during the year 1912? A. None except the places I mentioned, at his home, where he was boarding, where he was staying.

40 Q. You said he was at Haddon Heights during 1912? A. Haddon Heights, and this place on Diamond Street.

James W. Classey—Cross

Q. Did you go there during 1912? A. No, I just telephoned him.

Q. Cannot you answer this question, I ask you if you knew of a headquarters that he had in Philadelphia during 1912? A. No headquarters, except this place on Diamond Street, and in 1912 probably at Haddon Heights; I have never been to Haddon Heights. 10

Q. Did you know of headquarters that he had in Philadelphia after July, 1911? A. No headquarters, no.

Q. Who asked you to come over here Mr. Halyburton? A. Mr. Halyburton asked me to come over.

Q. How frequently have you seen him lately? A. Oh, I don't suppose, now let me see, I have seen him probably this year about five or six times during the year, when he would be in Philadelphia on business. 20

Q. Now the West End Trust Company is a regular Trust Company, is it not? A. It is.

Q. With its office right near the Broad Street station, Philadelphia? A. Right on the ground floor.

Q. Do you mean to say Mr. Halyburton was connected in any way with the West End Trust Company? A. He was not, that I know of. 30

Q. That he had a desk there? A. He had not.

Q. Did you hear from your brother-in-law, Mr. Looney, that in 1914, Mr. Baylor wrote him inquiring the whereabouts of Mr. Halyburton? A. In nineteen when?

Q. Fourteen. A. No.

Q. And did Mr. Looney ever tell you that he had written Baylor a letter telling him where he supposed Halyburton was? A. Not that I recall. 40

James W. Classey—Cross

Q. Did Mr. Halyburton tell you that the interest that Mr. Baylor had in this matter was a speculative one, and was of such a nature that Mr. Halyburton could not be held personally responsible for any losses he sustained? A. I don't recall any conversation of that character.

10 Q. How long had Mr. Looney known Mr. Halyburton? A. From what he told me he had known him for some fifteen or twenty years.

Q. Had they been associates in business? A. Associates in business, in a business way entirely.

Q. Beg pardon. A. In business entirely.

Q. Have you ever spoken to Mr. Halyburton with reference to the nine hundred dollars of yours that he took? A. Why, I have spoken to him, yes.

20 Q. What have you said to him? A. I have told him the thing was all up, I guessed it was all up, and—do you want me to tell you what he said to me?

Q. No, I asked you what you said to him. A. Well, I told him that I did not suppose it was possible to raise the capital of one hundred thousand dollars in Philadelphia, from what effort I made towards inducing people that might have the money, and it was a case of all up with me, as far as that particular end of it was concerned, in regard to this Gardner Valve company.

30 Q. As I understood your story it was to the effect that if one hundred thousand dollars capital was not subscribed your subscription didn't amount to anything? A. Not as far as the particular company was concerned, no.

Q. Did you ever suggest to him, as long as he had not gotten the hundred thousand, that you ought to get back your money? A. In this way—

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James W. Classey—Re-direct

Q. Had you ever suggested to him?

Mr. Collins: I think that is proper.

The Court: I think the witness can answer the question in his own way.

A. Mr. Halyburton was introduced to me by my brother-in-law as a man of honor, and I felt, and told him, if he ever would make a success of his ventures in this particular line that it would be natural for me to expect that I would have some return, but I have no positive arrangement to that effect, no agreement whatever, of any kind and I expected, as a man of honor, if he ever got on his feet that he would see that I didn't lose out entirely, although I am satisfied to take the loss as it now is, went into it as a business venture. 10

Q. Your idea was that if the valve ever turned out a success you would have your proportionate interest in it? A. The old company— 20

Q. No, no. If the valve ever turned out a success you would have your proportionate interest?

A. I only expected Mr. Halyburton to return me my money that I would put in the thing, I didn't know whether he would be willing to do anything else or not, that is a matter that I could not control. 30

RE-DIRECT-EXAMINATION by Mr. Collins:

Q. Mr. McCarter asked you if you subscribed for any particular number of shares, and you began to reply "No, the idea was—," and then he checked you and would not let you finish. Now I would like to know what the argument was. You are not allowed by law to state a conclusion, which the word "idea" would imply, but what was said 40

James W. Classey—Re-direct

that you were about to describe under the name of idea? A. The arrangement as far as we were concerned, as far as I was concerned, was that if Mr. Halyburton was successful in raising this one hundred thousand dollars we would be given sufficient preferred stock equal to the amount of our investment; of course it was purely speculative, it was a case of win or lose; I wouldn't do it to a stranger, but through the introduction of my brother-in-law I had enough confidence to take my chances; of course it is not usual for me to do those kind of things.

10 Q. Was Mr. Halyburton in the habit of going to the West End Trust company in the year 1912? A. He would be there frequently to meet me, I would make appointments to meet him there, and also to the restaurant I mentioned.

20 Q. In the year 1912? A. The latter part of his time in Philadelphia was 1912, and I know 1912 I met him there.

Q. What particular reason did he have for going to the West End Trust company?

Mr. McCarter: I object; you cannot prove that by this man.

30 Mr. Collins: I do not like to lead, but he can tell what it was, what connection he had with the company, or with somebody there.

By the Court: Q. Why did you meet at that particular place? A. Because the secretary and treasurer of the West End Trust company was a personal friend of mine, a man to whom I introduced Mr. Halyburton, and who had met Mr. Halyburton and talked with him a number of times, and that was my place for banking, and

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James W. Classey—Re-cross

we would frequently meet there, because it was convenient to me, and also because we could sit in Mr. Wolbart's office and could talk.

Q. What was the name of the secretary? A. J. E. Wolbart, secretary and treasurer.

Q. He formed the acquaintance of that gentleman through you? A. He also knows my brother-in-law Mr. Looney; through Mr. Looney. 10

RE-CROSS-EXAMINATION by Mr. McCarter:

Q. Your first payment was how much; fifty dollars? A. I said I paid in amounts of a hundred, and fifty, generally I should say probably fifty.

Q. Did you keep any memorandum of your payments? A. I kept a pencil memorandum, yes. 20

Q. Have you that here? A. I have not.

Q. Where is it? A. I kept a pencil memorandum of the total, I haven't got a pencil memorandum of the dates.

Q. Well, you put down nine hundred dollars; is that what you mean? A. I got the total that I paid him during the time I met him in Philadelphia.

Q. What? A. I have the total amount I paid to him during the time I met him in Philadelphia, and I probably could have the dates, although I haven't got them with me. 30

Q. If you paid for one hundred dollars worth of stock you say your understanding was what? A. I would get sufficient preferred stock, if this company was launched and they secured one hundred thousand dollars I would get sufficient preferred stock to pay for the amount that I had 40

John L. Halyburton—Direct

10 already given Mr. Halyburton; I may not have given him an even amount, I didn't give him an even amount, like to equal so many shares, but just that I had given him a certain amount, and I would get sufficient preferred stock if the thing was launched; I went into it as rather a specu-
 10 tive idea, if the thing was a success I would get some stock, and if it was not a success I would lose my money.

JOHN L. HALYBURTON, sworn:

Direct-examination by Mr. Collins:

20 Q. You are the defendant, Mr. Halyburton? A. Yes, sir.

Q. How did you come to go to Hampton, or as it used to be called I think, Hampton Junction, or Junction, New Jersey, to meet Mr. Baylor?

Mr. McCarter: Objected to as im-
 material.

A. I was taken there by—

30 Mr. McCarter: One moment. Objected to as immaterial how he happened to go to Hampton and fall in with Mr. Baylor.

Mr. Collins: Your honor, I have a deci-
 40 sion on that point—no doubt your Honor is very familiar with it—by Vice-Chancel-
 40 lor Pitney and approved by the Court of Errors and Appeals, in which the entire environment can be gone into, exactly as Mr. McCarter did; Mr. McCarter took the greatest latitude, and sometimes under ob-
 40 jection was permitted and asked the ques-

John L. Halyburton—Direct

tion to show the arrangement Mr. Baylor had with Mr. Halyburton, and I am simply going to give you an historical evolution of this.

The Court: Well, he did go there and met Mr. Baylor. 10

Mr. Collins: Yes.

The Court: Now let him start from that point. You can say that he went there by reason of some letter received.

Mr. Collins: I mean to say that he went there with this man Lepper, who took him there and introduced him.

The Court: That you can show.

Mr. Collins: Mr. Lepper and he had had some arrangement. 20

The Court: Well, we do not care about that, but you can start with that, that he went there in company with Mr. Lepper.

Q. That is the fact, is it? A. Yes.

Mr. McCarter: What is the fact, that Lepper took him there? A. That is right.

Q. When was it? A. That was in the year, I think, 1906.

Q. What was the subject of the discussion between you and Mr. Baylor? 30

Mr. McCarter: I object to that as immaterial; this contract was 1909, your Honor.

Mr. Collins: That does not make any difference. Mr. Baylor stated that it began in 1908. I will show you it began in 1906, by Mr. Baylor's own letter, in a minute, and that letter I am about to introduce, and when I prove it it will show that in 1906 - 40

John L. Halyburton—Direct

the arrangement was as far back as that—that Mr. Baylor wrote him “You will be safe in figuring on myself and my friends taking twenty thousand dollars worth of your preferred stock.” I will offer it in a minute.

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Mr. McCarter: On the cross-examination of Mr. Baylor, over our objection, was elicited by Judge Collins the statement that previous to the arrangement in question, which was in 1909 in writing and in August, 1908 verbally, there had been another deal, and that that was abandoned as impracticable by both of them and a new deal made in August, 1909—1908 verbally, and crystallized by this writing in 1909. I say it is utterly immaterial what occurred in August, 1906 on a suit based upon this contract.

20

The Court: I presume that is so, if I may accept the statement of Mr. Baylor as correct, but how do I know that the statement of this witness will not be different. I certainly will overrule all evidence going to show an arrangement which was different from the arrangement finally made with reference to the organization of this company. If this evidence has reference to the organization of this company, why then I think it is competent, but if it has reference to some other scheme which fell through, then I do not think it is competent.

30

Mr. Collins: Well, it has.

Q. What was the subject of the discussion between you and Mr. Baylor? A. The time

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John L. Halyburton—Direct

I went to Hampton at first with Mr. Lepper, I went there to look at this manufacturing site, which they told me they had there, to see if it was a suitable site for the manufacture of these valves; while there we discussed the question of raising enough money to start a plant there.

Q. Did you receive a letter, which I now show you, from Mr. Baylor, at about its date? A. Yes, sir. 10

Q. That is his signature; you know his signature? A. Yes.

Q. And that is his signature? A. I believe it is.

Mr. Collins: I suppose you will admit that is his signature.

Mr. McCarter: Oh, yes.

Mr. Collins: I will offer in evidence this letter. 20

Mr. McCarter: I do not think a letter written by Mr. Baylor in 1906 is competent against this complaint in this suit, except to contradict Mr. Baylor. If there was anything contradictory in this letter of Mr. Baylor's evidence it would have been competent to contradict him with it, but certainly this company cannot be bound by anything that is contained in an individual letter written by Mr. Baylor before the company was formed. 30

Mr. Collins: I want to show that from the very outset of their negotiations the whole object of Mr. Baylor, and I think it is not denied, was to establish an industrial plant in his home town at Hampton, and that that was the objective point, and that 40

John L. Halyburton—Direct

10 to do that he was willing to embark in the forming of a company which should have a certain amount of preferred stock for working capital, of which he would raise twenty thousand dollars, and the common stock should be issued for patents, and from the very outset that was the understanding, it must be there in that town, and that is laid out in the earliest letter of all. Then they went ahead, and finally within a month after this they formed this corporation; it is not a thing that was abandoned at all. Mr. Halyburton—I will have to anticipate a little—formulated a plan

20 of preferred stock and the three hundred thousand of common; it was reduced to typewriting; Mr. Baylor himself mailed it to Mr. Transue, and instructed Transue to frame the certificate of incorporation, which Transue did, and the corporation was formed in 1906, and this objective point was never lost sight of, and at a later date the matter crystallized more fully, perhaps it was in 1908, and then in 1909

30 Mr. Baylor wanted something to show, in the event of the possible death, or what not, of Mr. Halyburton, that this three hundred thousand dollars of stock of the company should go to the patents.

(After further discussion.)

40 The Court: As the letter was written only a month before the organization of the company I will let you put it in subject to objection; I do not know what its value

John L. Halyburton—Direct

will be, and I should rather think it would be valueless, but I will let you put it in.

Q. Was the Borough of Hampton at this time called Junction? A. Yes, sir.

Letter marked Exhibit D-2.

Q. I will read the letter:

10

“Junction, N. J., September 14th, 1906.

“Mr. John L. Halyburton,
Cohoes, N. Y.

“My dear Mr. Halyburton: I have your letter of the 12th and 13th inst., and in reply would say that the freight rate to Hampton Junction, N. J., from Wharton, N. J., via C. R. R. of N. J., is 45¢ per gross ton on Pig Iron. Wharton is about 30 miles from here. There are also large Furnaces at Oxford, N. J., Pequest, N. J., Netcong, N. J., and Catasauqua, Pa. I haven't the rate from Oxford is about 7 miles from here, Pequest 8 miles and Netcong about 30 miles. I would judge the rate from Oxford and Pequest would be around 30¢ per gross ton. The rate from Catasauqua is 70¢ per gross ton. We are near the Iron and Coal fields here and you will find the rates very low. You will also find that labor can be procured very cheap in this locality. Taylor Iron & Steel Co., employ about 1000 men and they pay laborers \$1.40 per day. Of course, you understand our shipping facilities are of the very best as we have freight trains out of here on the C. R. R. of N. J., every hour of the day. You will be safe in figuring on myself and my friends taking \$20,000 worth of your preferred stock. I have talked with enough of them to know just about what I can do.

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John L. Halyburton—Direct

Just as soon as I am positive you are able to handle your end of it, I will collect it and deposit it in the First National Bank of High Bridge, N. J. The land and other inducements you get here should be worth more than \$10,000. Since I have gone in with you fellows I have decided to get everything possible for the concern for nothing, as that will increase the assets. It will be hard for you to find a cheaper place than this to do your work as there isn't any such a thing as a labor organization in this locality. When it comes to the tax rate, I am pleased to advise you that our rate is \$10.36 per \$1,000 valuation. You must admit this rate is very low. Of course, the valuation would be made just as low as we could make it legally. Other people seem to make lots of money out of the valve and rack business, and we should do nicely here as you should manufacture the stuff very much cheaper. One thing is sure, and that is the company would have the good will of everyone in the locality as they are anxious to have a good industry locate here, and that goes a long way now days when it comes to employing men. If any of your people up there are going to make a good size investment and want to come here and look over the ground, I will be glad to show them around, and I will give them all the information I possibly can. If we get this thing going, and I believe we will, we must make it a success as it would be a duty we would owe our friends who help us raise the money. I personally would feel the responsibility. I organized a company a few years ago and took a number of my friends in and the thing has been a complete success, and

John L. Halyburton—Direct

it has helped me in raising money for this concern. Let me hear from you promptly.

Yours very truly,
E. B. BAYLOR.”

Now, following that letter was a corporation formed? 10

Mr. McCarter: That is already in evidence.

Q. With yourself, and this man Burrell, and Mr. Baylor, as incorporators? A. Yes.

Mr. Collins: Do you remember that distinctly?

Mr. McCarter: Well, it is in the minute book, and that is offered.

Mr. Collins: Well, then it is considered that the certificate of incorporation is in evidence. 20

Q. Was any particular parcel of land to be used, as the location for the plant? A. Yes, sir, that was part of—

Mr. McCarter: I object.

The Court: What do you propose to show?

Mr. Collins: I propose to show that the plan of this corporation was formulated by Mr. Baylor and Mr. Halyburton, put in writing, or typewriting, by Mr. Halyburton, was sent by Mr. Baylor to Mr. Transue to draw up the certificate of incorporation, which was drawn by Transue, as I will show in a few minutes, and that in that plan plan it was not only contemplated that there should be the hundred thousand dollars of preferred stock taken, but three hundred 30
40

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10 thousand dollars of common for the patents, and that fifty thousand of the common was to go back into the treasury to be used as a bonus to people who would take the preferred stock, and that the plant was to be on a particular piece of land specified; that was the understanding from the beginning. The reason I want to show about the piece of land is, I shall later show that that piece of land which was owned by the Warren Railroad company, and could be controlled by Mr. Baylor, was, in the year 1912 if my memory serves me right, conveyed away by the Warren Railroad Company to the Conservation Company, of which Mr. Baylor was an officer; that plans were made or contemplated on that piece of ground, and that Mr. Baylor procured the conveyance of it to his own company to use for manufacturing,— as bearing on this abandonment; I cannot prove my case unless I am entitled to show the environment of it, and when I follow this up by showing the document that was sent to Mr. Transue to draw the certificate of incorporation, and then the consequent arrangements, I will satisfy your Honor's mind that the thing failed and was abandoned.

20

30

40 The Court: I am going to allow you to show that there was a plant formulated; I am going to allow you to show what the plan was, and then I am going to allow you to show that it failed of performance; but when it comes to going into details with re-

John L. Halyburton—Direct

spect to this particular land, which the company had no connection whatever, it seems to me that that is utterly immaterial, and I am going to overrule it.

Q. Was there a plan for the formation of a New Jersey corporation agreed upon between you and Mr. Baylor? 10

Mr. McCarter: One moment.

The Court: A plan prior to the organization or subsequent?

Mr. Collins: A plan which the organization consummated. This document that I am about to have him identify is the one that he prepared after the consultation and agreement with Mr. Baylor; was sent by Mr. Baylor, I will prove later, to Mr. Transue, and on the back of it, in the handwriting of Mr. Halyburton, are the names of the incorporators; the body of it states what is to be done between these incorporators; that was sent by Baylor to Mr. Transue; Mr. Transue drew the certificate of incorporation, and the parties then met and incorporated, and this shows what the plan was to be. 20

(After discussion.) 30

The Court: I am inclined to think that the paper can have no legal effect on the rights of the company, but your point, Hr. McCarter, and Judge Collins' point is entirely different. You stand upon the letter of this particular agreement on which you have sued, and Judge Collins stands on what he calls the equities of his case; he wants to show a scheme which has been 40

John L. Halyburton—Direct

10 abandoned. Now I think that this paper, which has to do directly with the organization of the company, may throw some light upon the scheme, and possibly upon the subsequent conduct of the parties, and it is only in that point of view that I am going to allow it to go in. I am not going to allow evidence to be given with respect to what was done with this particular piece of land that is referred to; the fact is, as I understand it, it was never acquired by the company, the company had no relation with it in any way, shape or manner; I do not admit the paper in evidence for the purpose of enabling Judge Collins to show that the land did have some connection with the company as organized, I merely let it go in with a view of enabling him to prove, if he can, that equity which would prevent the Court from enforcing this particular agreement.

20

Q. Witness being shown a typewritten paper is asked: Who caused that to be prepared.

The Court: That does not make any difference. I am not going to allow this evidence to go in in great detail.

30

Mr. Collins: I simply want to show that this emanated from him, and that he then left it to Baylor, and I will prove by Transue what Baylor did with it.

By the Court: Q. Who composed that paper?
A. I did.

Q. Before or after conference with Mr. Baylor?
A. Before,—no, after.

40 Q. What did you do with it when you got

John L. Halyburton—Direct

through with it? A. I think I sent that to Mr. Baylor.

Marked for identification D-3.

Q. Now, Mr. Halyburton, after the Gardner Valve Manufacturing Company was incorporated, which I understand was in October, 1906, was there any agreement reached between you and Mr. Baylor and Mr. Transue with respect to the issue of stock and the acquisition of patents by that company, and when was it? 10

Mr. McCarter: I object.

(After argument the evidence is admitted subject to Mr. McCarter's objection, and subject to such action as the Court may take upon it.

A. There was no agreement until the execution; what I understood was simply a memorandum agreement. 20

Mr. McCarter: I move that be stricken out.

Q. I am speaking of a previous verbal agreement. A. There were no arrangements in regard to the distribution of stock.

Q. I did not say the distribution, but about the terms on which the—

Mr. McCarter: Oh, no, don't put the words into his mouth. 30

Q. The patents were to go to the company. A. No, sir, there was no agreement.

Q. It appears on September 11, 1908, Baylor, Transue and you were the only directors of the company that were present at the meeting September 11, 1908; I want to know whether at or after that time there was an agreement between you three gentlemen, who were the directors of 40

John L. Halyburton—Direct

the company, about the issue of preferred stock and of common stock. A. Oh, yes.

Q. Well, what was it?

The Court: In the first place, let us know when it was made.

10 Q. When did you make it? A. Well, that was made at about the time the company was formed, I should say.

Q. Well, I asked you if there was one made at or after 1908 on that subject by these gentlemen, yourself, Transue and Baylor? A. Verbally.

20 Q. Well, what was it? A. That as soon as we raised \$100,000 in cash for building and equipping a plant, at that time I would sign over my own patents to the company, when they issue to me \$100,000 of common stock personally; the understanding of course was that the whole common stock—

Mr. McCarter: No. One minute.

Q. State what was agreed on, not the understanding. A. That was the agreement, that I was to receive \$100,000 of common stock personally.

Q. What about the other \$200,000?

Mr. McCarter: Well, now.

30 The Court: Was there any agreement in reference to the other stock?

A. Of the common stock?

By the Court: Q. Yes. A. Yes, sir.

40 By the Court: Q. What was that? A. That was to go back into the treasury; fifty thousand of it to go as a bonus with the preferred stock, and the other fifty thousand was to be used in any way the parties who subscribed the preferred stock would see fit.

John L. Halyburton—Direct

Q. You say that as soon as \$100,000 cash was raised that transfer was to be made; what was to go for that hundred thousand dollars of cash?

Mr. McCarter: I think the gentleman ought to tell the contract, and not be led.

The Court: Yes. The question is was there anything further said. 10

Q. Well, was anything further said about the hundred thousand dollars of cash?

Mr. McCarter: Your honor, I object.

The Court: Was there anything further said in reference to the arrangement?

A. With the hundred thousand dollars?

Q. Of cash. A. We were to acquire this property at Hampton Junction, which included about eight acres of ground, which I understood belonged to the D. L. & W. railroad, and that the Central Railroad of New Jersey would run tracks into that property at their expense, that was their contribution, as I understood it, towards locating this industry at Hampton. 20

Q. That was what was to be done with the money when you got it? A. Well, that was plus the hundred thousand dollars; the hundred thousand dollars was to be spot cash.

Q. So I understood, a hundred thousand dollars of cash was to be raised, but raised out of what? A. Simply on subscription. 30

Q. On subscription of what? A. Of the stock.

Q. What stock? The hundred thousand dollars cash, what stock was to issue for that? A. Stock of this Gardner Valve Company.

Q. What class of stock? A. Preferred stock.

Q. Now you spoke of the D. L. & W. Railroad company owning the tract of land. 40

John L. Halyburton—Direct

The Court: Well, I do not think it is worth while to go into that.

Mr. Collins: All I was going to ask him was whether it was the D. L. & W., or this subsidiary company.

10 Q. Was there anything further in this agreement about—

Mr. McCarter: I think he ought to tell what the agreement was.

The Court: You can ask him in the ordinary form. Do you remember whether anything else was agreed upon.

Mr. Collins: I simply desire to—

The Court: No. Let the witness state. Do you remember anything else about this agreement?

20 A. Nothing more than what I stated in regards to the issue or preferred and common stock.

Q. Now, as to who was to—

The Court: No, that assumes that somebody was.

Q. As to the disposing of the preferred stock, to getting customers for the preferred stock. A. Well, we were all to pitch in and do all we could, everybody.

30 Q. Well, was there any agreement on that subject by any one of the three gentlemen? A. Of any specific amount?

Q. Yes. A. Not outside of that letter which Mr. Baylor wrote at that time.

Q. How much was Mr. Baylor to get? A. Twenty thousand dollars.

Q. Did he ever do it? A. No, sir.

40 Q. Did you ever receive any money for preferred stock? A. Not that preferred stock was given for; simply that these parties who did furnish

John L. Halyburton—Direct

money to me, for instance while this was going on it was understood—

Q. Who were they? A. That was Mr. Grasse, Mr. Looney, Mr. Transue and Mr. Cabbs.

Q. Mr. Gasse has told us how much he subscribed to; how much did Mr. Looney subscribe to? 10

Mr. McCarter: One moment.

Q. How much did Mr. Looney subscribe? A. Mr. Looney and Mr. Grasse jointly subscribed, I think it was between eighteen and nineteen hundred dollars.

Q. How much did Mr. Crabbs subscribe for? A. A little over two hundred dollars.

Q. How much did Mr. Transue subscribe to? A. About two thousand dollars. 20

Q. Has Mr. Looney ever said anything to you, after it developed that the preferred stock had not been all subscribed for, about his subscription?

Mr. McCarter: I object to that, I do not think you can prove that by this witness.

(After argument.)

The Court: I will admit it subject to the objection, and you may except specially to this on the ground that an estoppel or an abandonment can only be made by Looney himself. 30

Q. What, if anything, did Looney say about his investment after you failed to get the hundred thousand dollars? A. I have a copy of a letter from Mr. Looney to Mr. Baylor that I think would answer that question.

Mr. Collins: Will you please give us that letter. I did not serve you with a notice 40

John L. Halyburton—Direct

to produce, but you undoubtedly have it, a letter from Looney to Baylor; we have a copy of it.

Mr. McCarter: What is the date of it?

A. 1913 or 14, 1914 I guess.

10

Mr. McCarter: Dated June 6, 1914. Is that the one you want? (Producing letter).

Q. At the request of counsel for the defendant, counsel for the complainant produces a letter from Looney to Baylor. Is that the letter to which you refer? A. That is the letter, yes, sir.

The Court: If that is Mr. Looney's letter it of course obviates one of the objections that were made.

Mr. Collins: I will offer it in evidence.

20

Mr. McCarter: I object to it as immaterial.

Mr. Collins: I will read it.

“June 6, 1914.

“Mr. E. P. Baylor,
Hampton, N. J.

Dear Sir:

30 In delayed reply to your letter of the 13th ult., I would say that Mr. John L. Halyburton is connected with the American Car & Foundry Company, Berwick, Pa., and as far as I know as getting the valve business there in good shape, and if you have any legal claim on him, he may soon be in a position to meet it. So far as I understand the matter, your risk was simply a speculative one, and was of such a nature that Mr. Halybur-
40 ton could not be held personally responsible for

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any loss you may have sustained. I have been acquainted with Mr. Halyburton for over twenty-seven years, and I have never known him to do a dishonest or dishonorable act.

Yours very truly,
WESLEY A. LOONEY." 10

Marked Exhibit D-4.

Mr. McCarter: I think, your Honor, that the letter to which that is a reply should also go with it.

The Court: Yes, if the letters goes in the reply should go in.

Mr. McCarter:

"May 13th. 1914.

20

"Mr. Wesley A. Looney,
c/o Gulf Refining Co.,
Frick Bldg., Annex,
Pittsburgh, Pa.

"My dear Mr. Looney:

Of course, you no doubt remember meeting me here a few years ago in connection with the Gardner Valve Mfg., Co., and John L. Halyburton.

Mr. Halyburton left here about three years ago, and to my surprise, never returned, in fact I never heard from him after that, but later learned he was in Philadelphia, and met him there. He told me he had things fixed up and that they were going to make the valves at Bristol, Pa., and I would get my money, as long as they did not locate here. I have not seen or heard from him since, in fact have not known his whereabouts. 30

A few days ago, I heard that he was somewhere 40

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in Pennsylvania manufacturing the valves, but of course do not know this to be true.

I helped him to the extent of \$5,000.00, and he has evidently forgotten that.

10 I will be pleased to hear from you, and if you can give any information concerning this matter, I will appreciate it very much.

Marked Exhibit C-11.

Q. How about Mr. Crabbs' \$200? A. Mr. Crabbs put something over two hundred dollars into the proposition, which was to defray the expenses of—

The Court: I object. Answer the question.

20 Q. I did not mean to ask you about how Mr. Crabbs put in the two hundred dollars; I want to know whether he makes any claim on it any more, on this company? A. No, sir, he does not.

Q. How do you know he does not? A. He told me over the 'phone the other day that he would tell that, or write me a letter to that effect, or tell it to my lawyer.

Q. What effect? A. I wanted him to come here and testify to that effect.

30 Q. To what effect? A. That he had put two hundred or some odd dollars into this and considered it lost, and if I ever felt I could afford to give it back to him he would be very glad of it.

Q. Now Mr. Halyburton, it appears that in 1909, January, you signed a paper which you seen here in evidence, written on it "Accepted E. P. Baylor and Frank Transue." A. The memorandum agreement?

40 Q. Yes; you remember it? A. Yes.

John L. Halyburton—Direct

Q. Will you state the circumstances— it is Exhibit C-2 under which that came to be signed?

Mr. McCarter: I object.

Mr. Collins: I want to show how that came to be signed, who solicited it, and for what reason. I do not like to put words in his mouth or I could state how it came to be done. 10

The Court: Do you propose to show an agreement between Mr. Baylor and Mr. Transue of the same character that you showed before? You have already showed an agreement, as you claim; now I want to know whether this is a different agreement.

Mr. Collins: This is a part, this is a temporary make-shift, pending the raising of the preferred stock; the agreement was that the preferred stock was to be placed, one hundred thousand dollars of it, to go to working capital. 20

The Court: Was that before or after this?

Mr. Collins: Before this. In September, 1908 that agreement was reached; they were going to try and get the preferred stock, but they were not getting it; the thing went along, and Baylor wanted something or other to show that the company should have the common stock eventually, and this temporary thing was drawn up by Transue, and it was really—although they afterwards passed some resolution, it appears, at a meeting of the board of directors at which he was not present, he retired 30 40

John L. Halyburton—Direct

10 they said—but it was a personal thing between these gentlemen to bind them if he should die, or anything happen to him. It was not attempted to embody the whole thing, it was only a part of it, and I want to know the circumstances under which this was signed, and what was said.

The Court: You want to show some prior conversation between him and Mr. Baylor on the subject.

Mr. Collins: Yes, and Transue, all three of them.

20 Mr. McCarter: Well, I object, decidedly, it is the same question again. Counsel calls that a temporary thing. It is a contract, we say, or it is nothing; it is in writing; it is signed by this man; it appears in the record of this case, as well as in the minutes that it was presented at a meeting of the board of directors and accepted by the board of directors as a binding contract, and he was notified of the company's acceptance of it.

30 The Court: I am now trying to find out the kind of proof that Judge Collins is going to offer, and I understand that he is going to show some conversation between himself and these two gentlemen which led to the writing of that paper. Now on the same ground on which I admitted the other testimony I will admit this, subject of course to your objection, and the objection goes to the whole line of inquiry, not to this particular question.

40 Q. Now please state the circumstances under

John L. Halyburton—Direct

which that was signed? A. Mr. Transue came to me one day, and he said "Halyburton, Baylor thinks that you are going to croak some time—"

Mr. McCarter: Do you think, your Honor, that is admissible?

The Court: Well, I will let the whole conversation go in subject to cross-examination, and subject to being overruled. 10

Q. Go on. A.—"and in the event of anything like that happening we would not have anything to show, in case after your death we could carry this here arrangement out for locating this plant here, to show to your heirs, that you had verbally agreed to go on with this thing when we raised the money; he thinks we ought to have something, for instance, to show to your son Fred, and in the event of anything happening to you why we would go on with this thing;" "Well" I said "that sounds all right; I don't feel much like croaking just yet, but if he feels that way it seems logical to me, so write up something, and I will sign it." That is all there was to it, and Mr. Transue wrote that up and brought it up to me, where I was working on some drawings; I read it over, and said "That's all right," and I signed it, and that is all I know about it. 20

Q. Gave it back to Mr. Transue? A. Yes; I understood it was simply— 30

Mr. McCarter: I call the Court's attention to the fact that that was admitted on the statement of Judge Collins that he was going to prove a contract between Baylor Transue, and this gentleman.

Mr. Collins: I never made any such statement. 40

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The Court: Well, the evidence is in subject to Mr. McCarter's objection.

Adjourned until tomorrow at 10 a. m.

10

THIRD DAY

Before HIS HONOR VICE-CHANCELLOR STEVENS:

Mr. Linton Satterwaite and Mr. Robert H. McCarter, for the complainant.

Mr. Gilbert Collins and Mr. Frederick P. Whitaker (of the New York bar) for the defendants.

20

Transcript of shorthand report of the evidence given upon the trial of the above stated cause, on Friday, September 17, 1915, at Chancery Chambers, Newark, N. J.

JOHN L. HALYBURTON, re-called:

Direct-examination by Mr. Collins:

Q. Was there some apprehension about your health? A. I believe so, yes, sir.

Q. And you were asked to get your life insured? A. Yes.

Q. You did not pass the life insurance, did you? A. No, sir.

Q. Now Mr. Halyburton, who paid for the patents? A. I did.

Q. It appears that Mr. Baylor has one item in his claim which he says went to a firm of patent lawyers, he calls it Monroe & Curtis? A. Moser & Curtis is the real name.

40

John L. Halyburton—Direct

Q. In fact how was that paid? A. Why that was paid just out of other moneys which I had.

Q. No. How was it paid? A. By check.

Q. To whose order? A. To my order.

Q. By Baylor's check to your order, and you endorsed it over? A. Yes, and mailed it to Moser & Curtis. 10

Q. Did you meet Mr. Baylor in Philadelphia at any time after you left Hampton? A. Yes.

Q. Where? A. At the West End Trust Company building.

Q. When? A. I think it was about June 31st, June 30th, somewhere around there.

By Mr. Satterwaite: Q. June 31st, what year? A. Or July 31st.

Q. June 30th. A. June 30th. 20

Q. Of 1911? A. Yes.

Q. When you went away from Hampton did your family remain? A. Yes.

Q. Consisting of whom? A. My wife and son.

Q. For how long? A. My son still lives there, and my wife left Hampton in August, 1912.

Q. Did you have any conversation with Frank Transue with respect to the American Car & Foundry Company, and, if so, when?

Mr. McCarter: Is a conversation between this gentleman and Mr. Transue competent? 30

The Court: It depends upon the subject on which they conversed; I cannot tell.

Mr. McCarter: Well, I quite appreciate your Honor's predicament, and I suppose my objection will be ample. We object because we think that anything said to Mr. Transue, in the course of conversation be- 40

John L. Halyburton—Direct

tween this gentleman and Transue, is not competent as against the company. Now that will protect us, and your Honor can determine afterwards.

A. Yes, sir, we had a conversation.

10 Q. When? A. Well, it probably occurred in the latter part of 1912.

Q. Where was it? A. In Philadelphia.

Q. Where, do you remember? A. Now, that I couldn't state positively, just where we happened to be at the time this conversation took place.

Q. What was the conversation? A. I stated that I had negotiations with the American Car & Foundry Company with the idea of getting them to manufacture these valves for me, and I thought it would go through.

20 Q. What did Mr. Transue say? A. Why, about all that he did say was that he hoped that it would.

Q. Now Mr. Halyburton, will you tell us what efforts you made to secure a plant for the manufacture of valves under your patent, after you left Hampton and on your own account?

The Court: What difference does that make?

30 Mr. Collins: My purpose is this: He will show that he tried at Pennington, that he tried at various places, quite a number of them, and that the letters we are going to introduce in evidence in a few minutes will show that Mr. Baylor knew it and was glad of it, he hoped in some way, somehow, or other, he might get the money.

40 The Court: The letters will speak for themselves; they will indicate the amount

John L. Halyburton—Cross

of money which was received by the recipient of them.

Mr. Collins: But the letters won't be proof of the fact that he was making these negotiations. Of course if your Honor thinks I do not need it.

The Court: I do not think it is relevant. 10

Q. I will just ask one general question. Whether or not you did make such efforts during the period before you closed with the American Car & Foundry Company? A. Yes, sir.

Q. Did Mr. Staples give you any notice, either written or verbal, of any acceptance by the Gardner Valve Manufacturing Company, or the directors of the Gardner Valve Manufacturing Company, of this paper, Exhibit C-2? A. No, sir, none whatever. 20

CROSS-EXAMINATION by Mr. McCarter:

Q. So that as far as you are concerned is it your position that you never knew that the board of directors had accepted that matter, is that your attitude? A. No, I can't say that I didn't know; I supposed that they had.

Q. No, you cannot say if you didn't know? A. I can't say that I did know either. 30

Q. Well, you remember the date of the occasion? A. All I know about that document is when I signed it, and that is the last I seen it.

Q. You remember the occasion of the meeting referred to in the minutes? A. Yes.

Q. When you retired from the room? A. Yes.

Q. You retired for a purpose? A. Not that I knew, except to go to work on a drawing. 40

John L. Halyburton—Cross

Q. Didn't you know that your proposition was to be presented, and that is the reason you left the room? A. No, sir.

10 Q. Weren't you asked to retire because your proposition was coming up about assigning the patents to the company and it was not proper that you, being a member of the board, should act upon that? A. I don't remember that circumstance now.

Q. How long after that meeting was over did you continue to reside and continue to have your office right in the building where that meeting was held? A. I can't say just how long, quite a little while.

Q. Well, a year or two? A. Yes, I guess so.

20 Q. You did not leave Hampton until about June of 1911, did you? A. That is right.

Q. So that for two years and six months after that paper was prepared you continued to reside in Hampton, and you had your office in the same building in which that meeting took place, at which that matter was presented, didn't you? A. Practically, yes, sir.

Q. And you knew that the paper was to be presented, didn't you? A. I knew it was presented.

30 Q. And you knew that the board accepted it, didn't you? A. No, sir.

Q. Sir? A. No, I can't say that I know it.

Q. Did you ever read the minutes? A. No, sir.

Q. Never read the minutes? A. No, sir.

Q. And where was this meeting, what room was it in? A. If my recollection is right it was downstairs in Mr. Baylor's office, in the main office.

40 Q. Beg pardon? A. If I remember correctly

John L. Halyburton—Cross

it was down stairs in Mr. Baylor's office, where he conducts his general business.

Q. Do you remember coming into the room shortly after your retirement? A. After my retirement?

Q. Yes. A. No, not until I was through with my work upstairs, not until I was through with the work that I was working on upstairs; I had a little room upstairs where I was making drawings; that is where I signed this agreement. 10

Q. Upstairs? A. Yes.

Q. Did you sign it before or after the meeting? A. Well, I can't say positively, but I suppose it was after, I can't say positively whether it was before or after, but I imagine it was after.

Q. You only imagine, you don't know? A. No. 20

Q. Who presented it to you for signature? A. Mr. Transue.

Q. Upstairs in your drawing room? A. Yes, sir.

Q. Do you remember the resolution that day with regard to the issuance of stock to Mr. Baylor for the money he had advanced to the company? A. I remember a resolution was made to that effect.

Q. Don't you remember that those two matters came up, and were to come up, by the programme, the same day? A. I don't think that had anything to do with the signing of this. 30

Q. I didn't ask you whether it had anything to do with it. I ask you if you don't remember that by the programme that was laid out for that meeting those two matters were both to come up on the same occasion? A. I don't remember any programme being laid out. 40

John L. Halyburton—Cross

Q. Did you have any idea what was going to take place at that meeting before it occurred? A. Not until Mr. Transue came and told me about wanting to have something of this kind, in the event of something happening to me; I said "All right go ahead, write out something."

10 Q. Had you talked at all before the meeting about the proposition of the issuing of stock to Mr. Baylor for his advancements? A. I think we had.

Q. You were not surprised at the introduction of that resolution, were you? A. For the issue of this stock?

Q. To Mr. Baylor? A. Oh, no.

20 Q. Had you ever made any other inventions than this particular valve?

Mr. Collins: Objected to as not cross-examination. I only speak in the interest of saving time.

The Court: I do not understand what the object is.

Q. When did you invent this valve?

Mr. Collins: The same objection.

(Admitted.)

30 Q. When did you make the invention? A. Which particular valve are you speaking about, there are two valves.

Q. The valves we are talking about in this suit. A. There are two valves mentioned in this suit, one is a parallel seat valve, and the other a tapered seat valve.

40 Q. When did you make the invention? A. Well, the invention was made probably four to five years before I ever made any of these valves

John L. Halyburton—Cross

connected with it. Is that what you mean, when I conceived the idea?

Q. I suppose you know what "invention" means? A. That is my idea.

Q. You swear in your petition that you are the original inventor of this thing; when did you invent it? A. When did I make application for the patent? 10

By the Court: Q. When did you invent it? A. I invented this valve probably around 1902.

Q. Did you at once commence to exploit it, before you had it patented? A. After designing these valves, and getting the design in practical shape, I made attempts first off to interest capital in the manufacture.

Q. That was before you met Mr. Baylor or Mr. Lepper, was it not? A. The first attempt, that is all. 20

Q. You needed capital to manufacture the valve which you invented? A. Yes.

Q. You believed the invention to be a useful one and a good one, didn't you? A. Yes, that is right.

Q. And still think so? A. Yes, sir.

Q. You failed in your endeavors to get capital, previous to your meeting Mr. Baylor and Mr. Lepper? A. Yes, sir. 30

Q. You had no capital of your own? A. Nothing of any account.

Q. Now it is a fact, is it not, that a gentleman by the name of Morton, connected with the Central Railroad of New Jersey, took both you and Mr. Lepper out to Hampton? A. That is right.

Q. You know, don't you, that Mr. Lepper was then a stranger to Mr. Baylor and a stranger to 40

John L. Halyburton—Cross

Hampton, just as you were? A. I think they told me that they had paid a visit there once, but I am not sure about that.

Q. Now was it on that occasion that you met Mr. Baylor for the first time? A. That is right.

10 Q. How long had you know Mr. Lepper?

Mr. Collins: Objected to as irrelevant. I wanted to go into that myself, and your Honor, under objection, refused, said it did not make any difference, he did go there and did see Lepper.

(After argument.)

The Court: You can show that Mr. Lepper did not surrender his interest, but there is no use of going into previous transactions.

20 Q. How long have you known Mr. Lepper? A. I first met Mr. Lepper in 1898, Wilmington, Delaware.

Q. At Wilmington, Delaware? A. Yes.

Q. You were both in engineering work, and he was there and you were there? A. Yes.

Q. And you formed a friendship with him? A. That is right.

30 Q. And conceived some respect for his mechanical ability? A. Yes.

Q. Without taking time in order to get the date of your first meeting, I find in the files here a telegram from Mr. Doughty, the real estate agent of the Central Railroad Company to Mr. Baylor, dated, August 7, 1906, stating that he would bring a party out there; is that about the time you went up? A. That is about the time.

40 Q. Now you met Baylor, and you told him about your valve? A. Yes.

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Q. You believed it had great merit and was a money maker, didn't you, to that effect? A. Yes, if properly handled.

Q. And you needed money? A. That is right, that is all I did need.

Q. You went around and looked at some sites? 10
A. Yes.

Q. And in a few days thereafter you received the letter from Mr. Baylor that you put in evidence, dated September 14, 1906. That letter you have, Judge Collins.

Mr. Collins: I have the original, yes.

Mr. McCarter: Will you let me have it.

(Produced.)

Q. You may look at the letter. Now you re- 20
mained at Hampton that day about how long?

Mr. Collins: Which day, the day he went out?

Q. Yes. You remained out there how long at Hampton; only part of a day? A. The first day we visited there?

Q. Yes. A. Oh, we were out there several hours, I think we had dinner there.

Q. And you undertook to raise some capital, didn't you, you said you could raise some capital? 30

A. I thought I could.

Q. And said so to Mr. Baylor, for this enterprise? A. Along with Mr. Lepper and another young man named Woodford, who was with us, and who was interested with Mr. Lepper.

Q. Did you visit Hampton a second time before you received the letter of September 14th, which has been marked as an Exhibit, D-2; had you visi- 40

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ted Hampton another time before the receipt of that letter? A. That I could not say.

Q. I show you a letter dated September 12, 1906, in manuscript, purporting to be signed by John L. Halyburton; did you write that letter?

10 A. That is mine, yes.

Mr. McCarter: I offer that letter in evidence. It is the letter referred to in the letter Judge Collins introduced, so I suppose we have the undoubted right to introduce it.

Mr. Collins: Yes, that is so, but you ought to put in the other one; have you got them both there?

20 Mr. McCarter: No, I haven't the other one.

Mr. Collins: If you are going to put this in, in order to make the correspondence complete we ought to have the other in.

A. That letter in my own hand writing is the only one there I know anything about.

Mr. McCarter:

“Cohoes, N. Y., Sep. 12, '06

“My dear Mr. Baylor:

30 I am in receipt of yours of the 9th inst. and would have written sooner but have been waiting for a letter from Lepper. I wrote him asking him to send me a statement of the exact financial condition of the Gardner Engineering Company, but have not received it yet. When I wrote Lepper I explained to him a very simple method of taking care of the affairs of their company. If their affairs are as I imagine they are, it will not be
40 necessary for us to offer 50¢ on the dollar or any

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part of it. We can't have any debts loaded on this new company, and if the Gardner Engineering Company can't come in with clean decks we can start a company without them. The valve business is going to be the whole thing anyhow, and I control that; but at the same time I can see a very good thing in their agencies if handled right. I am also anxious to see Lepper in the business, as he is a fine fellow and will be a valuable man. Now as regards myself; I have been giving this valve business me entire attention since January 1st, in trying to get the right kind of people in it, as I know I have the greatest thing in the valve business in this country, and you would see that seven acres of ground devoted to it in less time than you imagine. I have turned down a number of people who wanted to take it up, as they did not look right to me. When it is started it will be started right and kept right, and I must say that I believe if I had looked over the entire United States I could not have found a better location than right in Junction for this particular business. When I met the Gardner people I thought they could command money, but I am afraid they can't. As I have given so much of my time to the business without a cent coming in, I am just about all in myself on money. I can see about 25,000 up here and in Phila, if I could afford to get around to the people I am after, and I am pretty sure that after you and I, by working together, could land the rest. I think there is plenty of money up around Bethlehem to be had for this business, and I can easily make a man who knows anything about the iron business see big things in this proposition. If I had

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50,000 dol., in the best bank in the U. S. I would yank it out and dump it into this affair. I have been rooting into freight rates &c., up here, and I honestly believe we could put these valve works up here out of business inside of six years, with
 10 necessary capital. I expect to see a party tomorrow who I think I will do some pretty good business with. The valve people up here have got on to me starting a new company, and are knocking me for all they are worth. I tried to work as quietly as possible, but it got out. I will write you again when I hear from Lepper. I want you to write me a letter that I can show to people, saying what the people down there are going to do for the new company. Don't be afraid to
 20 name a stiff amount, as it will help considerable. Also send me some good names of people there that they can write to, if they desire to satisfy themselves that the thing is going through. You understand what I mean.

Very truly yours,

JOHN L. HALYBURTON."

Marked Exhibit C-12.

Q. Do you remember writing that letter? A.

30 Yes, sir.

Q. And the letter that you have produced and have before you, marked D-2, is the reply you received in response to that letter, is it not?

Mr. Collins: I object to that because the letter refers to two letters, it is a reply to two letters; if you put each one of the letters in I don't care.

Q. I now show you a letter dated, Cohoes, N. Y.,
 40 Sept. 19, 1906, addressed to My dear Mr. Baylor,

John L. Halyburton—Cross

and signed "Halyburton"; that is your writing?

A. Yes.

Mr. McCarter: This acknowledges the receipt of that letter.

Mr. Collins: This one which you now show is the one that acknowledges the receipt of D-2? 10

Mr. McCarter: Yes. I will read it.

"Cohoes, N. J., September 19, 1906.

"My dear Mr. Baylor:

I am in receipt of your several letters but have delayed answering them until I had a little more to say. I am after two pretty big fish up here, and if I succeed in landing them we will be O. K., if not, I will not be able to do much up here. The thing is just at a stage where I am afraid to leave here though I want to very much. Both of these parties are investigating, and if anyone comes around Junction inquiring, it is likely to be these, as they mean business. I am after them, and some small fry hammer and tongs. If I land either one of the big fellows, the others will be easy. I have had a letter from Lepper and am writing him to-day. He is anxious to have me come down so as to arrange for the incorporating business, and I am decidedly anxious for that myself. 20 30

"I hardly think I can come down this week, but will try and arrange for next week. If I can come sooner I will advise you. Your letter is all right, and was just what I wanted. Anything of an encouraging nature you have, send it along in the same shape, as it helps considerable. I am at this thing day and night, and it is a case of make 40

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or break with me. I think we can consider Mr. Woodford dead.

Very truly yours,
JOHN L. HALYBURTON."

10 Marked Exhibit C-13.

Q. You read over the certificate of incorporation before you signed it and acknowledged it? A. Yes, sir. Of the Gardner Valve Manufacturing Company?

Q. The Gardner Valve Manufacturing Company? A. Yes, sir.

Q. And you approved of it? A. Yes, sir.

20 Q. Did you attend the organizing meeting? I think you did. A. Yes, sir; now I am not certain, yes, I think I did; there was a meeting held at Hampton, I am not sure whether it was the original organizing meeting or not, at which I was not present; that is the reason I stated that.

Q. Well, the record will show. How soon after the formation of this company did you open an office in New York for and on behalf of the company? A. Practically at the same time, I guess, that those papers were drawn.

30 Q. You had, I think, two offices, one in connection with other people, and finally one or two rooms for your purposes alone? A. That is right.

Q. And the rent for those offices was paid by Mr. Baylor, was it not?

Mr. Collins: Objected to as immaterial. Mr. Baylor has already proved what he paid, and it only wastes time and is not cross-examination.

40 The Court: If it is proved already it is not worth while to prove it again.

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Q. That was the office of the Gardner Valve Manufacturing Company, was it not?

Mr. Collins: Objected to as immaterial.

The Court: I will let that question be asked. Was it the office?

A. The last one, the last office, yes. 10

Q. You had a letter head of the Gardner Valve Manufacturing Company, stating that its office was at 55 Liberty Street, or whatever it was? A. I think that was it, yes, it was on Liberty Street.

Q. How long did you continue in that office? A. Nearly a year, I am not sure.

Q. And you were during that year devoting your energies to getting capital? A. Yes, sir.

Q. Was Mr. Lepper engaged during that year in assisting you with the plans? A. Yes, sir. 20

Q. Particularly in connection with the electrical work? A. No, Mr. Lepper was engaged in—he made tracings of an electrical valve which I designed, also tracings of the buildings which I was making plans for, which we hoped to locate at Hampton.

Q. How soon was it after that that you moved your family to Hampton and lived there? A. It must have been a couple of years after that.

Q. Well you moved out to Hampton because of 30 your relations with this business, did you not?

A. That is right.

Q. And you finally abandoned the New York office, and had your office in the building in which Mr. Baylor's personal office was? A. That is right, yes.

Q. You had drawing paraphernalia and plan arrangements, and all that, up there? A. Yes.

Q. That continued down to June, 1911, didn't 40

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it? A. Well, no not exactly, towards the latter part why we moved this apparatus up to a room in my house and I worked up there on the plans, etc; didn't make much difference.

10 Q. The letter D-2 correctly expresses the situation as you understood it; that was a satisfactory letter to you? A. This letter, D-2, yes.

Q. Yes, D-2. A. Yes.

Q. Well now, you did not succeed? A. This letter was practically though, in reference to this—

Q. No.

The Court: Just answer the question.

20 Mr. Collins: I think he should finish it, he wants to explain. You see it is misleading, Mr. McCarter says it correctly expresses the situation, and he wants to state what situation that was.

The Court: The question was whether or not the contents of the letter were satisfactory to him. Now you understand the question, and you may answer it.

A. Yes.

30 Q. Well, how much capital did you conceive was necessary in order to build a plant there at Junction, or elsewhere, that would be capable of manufacturing these valves? A. One hundred thousand dollars, spot cash.

Q. Without that is was impossible to manufacture yourself, to build a factory and manufacture yourself; that is a fact, is it not? A. To manufacture myself?

40 Q. Without an investment of that money it would have been impossible for the company to, itself, have built a factory and manufactured, in

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your view? A. Without taking great chances of failure, yes, sir.

Q. Well now, is it not a fact that in 1908 you and Mr. Baylor and Mr. Transue and Mr. Lepper all concluded, in a conversation with one another, that it was going to be then impracticable and impossible to raise that hundred thousand dollars, and did you not then and there— 10

The Court: One moment. Had he not better answer that first?

Q. Is not that a fact? A. That Mr. Baylor—

Q. (Question read.) A. I don't remember Mr. Lepper being in any of these conversations.

Q. I will leave him out then and ask you the same question: Did not Transue, Baylor and you, in 1908, meet, review the situation, and agree with one another that it was a practical impossibility for the hundred thousand dollars that had been attempted to be raised to be raised? A. No, sir. 20

Q. You did not? A. Otherwise I would not devote all the time I did afterwards in trying to get the plant to Hampton.

Q. And was it not then suggested by you—now listen to me, Mr. Halyburton, and try to remember—that that impossibility arose largely, if not wholly, from the fact that you had not yet manufactured valves, but that if you could get up a catalogue and could get some valves manufactured, and demonstrated to the public the practicability of the valve, that then probably the capital could be raised? A. That would have helped the situation. 30

Q. You remember that talk, don't you? A. To that effect. 40

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Q. Do you remember being asked what money would be necessary to make the catalogue, and what money would be necessary to have in order to make the necessary contracts for the manufacture; was it \$3,000? A. I cannot remember that.

10 Q. Well now, try to remember? A. No, I can't remember any specific amount.

Q. Didn't Mr. Baylor say: well now, if that is so, although I have already put a lot of money in this—or words to this effect—I will give \$2,000, and didn't Mr. Transue say: I will give \$500, and didn't you say: I will give, through my brother-in-law, the remaining \$500, making the \$3,000 that would be necessary? A. I cannot say that positively.

20 Q. Didn't that occur? A. Something to that effect.

Q. Wasn't it after that conversation, or rather during and at that time that that subject was discussed, when Mr. Baylor said that he would do so, and Transue said he would pay the \$500, and you said your brother-in-law would pay the \$500, that you said, in so many words, that if that was done, and they would advance this further money, you would then and there assign to the company the

30 patents? A. No, sir.

Q. Nothing of the kind? A. No, sir.

Q. Didn't you then and there receive permission to go on and make the catalogue, and you did make the catalogue? A. Made the catalogue.

Q. They paid for it, didn't they? A. Yes, sir.

Q. Didn't you then and there start out and undertake to have certain people manufacture the valves? A. I did have them made.

40 Q. Yes. That was after this talk, wasn't it?
A. Probably it was.

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Q. Who did you try to get to manufacture the valves? A. The valves were manufactured—the patterns were made by George Allen, of Philadelphia, and the valves were made by Eynon & Evans, of Philadelphia, machinists, which I did on my own hook.

Mr. McCarter: I move that be stricken out. 10

Mr. Collins: I object to it being stricken out.

Q. Mr. Halyburton, was not the plan that was outlined at this meeting between Transue, you and Baylor, that you were to have these valves manufactured, and that the company was to make the profit between the cost and the selling price? A. The plan was never made, it was a suggestion which I carried out myself. 20

Q. You carried out? A. Yes.

Q. It never received your assent? A. Sure, I carried it out.

Q. So that you went so far as to have the patterns made for this proposed manufacture by somebody else? A. And paid for them.

Q. Who gave you the money? Part of this three thousand dollars, was it not? A. No; Mr. Transue gave me the money to pay for those patterns. 30

Q. That was part of his five hundred dollars contribution that he arranged for? A. He may have considered it that way.

Q. Did Mr. Baylor give you any money, besides paying for the catalogue? A. Oh, yes.

Q. And did you have any valves made? A. With the money which Mr. Baylor gave me.

Q. I didn't ask you that. Did you have any 40

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valves thus manufactured, not by yourself, as originally proposed, but by outsiders; did you do it? A. Yes, sir.

Q. Who did it? A. Who manufactured the valves?

10 Q. Yes. A. Eynon & Evans.

Q. Where were they; Philadelphia? A. Yes, sir.

Q. I show you a letter that has been already offered in evidence as Exhibit C-8; please look at it; you recognize that as being a letter written by you to Mr. Lepper? A. Yes, sir.

Q. I am going to ask you a question, and I am going to read from the notes this letter, and I want you to follow it, it is on page 91, and see if the letter was correct when it was written. A.
20 You want me to follow this letter?

Q. Yes. "Junction, N. J. October 4, 1908. Mr. J. G. Lepper, c/o E. P. Lynch" (counsel read letter). Does that correctly state the situation? A. Yes. You read that letter before, I believe, at the first session, and I acknowledged it then.

Q. Now it did go through, didn't it, that is, Baylor and Transue agreed to it? A. No, it was never carried out.

30 Q. Didn't Baylor and Transue agree to it? A. No; after that letter was written the thing fell through.

Q. When did it fall through? A. I can't say just when, but it didn't go through.

Q. Well, the catalogues were made, weren't they? A. I don't think that letter says anything about a catalogue.

Q. Whether it does or does not, the catalogues were made, weren't they? A. The catalogues
40 were made.

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Q. The patterns were made, and the drawings?

A. Yes, sir.

Q. And paid for? A. Yes.

Q. And you hadn't the money to do it with yourself? A. Well now, you will have to let me explain.

Q. No. You had not individually, in your own possession, money sufficient to pay for those; you had to get money either from Mr. Baylor— A. I paid for those patterns individually myself, from money which I earned; Mr. Baylor's money had nothing to do with that.

Q. You told us a little while ago that Mr. Transue's money paid for some of the patterns. A. For the first patterns that were made.

Q. The letter I have just read to you was written on October 4, 1908. The catalogue I think you set about to prepare practically right away, didn't you? A. Yes, sir.

Q. I show you the letter that is also in evidence, marked Exhibit C-9, addressed to Mr. Lepper; do you recognize that as being a genuine letter of yours? It is also on page 93 of the record. A. Yes, sir, that is my letter.

Q. I will read it. (Counsel read same.) That was correct, was it not? A. That is right.

Q. Well now, the first letter, October 4th, was, as it appears, in response to several letters of inquiries from Mr. Lepper to you, complaining of the fact that he got no notice of what was going on, and wanted to know what you were doing, wasn't it? A. That is right.

Q. One of the letters is already in evidence, and I won't burden the record. They are the twelve or fifteen letters which he said he had written to

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you, and which you say you had not received? A. Yes.

Q. He was inquiring about what was going on, and you were endeavoring to answer them, weren't you? A. Yes.

10 Q. Do I understand you to contend that any other arrangement or agreement, verbal or otherwise, than the one that I have detailed, and that you have detailed in the letter that I have read of October 4th, was made in the year 1908? A. Any other arrangement? No.

Q. You spoke yesterday, after some inquiries by Judge Collins—I have your evidence here—about an arrangement which you described as follows: “We were to acquire this property at Hampton
20 Junction, which included about eight acres of ground, which I understood belonged to the D. L. & W. Railroad, and that the Central Railroad of New Jersey would run tracks into that property at their expense, that was their contribution, as I understood it, towards locating this industry at Hampton. Q. That was what was to be done with the money when you got it? A. Well, that was plus the hundred dollars; the hundred thousand dollars was to be spot cash. Q. So I understood,
30 one hundred thousand dollars of cash was to be raised, but raised out of what? A. Simply on subscription,” etc. You remember that evidence yesterday? A. Yes.

Q. You were then speaking, weren't you, of an understanding you had in 1906? A. At the time the Gardner Valve Manufacturing Company was incorporated.

40 Q. Now returning to the talk between Transue, Baylor and yourself, which you referred to in

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your letter to Lepper of October 4, 1908; is it not a fact that Mr. Baylor also stated that before he would advance the \$2,000 that would be required to carry out this project of the catalogues, and having the valves manufactured and put upon the market, so that their practicability could be demonstrated, is it not a fact that Mr. Baylor at the same time insisted that before he advanced another dollar he wanted your agreement to assign the patents to the company? A. No, sir, it is not. 10

Q. Nothing of the kind? A. Nothing, no, sir.

Q. Nothing of that kind said? A. No, sir. Time after time—

Q. One moment. You have answered by question. So that there was not a thing said about assigning the patents to the company? A. Not to me. 20

Q. To you? A. No, sir.

Q. How then did you happen to sign the document, Exhibit C-2, which is the paper by which you agreed to assign the patents? A. Simply because that had reference to nothing whatever, except in case—

Q. No. The question is how you happened to sign it? A. Yes, and I am trying to tell you.

Q. Not what it had reference to; the question is how you happened to sign it. A. Well, how can I tell you how I happened to sign it unless— 30

Q. Had you ever agreed to sign it? A. Under the conditions that something was going to happen to me, die, or something like that, and they could go on with this project.

Q. When had you talked about assigning patents, previous to January 30, 1909 when this document seems to have been signed, when had you talked about it? A. When had I talked about it? 40

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Q. Yes. A. I can't say that I ever talked about it.

10 Q. Do you mean to say that during this talk, after you had concluded, all of you, that it was impossible to raise the money to build the plant, and after you stated, according to your letter to Lepper, that if you could exploit the valve by showing a fitness through actual use, that then possibly the money could be raised; do you mean to say that during that talk there was nothing said about the company owning the patents?

Mr. Collins: Objected to upon the ground that it misrecites the testimony, characterization as to what its legal effect is, and as improper.

20 Mr. McCarter: Well, strike it out.

Q. Had there anything been said previous to the first of January, 1909 about the company owning the patents? A. By me?

Q. Yes. A. Yes, sir, time and time again, that I would never assign the patents.

Q. One moment. You have answered the question. You prepared this catalogue? A. Yes, sir.

30 Q. In November you said the catalogue was done, didn't you, the letter of November 11th, "It was a peach of a catalogue, slick." A. I think I did, something to that effect.

Q. You wished you had Lepper's work, but you did the best you could, and thought it was a pretty slick catalogue. A. Yes.

40 Q. So as early as November you got up this catalogue, marked Exhibit C—whatever it is—in which the connection between the Gardner Valve Company and the patents, as appears in the company, appears there; you had gotten that up?

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Mr. Collins: Objected to as again characterizing evidence; it speaks for itself.

The Court: The evidence is that this witness prepared the catalogue, and he will be *prima facie* found by the statement that is contained in it.

Q. Now Mr. Halyburton, had you, at the time you were getting up these valves and patterns and what not, for manufacture outside, your office still in New York, or had you abandoned that and gone up to Hampton with your office? A. I was at Hampton.

Q. And your office still continued there down until June, 1911? A. I guess that is right, I think that is right.

Q. You left Hampton in June, 1911? A. Yes.

Q. Did you tell Mr. Baylor where you were going? A. Yes, sir.

Q. Where did you tell him you were going? A. Philadelphia.

Mr. Collins: Of course you do not want to make a mistake inadvertently; it was in March.

Q. Was it March or June? A. I am not sure myself, March or June.

Q. Be a little careful, I don't want to make a mistake; March, 1911?

Mr. Collins: Yes, we all agree on that.

Q. When did you next see Mr. Baylor; in June?

A. In Philadelphia, yes, sir.

Q. Between June, 1911 and the commencement of this suit did you see him at all? A. Between about the thirtieth of June and this suit?

Q. Yes. A. No, sir.

Q. Were you in Hampton after June, 1911? A. No, sir.

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Q. Your wife continued to reside there some time, didn't she? A. Yes, sir.

Q. Your son was married there? A. Yes.

Q. You did not attend the wedding? A. No, sir.

10 Q. When did your wife move away? A. In August, 1912.

Q. Did she join you then? A. 1913 I think.

Q. Do you remember meeting Mr. Staples on the street in Berwick in 1914? A. Yes, sir, he was walking along the street outside the hotel, and I saw him and called him in.

Q. Do you remember a talk with him? A. Yes.

20 Q. You told him of your arrangement with the American Car & Foundry Company? A. Took him out and showed him what we were doing, and did all I could for him.

Q. Did you also tell him that you had told the American Car & Foundry Company of the arrangement you had with the Gardner Val. Manufacturing company? A. No.

Mr. Collins: Objected to as irrelevant, immaterial and not cross-examination.

30 The Court: It is not irrelevant, of course. I suppose the evidence is introduced for the purpose of laying a foundation for contradiction.

Mr. McCarter: That is it, your honor.

The Court: And not for the purpose of binding the parties.

40 Q. Didn't you, on that occasion of the visit of Mr. Staples to Berwick, Pennsylvania, in which you and he had a talk there, and during which time you say you took him and showed him the layout in the local plant of the American Car &

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Foundry Company, didn't you say to Mr. Staples that you, in going over the matter and negotiating the matter with the American Car & Foundry Company, had told them all about your connection with the Gardner Valve Manufacturing Company and your contract with them, or words to that effect? A. I explained nothing of that kind. 10

Q. Nothing of the kind? A. No, sir.

Q. No such thing occurred? A. No conversation of that kind occurred.

Q. And on the same occasion did you not also say to Mr. Staples that you had gotten introduced to the American Car & Foundry people through the intermediation of Mr. Looney? A. No, sir.

Mr. Collins: I object. You must give me time to object. 20

A. Mr. Looney never knew the American Car & Foundry Company, and don't know them yet that I know of.

Q. I show you letter dated March 18, 1907; is that a letter written by you on the letter head of the Gardner Valve Manufacturing Company to Mr. Baylor? A. That is my writing, yes, sir.

Q. I notice in this letter you say "I haven't heard from Page yet, and am of just the same opinion as you are regarding him. Cohoes is a hundred per cent better"—A. Shall I read it. "I have not heard from Page yet, and am of just the same opinion as you are regarding him. Cohoes is a hundred per cent better man for us"—oh, C-o-h-o, that is the man's name. 30

Q. I will read it. "Coho is a hundred per cent better man for us than Page, if we can land him. He is certainly pleased with our valve, and as he is an engineer himself he can judge them intelli- 40

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gently. He also seemed very much pleased with my method of conducting the business, as I explained it to him." What was your method of conducting the business, as I explained it to him." What was your method of conducting the business that you explained to him? A. To tell you the truth I have forgotten who this man is, I meet a great many men, and have kind of forgotten that.

10 Q. (Question read.) A. Now for the life of me I can't think who Mr. Coho is now.

Q. I don't care anything about who he is. I ask you again— A. I understand the question.

By the Court: Q. You say you do not remember? A. No, I don't remember anything about that.

20 Q. I show you a letter on the letterhead of the Gardner Valve Manufacturing Company, dated April 30, 1907; please look at it and see if you recognize it as having been written by you to Mr. Baylor? A. It is my letter, yes, sir.

Q. I notice in this letter you say: "I asked Lepper that if you took care of his end this week"— A. What is the date of that letter, please?

30 Q. April 30, 1907? "I asked Lepper that if you took care of his end this week, could he make it right with you this month coming, and he said he could but would not ask you. Now I don't like to do that either, as I know you are doing all you agreed to." A. That is right.

Q. What was Lepper's end, that you speak of there? A. Why, at the beginning of this thing—

40 Q. Never mind about the beginning. What was Lepper's end, that you refer to there? A. Furnishing his amount of money to keep, help pay

John L. Halyburton—Cross

for the rent of this office in New York, and to help pay my living expenses; he paid it one week and Mr. Baylor another; this time Mr. Lepper was a little short.

Q. And up to date, at least, you concede that Mr. Baylor had done all he agreed to do? A. 10
Yes.

Q. In a letter dated May 24, 1907 I observe you say: "I enclose stock certificates for Wright, which you will please sign and return." Did a Mr. Wright become a stockholder in the company? A. He was a stockholder in this Gardner Engineering Company.

Q. Did he become a stockholder of this company? A. And I believe they transferred that stock of his to this Gardner Valve Manufacturing 20
Company, if I remember rightly I think that was it; it was a very small subscription.

Q. I don't care whether it was large or small. Did Mr. Wright become a stockholder in the Gardner Valve Manufacturing Company?

Mr. Collins: Objected to as not the best evidence. If he did the certificate of stock will show it.

Mr. McCarter: Wright is not here, and his certificate is not here. 30

Mr. Collins: Objected to as immaterial and not cross-examination.

The Court: If the witness knows he can state.

A. I was just going to state that if he has got the certificate I guess he did, that is all I know about it.

Q. I show you a letter dated July 6, 1907, which appears to be written by you to Mr. Lapper, is it not? A. This is my letter, yes, sir. 40

John L. Halyburton—Cross

Q. And the same is true, is it not, of a letter dated July 13, 1907? A. That is my letter.

Q. Now I notice in this letter of July 6 you say: "I had quite a talk with Crabbs this morning, and I think the thing will go through O. K. I told him just how the common stock was distributed and how Lepper was situated, and offered him twenty-five thousand of Lepper's stock to come in and pull the thing through. He thinks the proposition all right." Do you remember that? A. Let me read that.

Q. (Handing letter to witness.)

The Court: What is your answer?

A. I remember the letter, I wrote the letter.

Q. How much stock was Lepper to take? A. There was no definite amount, we juggled things up in different ways in working out different schemes of distributing things, and probably that was in reference to one of them; we didn't know how we were going to get this thing out.

Q. Is that the best answer you can make? A. That is about the best.

Q. Well, he was evidently to pay twenty-five thousand, was he not? A. No.

Q. Well, if you offered Mr. Crabbs twenty-five thousand of Lepper's stock, was not Lepper to have twenty-five thousand? A. Well, on that sort of a deal, if it could have been carried through; I couldn't give this stock to anybody.

Q. "I told him just how the common stock was distributed and how Lepper was situated, and offered him twenty-five thousand of Lepper's stock to come in and pull the thing through." How was Lepper situated; how did you explain to Mr. Crabbs that Lepper was situated; what did you

John L. Halyburton—Cross

tell him? A. That was probably one of the arrangements which we had worked out for distribution of stock; that is all I can say to that.

Q. The inquiry is this: what was it that you told Mr. Crabbs, "I told him just how the common stock was distributed and how Lepper was situated;" what did you tell him? A. I don't remember. 10

Q. Don't remember? A. No.

Q. In this letter of July 13, which you have recognized, 1907, you say: "My dear Baylor: I have been thinking the proposition over very carefully, and the conclusion I have come to is this. We let Crabbs come in and take Lepper's place. Crabbs then must get fifty thousand, and we must dig in and get fifty thousand, and thirty-five thousand of that would have to go among people that we could positively control." Was it the arrangement that Lepper was to get fifty thousand of stock? A. Might have been at that time. 20

Q. Well, was it? A. I don't know.

Q. When you say "we let Crabbs come in and take Lepper's place. Crabbs then must get fifty thousand;" it was evident that Lepper was to get fifty thousand? A. That was a scheme that we were probably figuring out for the distribution of stock. 30

Q. Did you tell Mr. Crabbs the truth about it? A. I certainly did, whatever it was.

Q. I show you two letters dated, respectively, August 4, 1909 and September 22, 1909, addressed to Mr. Baylor, and purporting to be signed by you; did you sign that? A. That is my signature, yes, sir, I wrote it. 40

John L. Halyburton—Cross

Q. I notice that on each of these letters, Mr. Halyburton, appears this heading: "Osbourn & Robinson, Power Plant Apparatus Specialists, 320 Pennsylvania Building, Philadelphia;" then on one side: "The Ball & Wood Co., Elizabeth-
 10 port, N. J., The Casey-Hedges Co., Chattanooga, Tenn., The Watson-Stillman Co., New York City. Gardner Valve Mfg. Co., Hampton, N. J., Warren Steam Pump Co., Warren, Mass., Hersey Mfg. Co., Boston, Mass." Had you constituted Osbourn & Robinson agents for the Gardner Valve Manufacturing Company? A. No, sir; the condition that we—

Q. Had you or had you not constituted them agents or representatives of the Gardner Valve
 20 Manufacturing Company? A. No, sir.

Q. How did you happen to write letters to Mr. Baylor upon their letterhead which bears, among other things, the statement "Gardner Valve Mfg. Co., Hampton, N. J." A. That was an engineering corporation of very short life, who were friends of mine; in the event of this here factory being started they would liked to have handled our valves, and they asked me if they could put it on their letterhead; I said "Yes, go ahead, if
 30 you want to." I visited their office frequently in Philadelphia.

Q. You were at their office when you wrote those letters? A. Evidently.

Q. These were written in 1909, were they not, these letters? A. If that is the date.

Q. That is after the catalog was out? A. Yes, I guess it was.

Q. That was after the plan had been made to
 40 have these valves manufactured by the—

John L. Halyburton—Cross

The Court: Well, that all appears.

Q. After these catalogues were prepared, were they distributed? A. They might have been, a very few, sent somewhere, to personal friends.

Q. Just a few? A. As far as I remember.

Q. How many were printed? A. Oh, there were two hundred, I think, if I remember correctly. 10

Q. How many, to your knowledge, were distributed; one hundred? A. Oh, no.

Q. Eh? A. No, sir.

Q. They were down there at the Osbourn & Robinson Company, weren't they? A. Yes.

Q. I show you a letter dated February 17, 1911; see if you recognize that as being written by you to Mr. Lepper? A. Yes, sir. 20

Mr. McCarter: I would like to offer that letter in evidence.

Mr. Collins: I object to it as irrelevant and not cross-examination. I do not object to it as out of time.

The Court: You may call the witness's attention to what he has said.

Q. I will read this letter to you, written on the letterhead of the Gardner Valve Manufacturing Company, Hampton, N. J., dated February 17, 1911. Before I read the letter, where were you on February 17th, 1911? A. Must have been in Hampton. 30

Q. Hampton? A. Yes.

Q. "My dear Lepper: I received your epistle last week, and although I knew you were possessed of an uncontrollable temper and subject to brainstorms, I certainly never thought you could write such a mean letter. I believe that af- 40

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- ter you mailed it and cooled down you were as sorry that you wrote it as I was to receive it. If you see fit to class yourself with such fellows as you refer to, namely, Hough and Burrell, I am sorry, but I never took you for that type. The information you give me as to their knocking me in New York is not news to me as I have known that for some time, and it has done me more good than harm. Had they claimed to be friends of mine, they might have done me some harm. Their talk is taken just as all such talk is taken, and was just what I wanted. My record is fully capable of taking care of itself. Your interests in the Gardner Valve Company have always been as carefully considered and protected as my own, as every one whom I have had the matter up with can testify, and regardless of the letter you wrote me always will be." Now that sentence I want to call your attention to: "Your interests in the Gardner Valve Company have always been as carefully considered and protected as my own, as every one whom I have had the matter up with can testify, and regardless of the letter you wrote me always will be." Did you mean that? A. Yes, sir.
- 10
- 20
- 30 Q. When did you commence your negotiations with the Car & Foundry people? A. The early part of 1912 I think.
- Q. Did you inform Mr. Lepper that you had either entered into or consummated that matter? A. No, sir.
- Q. You thought that was always taking care of his interest, not to inform him? A. When I entered into negotiations with the American Car & Foundry Company I was left strictly to my own resources, deserted, it was sink or swim with me.
- 40

John L. Halyburton—Cross

Q. You never mentioned to Mr. Lepper the fact that you were sinking or swimming, did you? A. I guess he knew that.

Q. Well, you did not mention it to him? A. Not that I remember.

Q. I notice further in this letter you say "The best thing for you to do is to keep cool, and you might hear good news sooner than you expect. Such a letter as you wrote certainly would not make you look good in the eyes of anyone. You will certainly hear from me as soon as I have favorable news. Yours very truly, John L. Halyburton." Now you didn't ever write him of the fact that you had consummated the deal with the Car & Foundry people, did you? A. No, sir. 10

Q. Have you the letter to which you refer, that Mr. Lepper wrote you complaining? A. No, sir. 20

Q. Have you destroyed it? He was complaining, was he not, of the way he had been treated by you in this matter? A. For not writing to him about things.

Q. I show you another letter dated June 8, 1911, to Mr. Baylor, typewritten, and purporting to be signed by you; did you write that? A. Yes.

Q. I notice in this letter: "I expect to have things fixed up in good shape shortly and will then write you all about it." Did you mean that? A. What is the date of the letter? 30

Q. June 8, 1911. Did you mean that when you wrote it? A. Certainly I did.

Q. Did you ever write Mr. Baylor that you had fixed things up with the Car & Foundry people?

A. When that letter was written why I never knew the American Car & Foundry Company.

Q. That may be. I ask you again if you ever 40

John L. Halyburton—Cross

did write Mr. Baylor of the fact that you had fixed up your deal with the American Car & Foundry Company? A. No, sir.

10 Q. When did your negotiations with the Car & Foundry people commence? A. I stated a little while ago that I thought it was the early part of 1912.

Mr. Collins: Do you offer those letters?

Mr. McCarter: I am perfectly willing to offer them; I am going to have all these letters identified in some way; I have referred to passages from them all.

Mr. Collins: But the one you just read, I would be glad to have it offered.

20 The Court: If Judge Collins wants it offered, and you have no objection.

Mr. McCarter: No objection, not the slightest.

The Court: Let them all be marked then.

Marked Exhibits C-14, C-15, C-16, C-17, C-18, C-19, C-20, C-21 and C-22.

30 Q. While you had your office, or rather the office of the Gardner Valve Manufacturing Company, at 55 Liberty Street, New York, you were as you considered, and wrote to one of the gentlemen a letter I produce, engaged in doing the business of the company, weren't you, namely, promoting? A. Yes.

Q. Endeavoring to get capital? A. Yes.

40 Q. You had no means of your own, and the checks that were sent by Mr. Baylor or Mr. Lepper, weekly checks, were checks that they had agreed to advance to the company for the benefit of the company, so that you could live while you were promoting its interests? A. That is right.

John L. Halyburton—Cross

Q. And it is true, is it not, that that continued after you went to Hampton? A. That is right.

Q. Down to the time that you left? A. No.

Q. When did it stop? A. Well, I can give you that date I think.

Q. If it won't take too much time I would like to have it. A. Oh, that stopped I think in 1909; I was in Hampton quite a little while after Mr. Baylor stopped putting up any money. 10

Q. He said he had done all that he was going to do? A. That is right.

Q. And then he commenced again, after this talk that they talk of in 1908, and put up some more? A. Well, that was long before I left Hampton, yes.

Q. Well, that is a fact? A. Yes; Mr. Baylor never stopped and then started again, if that is what you mean. 20

Q. Is it not a fact that you collected \$1800 in the way of stock subscriptions from Mr. Glassey and Mr. Looney? A. I couldn't say stock subscriptions, no, sir; they never received any stock subscriptions, and didn't want it until this company was put on its feet.

Q. The question is whether you collected from those gentlemen \$1800 for stock subscriptions. A. I couldn't say for stock subscriptions, no; they loaned me that money. 30

Q. They loaned you that money? A. To carry along expenses while I was trying, and they eventually expected to receive stock for it if the deal was carried out.

Q. Then as a matter of fact the Glassey arrangement and the Looney arrangement were loans to you, personal loans to you, to be chang- 40

John L. Halyburton—Cross

ed into something else, possibly, later; is that it?
A. Well, yes, that would be it.

Q. And the Crabbs arrangement the same? A.
Well, I couldn't say whether Mr. Crabbs looked
at it that way or not, but I suppose so.

10 Q. The fact is that Crabbs spent about \$200
in taking himself and yourself out to Ohio to en-
deavor to get some capital, wasn't that it? A.
That is right.

Q. That is what you call a subscription? A.
Well, it was just helping along this general
scheme; you can call it what you please.

Q. You never reported to the treasurer, Mr.
Bagley, the fact that either Glassey or Looney
had paid you this money, did you? A. No.

20 Q. Where was the talk between Mr. Transue
and yourself, which immediately preceeded the
drafting of Exhibit C-2, the agreement for the
transfer of the stock, where was that talk? A.
Oh, why that was up in this little room where I
was making drawings.

Q. Can you fix the date? A. No, I couldn't fix
the date.

Q. How long did it antedate the actual signing
of the document; was it the same day? A. It
30 seems to me it was the same day, I don't know.

Q. Was the document prepared in your pres-
ence? A. No; Mr. Transue took it downstairs and
wrote it up, and then brought it up to me, and
I read it and signed it.

Q. When had the subject of the transfer of
stock by you to this company been previously
mentioned, by you to anyone or by anyone to
you? A. The transfer of the stock to me for pat-
40 ents, when that occurred, is that what you mean?

John L. Halyburton—Cross

Q. Yes. A. Oh, I couldn't say that, that thing was mentioned off and on quite frequently.

Q. Had you mentioned that between August 1908 and January, 1909, when it was signed? There had been talk about it, hadn't there? A. Not that document, no. 10

Q. Hadn't it been spoken of? A. Are you speaking about that document that is in evidence?

Q. I am speaking about the subject of the proposed transfer to the company by you of the patents having been mentioned anterior to the signing of this document. A. Yes, that was mentioned frequently.

Q. Had been mentioned between, we will say, August 1908 and the time this document was signed, hadn't it? A. It might have been. 20

Q. And you said you would do it? A. I said time and time again that I would never assign those patents to the Gardner Valve Manufacturing Company until one hundred thousand dollars cash was raised and we were ready to start business; that was understood by everybody that I ever talked to about the subject.

Q. Well, you remember that you, as your letter to Lepper says, practically abandoned raising a hundred thousand dollars. 30

Mr. Collins: Objected to a characterization of the letter.

Q. Bearing in mind this statement in the letter to Lepper of October 4th: "They are about to put up sufficient money along with my brother-in-law to pay for drawings, pattern and catalog of a line of high pressure and steel valves. I am to do all the work at present in connection with the business. After the catalog is com- 40

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plete I will get orders and have the valves built outside; we furnish drawings and patterns, and the parties who make the valves at a specified price, bill them direct to the parties they are for, we receive the difference between the selling
 10 price and the price of manufacture. If I can show that we can hold our own this way, Baylor and Transue will raise the money for a plant next year." Now, bearing in mind that statement, which you said told the truth, and bearing in mind the further statement in the letter: "When I assigned this patent to the company I receive common stock for it" and bearing in mind the statement in the next letter, which is also in evidence, "We will issue the stock at
 20 the first of the year;" bearing in mind those statements, I ask you, Mr. Halyburton, if you still understood, when the paper was actually signed, that those assignments of the patents were not to be made until one hundred thousand dollars capital had been raised, why you did not say so in those letters, why you did not say so in the assignment?

Mr. Collins: Objected to as not calling for any fact, nor is it asking for an explanation of language; it is asking for
 30 some reasoning on his part, why he didn't say it in a letter and the question is objectionable.

The Court: I will overrule it.

Q. I will ask you this question, and do not answer it until the Vice Chancellor says you may. Why didn't you put in the letters that you have written under date of October 4 and November
 40 11 to Mr. Lepper, and why didn't you put in the

John L. Halyburton—Cross

contract signed by you, dated January 30, 1908, the fact, if it were a fact that this condition about the raising of one hundred thousand dollars existed?

Mr. Collins: Objected to as incompetent. 10

Q. If that was the understanding, as you insist, why didn't you say so in the two letters that you wrote to Lepper?

Mr. Collins: Objected to as irrelevant and immaterial.

The Court: It seems to me the question is why did you not say so in the document, that is the relevant thing.

Mr. McCarter: I think both of them are relevant, your Honor. 20

Q. Why didn't you put the thing in the contract? A. In that document that you are referring to?

Q. Yes. A. Why, I didn't consider that had anything to do with the assignment of the patents or the one hundred thousand dollars either; that was only what I thought.

By the Court: Q. It was the very thing that you were doing. Now you do not understand the question. The question is why in that document you did not state the whole matter as it was. That is the question. A. The reason I didn't state it, Mr. Transue drew that up, and the rest was understood, just what it was intended for. 30

Q. Please look at the document C-2; the word "common" in manuscript is your writing, is it not? A. It looks like it, I guess it is. 40

John L. Halyburton—Re-direct

Q. The date, January 30, 1909, is your writing?

A. Yes.

Q. And, of course, the signature? A. Yes.

10 Q. So that in view of the fact that you made those corrections to the document, I again ask you why you did not also add this other thing that you say was part of the deal? A. I didn't think it was necessary, I didn't think it had anything to do with it myself, or I would have had it put in.

RE-DIRECT-EXAMINATION by Mr. Collins:

20 Q. You have spoken of some corporation besides the Gardner Valve Manufacturing Company that had the name Gardner in it. What was the name of that company? A. Gardner Engineering Company.

Q. That was already in existence when you and Lepper went out and saw Baylor? A. That is right.

Q. And it was that company to which you referred when you spoke about the Gardner Company, and not the Gardner Valve Manufacturing Company that had not yet been formed? A. No.

30 Q. You were speaking of the Gardner Company. A. Yes.

Q. You said that you had the patterns and outside valves made on your own hook? A. Yes.

Q. And Mr. McCarter had it stricken out. I will ask you the question myself now. Who had these patterns made and outside valves manufactured, and on whose credit? A. My own.

Q. It was your own affair? A. Yes, sir.

40 Q. Paid for—

John L. Halyburton—Re-direct

Mr. McCarter: Please don't lead him.

Q. Who paid for it? A. I did.

Q. Where did you get the money? A. Part of the money for the patterns I received from Mr. Transue, and part of that money—those valves were billed direct by Eynon & Evans to the parties I sold them to, and they received that part of the money; while these valves were in course of construction they made some jigs and fixtures along with it, which still left me in their debt, and Mr. Allen held my notes for other pattern work in connection with them, and the last of those notes I paid not later than a little over a year ago myself, and for the jigs and fixtures, and stuff that was made in connection with them, which was part of what I owed Eynon & Evans on this account, was finally paid for by the American Car & Foundry Company because we took them up there.

Q. I show you the letter of October 4, 1908 to Lepper. Now while you were being asked some question about that you desired the privilege of explaining something and you were not allowed to; what was it you wished to explain; there was something you desired to explain, and you were checked? A. I don't remember what it was, unless it was that I wanted to state that the reason I didn't write to him was because at that time there was nothing doing, and nothing to write about.

Q. Was the arrangement that was made in 1906, that you have detailed in your testimony, about the acquisition of the piece of land, the building of the plant, and the raising of one hundred thousand dollars of preferred stock, and the

John L. Halyburton—Re-direct

transfer of the common stock to you, was that arrangement ever changed?

Mr. McCarter: I object.

Mr. Collins: The whole theory is that it was.

10

The Court: No, I do not think the witness can express his opinion on that subject; the transaction speaks for itself, and the witness cannot characterize it; he stated what was done, and whether there was a change or not will have to be decided by the Court, I suppose; you are now calling on the witness for his opinion as to that matter.

20

Mr. Collins: Well, I asked the question and now your Honor overrules it.

Q. Was the condition of the raising of the hundred thousand dollars ever abandoned?

Mr. McCarter: One moment. I object to that, it is the same thing.

The Court: That might be opinion or it might be a fact. I understand, however, that the question is practically this: was there ever any action taken by this witness, or by the company, looking to the abandonment of that condition.

30

Mr. Collins: Yes, that condition that a hundred thousand dollar capital should be raised for preferred stock before you should have to assign your patents; was that ever abandoned?

Mr. McCarter: I object.

The Court: No. Was there ever any action.

40

Q. Changing that. A. Not that I know.

Mr. McCarter: One moment, I object.

John L. Halyburton—Re-direct

RE-CROSS-EXAMINATION by Mr. McCarter:

Q. Don't you know that Mr. Baylor paid the bill of the Chester Engineering Company in connection with the patterns, and that he manufactured the valves? A. He paid the bills for the patterns and the castings, yes, sir. 10

The Court: Well, he has already said that. His statement is that the money that went to pay for those valves came from the purchasers of the valves, that is his statement. Now if any of it came from Mr. Baylor, or anybody connected with the company, you may ask that.

Q. Did you have any resources of your own between 1909, January, and 1910, January, that you had not before? A. My own, personally? 20

Q. Yes. A. Yes, I had some, I may have had some, yes.

Q. What were they? You were collecting weekly stipends from Mr. Baylor during that year, were you not? A. Yes.

Q. What other resources did you have of your own during that period, than you had for the preceding year? A. I had a son who had quite an earning capacity, and his money was mine, family affairs. 30

Further RE-DIRECT-EXAMINATION by Mr. Collins:

Q. This letter, Exhibit C-22, did you receive a reply to that letter from Mr. Baylor, did you receive a reply to that letter and is this it? A. I think so.

Q. Well, look at it. A. Well, I can't say. 40

John L. Halyburton—Re-direct

Q. Did you get this letter dated June 9 from Mr. Baylor? A. Oh, yes.

Mr. Collins: I offer this in evidence, and I will read it:

10

“Hampton, N. J., June 9, 1911.

Mr. J. L. Halyburton,

2809 Diamond St., Philadelphia, Pa.,

My dear Halyburton—Your letter of the 8th just received. Glad to know that you have hopes of cleaning things up in the near future.

I am feeling so much better this spring, that I have gone around more than I have in the past four years, put together.

20

My car is working well. I just heard that J. R. Smith had bought a new Ford.

Yours truly,

E. P. BAYLOR.”

Marked Exhibit D-5.

Q. To what did the letter refer?

By Mr. McCarter: I object, how can he say; the letter must speak for itself; he cannot interpret the letter.

30

Q. What were you doing at that time?

Mr. McCarter: I object.

A. I was negotiating with Mr. Kean, who was the president of the American Pipe & Construction Company of Philadelphia, and we were trying to make arrangements, first off, to manufacture these valves at their Bristol plant, of certain sizes, and Mr. Kean was trying to then help me to raise money to locate a plant at Hampton, 40 or Trenton Junction, or wherever I thought

Frank Transue—Direct

would be a good location for the smaller size valve.

Q. Did Mr. Baylor know that? A. Yes, sir.

Further RE-CROSS-EXAMINATION by Mr. McCarter:

Q. Where did you tell him, in your letter? A. 10
In the letter that I wrote to him I probably told him about that, and that is what he refers to that he would be glad to know, and that was the gist of our conversation when I met Mr. Baylor in Philadelphia.

Q. You say that the letter that I show you, and which Judge Collins tried to get you to say the letter of June 9th was a reply, is dated June 8th, 1911, and simply says "I expect to have 20
things fixed up in good shape shortly, and will then write you all about it." Did you tell him anything about your plan there in that letter?

The Court: No, he said he told him outside of the letter. You may ask him when and where.

A. I may have told it in another letter.

Q. Well, did you tell him? A. Yes.

Q. When; have you got the letter? A. No, Mr. Baylor must have the letter; I wrote the letter. 30

Q. Telling him all about the Kean affair? A. Yes; that was our conversation when I met Mr. Baylor in Philadelphia at the West End Trust Company, that is what the talk was about.

FRANK TRANSUE, sworn:

Direct-examination by Mr. Collins:

Q. Where do you live? A. Trenton. 40

Frank Transue—Direct

Q. What is your age? A. Thirty-seven.

Q. You are an attorney at law and solicitor in Chancery? A. Counsellor-at-Law, yes, sir.

Q. But at present engaged as Chief Clerk in the Secretary of State's Office? A. Yes.

10 Q. How long have you been there? A. I have been in the office of the Secretary of State for seventeen years, and chief clerk for ten years.

Q. You have particular charge of corporation matters there? A. Yes, sir.

Q. Do you know Mr. Baylor? A. I have known Mr. Baylor all my life.

Q. Were you at one time in his employ? A. I was employed by Mr. Baylor during the years 1896 and 1897, and the early part of 1898.

20 Q. Will you produce the paper that Mr. Halyburton identified as having been composed by him; it is in blue typewriting, and left with Mr. Baylor. A. Yes, I produce such a paper.

Q. It is marked for identification some number. A. D-3.

Q. From whom did you receive that? A. I received that—

Mr. McCarter: Objected to as immaterial, same objection as yesterday.

30 Q. From whom did you receive it? A. I received it from Mr. Baylor.

Q. In what way? A. Special delivery letter.

Q. By mail? A. By mail, yes, sir.

Q. Addressed in his writing? A. Addressed in Mr. Baylor's writing.

Q. You are familiar with his writing? A. I am quite familiar, yes.

40 Q. Did you preserve the envelope? A. I preserved the envelope until some time ago, when I

Frank Transue—Direct

mislaidd it or destroyed it or something, inadvertently; it was a special delivery letter from an office in New York City, from some office on Liberty Street.

Q. On receipt of that paper what did you do?

A. I proceeded to prepare the certificate of incorporation of the Gardner Valve Manufacturing Company. 10

Q. The same one that was afterwards executed by Mr. Halyburton, Mr. Baylor and Mr. Burrell?

A. Yes.

Q. And in evidence in this case? A. Yes.

Q. You prepared that? A. Yes.

Q. When did you first come to have any personal connection with the Gardner Valve Manufacturing Company, and please state chronologically, to save questions, all that you know about the history of that company. 20

A. A short time before, or previous to the formation of the company I knew, Mr. Baylor was negotiating with someone with a view to locating an industry at Hampton, and he kept me advised from day to day of his progress, and shortly afterwards the Gardner Valve Manufacturing Company was organized, I believe that was October, 1906, and, do you want the succeeding steps leading up? 30

Q. Yes.

The Court: What is the object of all this? We have had it all, have we not?

Mr. Collins: Yes, but I can corroborate, can't I, an entirely disinterested witness?

The Court: Well, go to the arrangement; it is not worth while to corroborate facts that are not in dispute; when 40

Frank Transue—Direct

you prove certain facts by a single witness and those facts are not disputed, it is not worth while to prove them again, it seems to me that you better go directly to your defense.

10 Witness: The object of the corporation was to—

 Mr. McCarter: I object.

 The Court: The certificate will speak for itself.

A. The object of forming the—

 Mr. McCarter: I object.

 The Court: Well, go on now to the arrangement. It is always well to bear in mind the issue. Now the only issue is
20 that the contract sued on does not express the whole arrangement. That you have got to prove.

 Mr. McCarter: What I had in mind was the fact that it does not appear from any evidence that Mr. Transue was at Hampton where these gentlemen talked, and he cannot tell about the arrangement.

 The Court: He can only speak of the facts within his own knowledge, and the
30 facts within the issue.

A. I was at Hampton, I presume it was the day of the first organization meeting of this corporation, and there were present Mr. Baylor—

 The Court: All that appears; there is no use going into this.

 Q. What was said? A. At that meeting there was discussed ways and means of raising the money and of locating the factory at Hampton,
40 and I remember that Mr. Baylor expressed him-

Frank Transue—Direct

self as being primarily responsible for two things one was to secure certain subscriptions to stock at Hampton, and the other was the turning over of the factory site, which consisted of seven and a half acres, about, to the company.

Q. Legal title of which was in what company? 10

A. In the Warren Railroad.

The Court: That does not make any difference at all.

Q. The subscription to stock you speak of, what class of stock? A. To a class of preferred stock which was to be subscribed for, by, as I supposed, citizens of the Borough of Hampton.

Q. How much was he to be responsible for?

Mr. McCarter: Well, now, is there an obligation of this kind; was this loose talk 20 or what?

The Court: It seems to me that this evidence is perfectly irrelevant. The question is, was there an agreement modifying the agreement contained in this paper, the subject matter of this suit. That is the only question.

Q. State what was said?

The Court: Anything that was said at this preliminary meeting has not anything 30 to do with it. If there was an agreement made at that preliminary meeting, that would be different; but this transfer occurred three years afterwards, as I understand.

Mr. Collins: If I asked him if there was an agreement it would be objected to as a conclusion. I want to know what was said.

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The Court: That does not make any difference, as to what was said then. The agreement was necessarily made three years later.

10 Mr. Collins: No, sir; our theory is that the agreement was at that time, and never was changed, never was any different agreement than that.

The Court: Well, if you want to prove an agreement made at that time you may do so.

Q. Proceed. A. That proposition was discussed of raising one thousand dollars.

By the Court: Q. Not what was discussed. What was agreed on? A. It was agreed to raise 20 one hundred thousand dollars by the sale of preferred stock, and to locate the plant at Hampton.

Q. And was anything said as to how much Mr. Baylor was to raise? A. There was, but I don't know the amount, at that time.

Q. Was anything agreed upon about the common stock and the patent rights? A. Yes, sir.

Q. What was it? A. Two hundred thousand dollars of the common stock was to be issued to 30 Mr. Halyburton for his patent rights; Mr. Halyburton was to donate fifty thousand dollars of the common stock to the treasury, to be given away, half a share of which was to be given away as bonus to purchasers of preferred stock, and that left Mr. Halyburton with one hundred and fifty thousand dollars. We assumed that the fifty thousand—

40 Mr. McCarter: Never mind what you assumed.

Frank Transue—Direct

Q. Was there any condition in the agreement, upon the transfer of the patents, for the common stock?

Mr. McCarter: I object.

The Court: What was said about the patents.

Q. What was said? A. That when the hundred thousand was raised—

Q. Hundred thousand of what? A. Of preferred stock was sold, Mr. Halyburton would assign his patent rights to the corporation and would receive two hundred thousand dollars of common stock.

Q. It appears that you drew up Exhibit C-2, except the word "Common" that is interlined.

A. Yes, I prepared that.

Q. State the circumstances under which that was done. A. Yes, sir.

The Court: What difference does that make?

Mr. Collins: We have proved by Halyburton what Transue said when he brought it to him, which was that Baylor had made certain statements. I want to prove that Baylor did say that to him, that this was to be done as a temporary matter, because of the precarious character of Mr. Halyburton's health, which will be found in the letters when I come to read them, trying to get his life insured, and he could not pass the examination; that was the reason it was done.

The Court: You want to prove a conversation between Mr. Baylor and this witness?

10

20

30

40

Frank Transue—Direct

Mr. Collins: Yes.

Q. (Question read.)

Mr. McCarter: Objected to.
Overruled.

10 Q. You have just testified that you drew the paper, the typewritten paper? A. Yes.

Q. Where? A. In Mr. Baylor's office, Hampton.

Q. Did you strike it off on the typewriting machine yourself? A. Ran it off on an Oliver Typewriter, yes, sir.

Q. How did you come to write that?

Mr. McCarter: Objected to as immaterial.

20 The Court: I think, on the theory of the defense, that the evidence is competent, I think that they can show what was done in connection with this paper. I am going to allow that evidence to go in as part of their case. Whether or not the defense will be made out as a matter of law, is a different thing altogether.

Q. (Question read.) A. I drew it at the request of Mr. Baylor.

30 Q. State what he said? A. It was the meeting held, I think, January 31, 1909, Mr. Baylor expressed himself as being apprehensive of Mr. Halyburton's physical condition, he was of the opinion that Mr. Halyburton was suffering from kidney trouble.

40 Q. What was said? A. He said he felt that, and in the event of Mr. Halyburton's death there would be nothing in writing to show that Mr. Halyburton had agreed to assign those patent rights to the corporation, and that if he died, and

Frank Transue—Direct

we went on and raised the money or the money was raised, we wanted something to show his son Fred, who would naturally have control of the patent rights.

Q. Halyburton's son Fred? A. Yes; that his father had agreed to assign these patent rights. 10

Q. Did you draw it up then? A. Drew it up right then, yes, sir.

By the Court: Q. What did you do with it? A. Took it to Mr. Halyburton.

Q. Why? A. For his signature.

Q. But I mean how did you come to take it to Halyburton; anybody ask you to take it to Halyburton? A. Yes, Mr. Baylor asked me.

Q. What did you tell Halyburton? A. I told Mr. Halyburton that in the event of his death Mr. Baylor was of the opinion that there was nothing to—the corporation would have nothing to show that he had agreed to assign these patent rights, that the money might be raised and nothing would be in writing to show that Mr. Halyburton had ever agreed to make the assignment. 20

Q. What money might be raised? A. One hundred thousand dollars.

Mr. McCarter: One moment. Let him tell what was said. 30

The Court: What was said; you are not stating your own ideas, but what you said.

A. I don't recall that I said one hundred thousand dollars; I said the money, raising the money for this corporation, as near as I can recall it.

Q. So then he signed it? A. He signed it, yes.

Q. At whose suggestion was that acceptance written on the foot of it? A. I don't know whe- 40

Frank Transue—Direct

ther Mr. Baylor suggested that or whether I suggested it myself, however, both of us accepted.

Q. It says "Accepted, January 30, 1909;" whose writing is that? A. That is my writing.

Q. Then you signed it and Baylor signed it?

10 A. Yes.

Q. Who took it? A. I took it to Trenton with me.

Q. How long did you keep it there? A. I think I kept it there for two or three years, until I returned it to Mr. Baylor's counsel.

Q. Did you also advance some money to Mr. Halyburton? A. Yes, sir.

Q. Under what conditions?

Mr. McCarter: One moment.

20 The Court: What was said?

A. Mr. Baylor sent me a telegram, I don't recall the date, saying Mr. Halyburton would be at the office in the afternoon. Mr. Halyburton came, and then told me about this proposition to manufacture the valves at some outside plant, same place outside of Hampton; he said, I think, that Mr. Baylor was responsible for the suggestion, or approved of it, and that Mr. Baylor was going to put up some money, and asked me if I wouldn't put up some, and by doing that we would manufacture the valves and create a market with a view of having some basis for raising the money for the corporation.

30 Q. Was anything said as to what you were to get for this money? A. As to what I was to get?

Q. Yes, and Baylor. A. We were to get preferred stock.

40 Q. Did you advance some? A. Yes, I advanced some.

Frank Transue—Direct

Q. How much? A. In the neighborhood of fifteen hundred dollars.

Q. Mr. Halyburton thought it was \$2000; that is a mistake? A. Well, there was some money paid by me for filing the certificate of incorporation, the purchase of the minute book and other expenses which I kept no track of; it might aggregate \$2000. 10

Q. You paid it to Halyburton in person? A. Paid it to Halyburton.

Q. Now, was the effort to raise the hundred thousand dollars for preferred stock successful? A. No, sir.

Q. It was not raised? A. No, it was not raised.

Q. Do you know what became of Halyburton after March 1911, when he left Hampton? A. 20 Yes, sir.

Q. Do you know what he was doing? A. Yes.

Q. What was it? A. He was endeavoring to interest capital in this Gardner Valve proposition.

Q. At what place? A. At various places.

Mr. McCarter: Well.

The Court: How does the witness know this?

A. I know it because Mr. Halyburton told me.

By the Court: Q. You know it only from his 30 letters? A. And from my personal conversations with him.

Mr. Collins: He is the president of the company, and what he knew from Halyburton or any other source is knowledge. I want to show that he as the president, and one of the three interested in this matter, knew that he was trying to get capital. 40

Frank Transue—Direct

10 The Court: The witness must, nevertheless, whether he is president or anybody else, testify from his own knowledge. The witness can say that he received letters on this subject from Halyburton, he can say that he had conversation on this subject, but we must understand that the evidence he is giving is evidence that is properly admissible.

Q. State what you knew, either by information from Halyburton—and stating what the information was, or when—or from observation, your own knowledge? A. I knew Halyburton was negotiating with people at Pottstown, at Trenton Junction, at Pennington, and I think at Chester,
20 and some other places which are referred to in the correspondence there; I personally assisted him in endeavoring to locate this industry, or in raising the money for it.

Q. On whose account? A. In deference to the wishes of Mr. Baylor.

Q. But the investment he was to make, was it for the Gardner Valve Manufacturing Company or for himself? A. Either way, any way, to locate either—

30 Mr. McCarter: Oh, well.

Q. Did you know of his negotiations with the American Car & Foundry Company? A. No, sir.

Q. What was the first you knew about that? A. In December, 1912, I received a telephone call from Halyburton to meet him in Philadelphia, at the Hotel Walton, and there Mr. Halyburton told me he closed the deal with the American Car & Foundry Company at Berwick, Pennsylvania.

40 Q. That was December, 1912? A. 1912, the

Frank Transue—Direct

early part of December I think, and that he was going to Berwick in the course of a few days.

Q. What did you say to him? A. I wished him good luck, that is about all.

Mr. McCarter: Well, his wishes.

Mr. Collins: I submit it is perfectly proper. 10

The Court: Oh, yes.

Q. Do you make any claim for preferred stock in the Gardner Valve Manufacturing Company?

A. Never made any claim at all.

Q. Do you now? A. No, sir.

Q. Do you or not consider that enterprise abandoned?

Mr. McCarter: I object.

Overruled.

Q. Are you president still? A. I think not. I think somebody succeeded me; I resigned here in June, 1914, I think. 20

Q. Why?

Mr. McCarter: I object.

Overruled.

Q. Were you requested to sign a certificate of stock?

Mr. McCarter: Objected to as immaterial, whether he was requested or not. 30

The Court: What is its bearing?

Mr. Collins: Its bearing is this, Mr. McCarter took occasion to criticise this gentleman unfairly I think, and I want to show that at this time Mr. Baylor came to him and wanted him to sign a certificate of stock to Mr. Halyburton, presumably for the purpose of making a tender, and this witness told Mr. Baylor that wasn't honest, 40

Frank Transue—Direct

the thing couldn't be done, and he would resign first, and he did resign.

Overruled.

Q. I show you a letter purporting to be from you to Mr. Halyburton, dated January 14, 1913.

10 Did you write it? A. Yes, sir.

Q. And sent it to Mr. Halyburton? A. Yes.

Mr. Collins: I offer it in evidence.

Mr. McCarter: I object.

Mr. Collins: I want to show by documentary evidence that he knew of the American Car & Foundry Company as early as January, 1913, and this is a letter in which he referred to it.

20 The Court: I will allow it to go in for that reason, subject to Mr. McCarter's objection.

Mr. Collins: I will read it. "Trenton, 14th January, 1913, Mr. John L. Halyburton, Berwick, Pa. Dear Halyburton: I received your letter of December 21st and meant to answer same before this. I am very glad to learn that things are going along nicely. I imagine it is a great treat for you to get back to work again. Let me hear from you again as to how things are going?"

30

Very truly yours,

FRANK TRANSUE."

Marked Exhibit D-6.

Mr. McCarter: Where is the other letter?

40 Q. Have you it? A. Yes.

Frank Transue—Direct

Q. Produce it.
(Produced.)

Mr. Collins: "American Car & Foundry Company, Berwick District, Berwick, Pa., December 21st, 1912.

"Dear Transue: Arrived here Tuesday and got down to business Wednesday. It certainly feels good to get into working harness again. 10

"Things are going fine and the people are treating me fine, and there is no question but that they are going to give me all the chance in the world to make good.

"I am going to Philadelphia tomorrow, Sunday night, and will be there several days looking up some machinery. 20

"Might run over to New York to spend Christmas day with Mrs. H.

"Will probably go west about the first of the year, as we are going to get some of our machine tools from Rochester and Cleveland. Will write you again when I get back.

"Merry Christmas to all.

Sincerely yours,

"J. L. HALYBURTON." 30

Marked Exhibit D-7.

Q. Did Mr. Baylor ever say anything to you with regard to Halyburton's whereabouts after 1911? A. After 1911, yes, sir.

Q. What was it? A. In July, 1912, Mr. Baylor asked me to see Mr. Halyburton, and get for him certain blue prints with reference to the railroad 40

Frank Transue—Direct

property at Hampton and I wrote Mr. Baylor a letter and told him that I would do so if I knew of Mr. Halyburton's address, that the last I heard from him was Hadden Heights; Mr. Baylor replied—

10 Mr. McCarter: I think we better have the correspondence.

Q. Have you got the letter? A. I have just a copy I am using to refresh my memory; Mr. Baylor replied to write him at Haddon Heights; I wrote Mr. Halyburton at Haddon Heights, addressed the letter at Haddon Heights.

By Mr. McCarter: Q. What date are you referring to? A. July, 1912.

20 Q. What date in July, 1912? Have you a copy?
A. July 26, 1912.

Mr. McCarter: I object to this witness stating what he wrote Mr. Halyburton or Baylor, when we have the letter; it is here.

The Court: The question, as I understand it, is whether Mr. Halyburton had kept Mr. Baylor informed as to his whereabouts, whether he knew; he said he did not; now the evidence is introduced for the purpose of showing he did; I do not quite see how this evidence shows that.

30 Mr. Collins: This evidence shows that Mr. Baylor told the witness to write him at Haddon Heights, and he did so, and I will ask him if he got any reply.

A. Did I get a reply from Mr. Halyburton?

Mr. McCarter: One moment. Does my objection amount to anything?

40 The Court: If the letter shows that Mr. Baylor knew, or thought that Mr. Halybur-

Frank Transue—Direct

ton lived at Haddon Heights, why I presume that would be evidence to contradict Mr. Baylor's testimony.

Mr. Collins: I haven't the slightest objection to using the letter, and will offer it; that is a letter from Baylor to the witness. 10

A. No, it is from myself to Baylor.

By the Court: Q. Have you got any letter from Baylor to yourself? A. No, sir, I have not.

The Court: Well, Mr. McCarter's objection is sustained.

Q. The letter you speak of was one by you to Mr. Baylor? A. Yes.

Mr. Collins: Then I ask that it be produced, the letter from this witness to Baylor, in June. 20

Mr. McCarter: From Mr. Transue to Mr. Baylor, dated July 26, 1912.

(Producing letter.)

Mr. Collins: I offer in evidence this letter:

“Trenton, 26th July, 1912.

“Mr. E. P. Baylor,

“Hampton, N. J.

“My dear Baylor: Your letter of the 24th inst. is received. I will write a letter to Halyburton, but want to know his address first. The last I heard of him he was in Haddon Heights, but that was some time during the month of March. If you can give me any better address, I will write him for the blue prints, etc. 30

“I see by the Hunderdan Gazette that the new macadam road to High Bridge is 40

Frank Transue—Direct

completed, and also that it is about completed from Clinton Glen Gardner. What do you know about the Clinton-Glen Gardner road? If it is completed as far as Glen Gardner, there will, of course, be no difficulty in getting up to Hampton.

10

“Very truly yours,

“FRANK TRANSUE.”

Marked Exhibit D-8.

Q. Did he ever say anything to you—I am not speaking about letters, but talk with you, about being able to get at Halyburton, and when was it? A. Yes, sir, subsequent to the date of this letter we had a talk about my interview with Mr. Halyburton, I think it was some time in August, I am not certain.

20

Q. Of the same year? A. Yes, sir.

Q. Where was it? A. At Hampton.

Q. And what was it? A. I told Mr. Baylor then of my interview with Mr. Halyburton, that I met Mr. Halyburton at the Broad Street station in Philadelphia, and I perhaps told him that we went to lunch somewhere, I presume we did, always our custom, told him how Mr. Halyburton was looking, and that he had been making garden all summer at Haddon Heights; that is my recollection of my information to Mr. Baylor regarding that.

30

Q. But I refer to some conversation that I have in my notes here, as to a statement Mr. Baylor made to you of his knowledge where to find Halyburton. A. Well, I haven't the letter; my recollection is that Mr. Baylor wrote me—

40

Mr. McCarter: One moment.

Frank Transue—Direct

Q. Never mind, you are not going to give the contents. What you have in mind is some letter that you haven't got? A. I haven't the letter.

Mr. Collins: I want to offer in evidence some letters, and the first one is this (producing letter).

Mr. McCarter: Well, that is admitted. 10

Mr. Collins: I offer in evidence that letter, and I will read it.

“Hampton, N. J., October 4, 1911.

“Mr. George R. Allen,

“13th & Buttonwood Streets, Philadelphia, Pa.

“My dear Sir: You will be more apt to find Halyburton going to the offices of the West End Trust Co., or the Whiteall-Tatum Co. I think he visits the latter place very often. 20

“Yours very truly,

“E. P. BAYLOR.”

Marked Exhibit D-9.

Mr. Collins: Now you proved a number of letters which were produced at the last hearing, and I now propose to offer them. I understand your Honor does not care to have them read. 30

The Court: Oh, no.

Mr. McCarter: Well, that brings up the question whether these letters are admissible.

The Court: Well, that is a different question. Judge Collins may state why he offers them. 20

Frank Transue—Direct

Mr. Collins: Admissions by Baylor of a variety of things, one is the knowledge of where he shall be found, Halyburton.

The Court: That I will admit, any letter showing that Mr. Baylor knew.

10

Mr. Collins: And the other with reference to the reason why this C-2 was given that he was apprehensive that he had kidney trouble, could not pass the examination of the physicians.

The Court: Who said that?

20

Mr. Collins: Mr. Baylor. Others referring to his endeavoring to place this valve manufactory in Pennington, and various other places named, and expressing his hope that he could do so, that he would be very glad if he did it, he didn't want to have anything more to do with Halyburton, all he was anxious for was if he could get his money back; I cannot tell you in detail, you will have to look at each one, there are quite a number; some of the letters have various aspects on the abandonment question, on the knowledge where Halyburton was, on what the original arrangement was; they are full of corroboration.

30

The Court: Well, the letters may be evidence on the question of abandonment by Baylor; so far as they relate to that subject I shall be disposed to admit them. But letters which state a past agreement between the company and Mr. Halyburton are certainly not evidence. The well settled rule, and counsel are perfectly familiar with it, is that declarations made by an

40

Frank Transue—Direct

agent in the course of the transaction in which he is acting as agent are evidence; statements made by him subsequently, as to what the transaction was, are not. Now, that is the rule to guide me in the admission or rejection of these papers. If you insist that they are parts of the transaction you will have to offer them separately so that I may rule upon the question; I cannot pass upon that question in a general way. 10

Mr. Collins: The ones we offer are, November 2d, 1909—I might say that all this batch that we offer relate to Mr. Baylor's willingness to have Halyburton go elsewhere, don't want to be associated with him any more, and don't believe he can raise the money, and wants him to get out, and also knowledge of where he is or was, and I don't know how I can do any better than to pick them out and let your Honor have them under advisement. 20

The Court: Well, that is the rule by which I shall be governed.

Mr. Collins: I will give Mr. McCarter copies of them, and let them be considered and held under advisement. 30

Mr. McCarter: The understanding being that we have the general objection to this private correspondence between Baylor and Transue.

The Court: If they are part of the transaction they are evidence; if they are mere statements of past transactions they are not evidence. Now, that will be the dis- 40

Frank Transue—Direct

inction by which I will be governed in giving effect to the letters as evidence.

Mr. McCarter: I think that is all right, with that understanding. Of course we are assuming that these are correct copies.

10 Mr. Collins: Oh, yes, you may rely on that. Now, I want to offer the paper marked for Identification D-3.

Marked Exhibit D-3.

Q. You are familiar with the property referred to, seven acres? A. Yes.

Q. I show you a deed, certified copy of a deed from Warren Railroad Company to the Conservation Company, of certain part of Hunterdon County, and ask you if that deed, of which this
20 is a certified copy, conveyed that property?

The Court: Is there any objection?

Mr. McCarter: Utterly immaterial and irrelevant.

The Court: I will overrule it as irrelevant.

Marked for Identification D-10.

Q. Do you know the Conservation Company?

A. Yes, sir.

Mr. McCarter: Same objection.

30 Mr. Collins: I want to prove that the conservation company is a company of which Mr. Baylor is—what?

A. Was an incorporator, and I believe was an officer.

Mr. Collins: That is what I want to prove.

The Court: I overrule that.

Q. I asked the witness, supposing that it was
40 some conversation he had with Mr. Baylor, and

Frank Transue—Direct

he said it was a letter he hadn't got. Now, I think if I can prove the loss of the letter then I may resort to secondary evidence as to what it said, so I want to ask you about the letter you spoke of in answer to my question if you knew anything from Baylor about his knowledge of the whereabouts of Halyburton, when you referred to some letter that you received from him; what became of that letter? A. My recollection was that Mr. Baylor wrote me— 10

Q. Don't tell what he wrote. What became of the letter? A. The letter I mislaid, didn't save it.

Q. Didn't save it? A. No, sir; that was in 1912; I saved no original letters from Mr. Baylor after July or August, 1911. 20

Q. I ask what was in that letter with regard to Halyburton?

Mr. McCarter: Q. Did you destroy the letter? A. I destroyed all of Mr. Baylor's letters after August, 1911, destroyed them as fast as I got them.

Q. What was in that letter?

Mr. McCarter: One moment. Perhaps at the expense of appearing technical, but because of the danger of misrecollection, that is all, I want to say about Mr. Transue, I don't think he would purposely misstate what his recollection is, I am going to object to that evidence; this is quite an important feature, and we have decided views about the knowledge or lack of knowledge that Mr. Baylor had about the whereabouts of Mr. Halyburton, and we can show just what we did know and what we did not. 30 40

Frank Transue—Cross

10 Now, witness is so apt to be mistaken in regard to a letter, when it was dated, and all that kind of thing, and if you are going to apply the rule laid down by Judge Van Syckle, in a case which I can refer you to at recess, I do not now recall the name, where a witness destroys a letter or a document he cannot give secondary evidence, it is only when a thing is inadvertently lost; in other words, a witness cannot purposely destroy a document, and then give secondary evidence.

Mr. Collins: That rule only means if he destroys it for some purpose.

20 Mr. McCarter: That is not the way I understand the rule.

The Court: I will admit it subject to your cross-examination; if the witness cannot remember the contents of the letter, why that is a different matter. The witness cannot state now what he thinks was in the letter, but if he remembers its contents, and can state what its contents are so far as they relate to Mr. Halyburton's wherabouts, why, he may state that, and Mr. McCarter may cross-examine, if he pleases, for the purpose of ascertaining whether the witness is competent to speak.
30 Do you want to cross-examine?

CROSS-EXAMINATION by Mr. McCarter:

Q. You say this letter was destroyed? A. The letter of July, 1912?

Q. Yes. A. Yes, sir.

40 Q. How do you remember its date? A. By rea-

Frank Transue—Cross

son of the fact that I wrote Mr. Baylor August 7, 1912 that I had directed the letter to Haddon Heights, and also by a copy of the letter which I wrote Mr. Halyburton July 29.

Q. Well, why did you destroy the letters from Mr. Baylor after 1911? A. I wanted to forget that I ever had any connection with the Gardner Valve Manufacturing Company. 10

Q. You didn't destroy a large bulk of the correspondence and papers that pertained to that matter, did you? A. No, they all antedated that date, all that is in evidence preceded that date.

Q. Well, how did the fact that you destroyed everything that passed after a certain date, help you to forget, when you kept everything anterior to the date? A. Because those letters referred to the character and habits and so on, of Mr. Halyburton, I put them to one side. 20

By Mr. Collins: Q. The earlier ones you are speaking of? A. Yes, these earlier ones.

Q. So that you have no memorandum of any kind in your possession after 1911 concerning him? A. No, sir, not from Mr. Baylor.

Q. Have you from anybody else? A. I have from Mr. Halyburton, I have letters from him.

Q. How did the fact you kept Halyburton's letters after 1911, and destroyed Baylor's letters, help you to forget? A. That probably Baylor's predictions might come true, that Halyburton was the disreputable character that Baylor said he was; Halyburton was a stranger to me. 30

Q. You continued to be an officer and the counsel of this company? A. Not counsel, Mr. McCarter.

Q. Weren't you counsel? A. No, sir. 40

Frank Transue—Cross

Q. Well, didn't you attend to their legal work?

A. I prepared the certificate of incorporation, and attended one or two meetings, that is all.

10 Q. Whatever legal advice the company had, down to Senator Large taking up this suit, you attended to? A. No, sir, the company never asked me for any legal advice.

Q. In what capacity were you acting when you drew the certificate of incorporation? A. Friend of Baylor.

Q. When did you cease to be a friend of Baylor?

The Court: That is not cross-examination of this letter.

20 Q. You continued to be an officer of this company down to July 18, 1914? A. The date I signed the certificate, yes.

Q. Do you still adhere to the statement that you destroyed the correspondence between yourself and Baylor, concerning the company, because you wanted to forget? A. I wanted to get out of it, I was disgusted with it, absolutely disgusted with it.

30 Q. You had quite some correspondence with Mr. Baylor after 1911? A. Oh, yes, Baylor often asked about Halyburton's whereabouts.

Q. When did you destroy them? A. About the time I got them I guess.

Q. Are you sure of that? A. Quite sure.

Q. You had some conferences since this suit commenced with the General Counsel of the company? A. Oh, yes, a number of conferences.

Q. Went to New York for that purpose? A. No, I don't think I went to New York for Mr. Large.

40 Q. You have been to New York to confer about this case? A. With Mr. Large?

Frank Transue—Cross

Q. With or without him? A. Not to New York.

Mr. Collins: Are you speaking of Mr. Large?

Q. Oh, no, Mr. Whittaker? A. Oh, yes, I was to Mr. Whittaker's office.

Q. Were not some of those letters destroyed after you were at Mr. Whittaker's office? A. No, sir. 10

Q. When were they destroyed? A. The letters which Mr. Baylor directed to me, subsequent to either July or August, 1911, were destroyed by me.

Q. When? A. Immediately after their receipt, after I received them.

EXAMINED by the Court:

20

Q. Now you remember the contents of this letter? A. Which is that?

Q. The letter that has caused all this discussion? A. Original letter from Mr. Baylor?

Q. Yes. A. Only part of it.

Q. Well, you do remember that part of it? A. Apparently, yes.

Q. Well, you may state it? A. Yes.

By Mr. Collins: Q. What was it? A. That I should direct him, address Mr. Halyburton at Haddon Heights. 30

Recess.

CROSS-EXAMINATION by Mr. McCarter:

Q. Mr. Transue, you were not present at any interviews between Mr. Halyburton and Mr. Baylor at Hampton prior to the organization meeting of the company? A. No, sir. 40

Frank Transue—Cross

Q. Coming now to a talk between Mr. Halyburton and yourself, which I understood from your direct-evidence occurred at Trenton, did Halyburton report to you that he and Mr. Baylor had reached the conclusion that the scheme of raising
10 one hundred thousand dollars of stock was, under existing conditions, impracticable? A. No, sir.

Q. Did he report to you that it was deemed important to raise some money for the purpose of having valves manufactured and getting out a catalogue? A. Yes, sir, oh, yes.

Q. And was three thousand dollars named as the sum that would be required to immediately take care of that? A. I rather think it was, yes, sir.

20 Q. Were you present at any interview between Baylor and Halyburton, at which that subject was discussed? A. No, sir.

Q. Your acquaintance with it and assent to it was brought about by the interview between Halyburton and yourself at Trenton? A. Yes, that is true.

Q. In which he said that Mr. Baylor had asked him to come down and get your views about it, and your assent to it, you did assent to it? A.
30 Yes, I agreed.

Q. Of that money that was to be raised, you undertook to raise how much? A. \$500.

Q. Mr. Baylor was to raise \$2000? A. I believe it was \$2000, yes.

Q. And Mr. Halyburton's brother-in-law was to raise \$500? A. I don't recall that, Mr. McCarter.

Q. You recall the fact that at least \$3000 was
40 supposed to be necessary? A. Yes, sir.

Frank Transue—Cross

Q. The scheme was that a catalogue should be gotten up; was that mentioned? A. I don't recall whether that particular part of the scheme was mentioned or not; the catalogue, I don't recall that.

Q. You do recall plainly that Mr. Halyburton reported to you the idea that instead of delaying the actual projection of the valve further until the company could get funds to manufacture, that they should now hire the manufacture of the valves, procure all, necessary patterns, and endeavor to sell them, and get the valves on the market that way, establish their validity and merchantability? A. To create a market. 10

Q. You remember that? A. Yes.

Q. You assented to that idea? A. Yes. 20

Q. Do you recall having some interviews between yourself and Mr. Baylor, between that interview of Halyburton's with you at Trenton, and the meeting in January when this paper was signed? A. I recall one interview.

Q. Where was that? A. Either at Mr. Baylor's residence or his office at Hampton.

Q. Can you tell us about when that interview was? A. I think it was, oh, a very short time after Mr. Halyburton visited me in Trenton. 30

Q. At that interview Mr. Baylor told you, did he not, that as part of this—whatever you want to call it—this three thousand dollars arrangement—A. Yes.

Q. Halyburton had agreed to make a written assignment of the patents? A. No, sir.

Q. When did you first hear of that? A. At the meeting, January, 1909. 40

Frank Transue—Cross

Q. You had never heard of it before? A. No, sir.

Q. Are you sure of that? A. Positive.

Q. In what capacity did you prepare Exhibit C-2? A. Is that the agreement?

10 Q. Yes. A. Merely as a friend to Mr. Baylor.

Q. Well, I notice that Mr. Baylor writes that you were counsel of the company. In view of the fact that you prepared that document, and in view of the fact that you prepared a certificate of incorporation, in view of the fact that you are as you say you are, a counsellor-at-law—A. Yes.

Q. —in view of the fact that neither Mr. Baylor or Mr. Halyburton is a lawyer, don't you think that if the company had counsel you were its counsel? A. No, sir, I was not.

20 Q. Who was? A. As far as I know the company had no counsel.

Q. You did what legal work the company had to have done? A. What little work was done, why I did.

Q. You did? A. Yes.

Q. When did you first see or hear of the two letters of October 4, and November 11, 1908? A. What are they?

30 Q. From Halyburton to Lepper, which have been read this morning and offered in evidence. A. From Halyburton to Lepper?

Q. Yes. A. Read in evidence this morning. This morning was the first I heard.

Q. Oh, you never heard of them before? A. No.

Q. Halyburton never spoke of that to you? A. 40 No, sir.

Frank Transue—Cross

Q. Of having written those letters? A. No, sir.

Q. Well, when Mr. Baylor in January, 1909 requested you to get a written assignment of the patents he told you, did he not, that Halyburton had agreed to making it? A. No, sir, I don't think he did, I don't think he said anything about that. 10

Q. Have you given us the only information that you possess with regard to the facts surrounding the signing of that document? A. Yes, sir, as far as I know the whole thing was hatched up that day, and due to the fact—

Q. At whose advice was it that Mr. Halyburton withdrew from the meeting; yours? A. I think it was mine, yes.

Q. Did you draft the resolutions that appear in the book? A. Yes, sir. 20

Q. Had you previous to this time, the autumn of 1908, advanced any money in this enterprise? A. Previous to 1908?

Q. 1908? A. About a hundred dollars.

Q. How much further did you advance; about \$1500? A. Well, that was inclusive, no, about \$1500 further.

Q. When did you commence your advancements? A. The hundred dollars I refer to was to pay the expenses of filing the certificate of incorporation, the minute books; I commenced to advance to Mr. Halyburton in; I think it was, August, 1909. 30

Q. 1909? A. Yes. You see the agreement was made in January, 1909; I think I commenced in August, 1909.

Q. Aren't you speaking of 1908? A. Oh, no, 1909; my checks will show it. 40

Frank Transue—Cross

Q. Well, would you have made the advancements if you hadn't—

The Court: No, that will not do.

10 Q. Then all your advancements were made after Halyburton had signed Exhibit C-2, except the original hundred dollars? A. The advancements were made in accordance with the agreement, in accordance with my agreement to advance \$500.

Q. Please answer my question, they were all made, but the original hundred dollars, after the agreement? A. Yes, subsequent to January 31, 1909.

20 Q. They were applied to what purpose, do you know? A. I suppose for living expenses of Mr. Halyburton, and whatever purposes he saw fit to use them for in exploiting this proposition of his.

Q. In getting the valves manufactured? A. I presume so.

Q. That is what you understood? A. Anything at all he saw fit to use it for.

Q. For the purposes of the company? A. For the purposes of furthering this scheme.

30 Q. Now I take it that you are lawyer enough to believe and conceive that the effect of that document was to make the company the legal owner of the patent? A. No; I thought that the agreement was to be used for the purposes which I mentioned this morning.

Q. I didn't ask you that at all. (Question read.) A. Not to make the company the legal owners of the patent.

40 Q. Or the equitable owner? A. The equitable owners, I presume, yes, on the performance—

Frank Transue—Cross

Q. You never knew of his signing any other document, did you? A. No, sir.

Q. Now who fixed up the figures in that C-2, do you know? A. I did.

Q. You did? A. I think so, yes.

Q. That is your writing? A. It is in type-10 writing, is it not—Oh, that is Mr. Halyburton's writing, I believe.

Q. So that Halyburton filled that in, as well as the other manuscript matters, after you presented it to him? A. Yes, sir.

Q. Now did you report your assent to the Halyburton proposition made to you at Trenton, to Mr. Baylor, or did you simply say that he could tell Baylor? A. Mr. Baylor interrogated me about that.

20

Q. When? A. Immediately after my first visit to Hampton. You are referring to Halyburton's trip to Trenton?

Q. Yes. A. Yes, Mr. Baylor interrogated me about that.

Q. What did he say? A. He asked me if Halyburton had been to see me, asked me what Halyburton stated to me, and what he offered to give me; I told him.

Q. At that time did not Mr. Baylor say something about an assignment of the stock? A. No, sir.

Q. Are you sure? A. I am positive.

Mr. Collins: Patents, you mean?

Q. Patents. A. I am positive.

Q. You have been a life long friend of Mr. Baylor's? A. Yes.

Q. Up until recently? A. Yes.

40

Frank Transue—Cross

Q. You were a protege of his, were you not?
A. Yes.

Q. What happened that made you destroy his letters, and give all your correspondence to the enemy in this case, what happened between you and Baylor? A. Mr. Baylor was importuning me to get Mr. Halyburton, or to assist Mr. Halyburton in getting located either at Hampton or elsewhere, for the purpose of getting the money to pay Baylor off; I assisted him; and another reason was that, the correspondence will show I think that he had somebody else whom he wanted to locate in that same property; and when we came to the Bristol proposition, my recollection is that all valves above 24 inch were to be manufactured at Hampton, and the balance at Bristol, and that Mr. Baylor and I would probably be paid off.

Q. Where did you get that proposition from?
A. Mr. Halyburton.

Q. Oh, Mr. Halyburton? A. Yes; he would probably pay it off, and Mr. Baylor was very insistent upon asking for a receiver.

Q. For what? A. For the Gardner Valve Manufacturing Company; he wanted me to go in with him and ask for a receiver.

Q. You declined to do it? A. Yes. Then Mr. Baylor was constantly bombarding me with letters with reference to Halyburton's character, and the affairs of the Gardner Valve Company, sometimes as high as four and five a day, and telephone calls.

Q. He was very anxious to find out where Halyburton was? A. No; anxious for me to assist him in locating—

Frank Transue—Cross

Q. Halyburton. A. No, in helping Halyburton locate this industry.

Q. What? A. In helping Halyburton locate this industry.

Q. Do you mean to tell me that he was not inquiring of you where Halyburton was? A. Oh, 10 he would ask where he was, unquestionably, and I would tell him.

Q. He didn't know? A. I would tell him.

Q. You would tell him? A. Yes.

Q. You knew where he was all the time? A. Yes.

Q. Between June, 1911, when he left Hampton, and 1914? A. I am referring to these letters which were offered in evidence.

Q. Answer my question. Do you want to tell 20 Vice Chancellor Stevens that you knew where Halyburton was all the time between June, 1911, when he left Hampton, and 1914, August, when you resigned? A. I could have found out easily.

Q. Did you know? A. I think I did, yes.

Q. Did you tell Baylor that you knew? A. No, sir.

Q. Then you told him you did not know? A. I do not recall telling him I didn't know; I did not intend to tell him I knew. 30

Q. When did you break with Baylor? A. I suppose it was about June, 1914.

Q. Have you given us the reasons for doing so? A. Baylor broke with me, I didn't break with him.

Q. Was it after June, 1914 that you destroyed—

The Court: This is not a matter of much consequence.

Frank Transue—Cross

Q. Please look at the letters which I hand you, and see if they were all written by you to Mr. Baylor, one dated October 25, 1909?? A. Yes, sir, that is my letter.

10 Mr. McCarter: I will offer that in evidence.

Marked Exhibit C-23.

Q. One contained in an envelope postmarked "Trenton, October 20, 1909," but undated inside? A. Yes, sir, that is my letter.

Mr. McCarter: I will offer that in evidence.

Marked Exhibit C-24.

Q. Another one on the 11th of May, 1909? A. My letter.

20 Mr. McCarter: I will offer that in evidence also.

Marked Exhibit C-25.

Q. Also one dated the 29th of September, 1911. A. That is my letter.

Mr. McCarter: I offer that letter in evidence.

Marked Exhibit C-26.

Q. Also a letter dated December 1st, 1911. A. Yes, sir; there are two of them.

30 Mr. McCarter: I offer that in evidence. Marked Exhibit C-27.

Q. And one dated August 7, 1912? A. Yes.

Mr. McCarter: I offer that in evidence.

Marked Exhibit C-28.

Q. One dated the fifth of August, 1913? A. Yes, I wrote that, but it is signed "Crater" by mistake by my stenographer.

Mr. McCarter: I offer that in evidence also.

40 Marked Exhibit C-29.

Frank Transue—Cross

Q. Also one written July 18, 1914? A. Yes.

Q. That is your letter, July 18, 1914, is addressed to "My dear Senator," addressed to "Senator George H. Large." A. Yes.

Mr. McCarter: I offer that in evidence also.

10

Marked Exhibit C-30.

Q. Who was the attorney, as you understood, for Mr. Baylor? A. Yes.

Q. I again call your attention to this letter in manuscript, that is undated, and that I said was in an envelope dated October 20, 1909—I am just informed by my friend Senator Large that I am in error about that, that it did not come in that envelope. Have you any way of fixing when that letter, which is undated, was written, and to re- 20
fresh your recollection I will ask you if it was not after you had made all your advancements on the \$1500 that you agreed to advance? A. I suppose that was some time subsequent to 1909.

Q. Can you tell us when, with reference to the last payment you made on account of the \$1500; after that? A. No, I couldn't tell that.

Mr. McCarter: I think this had better be marked instead of the envelope.

Marked Exhibit C-24.

30

Mr. Collins: These are only marked for identification, as I understand it; if they are in evidence I want to look at them.

Mr. McCarter: Well, I am going to ask the witness about them now.

Q. Now, Mr. Transue, when was the visit that Halyburton made to you at Trenton? A. Some time in 1908 I think.

40

Frank Transue—Cross

Q. August or September? A. I think it was in August, 1908; it was referred to this morning in the testimony.

Q. I notice that in this letter of October 25, 1909, you say to Mr. Baylor as follows: "I am
10 very sorry that you take such a gloomy view of the valve proposition. Halyburton did not tell me any more than he told you, but I believe he is now in a position to get the money, and I don't think that he will be very long in getting it. I don't see what cause you have for worriment, as you are better protected than any other person, in case there was a failure, and in the event of success, you will get more out of it than anyone else. If, however, you still feel that you would
20 like to get out of it, you could make that proposition when he gets the preferred stock all subscribed for, but if you did that, you would lose the common stock which he has promised you. I have nothing to show for the amount of money that I have in it, but I feel absolutely safe. We have our remedy if anything goes wrong, and Halyburton has everything to lose. The patent rights, in my estimation, are very valuable and would, if offered for sale, bring a great deal more
30 than what you and I have already put in the company. He would, of course, be out. He told me that the matter in all probability would be settled on the third of November." Now I ask you this question, after refreshing your recollection as to what that letter says, when you told him: "We have our remedy if anything goes wrong, and Halyburton has everything to lose. The patent rights, in my estimation, are very valuable, and
40 would, if offered for sale, bring a great deal more

Frank Transue—Cross

than what you and I have already put in the company." You relied upon the agreement, C-2, did you not? A. Yes, because Mr. Baylor could always—

Q. One moment. Did you or did you not? A. No, I don't know whether I relied on the agreement when I wrote that letter, or not. 10

Q. What other paper had the company to show for the patent rights which gave Mr. Baylor his value, if it was not C-2? A. Mr Baylor said that—

Q. Will you tell me what other paper? A. I don't know of any other paper.

Q. On the 11th of May, 1909, Exhibit C-25, I observed that you wrote to Mr. Baylor: "I will make an effort to have them try some of the valves here at the State House, although when Mr. Halyburton was here he did not think it was necessary to make an attempt to get business of this character. I am glad to hear that the prospects for a sale of the valves are so good. It does seem to me that before the year is over, there will be a great demand for them." Where did you hear that the prospect for the sale of the valves was so good? A. I presume from Mr. Halyburton. 20 30

Q. That was the valve that was being manufactured outside? A. Yes.

Q. Now this next letter in your writing, which I regret to say, like mine, is not very good, and I have what purports to be a copy of it here, and you can read the original, if you will, and correct me if I misread; in your letter, undated, but which you say was written after 1909, you say 40

Frank Transue—Cross

as follows—marked Exhibit C-24—“Dear Baylor: Your letter received. I don’t think you have any reason to fear but that you will get all of your money eventually. We are preferred stockholders, and as such come in ahead of him. The agreement what he made to assign those patent rights will hold him as he gets common stock for it and would therefore, in case of a failure or receivership, come in after us. The drawings, models and any other tangible property belong to the company and form part of its assets. He is also liable to pay \$400 for his stock as he subscribed for it, and so far as the minutes show has never paid anything for it. I am only saying this in the event anything should happen and you are forced to do something. I think that the best thing for us is to say nothing about it to any outsider and let the matter drift along until such time as he finds out that he can’t raise the funds and asks for help. You have paid in all the money you agreed to and so have I, so the whole thing is up to him. Don’t say anything about it. I still think he will eventually get the money, if not, we have our remedy. Will talk it over with you when I come up.” Is that about correctly transcribed? A. Yes.

Q. When you wrote that letter you knew of no other assignment by Mr. Halyburton of his patents to the company than the one, C-2, did you?
A. That is all.

Q. And did you believe the advice you were giving to Mr. Baylor in the statement that “the agreement what he made to assign those patents will hold him.” A. Under certain conditions,
40 yes, sir.

Frank Transue—Cross

Q. Did you mean what you said when you told Baylor that you and Baylor had done all that you had to do? A. I meant that we had done all we agreed to in raising money.

Q. Did you mean what you said when you said "You (Baylor) have paid in all the money you agreed to, and so have I, the whole thing is up to him." Did you mean that or not? A. Yes. 10

Q. Did you write that letter as a friend, or as a lawyer, or as both? A. I wrote it as a friend to Mr. Baylor.

Q. What act of friendship to Mr. Baylor were you exercising when you said "I think that the best thing for us is to say nothing about it to any outsider, and let the matter drift along until such time as he finds out that he can't raise the funds and asks for help?" A. Because of the fact that Mr. Baylor and I had agreed, or had written to each other to say nothing to outsiders about it; we did not want any outsiders to know of our affairs in this company. 20

Q. "Don't say anything about it. I still think he will eventually get the money." A. I thought he would.

Q. This letter was written as a matter of fact, that I am just talking about, C-24, in 1911, was it not? A. I don't know. 1911? 30

Q. 1911. A. I don't know.

Q. You said after 1909? A. Yes, after 1909; I don't know what he referred to, because there were so many.

Q. I am not asking you what it referred to. A. I don't know whether it was written in 1911 or not.

Frank Transue—Cross

Q. Have you any way at all to fix when it was written? When did you make your last payment? A. It must have been written in 1910, I think.

10 Q. It was after you made your last payment, because you say "I made all my payments." A. I won't say after I paid my last payment; it might have been after I paid my \$500.

Q. "You have paid in all the money you agreed to, and so have I." A. Which was \$500.

Q. I ask you when you made your last payment? A. Some time subsequently to the payment of my \$500, I wrote this letter.

Q. When did you make your last payment? A. I think it was in October, 1910.

20 Q. Now then, you know as a matter of fact that at the time C-24 was written Halyburton had left Hampton and was in Philadelphia? A. No, I can't say that, because it might have been after that \$500 was paid.

Q. What? A. I might have written that after I paid the \$500.

30 Q. Oh, of course you keep harping on that; I didn't ask you that at all. I ask you if you do not recall as a matter of fact that that letter, C-24, was written by you after Halyburton had left? A. No, sir; I don't recall that.

40 Q. The letter starts out: "I don't think you have any reason to fear but that you will get all of your money eventually," etc.; don't you know that Halyburton had left Hampton, and that Baylor was pressing you about his apprehension concerning the matter, and it was because of this apprehension, in view of the fact that Halyburton had skipped, that you wrote this letter? A. No, sir, I don't recall writing that.

Frank Transue—Cross

Q. When did you write the letter? A. I don't know when I wrote it.

Q. When did you make your last payment of the \$500? You are so anxious to get that in. A. About November or December, 1909.

Q. Have you any memorandum? A. I have a 10 check here, I think.

Q. Well, look at it and see. A. About November, 1909.

Q. And the last payment of the money you did pay was, I think you told us already— A. October, 1910 I think.

Q. Now I call your attention to Exhibit C-26, dated "Trenton, 29th September, 1911. My dear Baylor: I had a talk with Senator Large this morning, and told him that I did not think it was 20 well to go ahead and do anything until we found out whether or not any assignment had already been made of the patent rights. He is going to write to Washington city right away, and see if there is any record of an assignment of the patents. I also told him that there is one other thing we should know before taking the thing to the courts, and that is if there is any possibility of their doing anything at Bristol. You will recall telling me that they were going to advise you of 30 this fact later on. Just as soon as these two questions are settled, there should be no time lost in filing a bill." Do you remember writing that letter? A. Yes.

Q. Have you got a copy of it? A. I don't know whether I have a copy of it.

Q. Eh? A. I don't think I have.

Q. Did you destroy the copy? A. Oh, no, I may have a copy of that here. 40

Frank Transue—Cross

Q. Now it is true, is it not, therefore, that on or about the 29th of September Senator Large, on behalf of whom it might concern, but because of the plight Mr. Baylor found himself in, consulted you with reference to the advisability of taking some action? A. For Mr. Baylor, yes.

Q. With regard to the difficulty or difference between Halyburton and Baylor? A. Yes, sir.

Q. What action did you advise to be commenced? A. I told the Senator he could do just as he liked about it, receivership, or whatever he saw fit.

Q. For what reason did you want to find out whether any assignment had been made of the patent rights at Washington? A. Suppose to find out whether Halyburton had formed some alliance with some company.

Q. "Just as soon as these two questions are settled, there should be no time lost in filing a bill." What kind of a bill? A. I suppose file a bill in equity.

Q. On behalf of? A. Mr. Baylor, I suppose.

Q. Baylor? A. Yes, on behalf of Baylor.

Q. Against whom?

The Court: Oh, well, that is a matter of no consequence; I do not think it is worth while to question the witness about this.

Q. Well, you evidently then felt, as late as September 29, 1911, whatever be the date of C-24, that there was ground for action? A. If he had ground for action, if Baylor had, I wasn't going to get into the proceeding; I was satisfied to get out, wanted to get out, satisfied to lose my money.

Q. You had received some promises from Mr. Halyburton that he would see that you would ul-

Frank Transue—Cross

timately get back your money? A. He always assured me he was under a moral obligation to pay me if he were ever in position to do it.

Q. Therefore, as far as you were concerned, you were indifferent? A. I was indifferent because I thought his valve was no good; we had the report, all of us. 10

Q. How long had you thought it was no good? A. A short time before the Bristol proposition.

Q. Do you still think it is no good? A. I don't know whether it is any good; I thought it was no good at the time he made the assignment to the American Car & Foundry Company.

Q. You have stated that Mr. Baylor was from time to time inquiring of you the whereabouts of Mr. Halyburton? A. Yes, in a way he would inquire. 20

Q. I notice in this letter of August 7, 1912, C-28, you say "I wrote Halyburton about ten days ago regarding the blue-prints, etc., and have not heard from him yet. The letter was directed to Haddon Heights." Do you remember doing that? A. Yes, sir.

Q. Did you ever get a reply to that letter? A. I testified this morning that Mr. Halyburton telephoned— 30

Q. Did you get a reply to that letter? A. Not a reply to the letter, no, sir.

Q. Was he at Haddon Heights, as a matter of fact? A. Yes.

Q. He did not answer your letter? A. No, sir.

Q. I refer you now to Exhibit C-29, which is dated August 5, 1913? A. Yes.

Q. That is the letter that you say, by the stenographer's error, was signed "Crater"? A. Yes. 40

Frank Transue—Cross

Q. In that letter you say "Your letter of the 4th inst., just received. I don't know whether I filed any report for the Gardner Valve Company last year or not, but even if the company were put out of business for failure to pay taxes, it can always be reinstated, for a nominal sum. I know of cases where corporations have had their charters forfeited for ten or fifteen years, and it has afterwards developed that there was some assets which could be levied upon, and in order to accomplish this, they are reinstated, so it don't make any difference whether it is dead or alive. I will try and get up on the 14th inst. Very truly yours, David S. Crater." Did you write that letter as counsel, or as a friend of Baylor's? A. No, sir, as a friend of Baylor's; that was in response to his letter.

Q. When was it that the break occurred? A. 1914.

Q. The break had not yet occurred? A. No, sir.

Q. "It don't make any difference whether it is dead or alive"? A. No, sir, it didn't.

Q. That was some advice you gave him. Do you find in your files a letter dated February 24, 1911 from Mr. Baylor to yourself? A. No, not February 24th I haven't.

Q. Have you your complete file there? A. I haven't any letter dated February 24, 1911.

Q. Have you your complete file of all letters? A. Yes, sir.

Q. From him? A. From October 16, 1909 to July 3, 1911.

Q. Oh, it was after July 3, 1911 that you destroyed them? A. Yes, I destroyed them as fast as I received them.

Frank Transue—Cross

Q. So that this letter you cannot find? A. It ought to be here if it is February 24, 1911.

Q. Have you letter of October 3, 1911? A. No, sir.

Q. That is one you destroyed? A. Yes, sir.

Q. I show you what purports to be a copy, and see if you remember receiving it? A. I recall Mr. Baylor being in Trenton that time, yes. 10

Q. Do you recall receiving a letter of which this apparently is a copy? A. I think I received that, yes.

Q. "October 3, 1911. My dear Transue"—the first paragraph is in regard to an automobile that need not be read—"I am going to make another effort tomorrow to locate Halyburton; he is certainly keeping in the shade." You knew, didn't you, both from that letter and from talks with Mr. Baylor that he was endeavoring to locate Halyburton? A. I did, yes, sir. 20

Q. Have you the letter of March 28, 1912? A. No, sir.

Q. Look at what purports to be a copy, and see if you can recall receiving such a letter—probably there is something in it will refresh your recollection. A. I recall receiving the letter, yes, sir.

Q. Letter dated March 28, 1912, addressed to Mr. Transue. "I am enclosing your check for \$510.40. Kindly return the water bond. There is one thing I wish you would do, and that is to find out what that fellow is doing in Philadelphia, if anything; if he is down and out with the Nelson Valve Company let me know, and I will find out just what the trouble was. I am simply anxious to know about it, that is all." You understood "that fellow" to mean Mr. Halyburton, didn't you? A. Surely. 30 40

Frank Transue—Cross

Q. Did you let him know? A. No, sir.

Q. I show you two letters dated April 12 and 22, 1913, copies of two letters. Please look at them, and see if you recognize them as the originals having been received by you? A. April 12, 1913, yes, I presume I received those letters.

10

Q. "April 12, 1913. My dear Transue. I wish you would fix this thing up. Attached you will find card from the Bureau of Statistics of New Jersey. I wish you would fix this thing up with the department. We must keep the Gardner Valve Manufacturing Company in shape; one can never tell what will turn up. I understand Halyburton is doing something now, but I don't know what it is." Then in the letter of April 22, 1913

20

"My dear Transue. A party told me a few days ago that he had seen Halyburton in Elizabeth; he was well dressed. Have you seen or heard anything of him? I haven't looked into the matter as yet." Did you receive both those letters? A. Yes.

Q. So that during all this time apparently, Mr. Baylor was endeavoring to find out the whereabouts of Halyburton, wasn't he? A. He was asking me those questions.

30

Q. You and he were friendly? A. Yes.

Q. Did you think he was going through the motion of asking you? A. He always told me he could put his hand on him any time he wanted to.

Q. Did you think in these inquiries to you, as a friend, he was going through the motion? A. No; I told him repeatedly I wanted to get out of the Gardner Valve Manufacturing Company, did-
40 n't want to have anything to do with it.

Frank Transue—Cross

Q. Do you think those were bona fide inquiries or don't you? A. I don't believe they were.

Q. Thought he was doing what, writing for the fun of the thing, to a friend? A. No, he would always tell me he could put his hand on him any time he wanted to.

Q. How did you construe those letters? A. Paid no attention to them. 10

Q. I refer you to letter dated August 6th; please look at it, and see if you recognize it as being a copy of a letter you received from Mr. Baylor? A. Yes, sir.

Q. I noticed in this letter Mr. Baylor says: "I don't imagine you have any way of getting a line on Halyburton. If you know of anyone in Philadelphia who knows anything about him I wish you would take that up." You got that letter? A. Yes. 20

Q. You still thought he know where Halyburton was? A. If he didn't he could find out very readily.

Q. You still thought he knew where Halyburton was? A. I don't know whether he did or not.

Q. You were still friendly with him? A. Yes, sir, very friendly. 30

Q. On April 28, 1914 a letter seems to have been written, of which this is a copy; see if you remember getting it? A. I don't recall getting that, but I assume I did.

Q. "April 28, 1914. Have you heard anything of Halyburton, and do you know his whereabouts. I wish you would let me know." Did you let him know? A. I don't think I did.

Q. Did you know yourself? A. In April, 1914? 40

Frank Transue—Cross

Q. Yes. A. I thought of course he was at Berwick.

Q. What? A. I thought Mr. Halyburton was at Berwick.

10 Q. Did you let him know? A. I didn't let Baylor know, no, sir.

Q. Did you ever tell Mr. Baylor of the conversation you say you had with Halyburton, in which he told you of his business arrangements with the American Car & Foundry Company? A. No, sir.

Q. Why not? A. Simply because I was disgusted with the whole business, never thought it was worth anything.

20 Q. That information with regard to the American Car & Foundry Company came to you when? A. In December, 1912.

Q. You had several visits from Mr. Baylor and Senator Large at your office in Trenton, didn't you, in the intermediate time between the time that you finally resigned and the time that some of these letters were dated? A. Yes, sir.

Q. Did you ever tell Senator Large? A. Never told Senator Large.

Q. Or Mr. Baylor? A. No, sir.

30 Q. Of your information with regard to the— A. American Car and Foundry?

Q. Yes. A. No, sir.

Q. You knew they contemplated action? A. No, sir.

Q. Well, what was the subject of conversation between you? A. Oh, they frequently came to Trenton and would always drop in.

40 Q. But they spoke of this matter, didn't they, they spoke of the Gardner Valve Manufacturing

Frank Transue—Cross

Company? A. Yes, in 1914, in June I think it was, 1914.

Q. Had they ever spoken of it before that?

A. Not until Mr. Baylor started this action, I don't recall their speaking to me about it.

Q. Did you not discuss with Senator Large and Mr. Baylor, at these conferences, the situation of the Gardner Valve Manufacturing Company, and the respective difficulties and rights of the parties in that connection? A. At what time? 10

Q. Any of these interviews between the time when this bill was filed, between the time that you resigned, and we will say the first of January, 1911? A. Oh, I did with Senator Large, one matter, yes, sir.

Q. Didn't you have several conferences with Senator Large and Mr. Baylor, when you knew that Senator Large was there as counsel for Mr. Baylor, with regard to the Gardner Valve Manufacturing Company, with regard to Halyburton and his connection with it, with regard to the money that Mr. Baylor put into it, after you knew of the arrangements with the American Car and Foundry Company? A. No, sir, not between that time and the filing of the bill, no, sir, I don't recall any such conference between that time and the filing of the bill. 20 30

Q. Between what time? A. Between the time the American Car & Foundry Company made this arrangement with Halyburton.

Q. You say you were told that in January. A. Pardon me a moment. Between the time the American Car & Foundry Company took over the patent rights, and Baylor's preparation for this suit—before the bill was filed—I believe Senator 40

Frank Transue—Cross

Large did come in to see me, a couple of times at least.

10 Q. Do you say that after you knew of the fact that Mr. Halyburton had made a connection with the American Car & Foundry Company that you had no conference with him and Mr. Baylor touching this situation, until the final conference just before the bill was filed? A. No, not until I think it was May or June, 1914.

Q. None during 1913? A. No, sir, none, during 1913.

Q. And none during 1914, until after they learned of his connection with the Car & Foundry Company? A. Exactly so.

20 Q. Don't you recall that during 1912 and 1913 Senator Large called with Mr. Baylor several times upon you at your office in Trenton to see if you could give them any information as to the whereabouts of Halyburton? A. Not in 1912 and 1913. I recall in the early part of 1912 and the latter part of 1911, I recall that distinctly.

30 Q. Do you say that there were no other calls? A. No, I don't recall Senator Large conferring with me about the Gardner Valve Manufacturing Company after, perhaps, February, 1912, until May or June, 1914.

Q. How do you fix the time? A. I fix the time this way—shall I go on with the detailed explanation of it?

40 Q. Fix the time. A. Mr. Halyburton came to me in December, 1911, and said that he had arranged, or had made some alliance with the Cloud Pump Company at Singac Falls, and I immediately told Senator Large about it, or, I don't know whether immediately or whether he hap-

Frank Transue—Cross

pened to come in the office—I told him about it, and that Mr. Halyburton told me that he would make some arrangement to take care of those fellows who put their money in, and I told Senator Large about that, but that fell through; that is the last I ever heard of it.

Q. That does not answer me yet, how you fix the time. You were very anxious to get that in, weren't you? A. No, I wanted to get the idea—

Q. Well, you got it in. Now the question supposed to be answered was, how you are able to fix the fact that these men, whom you say used to drop in your office every frequently at Trenton, were not there on this matter? A. I know they were not.

Q. After you learned of the American Car & Foundry Company, how do you fix it? A. I don't recall conversing with Senator Large about it.

Q. Were they there in March? A. In March 1913?

Q. Yes. A. I don't recall their being there, no, sir.

Q. Will you say they were not? A. I wouldn't want to say they were not; I don't recall it.

Q. You have no recollection? A. I have no recollection of conferring with them, no, sir.

Q. They did finally come? A. In May or June, 1914.

Q. And they had learned of his connection with the Car and Foundry Company? A. Said so, yes.

Q. Did you tell them then that you knew it? A. I told them then that I knew it, yes.

Q. Did you give any reason for not having told it before? A. I don't think they asked me for any.

Frank Transue—Cross

Q. You told us this morning, in answer to a question of Judge Collins', that you made no claim by virtue of your subscription and payments to this enterprise, and never made any. Do you still adhere to that position, in view of the letters I confronted you with this afternoon? A. I make
10 no claim for it, no, sir.

Q. You also state you never made any? A. Never made any claim.

Q. Yes; I asked you if you still adhere to that position, in view of the letters, apparently which you had forgotten, and which I read here this afternoon?

Mr. Collins: Objected to as misreciting evidence. I didn't hear him say he never made any claim.
20

By the Court: Q. What do you say about that. A. I never made any claim for this money I put in, no sir.

Q. What? A. I never made any claim for this money I put in.

Q. I ask you if you never made any claim of having a right, in connection with what had occurred between you about this enterprise? A. I did previous to August or September, 1911.

30 Q. And what did you do at that time to manifest the abandonment of that? A. I told Mr. Halyburton that I thought his old valve was no good; I got that information from Colonel Fuller, who reported to me his investigations of the use of the valve by the Standard Pipe Company.

Mr. McCarter: I ask that that be stricken out.

Mr. Collins: I object to that being stricken out.

40 A. I told Mr. Halyburton.

Frank Transue—Re-direct

Q. Then it was because the valve was no good that you abandoned your claim? A. Not only that, but I wanted to get rid of it; Mr. Baylor was at me all the time to do something, to do something.

RE-DIRECT-EXAMINATION by Mr. Collins: 10

Q. You were asked your opinion as a lawyer, by Mr. McCarter, as to whether the Gardner Valve Manufacturing Company was not the equitable owner of the patent, and you said "Yes, on the performance" and then you were interrupted; what was it you wanted to say?

The Court: That is not worth going into.

Q. You were asked to give a reason for your break with Mr. Baylor, and in the middle of your story some other matter came up, and you were interrupted and did not finish. Will you please finish? 20

The Court: I do not think it is important at all. The only relevancy of the evidence was in reference to the disposition of the witness.

Mr. Collins: Yes, but he asked him the cause of the break, and he did not finish telling it. 30

The Court: I stated at that time that I did not think it was necessary to go into it. The disposition of the witness was admitted by the witness. He did have a break, and did have a quarrel with Mr. Baylor, and it seems to me that is all that is necessary. I will overrule that.

Q. Attention was directed to a letter of 40

Frank Transue—Re-cross

October 25, 1909, and you were going on to state what you meant as to some protection that Mr. Baylor had in the existing situation, and were not permitted to finish. Will you please explain what you mean.

10 Mr. McCarter: I don't remember any such thing as that.

Q. What protection did you refer to that Mr. Baylor had? A. If Mr. Baylor showed that he could raise this hundred thousand dollars, why he could always claim his right.

Q. You said you got no letter from Halyburton from Haddon Heights. About what time was it, with relation to your having written him in Haddon Heights, that you met him in Philadelphia? A. Two or three weeks later.

20 Q. Then you got the information that you asked for? A. Oh, yes.

Q. I would like to have it made plain what the Bristol affair was, that was referred to in the testimony this afternoon? A. Why Mr. Halyburton was negotiating with the American Pipe Construction Company, I think, to manufacture the valves at Bristol, and I understood at that time that we would be taken care of, Mr. Baylor and myself, we would be paid off, and I was very
30 anxious to see it go through, so as to be paid off.

RE-CROSS-EXAMINATION by Mr. McCarter:

Q. Now Mr. Transue, do I understand that you wish the Vice-Chancellor to understand that in this letter Exhibit C-23 in which you say: "I have nothing to show for the amount of money that I
40 have in it, but I feel absolutely safe. We have

Elsworth P. Baylor—Direct

our remedy if anything goes wrong and Halyburton has everything to lose. The patent rights, in my estimation, are very valuable and would, if offered for sale, bring a great deal more than what you and I have already put in the company”—

The Court: You have gone all over that. He has stated, as I understand him, that when he wrote in the way he did, he did not mean it. 10

Defendant rests.

ELSWORTH P. BAYLOR, re-called: 20

Direct-examination by Mr. McCarter:

Q. The letter marked C-24 is undated; did you receive that letter? A. Yes, sir.

Q. Do you remember receiving it? A. Yes, sir.

Q. Without undertaking to specify the date that you received it, was its receipt before or after Halyburton had left Hampton? A. After Halyburton had left Hampton.

Q. And he left Hampton in March, 1911? A. 30
Yes.

Q. I understand that it appears in the case already that you had an interview with Mr. Halyburton in the month of June, 1911 in Philadelphia? A. June 30, 1911.

Q. And you have already testified that you did not see him again after that until I think this case was on? A. I never saw him and never heard from him. 40

John Gardner Lepper—Direct

Q. What efforts did you make to find where he was? A. Made all sorts of efforts.

Mr. Collins: Objected to as not rebuttal; it has all been gone into.

The Court: It has all been gone into, and is a part of your principal case.

10 Q. The question I put to Mr. Baylor was: "Did you make any effort to ascertain his whereabouts in the meantime? A. I sent Mr. Staples to Philadelphia several times, and I went to Bristol that fall. Q. For the purpose of finding out? A. Yes.

Q. You could not find out where he was? A. No, the deal was off, and they didn't know where he was." I didn't understand that that perhaps went as far as to show all he had done. If your Honor understands his evidence to be that he made a bona fide effort to find Mr. Halyburton, why all right. I will ask you this. You have heard read the copies of the letters that I showed to Mr. Transue from yourself, with regard to the whereabouts of Halyburton? A. I have.

20 Q. Were they written in good faith? A. Yes. Q. Did you at that time have any idea where Halyburton was? A. None whatever. Four words will explain the whole thing.

30 Not cross-examined.

JOHN GARDNER LEPPER, re-called:

Direct-examination by Mr. McCarter:

40 Q. You have already testified with regard to your interest in this enterprise, and two letters

John Gardner Lepper—Direct

have been offered in evidence from Mr. Halyburton to yourself, known as the letters of October 4th and November 11th 1908. I do not want to take time to bother more about that. Did you make any effort to assert your right and ascertain the whereabouts of Mr. Halyburton after that time? 10

Mr. Collins: Objected to as not rebuttal.

The Court: What is the object?

Mr. McCarter: They have claimed that we abandoned this.

Admitted.

Q. Did you make any effort to assert your claim and ascertain the whereabouts of Halyburton, and what was being done by the company?

A. I did. 20

Q. What efforts did you make?

Mr. Collins: Objected to as not rebuttal.

Q. Did you ever abandon your claim? A. Never.

Q. I show you a letter dated Bridgeport, Connecticut, March 13, 1909, to Mr. Baylor; did you write such a letter? A. I did.

Mr. McCarter: I will offer it.

Mr. Collins: Objected to as irrelevant and not in rebuttal. It is a letter written 30 in 1909.

Mr. McCarter: It is asserting his claim, and wants to know what is going on, etc.

The Court: He says he never abandoned his claim, and I shall accept that as true unless there is something to the contrary.

Q. Have you ever abandoned your claim in any way? A. Never.

Q. Did you hire detectives to try to find Mr. Halyburton? 40

John D. Staples—Direct

Mr. Collins: Objected to as irrelevant.
Admitted.

Q. Did you? A. I did.

10

JOHN D. STAPLES re-called:

Direct-examination by Mr. McCarter:

Q. In the interview that you had with Mr. Halyburton at Berwick, did or did not Mr. Halyburton tell you that he had, before and during the negotiations that he had with the American Car and Foundry Company, informed them of the arrangement he had with the Gardner Valve Manufacturing Company?

20

Mr. Collins: Objected to as not intended to contradict anything that Mr. Halyburton said that was brought out by us. He asks a question on cross-examination of Mr. Halyburton, whether he had told the American Car and Foundry Company of his relations with this Gardner Valve Manufacturing Company, and he said he had never told them, and then he asks if he told this man he had told them. How would that prove anything?

30

The Court: It does not prove anything against the Car company, but does it not prove something against Mr. Halyburton? I think it is evidence against him. Clearly it is not evidence against the company. I will admit it subject to objection.

40

Q. Did you? A. Yes.

George H. Large—Direct

GEORGE H. LARGE, sworn:

Direct-examination by Mr. McCarter:

Q. Did Mr. Baylor confer with you touching his interest in this matter, Gardner Valve Manufacturing Company? A. Yes, sir, many times. 10

Q. When did you interest yourself as his counsel in that matter? A. I couldn't be accurate about dates, but it must have been, it started I think along in 1910 or 1911.

Q. Did you have any conferences with Mr. Transue touching the matter? A. Quite a large number.

Q. Over what period did those conferences extend? A. I think pretty much from that time right on down to the bringing of this suit. 20

Q. Did you have any conference during the year 1912 with Mr. Transue? A. Oh, yes.

Q. And 1913? A. Yes.

Q. Was any effort made at those interviews to ascertain the whereabouts of Mr. Halyburton? A. Oh, very frequently.

Q. Did you know, or did Baylor know, as far as you were aware, where Halyburton was? A. He did, I think at the first of it, but dates are very troublesome for me to recall, but I think 1911, 1912 and 1913, he was constantly trying to find out where he was. 30

Q. He disappeared, and couldn't find him? A. Yes.

Q. At one of these interviews what did Mr. Transue tell you with reference to Halyburton's promise to refund his, Transue's subscriptions?

Mr. Collins: Objected to.

40

Exhibit C-2

The Court: I think the evidence is competent for the purpose of showing that there was no abandonment of the claim on Mr. Baylor's part, but when you get beyond that I do not think the evidence is competent.

10

Mr. McCarter: I only thought it might show the interest of Mr. Transue; but if your Honor thinks not I won't put the question.

Case closed.

20

COMPLAINANT'S EXHIBITS
Exhibit C-1

Minute Book, excerpts of which are in the evidence.

30

Exhibit C-2

To the Board of Directors of
THE GARDNER VALVE MANUFACTURING Co.
Gentlemen:

I have pending applications for letters patent of the United States, upon a new and novel invention for straight way valves.

I hereby agree that if you will issue to me 7,996 shares of your common capital stock, I will
40 sell and assign to you such applications and the

Exhibit C-3

letters patent when granted—and also all improvements I may hereafter make thereon.

Very truly yours,
JOHN L. HALYBURTON.

Jan. 30th, 09.

Accepted Jan. 30, 1909.

10

Frank Transue
E. P. Baylor.

Exhibit C-3

Catalog of Gardner Valve Manufacturing Company, containing seventy-three printed pages, the front cover of which reads as follows: 20

HALYBURTON VALVES

Catalog
1909

GARDNER
VALVE MANUFACTURING
COMPANY.

30

and the first page of which reads as follows:

GARDNER VALVE MANUFACTURING CO.

Hampton Junction
New Jersey, U. S. A.

Manufacturers of
"HALYBURTON" STRAIGHT WAY VALVES

40

Exhibit C-4

—for—

Power Plants, Manufacturing and
General Engineering Purposes.

It also contains the following on the third page:

10

“ANNOUNCEMENT

To the Mechanical and Operating Engineers
“In arranging this catalog we have endeavored to be of some assistance to the Mechanical Engineer who is every day figuring on power and manufacturing equipments, laying out pipe arrangements, and who wants to know the detail construction of the valves he is putting into his equipment.

20

The Operating Engineer wants to know the detail construction of every valve he is handling so that he may have an opportunity to work intelligently and be prepared for emergencies. He will note in our tables of dimensions that we give the size of packing that is used in every valve so that he will not have to wait until the valves are received before ordering supplies or measure up the stems and stuffing boxes.

30

The goods represented are of the highest grade and are intended for economical operation and not low first cost. We feel that they will be appreciated by the Mechanical Engineer, the operating Engineer and those who figure the net earnings on their investments.”

Exhibit C-4

This is a check of E. P. Baylor, dated March 20, 1909, to the order of Hobson Printing Company for \$179.25.

40

Exhibit C-5

Bill of the Hobson Printing Company against the Gardner Valve Manufacturing Company for \$197.55. Paid August 10, 1909.

 10
Exhibit C-6

This is a bunch of twenty-six receipts to J. G. Lepper signed Gardner Valve Manufacturing Company, per John L. Halyburton, frequently styled Vice-President, covering miscellaneous expenses, office rent, etc., of the company running from October 1, 1906 to May 25, 1907.

 20
Exhibit C-7

Sept. 30, 1908.

Mr. J. L. Halyburton,
Junction, N. J.

Dear Halyburton:

I have remained silent for some time with the idea in my mind that you would see the folly of your ways, and write me a few lines in reply to the dozen of so letters I have written you in the last several months, but I see that I have been laboring under a grievous error in expecting anything. 30

The question in my mind is: Does my connection with you personally, and with the enterprise which you are, I suppose, still working on entitle me to the courtesy of one reply to a dozen letters? 40

Exhibit C-8

If it does not, then I plead guilty to some impatience in the matter. If it does so entitle me to respect, then you must be aware that you are violating the usual customs in vogue among good business men as well as among good citizens who supposedly hold due regard for each other.

10 I wrote Mr. Baylor some time ago and he reported that you were very busy. It is impossible for me to imagine anyone so entirely absorbed with business cares as to forget the duty he owes to those who have been so closely allied with him in business and in daily life as I was with you.

I feel that I am entitled to a line from you, stating what progress you have made, if any, or in case you have given up the original fight for money, what you have in mind for the future.

20 I trust you will accept this letter in the light that I have written it, and let me hear from you at the earliest convenient date.

Sincerely yours,

J. G. LEPPER.

30

Exhibit C-8

Junction, N. J. Oct. 4th, '08.

Mr. J. G. Lepper,
c/o E. P. Lynch Co.
Real Estate Trust Building,
Phila., Pa.

My dear Lepper:

I recd. your letter of Sept. 30th, it sounds quite serious. The dozen or more letters which you

40

Exhibit C-8

state you have written me, must have miscarried with the exception of three. These letters merely asked, if I was alive and if so, how were things going. In answer to the first question, I was not sure whether I was or not and did not want to tell a lie. There was absolutely nothing doing, so nothing to write about and a letter that says nothing is disgusting. 10

Just now however, I have a little to write about. There was no show of getting the money for a plant or of doing anything else that required money. So as a last resort I am trying to bring about something like this. I have talked it over with Baylor and Transue and I think they will do it.

They are to put up sufficient money along with my brother in law to pay for drawings, pattern and catalogue of a line of high pres. and steel valves. I am to do all the work at present in connection with the business. After the catalogue is complete I will get orders and have the valves built outside, we furnish drawings and patterns and the parties who make the valves at a specified price, bill them direct to the parties, they are for. We receive the difference between the selling price and the price of manufacture. If I can show that we can hold our own this way Baylor and Transue will raise the money for a plant next year. 20 30

Pref. Stock certificates will be issued to them for this money and the half share of common that goes with it. At the same time Pref. stock will be issued for the cash you put in and common for services rendered as you figured it out. One of my patents has been granted and will issue next month. 40

Exhibit C-9

When I assign this patent to the Co. I receive common stock for it. The idea is not to issue any more stock than what is necessary at present to run the business, so as to keep down the tax.

10 Transue will be Pres. I will be V. P. Baylor
Treas. and J. W. Staples Sec. (You will be on
the board of directors.) I think if this goes
through we can make something out of it. (You
had better send me your cousins name so that a
Certificate can be made out for that. Will write
you later how things go.

Sincerely yours,

J. L. HALYBURTON.

20

Exhibit C-9

Nov. 11th, '08.91

My dear Lepper:

Yours of the 8th recd. I had been wondering
whether you were still in Phila. We are making
headway with the valve business. I am having a
7 in. steel valve for superheated steam built at
Chester. It will be finished next week. It is to
30 go in the Edison Power plant in New York. I will
probably be in Phila. next week and will look you
up. I have been busy getting out a catalogue and
it goes to the printer tomorrow. I would like to
have had you on this job, as I think you would
have made a neater job of it. However I think it
will be the slickest valve catalogue out. We will
issue the stock at the first of the year and I can
then invite you to pay us a visit. I have taken a
40 house here and we move the first of Dec.

Exhibit C-10

My son Fred is working at High Bridge and is getting along nicely. How did the election strike you. Things are certainly looking up all over the country and I hope some of it will come your way. I know the guy that is in charge of the Nelson office in your building. He is thoroughly N. G. 10

I suppose Mrs. L and Manning are still in Washington. Mrs. H. has been asking about them. This is about all the news at present and hope to see you next week.

Yours sincerely,
J. L. HALYBURTON.

Exhibit C-10

A catalog of the defendant company, consisting of 212 printed pages, the front cover of which reads as follows: 20

HALYBURTON VALVES

Patented October 25, 1910

Manufactured by

Valve Department

AMERICAN CAR AND FOUNDRY Co.

Berwick, Pa.

U. S. A.

—for—

Power Plants, Manufacturing and
General Engineering Purposes

1913

Pocket Edition.

30

40

Exhibit C-10

The first page of which reads as follows:

10 Valve Department
 AMERICAN
 CAR AND FOUNDRY COMPANY
 Berwick, Pa.
 U. S. A.

20 Manufacturers of
 HALYBURTON
 STRAIGHT-WAY VALVES
 Patented October 25, 1910
 —also—
 Flanged Pipe and Fittings of
 Standard and Special
 Patterns
 —for—
 Power Plants, Manufacturing and
 General Engineering Purposes.

1913

Exhibit C-11

30

May 13th, 1914.

Mr. Wesley A. Looney,
 c/o Gulf Refining Co.
 Frick Bldg. Annex.
 Pittsburgh, Pa.

Mr. Dear Mr. Looney:

40 Of course, you no doubt remember meeting me
 here a few years ago in connection with the Gard-
 ner Valve Mfg. Co and John L. Halyburton.

Exhibit C-12

Mr. Halyburton left here about three years ago, and to my surprise, never returned, in fact I never heard from him after that, but later learned he was in Philadelphia, and met him there. He told me he had things fixed up and that they were going to make the valves at Bristol, Pa., and I would get my money, as long as they did not locate here. I have not seen or heard from him since, in fact have not known his whereabouts. 10

A few days ago, I heard that he was somewhere in Pennsylvania manufacturing the valves, but of course do not know this to be true.

I helped him to the extent of \$5,000.00, and he has evidently forgotten that.

I will be pleased to hear from you, and if you can give any information concerning this matter, I will appreciate it very much. 20

Yours truly,

Exhibit C-12

Cohoes, N. Y. Sep. 12th 06.

My dear Mr. Baylor:

I am in receipt of yours of the 9th inst. and would have written sooner but have been waiting for a letter from Lepper. I wrote him asking him to send me a statement of the exact financial condition of the Gardner Engr. Co. but have not received it yet. When I wrote Lepper I explained to him a very simple method of taking care of the affairs of their company. If their affairs are as I imagine they are, it will not be necessary for 30
40

Exhibit C-12

us to offer 50¢ on the dollar or any part of it. We can't have any debts loaded on this new company and if the Gardner Engr. Co. cant come in with clean decks we can start a company without them. The valve business is going to be the whole thing any how and I control that, but at the same time I can see a very good thing in their agencies if handled right. I am also anxious to see Lepper in the business as he is a fine fellow and will be a valuable man. Now as regards myself, I have been giving this valve business my entire attention since Jan. 1st in trying to get the right kind of people in it as I know I have the greatest thing in the valve business in this country and you would see that seven acres of ground devoted to it in less time than you imagine. I have turned down a number of people who wanted to take it up as they did not look right to me. When it is started it will be started right and kept right and I must say that I believe if I had looked over the entire United States I could not have found a better location than right in Junction for this particular business. When I met the Gardner people I thought they could command money but I am afraid they can't. As I have given so much of my time to the business without a cent coming in I am just about all in myself on money. I can see about 25,000 up here and in Philadelphia if I could afford to get around to the people I am after, and I am pretty sure that after that you and I by working together could land the rest. I think there is plenty of money up around Bethlehem to be had for this business and I can easily make a man who knows anything about the iron business see big things in this proposition. -If I had 50,000

Exhibit C-12 -

dol. in the best bank in the U. S. I would yank
 it out and dump it into this affair. I have been
 rooting into freight rates, etc up here and I hon-
 estly believe we could put these valve works up
 here out of business inside of six years with nec-
 essary capital. I expect to see a party to-morrow
 who I think I will do some pretty good business
 with. The valve people up here have got on to me
 starting a new company and are knocking me for
 all they are worth. I tried to work as quietly as
 possible but it got out. I will write you again
 when I hear from Lepper. I want you to write
 me a letter that I can show to people saying what
 the people down there are going to do for the new
 company. Don't be afraid to name a stiff amount
 as it will help considerable. Also send me some
 good names of people there that they can write to
 if they desire to satisfy themselves that the thing
 is going through. You understand what I mean.

Yours very truly,

JOHN L. HALYBURTON.

September 14th, 1906.

Mr. John L. Halyburton,
 Cohoes, N. Y.

My dear Mr. Halyburton:

I have your letter of the 12th and 13th inst., and
 in reply would say that the freight rate to Hamp-
 ton Junction, N. J. from Wharton, N. J. Via C. R.
 R. of N. J. is 45¢ per gross ton on Pig Iron.
 Wharton is about 30 miles from here. There are
 also large Furnaces at Oxford, N. J. Pequest, N.
 J., Netcong, N. J., and Catasauqua, Pa., I haven't

Exhibit C-12

the rate from Oxford, N. J. as the tariff sheet dont show it. Oxford is about 7 miles from here. Pequest 8 miles and Netcong about 30 miles. I would judge the rate from Oxford and Pequest would be around 30¢ per gross ton. The rate from

10 Catasauqua is 70¢ per gross ton. We are near the Iron and Coal fields here and you will find the rates very low. You will also find that labor can be procured very cheap in this locality. Taylor Iron Steel Co., employ about 1000 men and they pay laborers \$1.40 per day. Of course, you understand our shipping facilities are of the very best as we have freight trains out of here on the C. R. R. of N. J. every hour of the day You will be safe in figuring on myself and my friends taking

20 \$20,000 worth of your preferred stock. I have talked with enough of them to know just about what I can do. Just as soon as I am positive you are able to handle your end of it I will collect it and deposit it in the First National Bank of High Bridge, N. J. The land and other inducements you get here should be worth more than \$10,000. Since I have gone in with you fellows I have decided to get everything possible for the concern for nothing as that will increase the assets It will

30 be hard for you to find a cheaper place than this to do your work as there isnt any such a thing as a labor organization in this locality. When it comes to the tax rate, I am pleased to advise you that our rate is \$10.36 per \$1,000 valuation. You must admit that this rate is very low. Of course, the valuation would be made just as low as we could make it legally. Other people seem to make lots of money out of the valve and rack business, and we should do nicely here as you should manu-

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Exhibit C-13

facture the stuff very much cheaper. One thing
 is sure and that is the company would have the
 good will of everyone in the locality as they are
 anxious to have a good industry locate here, and
 that goes a long way now days when it comes to
 employing men. If any of your people up there
 are going to make a good size investment and
 want to come here and look over the ground, I will
 be glad to show them around and I will give them
 all the information I possibly can. If we get this
 thing going, and I believe we will we must make it
 a success as it would be a duty we would owe your
 friends who help us raise the money. I personal-
 ly would feel the responsibility. I organized a
 company a few years ago and took a number of my
 friends in and the thing has been a complete suc-
 cess, and it has helped me in raising money for
 this concern. Let me hear from you promptly.
 Yours very truly,"

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Exhibit C-13

Cohoes, N. Y. Sep. 19th, '06.

My dear Mr. Baylor:

30

I am in receipt of your several letters but have
 delayed answering them until I had a little more
 to say. I am after two pretty big fish up here and
 if I succeed in landing them we will be O. K. If
 not, I will not be able to do much up here. The
 thing is just at a stage where I am afraid to leave
 here though I want to very much. Both of these
 parties are investigating and if anyone comes
 around Junction inquiring it is likely to be these

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Exhibit C-14

as they mean business. I am after them and some
 small fry hammer and tongs. If I land either one
 of the big fellows the other will be easy. I have
 had a letter from Lepper and am writing him
 today. He is anxious to have me come down so as
 10 to arrange for the incorporating business and I
 am decidedly anxious for that myself.

I hardly think I can come down this week but
 will try and arrange for next week. If I can come
 sooner I will advise you. Your letter is all right
 and was just what I wanted. Anything of an en-
 couraging nature you have, send it along in the
 same shape as it helps considerable. I am at this
 thing day and night and it is a case of make or
 break with me. I think we can consider Mr.
 20 Woodford dead.

Very truly yours,
 JOHN L. HALYBURTON.

Exhibit C-14

GARDNER VALVE MFG. CO.
 95 & 97 Liberty Street,
 New York.

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IMPROVED STRAIGHT-WAY VALVES

New York, Mar. 18-07.

My dear Baylor:

Just recd yours of the 17th. Coho means busi-
 ness and he is o. k. I would like you to come in on
 Wednesday as Coho will be here again on Thurs-
 day and I want to talk some matters over with
 40 you before I talk again with him.

Exhibits C-15 and C-16

We will soon have settled whether and must get things in shape to sail in.

I have not heard from Page yet and am of just the same opinion as you are regarding him. Coho is a hundred per cent better man for us than Page, if we can land him. He is certainly pleased with our valve and as he is an engineer himself he can judge them intelligently. He also seemed very much pleased with my method of conducting the business as I explained it to him. Hoping to see you Wed. I remain,

Yours truly,
JOHN L. HALYBURTON.

Exhibits C-15 and C-16

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GARDNER VALVE MFG. CO.
95 & 97 Liberty Street,
New York.

IMPROVED STRAIGHT-WAY VALVES

New York, Apr. 30-07. 30

My dear Baylor:

Since writing you today I have had a talk with Leppers and he is up a tree. I was wondering why he did not come up with his money for expenses for this week and when I asked him about it, he said he was stuck. It appears that for some reason or other the J. R. Meade Co., laid off their whole force and Lepper with them last Sat. He said he did not want to say anything to me at the 40

Exhibits C-15 and C-16

time as he thought he could get enough together to carry him through as he has a good job in sight for next week, but in the meantime I am stuck for expenses. I took that new quarters, it will cost us twelve pr. month and my expenses. I asked Lepper that if you took care of his end this week could he make it right with you this month coming and he said he could but would not ask you. Now I don't like to do that either as I know you are doing all you agreed to do, but I think you had better do it as things are looking so promising now it would be too bad to have anything interfere. Bradley is certainly digging in on the proposition and I feel sure we will get one of the scale people. Shurtz is very enthusiastic over the matter and anxious for his people to take hold. I think Pres. of * * * Scale Co., is waiting for the Sec. and Treas. * * * he answers our letter. Their Manager * * * me they were both away from Pittsburgh, and that left Mr. Gill there alone and it is hardly likely he would make any reply if he thought anything of it himself without talking with them. I don't think old man Page will move until he gets ready and will then let us know quick enough.

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Yours truly,

JOHN L. HALYBURTON.

Exhibit C-17

GARDNER VALVE MFG. CO.
95 & 97 Liberty Street,
New York.

IMPROVED STRAIGHT-WAY VALVES 10

New York, July 6. '07.

My dear Baylor:

I had quite a talk with Crabbs this morning and I think the thing will go through O. K. I told him just how the common stock was distributed, and how Lepper was situated and offered him 25 M of Leppers stock to come in and pull the thing through. He thinks the proposition all right and will take it up with Kelly on Monday. He and Kelley will split the 25 M. He says if anyone can get anything out of the Carey people he can, and the first one he will go after will be Mr. Dunn of the International Steam Pump Co. Those people are mixed up with the Ludlow Valve Co. but Dunn himself is sour on the Ludlow Valve. I am going to keep right at them, as I am sure if we get Crabbs in anyway at all it will go through. When I see you I will show you the letter from Forbes, and if you want to you can show it to Chrystie. If you do not get in Monday, do not forget to send me some money, as I must certainly get some together next week to straighten out things at home. 20 30

Yours truly,

JOHN L. HALYBURTON.

Exhibit C-18

GARDNER VALVE MFG. CO.
95 & 97 Liberty Street,
New York.

10 IMPROVED STRAIGHT-WAY VALVES

New York, July 13-07.

My dear Baylor:

I have been thinking the proposition over very carefully and the conclusion that I have come to is this. We let Crabbs come in and take Leppers place. Crabbs then must get 50 M and we must dig in and get 50 M and 35 M of that would have to go among people that we could positively control. As to Lepper we would have to take care of him the best we could. I talked the matter over with him last night and he would be satisfied even with a permanent job. We must carry the deal through and do the best we can for each other.

Yours truly,

JOHN L. HALYBURTON.

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Exhibit C-19

June 23rd, '09.

My dear Baylor:

Arrived here at 6:55 this evening. Hot as H.M. even on the train. Send mail to address I gave you if of any importance. Will write you later.

Yours truly,

JOHN L. HALYBURTON.

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Exhibits C-20 and C-21

August 4th, 1909.

Mr. E. P. Baylor,
Hampton, N. J.

My dear Baylor:

I will be here until Thursday night, possibly until the end of the week. Any mail of importance can be mailed to me c/o Osborn & Robinson. 10

Yours truly,
JOHN L. HALYBURTON.

J. L. H. (L.)

Sep. 22nd, 09.

My dear Baylor:

Recd. the letter from the Westinghouse people, they want another drawing. Am getting along all right down here. May not be home until Sat. 20

Yours truly,
J. L. HALYBURTON.

Exhibits C-20 and C-21

GARDNER VALVE MFG. CO.

Hampton, New Jersey

HALYBURTON

IMPROVED STRAIGHTWAY VALVES 30

Feb. 17-11.

Mr. J. G. Lepper,
Bridgeport, Conn.

My dear Lepper:

I recd your epistle last week and although I knew you were possessed of an uncontrollable tem- 40

Exhibits C-20 and C-21

per and subject to brainstorm I certainly never thought you could write such a mean letter. I believe that after you mailed it and cooled down you were as sorry that you wrote it as I was to receive it. If you see fit to class yourself with such fellows as you refer to, namely, Hough and Burrell, I am sorry but I never took you for that type. The information you give me as to their knocking me in N. Y. is not news to me as I have known that for some time and it has done me more good than harm. Had they claimed to be friends of mine, they might have done me some harm. Their talk is taken just as all such talk is taken, and was just what I wanted. My record is fully capable of taking care of itself. Your interests in the Gardner Valve Co. have always been as carefully considered and protected as my own as everyone whom I have had the matter up with can testify, and regardless of the letter you wrote me always will be. As I have told you before, there is no use writing to anybody until you have something to write about. I managed to get some of the valves built and they have been in constant service for over a year on the hardest kind of work, but if I was to fall into some of the schemes that have been proposed to manufacture them I could never take care of my friends. The best thing for you to do, is to keep cool and you might hear good news sooner than you expect. Such a letter as you wrote certainly would not make you look good in the eyes of anyone. You will certainly hear from me as soon as I have favorable news.

Yours very truly,

JOHN L. HALYBURTON.

Exhibit C-22

Phila. June 8th, 1911.

Mr. E. P. Baylor,
Hampton,
N. J.

10

My dear Baylor:

I received the Keuffel & Esser Co. Act, and their letter to you. I will attend to it at once. I expect to have things fixed up in good shape shortly and will then write you all about it.

Very truly yours,
JOHN L. HALYBURTON.

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Exhibit C-23

STATE OF NEW JERSEY

Department of State

The Chief Clerk.

Trenton, October 25, 1909.

30

Mr. E. P. Baylor,
Hampton, N. J.

My dear Baylor:

Your letter just received, I am very sorry that you take such a gloomy view of the Valve proposition. Halyburton did not tell me any more than he told you, but I believe he is now in a position

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Exhibit C-24

to get the money, and I don't think that he will be very long in getting it. I don't see what cause you have for worriment, as you are better protected than any other person, in case there was a failure, and in the event of success, you will get more out of it than any one else. If, however, you still feel
10 that you would like to get out of it, you could make that proposition when he gets the Preferred Stock all subscribed for but if you did that, you would lose the Common Stock which he has promised you. I have nothing to show for the amount of money that I have in it, but I feel absolutely safe. We have our remedy if anything goes wrong and Halyburton has everything to lose. The patent
20 rights, in my estimation, are very valuable and would, if offered for sale, bring a great deal more than what you and I have already put in the Company. He would, of course, be out. He told me that the matter in all probability would be settled on the Third of November.

Very truly yours,
FRANK TRANSUE.

Exhibit C-24

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My dear Baylor:

Your letter recd. I don't think you have any reason to fear but that you will get all of your money eventually. We are preferred stockholders, and as such come in ahead of him. The agreement that he made to assign those patent rights will hold him as he gets common stock for it and
40 would, therefore, in case of a failure or receiver-

Exhibit C-25

ship come in after us. The drawings, models and any other tangible property belong to the Company, and form part of its assets. He is also liable to pay \$400 for his stock, as he subscribed for it, and so far as the minutes show has never paid anything for it. I am only saying this in the event anything should happen, and you were forced to do something. I think that the best thing for us is to say nothing about it to any outsider, and let the matter drift along until such time as he finds out that he can't raise the funds and asks for help. You have paid in all the money you agreed to and so have I, so the whole thing is up to him. Don't say anything about it. I still think he will eventually get the money. If not, we have our remedy. Will talk it over with you when I come up.

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Yours,
F. T.

Exhibit C-25

STATE OF NEW JERSEY

Department of State

30

Trenton, 11th May, 1909.

Mr. E. P. Baylor,
Hampton, N. J.

Dear Baylor:

I will make an effort to have them try some of the valves here at the State House, although when

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Exhibit C-26

Mr. Halyburton was here he did not think it was necessary to make an attempt to get business of this character. I am glad to hear that the prospects for a sale of the valves are so good. It does seem to me that before the year is over, there will be a great demand for them.

10 I find that I will be unable to get home this week, and at this time cannot say whether I will be able to get home the week after. Senator Large was in this morning and said that Chrystie had been down to Flemington one day last week to see him in reference to the settlement of his Grandfather's state.

Very truly yours,
FRANK TRANSUE.

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Exhibit C-26

STATE OF NEW JERSEY

Department of State

Trenton, 29th September, 1911.

30 Mr. E. P. Baylor,
Hampton, N. J.

My dear Baylor:

I had a talk with Senator Large this morning, and told him that I did not think it was well to go ahead and do anything until we found out whether or not any assignment had already been made of
40 the patent rights. He is going to write to Wash-

Exhibit C-27

ington City right away, and see if there is any record of an assignment of the patents. I also told him that there is one other thing we should know before taking the thing to the courts, and that is if there is any possibility of their doing anything at Bristol. You will recall telling me that they were going to advise you of this fact later on. Just as soon as these two questions are settled there should be no time lost in filing a bill. 10

Very truly yours,
FRANK TRANSUE.

Exhibit C-27

STATE OF NEW JERSEY 20

Department of State

Dec. 1, 1911.

My dear Baylor:

Your letter of the 28th ult. was recd. It does seem to me that there is some way of adjusting this valve business. I have talked with a few men here in Trenton who are interested in that kind of business and they say that if the article is alright in every way, the reputation of one man can't block its progress. These men seem to think that the best thing to do is to let some one make them on a royalty. I am going to try and go to Philadelphia next week. I have entered my order for a 40 horse power Oakland auto, to be delivered Apr. 1, 1912. It is the best proposition I have seen in 40 30

Exhibit C-28

a long time. They have also a seven passenger model which might suit you. My car will cost \$1600 fully complete. You can scarcely hear the motor run on the seven passenger.

10 If you are going to make a change I will have the fellow drive up to Hampton Avenue, and show it to you. They are the slickest cars I have ever seen.

Yours,
F. T.

Exhibit C-28

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STATE OF NEW JERSEY

Department of State

Trenton, 7th August, 1912.

Mr. E. P. Baylor,
Hampton, N. J.

Dear Baylor:

30 Your letter of the 6th inst., just received. I wrote Halyburton about ten days ago regarding the blue prints, etc., and have not heard from him yet. The letter was directed to Hadden Heights.

Just as soon as the road from Clinton to Hampton is passable, I wish you would let me know and I will make the trip. I did think of coming up this week as far as High Bridge, but have postponed it to some future date, as the folks didn't want to
40 stay away over night.

Exhibit C-29

Very sorry to hear of the death of Charlie Wallander. I saw an account of it in the Newark News last night.

Very truly yours,
FRANK TRANSUE.

FT/MTS.

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Exhibit C-29

STATE OF NEW JERSEY

Department of State

Trenton, 5th August, 1913.

Mr. E. P. Baylor,
Hampton, N. J.

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Dear Baylor:

Your letter of the 4th inst. just received. I don't know whether I filed any report for the GARDNER VALVE COMPANY last year or not but even if the Company were put out of business for failure to pay taxes, it can always be re-instated, for a nominal sum. I know of cases where corporations have had their charters forfeited for ten or fifteen years, and it has afterwards developed that there were some assets which could be levied upon, and in order to accomplish this, they are re-instated, so it don't make any difference whether it is dead or alive. 30

I will try and get up on the 14th inst.

Very truly yours,
DAVID S. CRATER.

FT/MTS

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Exhibit C-30

STATE OF NEW JERSEY

Department of State

Trenton, N. J. July 18, 1914.

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My dear Senator:

I am enclosing my ctf. of stock of the G. V. N. Co. Have inserted Mr. Flynn's name in ctf. The transfer of this ctf. (it being all the stock I have) disqualifies me to act as either Pres. or director. You will therefore be good enough to present my resignation as such.

Very truly yours,
FRANK TRANSUE.

20

DEFENDANTS' EXHIBITS

**List of Letters or Excerpts There-
from Offered by the Defendant
and Admitted**

30

LETTERS FROM BAYLOR TO TRANSUE

Letter dated June 18, 1910:

“There is nothing much to hear about the valve business. Nothing much is being done. H. is taking treatment and thinks he will pass the examination, but no one else thinks so, at least Dr. Hunt told me that he did not think there was much chance for him.”

40

List of Letters or Excerpts Therefrom Offered
by the Defendant and Admitted

Letter dated July 12, 1910:

“When it comes to the valve proposition, I am somewhat troubled and have been for some time. H. is the most good for nothing man I have ever met. He spends all of his time in blowing. I have looked up that man Adams in New York and he don’t amount to much. I don’t know anything about Norris and I have not looked him up. * * * Looney had not seen H. for twenty-five years until H. went after him on the money business. H. seems to get out with everybody after a short time and they all say the same thing about him. If we get out we will be lucky. If those fellows would only get a small building in some way and around Pittsburgh get the thing started so we could get our money we would be lucky. I think H. is liable of making a mess out of anything he may go into. I have never seen a man like him in all my life. It only plain why he never has been able to hold a job anywhere very long. My car works fine and I have not had any trouble. You are right when you say we will be compelled to wait and let the thing drift along.”

10

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Letter dated November 26, 1910:

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“They are not all like ‘J. L. H.’ I am afraid the other business is slipping again. He is one Hell of a man anyway. I want to get something here if I can. I lost Childs through him and I don’t intend to lose any more business. My only hope is those Pittsburgh people will put up the money, take him and the whole damn thing out there and

40

List of Letters or Excerpts Therefrom Offered
by the Defendant and Admitted

give us our money. He in my way of thinking
will never do much any where."

Letter dated February 10, 1911:

- 10 "I merely told Halyburton that when he once
got down and out I would talk with my friends
and that I did not know what they would do now
but I could have interested them last fall, under
certain conditions. That was all that I said. Of
course I don't know what he might of told you
but I did say that nothing would please me more
than getting out if I could do so whole. In fact I
have told him that many times in the past two
20 years. I don't believe that that any one if they
look up John will ever give him one hundred thou-
sand to handle as he may think best."

Letter dated February 28, 1911:

- 30 "Nothing would please me more than getting
out with my money. I have so told H. for a year
or more. He don't like to hear that for he wants
to use me further just as long as he can. I was im-
hopes that when he went to Pittsburgh they would
take this thing out there and pay me off."

Letter dated March 6, 1911:

- 40 "As I told you this a. m. I am perfectly willing
to get out. I simply want to get out whole with
cash. This has been a very troublesome and un-
profitable proposition for me. If those people
will take it that will be the easiest and quickest

List of Letters or Excerpts Therefrom Offered
by the Defendant and Admitted

way to wind it up. If my friends should, it means both a lot of trouble and hard work. * * * I would like you to go out if I do. I don't want you to be too sure we are not going on with something else here and take the property. I feel I would be better off and associated with better men which would be better in every way." 10

Letter dated March 7, 1911:

"I am by no means sure that H. will be able to close with those people. They have plenty of money, if they want to go into the deal. I have just reached the point that I will be mighty glad to know of his getting the money out of some one and I will get out." 20

Letter dated March 16, 1911:

"I know what he would do, if he had an opportunity. I have done all I ever agreed to, and he has done nothing that he agreed to do.

"As far as you are personally concerned, you can do just as you like. I have nothing to say about that. There are lots of people that know all about these things, and if I understand it, Halyburton will have very little chance. 30

"I believe he will do anybody on earth, if he has an opportunity."

Letter dated March 26, 1911:

"I note what you say about H. being in Trenton and that Looney will come on in about ten 40

List of Letters or Excerpts Therefrom Offered
by the Defendant and Admitted

10 days to straighten matters out. I don't take any stock in the Walls Owen Stanbach to being interested in the thing. If they are why don't they put up the money and start an independent plant. I can't take any stock in what H. says. The valves he made for the Standard Oil Company may be like the steel valve he had made never left the shop that it was made in. He is certainly one Hell of a man. * * * He wrote Mrs. H. to send him his Spring coat. She did. Well he has got about all the money he can get around here and he probably realizes that. I would certainly like to have my money out of the valve business, but I must admit that the people that he is trying to interest are showing mighty good sense in not putting any money up for him. No one could do any business with him."

20

Letter dated March 30, 1911:

"He is coming up again in a week or so. Try to get that man Halyburton to get sufficient stuff from his friends in Pittsburgh to pay us off.

30 "We will take care of the factory site at Hampton too. It is useless for anyone to try to do business with him."

Letter dated April 5, 1911:

40 "You get all out of Halyburton you can. He has been drifting away ever since he got all that money out of me that he could. He first moved his office to the house, then he never came to the places unless compelled to. It looks to me as if

List of Letters or Excerpts Therefrom Offered
by the Defendant and Admitted

he had been laying his plans so if he failed to get the money, he would simply walk off with the valves and let us all go to thunder."

Letter dated April 11, 1911:

10

"Don't imagine you have heard anything from Halyburton. It has now been three weeks since you seen or heard from him. I am very much afraid he will land up in some job somewhere and finally say he is going to work them both together. That will end it so far as he is concerned. Of course, he may have some new scheme in mind, God only knows what and I don't think he knows himself. He is stopping at his brother-in-law's Martin Evoy, 2809 Diamond Street, Phila. and his telephone is 455 Diamond—Bell Phone."

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Letter dated May 8, 1911:

"He is certainly a terrible fellow seems to be willing to do any. I feel just as you do I would like to get out, that is all. I certainly don't want to be connected with Halyburton in any way. If he got some cash out of Looney he won't do anything for a while. I am afraid that he will die with his kidney trouble before he gets anywhere. I will have no trouble finding out just what he is doing in Phila. I also believe I can find out just where Walls & Owen stand too."

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Letter dated May 8, 1911:

"I am just in receipt of a little information concerning Halyburton. The people at Pennington

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List of Letters or Excerpts Therefrom Offered
by the Defendant and Admitted

are looking him up. They want to know all about Halyburton and the value of his patents. It looks as if he was trying to get money out of the Pennington people. They have an idle Foundry there and he may be trying to get that. It also begins to
10 look as if the Walls, Owens, Stanbach People were not into the thing to any great extent. I will have full particulars to morrow when I will write you."

Letter dated May 9, 1911:

"I learned today that Halyburton walked into Pennington, a perfect stranger, approached some people there, and told them about his valves and
20 patents, and tried to interest them. They turned it over to a party in their town, that is connected with the Pennington Post, and asked him to look up Halyburton's reputation, habits, etc., as well as the valuable patents he claims to have.

"This was last week, and they have not gotten very far with the thing as yet. Halyburton stated that he had, or thought he had, some Philadelphia people interested. This don't look much like the Stamsbach people of Philadelphia."

30 *Letter dated July 1, 1911:*

"Mr. Chrystie, Mr. Brinton, Mr. Budlong, Mr. Beavers and myself had a meeting at the High Bridge Bank this a. m. I told them as near as I
40 could where I stood in the deal with Halyburton in the Valve Company. Mr. Chrystie seems to think I could make them an unlimited amount of trouble. You know I went into this thing with

List of Letters or Excerpts Therefrom Offered
by the Defendant and Admitted

one thing in mind and that was to get the plant at Hampton. The money was put up for that purpose. * * * Mr. Chrystie also says I should investigate the thing thoroughly before I go out with only the cash I put in. We are going over all the letters and they contain a lot concerning the matter. Be good enough to let me have a copy of that agreement by return mail. Mr. Chrystie says my promise to go out whole isn't worth anything. He says it won't cost me one cent to go with him to some able attorney. We can raise the money to carry out this proposition. We want a business and we want it here. The more I look into it the plainer it seems to me that we could go on raise the money and bring Halyburton to time." 10 20

Letter dated July 2, 1911:

"Don't you think that I will do anything that is wrong. But I do want to know where I stand. That fellow got all out of me that he could and then let me go to the devil, and he will still do me out of the money if he can. He has no use for any one on earth. I said I would go out if I could go out whole. Don't you believe for a minute that I would go on the stand and swear to any thing that was not true. He told me that he wanted me to stay in the other day and said he considered me a friend and that I would do more for him than any one on earth. I was to raise 20,000 if they located the plant here and that was practically all subscribed." 30

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IN CHANCERY OF NEW JERSEY

10	Between GARDNER VALVE MANUFACTURING Co.,	}	On Bill.
	and JOHN L. HALYBURTON, <i>et al.</i> , Def'ts.		

Mr. Linton Satterthwaite and Mr. Robert H.
 McCarter for Complainant.
 Mr. Gilbert Collins for Defendant.

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STEVENS, V. C.

This is a bill to compel specific performance of a contract to assign patents for straight way valves. The defendant Halyburton invented them in 1902. From that time on, he made efforts to interest capitalists in their manufacture but without success. In the fall of 1906 he was introduced to Elsworth P. Baylor, a coal-dealer and merchant in Hampton or Junction as it was then called, a small town on the New Jersey Central R. R. about
 30 fifty miles from New York. Baylor was eager to have a factory built there and lent a ready ear to Halyburton's proposal that a company should be organized with a view to there carrying on the business. It was thought that if \$100,000 could be raised by a sale of preferred stock, that would suffice to erect the building and commence opera-
 40 tions.

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In October 1906 a company was incorporated with an authorized capital of \$300,000 divided into 12,000 shares of which 4,000 were to be preferred stock and 8,000 common. The plan, for it hardly rose to the dignity of an agreement, was for Baylor to procure subscriptions to the amount of \$20,000 and for Halyburton to procure them to the amount of \$80,000. Halyburton was to transfer to the company his patents, when issued, and receive therefor the common stock (\$200,000). The original subscribers to the organization stock were Halyburton, Baylor and a figure head, Burrell. These were also the first directors. Although they made considerable effort, neither Baylor nor Halyburton was able to procure any subscriptions. This is not surprising, for the patents had not as yet been issued and no practical demonstration of the merits of the invention had been made. Baylor however had so much confidence in the ultimate success of the enterprise, that by January, 1909 he had advanced to the company to pay current expenses \$3,200. Nearly all this money was received by Halyburton, for salary, to enable him to maintain himself while engaged in bringing his invention to the notice of the public. He had no money of his own.

Up to the fall of 1908 nothing had been accomplished and Baylor, evidently, had become anxious to get security for what he had put in. At a meeting held on January 30, 1909, the board of directors, then consisting of Baylor, Halyburton and Transue, authorized an issue to him of 128 shares of the preferred stock, for the money he had advanced. At the same meeting there was taken the action on which this suit is based. I quote from the minutes.

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10 “The secretary then presented the following communication received from John Halyburton: ‘to the Board of Directors of the Gardner Valve Manufacturing Co., Gentlemen, I have pending applications for letters patent of the United States upon a new and novel invention for straight way valves.

“ ‘I hereby agree that if you will issue to me 7,996 shares of your common capital stock, I will sell and assign to you such applications and the letters patent when granted and also all improvements I may hereafter make thereon.

“ ‘Jan. 30th/09.

20

“ ‘Very truly yours,

“ ‘JOHN L. HALYBURTON.’

30

“On motion of Frank Transue (who had been substituted in the board for Burrell) the proposition of John L. Halyburton was accepted and the secretary directed to notify him that when the actual assignments covering all patents issued and applied for at the date of this meeting were made to the corporation, there would be issued to him or such person as he might nominate common capital stock of this company amounting to 7,996 shares.”

Upon the strength of this action Baylor advanced to the company \$2,000, in addition to the 3,200 already advanced. This went partly to Halyburton as salary and partly to pay for a catalogue and some valves then being made under Halyburton's direction by others. Halyburton, at or

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shortly after this time, secured from Transue, who had become president, and from one or two other acquaintances about \$3,000 more. No stock was issued to these gentlemen and they now disclaim any interest in the company by reason of what they contributed. The only person other than Baylor who seems to make any claim is the witness Lepper, an engineer, who at the beginning gave a little money and did some drafting. 10

The minute book does not record any meeting, after that held in January 1909, until July 29, 1914, when it was resolved by Baylor and Flynn (who had taken Transue's place) that there be issued 7,996 shares of the common stock to Halyburton, the same to be delivered upon his executing an assignment of his letters patent. What interest Flynn had in the company, (if any) does not appear. Evidently the action was taken with a view to the commencement of a suit for the benefit of Baylor and Lepper. The company, as far as appears, owed no debts. The only assets were the patents, if their transfer could be compelled. In case of dissolution, Baylor as a holder of preferred stock would under the certificate of incorporation, be entitled to a preference in the distribution. 20

Halyburton had moved his family to Hampton, in 1909, and remained there until the spring of 1911. Having, during that interval, failed to secure the needed capital, he began to make efforts to start the manufacture elsewhere. At the beginning, these efforts were known to and acquiesced in by Baylor. On Dec. 12, 1912 without informing Baylor, Halyburton made an agreement with the defendant, The American Car and Foundry Company by which he gave it "the exclusive right to 40

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10 manufacture, use and sell, and to be caused to be
manufactured, used and sold, articulated devices em-
bodying his inventions." The company, on its
part, agreed to equip at its Berwick, Pa. plant, a
department for the manufacture of valves and to
take Halyburton into its employ for five years. It
has spent nearly \$100,000 in carrying out this
agreement. Its vice-president, Mr. Dickerman,
says that he thinks the valve a good one. He tes-
tifies further that they have attempted to market
it in a small way with unsatisfactory results; that
they have scrapped valve parts that had cost them
ten or twelve thousand dollars; that they have
made very material improvements and that they
20 have now reached a point where they are about
ready to put it on the market.

Such in brief is the situation. The question is
whether the complainant is entitled to a specific
performance of Halyburton's accepted proposal.
This is resisted first, on the ground that the Court
will not enforce performance of a contract which
violates the policy of the statute (Sec. 49 of Cor-
poration Act) authorizing stock to be issued for
property purchased, to the amount of the value
thereof. Second, on the ground of laches.

30 In reply to the first objection complainant con-
tends that the patents were worth \$200,000 and
that, if not, the defense is not specifically set up in
the answer. If the contract be illegal the Court
cannot give it effect. If it be "one, the enforce-
ment of which, would violate public policy," said
Mr. Justice Dixon in *Minzesheimer v. Doolittle*,
15 Dick., 397, "the Court will not, for any delin-
quency of defendant" (in the matter of pleading)
40 "lend its assistance to such violation."

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It is perfectly plain, on the evidence, that this contract does ~~not~~ violate the policy of the Corporation Act. There is no proof, worthy of the name, that the invention in its then stage of development was worth \$200,000. Lepper indeed testifies that it was worth, in his opinion, \$300,000 but the very ground on which he bases it shows it to be worthless. Asked how he arrived at the amount, he says, "Because it would easily make that much money." Now if anything is clear, it is that it would *not* easily do so. Halyburton says that he made the invention as early as 1902. For the four years before the company was organized he had been trying to interest capital on its behalf and had failed. The company was formed in 1906 and for two years thereafter, devoting all his time and energies to its perfection and to an endeavor, with Baylor's assistance, to procure subscriptions to the capital stock, he accomplished nothing. The first patent did not issue till Oct. 1908 and the second until Oct. 1910. The resolution accepting Halyburton's proposal was passed in January 1909, and over two more years were consumed in a further endeavor to put a few valves, made by outsiders, on the market and to induce others to take up their manufacture, but without success. Finally Halyburton made his agreement with the Car Company and even then the invention had not reached a stage of development in which it became practically remunerative. The Car Company, after creating at great expense, a department for the manufacture, was obliged to scrap valve parts that had cost ten or twelve thousand dollars. Mr. Dickerson says that with the very material improvements that they have made, he expects to be

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able to market the valves, but has not as yet done so. Halyburton assigned his patent rights in consideration of a five years' employment, first at a salary of \$250 per month and then on a commission equal to 1½% per cent of the net selling price of all articles embodying his invention.

10 This statement shows how impossible it would have been, on an honest valuation, to declare that in 1909, in its then condition, the invention was worth \$200,000. In fact no declaration or valuation of any sort was made or attempted. The directors did not go through the formality of resolving that it was worth that or any other sum; and that they did not intend to give Halyburton stock to that amount is apparent from the understanding of all concerned that upon its issuance, he
 20 would return half of it to the company's treasury. If this Court should enforce the contract, it would do so against the statute and the course of decisions. *Volney v. Nixon*, 2 Robb., 605; *Easton Nat. Bk. v. The American Brick Co.*, 4 Robb., 732; *Equadorian Asso. v. Ecuador Co.*, 1 Buch., 757.

30 But even if the contract were legally enforceable, there have been such laches as would prevent its enforcement. According to the terms it was enforceable immediately. Defendants argue that it was conditioned upon the raising of \$100,000, cash capital. I doubt if the evidence sustains this contention. I am strongly inclined to think that, as Transue suggests in his letter of Oct. 25, 1909, and as Baylor testifies, the real reason why the resolution was passed was that Baylor wanted security for his past advances and for the money he was about to advance and that Halyburton was willing
 40 to give it. The proposal having been made and ac-

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cepted, Baylor thought himself safe. He did not want a formal transfer and a formal issue of stock because, as he said in one of his letters, that would have imposed upon the company the necessity of paying a larger franchise tax. After the year 1910, both Halyburton and Baylor appear to have given up all hope of raising the necessary capital. At that time the three directors were Baylor, the treasurer, Transue the president and Halyburton. Baylor and Transue knew that Halyburton had begun to make an effort to establish a plant elsewhere. Transue knew, before he broke with Baylor, that Halyburton was negotiating with the Car Company. Baylor did not know this, but he had every reason to believe that he was still trying to put his patent to account. Under these circumstances it would seem that it was the duty of complainant, if it wished to insist upon its rights, to have taken some action. It (and Baylor, Halyburton and Transue were the company) must have supposed that Halyburton was likely to do that which would trench upon those rights and that others might innocently be drawn into expending money because of Halyburton's apparent ownership. The mental attitude of these two gentlemen is no doubt correctly depicted in the letters written by Transue to Baylor at that time. In that of Oct. 25, 1909 he says,

"I don't see what cause you have for worryment as you are better protected than any other person, in case there was a failure and in the event of success you will get more out of it than any one else. * * * I have nothing to show for the amount of money I have in it but I feel absolutely safe. We have

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our remedy, if anything goes wrong, and Halyburton has everything to lose. The patent rights, in my estimation, are very valuable and would if offered for sale, bring a great deal more than what you and I have already put in the company."

10 In another letter written subsequently he says, "We are preferred stockholders" (in point of fact no stock appears to have been issued to Transue) "and as such come in ahead of him" (Halyburton).

20 "The agreement that he made to assign those patent rights will hold him as he gets common stock for it and would therefore, in case of a failure or receivership, come in after us. * * * am only saying this in the event anything should happen and *you are forced to do something I think the best thing for us is to say nothing about it to any outsider and let the matter drift along* until such time as he finds out that he can't raise the funds and asks for help."

30 It is quite probable that the matter would have "drifted" until now, had it not been for the agreement made with the Car Company. This company unquestionably acted in good faith and without actual knowledge of the accepted proposal. It searched the record of assignments of patents and found nothing; and it spent large sums of money in making the invention practicable. The bill was filed in September, 1914, nearly six years after the right to demand the transfer had accrued. Baylor says that after Halyburton left Hampton he did not know where he was. He made some effort
40 to locate him. It is not pretended that Halybur-

Opinion

ton was in hiding and Transue knew where he could be found. I have no doubt, under the evidence, that a painstaking effort on Baylor's part would have been attended with success. Without reference to the question whether the inspection of the Gardner Valve Company's catalogue, stating on its cover that it was the manufacturer (not the assignee or sole licensee) of Halyburton valves affected the Car Company with constructive notice of the existence of the contract, it seems to me that the fact that the complainant waited so long (whether because Baylor did not want to pay a larger franchise tax or for other reasons) and the further fact that the Car Company has, in good faith, spent so much money on the faith of Halyburton's representation that all previous negotiations with others had fallen through and that he was free to negotiate would make it highly inequitable now to enforce a specific performance. 10 20

The amended bill prays in the alternative that in case a specific performance be refused Halyburton may be decreed to refund the money advanced to him. The company paid Halyburton an agreed salary. It is not pretended that he was remise in his endeavor to promote the company's success. He performed the service for which the money was paid. On what principle then can he be decreed to return it? He treated Baylor shabbily in not at least tendering himself ready, at some future time, if he could, to repay the whole or a part of the money which he had received from him and which had enabled him to live. But the venture was a speculative one. It was so regarded by the four other gentlemen who also gave their money. There was no agreement to return it in case of 30 40

Notice of Appeal

failure and consequently no legal ground upon which a money decree can be based.

A true copy.

ROBERT H. McADAMS,
Clerk.

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Notice of Appeal

IN CHANCERY OF NEW JERSEY

20	Between GARDNER VALVE MANUFACTURING COMPANY, Complainant, and JOHN L. HALYBURTON and AMER- ICAN CAR & FOUNDRY COM- PANY, Defendants.	}	On Bill etc.
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The complainant above named hereby appeals from the whole and every part of the final decree entered on the twenty-fourth day of May, 1916, in the above stated cause, to the Court of Errors & Appeals, in the last resort in all causes.

LINTON SATTERTHWAITE,
Solicitor of Complainant-Appellant.
ROBERT H. McCARTER,
Of counsel with complainant-appellant.

I conceive there is good ground for appeal in the above cause.

ROBERT H. McCARTER,
Counsellor at Law.

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Petition of AppealNEW JERSEY COURT OF ERRORS
AND APPEALS

Between GARDNER VALVE MANUFACTURING COMPANY, Complainant-Appellant, and JOHN L. HALYBURTON and AMER- ICAN CAR & FOUNDRY COM- PANY, Defendants-Respondents.	} 10
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The petition of Gardner Valve Manufacturing Company, the appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the twenty-fourth day of May, nineteen hundred and sixteen, in a cause wherein the said Gardner Valve Manufacturing Company was complainant, and the said John L. Halyburton and American Car & Foundry Company were defendants, in this respect, to wit, that the said decree adjudges that the bill of complaint should be and the same was thereby dismissed with costs. And your petitioner humbly appeals from the whole of the said decree, upon the ground that the same is erroneous, for that the said complainant should have been awarded the relief sought by it in its original or amended bill of complaint.

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Petition of Appeal

Your petitioner, therefore, prays that the said decree of the said chancellor may be in all respects reversed, set aside and for nothing holden; and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

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LINTON SATTERTHWAITE,
Solicitor of Complainant-Appellant.
ROBERT H. McCARTER,
Of counsel with Complainant-Appellant.

[Common answer in appeal.]

New Jersey Court of Errors and Appeals.

Between

GARDNER VALVE MANUFACTURING COMPANY,
Complainant-Appellant,

AND

JOHN L. HALYBURTON, and
AMERICAN CAR & FOUNDRY
COMPANY,
Defendants-Respondents.

On Appeal
from Decree in
Chancery.

**BRIEF FOR
APPELLANT.**

This is an appeal from a final decree advised by Vice Chancellor Stevens, dismissing a bill filed by the Gardner Valve Manufacturing Company, a corporation organized in this State by certificate dated October tenth, nineteen hundred and six, and filed with the Secretary of State, October thirteenth, nineteen hundred and six, seeking to compel the performance by the defendant, Halyburton, of an agreement dated January thirtieth, Nineteen hundred and nine, which he made with the company, and which reads as follows:

“To the Board of Directors of
THE GARDNER VALVE MANUFACTURING CO.
GENTLEMEN:—

I have pending applications for letters patent of the United States, upon a new and novel invention for straight way valves.

I hereby agree that if you will issue to me 7,996 shares of your common capital stock, I will sell and assign to you such applications and the letters patent when granted, and also all improvements I may hereafter make thereon.

Very truly yours,

JOHN L. HALYBURTON.

Jan. 30th, 09."

The evidence (p. 35) quotes from the minutes of the company, to the effect that on the thirtieth day of January, nineteen hundred and nine, a meeting of the Directors was held, at which the proposition embodied in the above document was presented, Mr. Halyburton having retired from the room, and (p. 36) that on motion of Frank Transue the proposition was accepted, and the Secretary directed to notify him, Halyburton, "that when the actual assignments covering all patents issued and applied for at the date of this meeting was made to the corporation, there would be issued to him or such persons as he might nominate, common capital stock of this company, amounting to 7,996 shares". Staples swears (p. 41) that he knows notice of the company's acceptance of this proposition was given to Halyburton. Halyburton (p. 171, line 28) admits he supposed the Directors had accepted his proposition.

Halyburton, who signed the contract, and the American Car & Foundry Company, are the defendants to the bill. The latter is alleged to have acquired some unknown interest in the patents from Halyburton, but it is charged with having had notice of the complainant's rights before and at the time of such acquisition. The prayer is for specific performance of the agreement; and that the rights, whatever they are, of the Car Company may be subordinated to those of the complainant.

The facts and circumstances, about which there is no dispute, leading up to the introduction of Haly-

burton to his later associates in the complainant company, are as follows:

Some time in the month of August, 1916, Halyburton, Lepper (who seems to have been acquainted with Halyburton since about 1898), a man named Woodward, and possibly others, came to Hampton to inspect a proposed site for a factory. Halyburton (p. 175) invented his valve for which the patents in suit subsequently issued as early as 1902, but having no means he sought to interest capital, and (p. 176) while at Hampton, on about the 7th of August, 1906, he met Baylor and told him of his valve. The visit at Hampton consumed the better part of the day, Halyburton informing Baylor that it would require one hundred thousand (\$100,000) dollars to build a plant and get things in shape to manufacture the valve, and the parties seemed to have enthusiastically agreed among themselves to form a company, Baylor agreeing with his friends to raise twenty thousand (\$20,000) dollars, if Halyburton would raise the remaining eighty thousand (\$80,000) dollars. Shortly afterwards, Halyburton wrote Baylor a letter (p. 178) dated September 12th, 1906, in which, after enlarging upon the value of his valve, he said (p. 180), "I want you to write me a letter that I can show to people, saying what the people down there are going to do for the new company. Don't be afraid to name a stiff amount, as it will help considerable." Pursuant to this request, Baylor wrote the desired letter, quoted on page 151, in which, after acknowledging the receipt of the letter just referred to and enlarging upon the availability of Hampton as a factory site, he states, "You will be safe in figuring on myself and my friends taking twenty thousand (\$20,000.) dollars worth of your preferred stock. I have talked with enough of them to know just about what I can do. Just as soon as I am positive you are able to handle your end of it, I will collect it and deposit it in the First National Bank of High Bridge, N. J." This is the

communication dated September 14th, 1906 (merely a month before the organization of the company) upon which the defendants place so much emphasis as indicating that Baylor was expected to raise twenty thousand (\$20,000.) dollars capital. It is evident that his promise in that regard was wholly conditioned upon Halyburton's raising his eighty thousand (\$80,000.) dollars. The letter seems to have been what Halyburton desired, for (p. 181) on September 19th, he writes to Baylor (p. 181, line 35): "Your letter is all right, and was just what I wanted. Anything of an encouraging nature you have, send it along in the same shape, as it helps considerable."

Halyburton prepares and sends to Baylor a prospectus of the proposed enterprise (Ex. D-3) which in turn is transmitted by Baylor to Transue who prepares the certificate of incorporation which is offered in evidence and was signed by Halyburton, Baylor and a man named Burrell, who acted for Lepper. You will search in vain throughout this certificate for any condition that the existence of the company should be dependent upon the securing of a site at Hampton, or the raising of any particular sum of money, either by Baylor or Halyburton, and we contend that the best evidence of the purposes and objects of this company is found in its charter and by-laws, and not in some mere scrap of paper which one of its promotors prepares and sends to another. After the company was incorporated, the organization meeting was held, a board of directors elected and officers chosen, and Halyburton was supplied with cash for his expenses by weekly payments from either Baylor or Lepper, and set about to raise the necessary capital to enable this company to build its plant and manufacture the valves. An office was opened in New York in the name of the company, letterheads were printed, and Halyburton, as general manager, undertook with more or less energy, to raise the required capital, but was

unsuccessful. After about two years, the office in New York was abandoned, Halyburton moving both it and his home to Hampton, where he established, and thereafter maintained his business headquarters until March, 1911, when he disappeared. Lepper advanced (p.86) five hundred and seventy-two dollars and seventy-seven cents (\$572.77) for which he had receipts signed by the company. This was in addition to other small sums due him for services rendered and disbursements made for the benefit of the Company. He was promised by Halyburton a large block of stock for his services and activities (p. 87, line 35). Baylor had advanced in August, 1908, two thousand two hundred and thirty-seven dollars and fifty cents (\$2,237.50), and as there was no evidence of the ability of Halyburton to make good his promises to raise the \$80,000. he was despondent. Lepper says (p. 87, line 37) that frequently while he was making his advancements, Halyburton not only promised him stock, but likewise agreed to transfer the patents to the company. This was during the year 1908. Halyburton does not deny this.

The theory of the defense as stated in the answer, and attempted to be testified to by Halyburton, is that the arrangement between these parties—whatever that arrangement was—was on condition that Baylor should raise the twenty thousand (\$20,000.) dollars capital, and the contention is that as he never did this, the whole thing falls to the ground.

Our position is that Baylor undoubtedly, at the organization of this company, undertook to be responsible for twenty thousand (\$20,000.) dollars cash capital, providing Halyburton would raise the other eighty thousand (\$80,000.) dollars, as shown by the letter above quoted, all of which was to be applied to the erection of a factory. Baylor, who is accustomed to make his promises good, stipulated that he would put the money up in the High Bridge Bank as soon as Halyburton made good on his

quota. It is somewhat amusing to observe the difficulty with which counsel is able to persuade Halyburton into testifying upon this matter. He says (p. 158) it was verbally understood, *about the time that the company was formed* "that as soon as we raised one hundred thousand (\$100,000) dollars in cash for building and equipping a plant, at that time, I would sign over my patents to the company, when they issued to me one hundred thousand (\$100,000) dollars of common stock personally". The Court's attention is directed to pages 159, 160, as an indication of the way counsel dragged the testimony from the lips of Halyburton.

Of course, the minutes contained no resolution or anything to warrant any such verbal understanding as counsel was able to elicit from the lips of Halyburton. On pages 190 and 191 Halyburton concedes that the verbal understanding, to which he referred in his testimony (just quoted) was had in 1906.

Transue seeks to corroborate Halyburton, and while he concedes that (pp. 216, 217 and 218) he did not see either Baylor or Halyburton previous to the organizing meeting, and of course until after he had prepared the charter, he nevertheless testified against our objection that at the organization meeting (p. 218, line 36) ways and means of raising the money and of locating a factory at Hampton were discussed, and that Baylor expressed himself as primarily responsible for the securing of certain subscriptions and turning over the factory site. His statement, however, is (p. 220) that two hundred thousand (\$200,000) dollars of stock (instead of one hundred thousand (\$100,000) dollars as testified to by Halyburton) was to be issued to Halyburton for his patent rights, of which Halyburton was to donate to the treasury fifty thousand (\$50,000) dollars, so an important discrepancy exists between the evidence of these two men. But the important thing about it is, that assuming, which we deny, that this evidence is competent—that a company is to be bound

by the mere loose statements of some of its officers, which in no way rise to the dignity of agreements, and are, at the best, as testified to by Transue, mere discussions of ways and means, and which according to Halyburton, preceded the organization of the company, the point is that this so-called agreement or understanding or underlying condition was made before or contemporaneously with the formation of the company, and comprehended the raising of money, one hundred thousand (\$100,000) dollars, eighty thousand (\$80,000.) dollars by Halyburton and twenty thousand (\$20,000) dollars by Baylor, for the purpose of securing a site in Hampton and building thereon a manufacturing plant, the estimated cost of which was one hundred thousand (\$100,000) dollars.

Assuming, therefore, that at the organization of this enterprise, there was such an expectation, the proofs unqualifiedly establish the fact that about August, 1908, when Lepper was disgusted and Baylor discouraged at the total want of success of Halyburton's efforts to raise the necessary cash, a new and entirely distinct arrangement was made at the suggestion of Halyburton, to the effect that the project of building a plant should be, temporarily at least, abandoned because of his apparent inability to raise the necessary capital, without being able to demonstrate the merchantability and practicability of the valve, and hence the plan was adopted that Baylor would advance two thousand (\$2,000) dollars, Transue five hundred (\$500.) dollars and Halyburton, through his brother-in-law, would raise five hundred (\$500.) dollars, making three thousand (\$3,000.) dollars in all, which would suffice to pay for a catalogue and the necessary cost of the manufacture by outsiders, of valves which could be sold, and the company reap the difference between the cost and the selling price. This proposition was accepted by Baylor, expressly upon the condition that Halyburton would assign his patents to the company, which Halyburton agreed to do, whereupon Baylor renewed his advancements, till they finally reached

the promised two thousand (\$2,000.) dollars more. Transue put up nearly fifteen hundred (\$1500.) dollars and characteristically Halyburton's brother-in-law failed to come to the front.

See Baylor's evidence, pp. 54 and 55.

See Staples' evidence, pp. 114, 115 and 116.

See also the important letters from Halyburton to Lepper dated respectively October 4th and November 11th, 1908, and found on pages 95 to 97 of the State of the Case.

Lepper had been complaining of the unsatisfactory condition of affairs to Halyburton, and the latter writes him (p. 96):

"Just now, however, I have a little to write about. There was no show of getting the money for a plant, or of doing anything else that required money. So as a last resort I am trying to bring about something like this, I have talked it over with Baylor and Transue and I think they will do it.

They are to put up sufficient money along with my brother-in-law to pay for drawings, pattern and catalogue of a line of high press and steel valves. I am to do all the work at present in connection with the business. After the catalogue is complete I will get orders and have the valves built outside; we furnish drawings and patterns, and the parties who make the valves at a specified price, bill them direct to the parties they are for; we receive the difference between the selling price and the price of manufacture. If I can show that we can hold our own this way, Baylor and Transue will raise the money for a plant next year.

Preferred stock certificates will be issued to them for this money, and the half share of common that goes with it. At the same time, preferred stock will be issued for the cash you put in, and common for services rendered as you figured it out. One of my patents has been granted and will issue next month. When I assign this patent to the company, I receive common stock for it. The idea is not to issue any more stock than what is necessary at present to run the business, so as to keep down the tax."

On November 11 (p. 97), they seemed to have proceeded with the new plan, for Halyburton writes to Lepper "We are making headway with the valve business; I am having a seven inch steel valve for superheated steam built at Chester * * *. I have been busy getting out a catalogue and it goes to the printer tomorrow. * * * We will issue the stock at the first of the year and I can then invite you to pay us a visit. I have taken a house here and we move the first of December."

The evidence of Mr. Staples (pp. 114, 115 and 116) is directly corroborative of this, he having overheard a conversation between Halyburton and Baylor in the early autumn of 1908, to the effect that if the three thousand (\$3000.) dollars were raised, a catalogue could be produced, and the project of manufacturing postponed, until valves could be procured to be manufactured and sold and their success thereby demonstrated.

Moreover, Transue himself testifies to the same effect. On pages 224, 225, 241, 242 and 243, he swears that Halyburton told him that he and Baylor had concluded that it was important to raise three thousand (\$3000.) dollars for the purpose of getting out a catalogue, and having some valves manufactured, instead of further delaying until the company could get funds to manufacture itself, and that he assented to this, agreeing to put up two thousand (\$2,000.) dollars. Halyburton was to put up, through his brother-in-law, five hundred (\$500.) dollars and Baylor two thousand (\$2,000.) dollars.

In view of Halyburton's letters, it was impossible for him to testify otherwise than he did on pages 184 to 187, to the effect that it was necessary to have one hundred thousand (\$100,000) dollars cash capital before a factory could be built and the company do its own manufacturing. He had had a talk in 1908 to the effect that the difficulty in raising the capital arose from the fact "that as yet we have no valves manufactured, but that if we could get them and a catalogue, and therefore demonstrate

the practicability of the valves, the capital could then be raised". And that after this talk, he had the valves manufactured outside.

There is, therefore, left no room for doubt about this subject. All four agreed to the modification of the plan, and while Transue does not state that part and parcel of the scheme was the prompt assignment by Halyburton of his patent to the company, the others, including Halyburton by his letters above quoted, unite in that view.

The first thing that was done thereafter was the production of the catalogue, Exhibit C-3, on the outside cover of which appears—

“Gardner Valve Manufacturing Co.
Halyburton Valves
Catalog 1909
Gardner Valve Manufacturing Company.”

and the first inside page reads—

“Gardner Valve Manufacturing Co.
Hampton Junction,
New Jersey, U. S. A.
Manufacturers of
‘Halyburton’ Straight way valves
for
Power Plants, Manufacturing and general
Engineering purposes.”

All hands saw and used this catalogue which (Ex. C-5) was in course of preparation between September 1st, 1908, and January 19th, 1909. It was apparently completely ready for the printer by November 11th, 1908, for Halyburton in his letter of that date to Lepper (p. 97), says:

“I have been busy getting out a catalogue, and it goes to the printer to-morrow. I would like to have had you on this job, as I think you would have made a neater job of it; however, I think it will be the slickest valve catalogue out.”

How, in view of this catalogue, Transue and Halyburton can claim that it was not expected that

the company should not control the patents, we fail to understand. Halyburton's letters to Lepper speak of issuing the stock at the first of the year, and another one says: "When I assign the patents to the company, I will receive common stock. The idea is not to issue any more stock at present to run the business, so as to keep down the tax." It was thus his idea apparently to postpone the actual transfer of the patents till the first of the year. Baylor testifies (p. 57, line 37) that he spoke to Halyburton several times about making good his contract to sign the agreement, and he replied that any time would do. Finally, on January 30th, 1909, a meeting was held and the document in suit (Ex. C-2) signed by Halyburton. The first of the year referred to by Halyburton in his letter to Lepper had come, and the time for the transfer of the patents had arrived, and so the resolution was passed and the document signed.

The effort of the defense is, notwithstanding the plain language of the agreement (Ex. C-2), to attach to it a condition that the patents should only be assigned when \$100,000. were raised. The paper (Ex. C-2) is a complete document in itself. It was typewritten by Transue and corrected by Halyburton, and it is most significant that neither one of them inserted the alleged condition—the most important feature in the transaction—in the document. We contend that under well settled principles of evidence, applicable, we believe, as well to courts of equity as to courts of law, the interpolation of parol evidence to impose a condition of this character is illegal. *American Surety Co. v. Mason*, 92 Atl. Rep. 939; 87 N. J. Law, 290. In this case the very point that the rule of *Naumburg vs. Young*, does not prevent the admission of parol evidence to show that the written contract was made upon some condition, was urged with great vigor and was the very point of the case.

But, supposing the rule to be otherwise, it is impossible to believe that such condition existed.

There was indeed undoubtedly an expectation when the company was originally organized that there should be one hundred thousand (\$100,000) dollars raised, of which Baylor was to contribute twenty thousand (\$20,000) dollars for the purpose of building a plant, and that when this was done Halyburton was to assign his patents on receiving two hundred thousand (\$200,000) dollars of stock.

As we have seen, all hands agreed that that plan would have to be postponed and the idea substituted of raising three thousand (\$3,000) dollars, publishing a catalogue and procuring some outsiders to manufacture the valves, and Baylor only agreed to advance the two thousand (\$2,000) dollars additional, that the latter plan involved, upon the express condition that the patents should be assigned to the company, and so the agreement (Ex. C-2) was signed. Halyburton admits (pp. 206, 207) that the subject of his assigning the patents to the company had been frequently adverted to between August, 1908, and the time the document was signed. Having signed the document, when asked why, if there was this condition with reference to one hundred thousand (\$100,000) dollars he did not insist upon its insertion in the document he replies (p. 209, line 24): "Why I didn't consider that had anything to do with the assignment of the patents or the one hundred thousand (\$100,000) dollars either; that was only what I thought." Whereupon the court (p. 209, line 28) interrupted: "It was the very thing that you were doing. Now you do not understand the question. The question is, why in that document you did not state the whole matter as it was. That is the question." And the witness replies: "The reason I didn't state it, Mr. Transue drew that up, and the rest was understood, just what it was intended for."

If Transue did draw it up, the witness interpolated, the figures "7,996" to indicate the number of shares, which would be one hundred and ninety-nine thousand nine hundred (\$199,900) (par value

being \$25.) dollars. He was also careful enough to interpolate the word "common" before the words "capital stock" and to affix the date.

If there was any such condition why did not Halyburton mention it in his letters to Lepper of October 4th and November 11th, 1908?

The conclusion is inevitable that there was in fact no such condition, and that the written document expressed the whole contract.

Mr. Transue struggles in his evidence to interpolate this same condition. He does not directly say there was any such condition, but seeks to give the impression that it some how or other, underlay the whole thing, and that as the alleged condition had not been performed, the agreement to assign should not be enforced, and he does swear (p. 243) that he first heard of the idea that Halyburton was to assign the patents, on the day of the meeting of January, 1909, and that he prepared C-2, as a friend of Baylor. He admits, however (p. 245), that upon his advice, Halyburton withdrew from the meeting before corporate action was taken thereon.

If Transue's idea that some how or other, the condition underlay the written agreement, how can you reconcile his letter of October 25th, 1909, quoted on page 252 to the effect that "I have nothing to show for the amount of money that I have in it, but I feel absolutely safe. We have our remedy if anything goes wrong, and Halyburton has everything to lose. The patent rights in my estimation are very valuable and would, if offered for sale, bring a great deal more than what you and I have already put in the company". He conceded (p. 253) at the time of writing the letter, all the company had to rely on for his interest in the patents, was Exhibit C-2, and he is a lawyer enough to admit (p. 246) that the effect of Exhibit C-2 was to make the company the equitable owner of the pat-

ents. How, if his theory be correct, could he have written the letter (Ex. C-24, quoted on p. 254) which letter Baylor swears was written after March, 1911. "I don't think you have any reason to fear but that you will get all of your money eventually. We are preferred stockholders, and as such come in ahead of him. The agreement that he made to assign those patent rights will hold him as he gets common stock for it and would therefore, in case of a failure or receivership, come in after us. * * * You have paid in all the money you agreed to and so have I, so the whole thing is up to him * * * ." Transue admits (p. 248) at the time of writing this letter, the company had no other evidence of the title to the patents than Exhibit C-2. Indeed, the Vice Chancellor agreed with us upon this point. His opinion (p. 318, line 30) says:

"Defendants argue that it was conditioned upon the raising of \$100,000, cash capital. I doubt if the evidence sustains this contention. I am strongly inclined to think that, as Transue suggests in his letter of October 25, 1909, and as Baylor testifies, the real reason why the resolution was passed was that Baylor wanted security for his past advances, and for the money he was about to advance and that Halyburton was willing to give it."

We think, therefore, that there can be no question that Exhibit C-2 expresses the intention of Mr. Halyburton; that such intention thus evidenced was accepted by the company, by the resolution already adverted to, and that under the principles of *Harrigan v. Smith*, 57 N. J. Eq. 636, and *Dalzell v. Duber Watch Co.*, 149 U. S. 315, the court will, unless some other reason supervenes, compel Halyburton to perform the agreement, the company, of course, to transfer to him the 7,996 shares of stock.

The Vice Chancellor concluded that the bill should be dismissed, first, upon the ground that the issue

of little less than \$200,000 of stock contracted for in the agreement, in exchange for the patent rights, was invalid as a gross overvaluation; and, secondly, on account of the lapse of time. We will discuss both of these matters, but before doing so the court's attention should be directed to the pleadings by the defendants. Halyburton in his answer sets up the supposed failure of the alleged condition to supply the cash for the erection of a plant at Hampton, and also the fact that the plan had been abandoned. It is nowhere suggested, either in his answer or his testimony, that the patents were and are not fully worth the \$199,900. of stock that the contract provided should be paid for them.

The Answer of the American Car and Foundry Company sets up the contract it made in December, 1912, with Halyburton, a copy of which contract is attached to his answer (Case, p. 17), and claims to be a *bona fide* purchaser for value. It is entirely silent, both as to the value of the patents, and as to the lapse of time.

With respect to the first of these contentions, namely, the over-valuation of the patents, the court below concluded that the valuation was so excessive as to justify it in refusing to direct a performance of the contract, although neither defendant in his or its pleading relied upon any such over-valuation, and neither has offered any proof in support of that idea. It is important, therefore, for us to show that this conclusion of the Vice Chancellor was erroneous, and we shall to that point now address ourselves.

I.

The proposed issue of \$199,900 of stock for the patents and inventions of Halyburton, instead of being excessive, was a fair equivalent of their value.

We frankly admit that there was no resolution of the directors, appraising the inventions to be fairly worth the amount of the stock agreed to be issued therefor. The Vice Chancellor (p. 318, line 16) designates a resolution of this character as "a formality". The only practical effect of the absence of such a resolution is to deprive the company of the right to claim, under section 49 of the Corporation Act, that the conclusion reached by the directors in such a resolution can only be overcome by proof of fraud.

* In the case of *Holcombe v. Trenton White City Co.*, 80 N. J. Eq. 122, the present Chancellor speaking upon this very subject said, referring to the absence of such a resolution:

"But as the directors did not do that, and as it now devolves upon the court to perform the duty which they neglected, the court will have to exercise its judgment now as of the time when they should have acted, in substitution for the judgment that they should have formed."

The learned opinion of the Chancellor in that case was adopted by this Court in 82 N. J. Eq. 364, and is the last word upon the subject. We, therefore, conclude that the court must investigate the subject and determine whether or not, in the light of the circumstances that then existed, the directors could reasonably have concluded that the inventions were worth the \$199,900 of stock they agreed to pay for them. The date of the ascertainment being January

30, 1909, what do the proofs show with reference to the value of the inventions at that time?

Halyburton swears that he made the invention (p. 174, line 39):

“Probably four to five years before I ever made any of these valves connected with it”,

and that he invented the valve probably around 1902 (p. 175, line 12); that he had no capital of his own, and he spent some time in interesting capital in their manufacture, and carrying out that view he met Baylor and Lepper, and subsequently formed the complainant corporation. Only one patent was then issued, that of October 27, 1908 (p. 23), and no application for the second patent was made for four months after the agreement and no patent issued therefor until October 25, 1910, a year and nine months after the agreement. No inventor can make much headway with capital, particularly when a \$100,000 investment is required, until the Government has given his invention the stamp of its approval by the issuance of a patent. While the agreement Halyburton made with the Car Company (Schedule A, p. 17) refers to both patents, nevertheless the answer of the Car Company (p. 15) sets up and relies wholly upon the later patent, for which there was no application filed until May 4, 1909. The point we make is that while Halyburton and those to whom he explains the merits of his invention may, in forming the company to exploit it, have had knowledge and information as to the value of the inventions, no presumption can arise nugatory to the correctness of such valuation, from the failure to have interested capital (especially when \$100,000 is necessary) before the patent is actually issued. It seems to us, therefore, that in considering the length of time after the making of this agreement during which the failure to acquire capital continued, the period anterior to the issuance of the most valuable patent, namely, October 25, 1910, should be eliminated. Halyburton un-

doubtedly believed in his invention. He testified to that effect and swore to its utility on page 175. Baylor, on page 46, spoke of the valve as having very great value, and that it would develop into a very valuable proposition. Lepper was an engineer by practice, of large experience, whose mechanical ability Halyburton relied upon (pp. 176, 189, 183) and was the engineer of the company. He (p. 82) looked over the entire working drawings, and concluded

“ That the Halyburton valves were about as fine a set of valves as I ever came across ”,

and further concluded:

“ That the patents and designs that he had were fully worth \$300,000.”

and that (p. 85) he brought to the knowledge of Mr. Baylor the views he entertained with reference to the valves. On page 93 he says that the valves had many features that were far superior to other makes. Mr. Dickerman, the Vice President of the Car Company, states (p. 110, line 30) that he regards the valve as a good one. His Company thought enough of it to create a special department in and about which they have already invested upwards of \$100,000, in which they are to manufacture this valve. Their catalogue (Ex. C-10) on page 10 contains the following:

“ DESCRIPTION OF HALYBURTON VALVE

The Halyburton valve is the most perfectly designed, from an Engineering and Mechanical standpoint of any of the valves on the market at the present time which are manufactured and sold in large quantities.

The shape of the body is that which gives the greatest strength with a given amount of material and the distribution of metal has been most carefully worked out to take care of the strains due to expansion and contraction.

The detail mechanism is of the most substantial character; thoroughly reliable in operation

and of a design which allows the gates to be perfectly self-adjusting to their seats under working conditions with a minimum amount of friction. This is true to such an extent that the pressure can be applied against either gate, and while this pressure is on, the cover of the valve can be removed and the interior inspected. The stems can also be removed and replaced under this condition and the valve can be changed from an Inside Screw Valve to an Outside Screw and Yoke Valve while in the line and with the pressure still on.

This valve is the only one manufactured at the present time which is tight against pressure and not dependent upon pressure to make it tight and is also the only valve which has renewable seats in fact and not in fancy. The Bronze Faces on the Gates are rolled under heavy pressure into a machined dovetail groove and cannot be taken off or loosened except by cutting the ring in two."

Halyburton wrote Mr. Baylor under date of September 12, 1906 (p. 179, line 15):

"I know I have the greatest thing in the valve business in this country."

Transue (p. 298), writes Baylor under date of October 25, 1909:

"The patent rights in my estimation are very valuable."

Indeed, we have already seen, that Mr. Lepper concluded, and advised Halyburton and Baylor, before the agreement in question was made, that in his opinion the patents were worth \$300,000. He says (p. 93) that they possessed many features that are superior to other makes, and an earning capacity that would warrant an investment of that amount. No one contradicts a word of this evidence. The Vice-Chancellor concludes that an issue of a little less than \$200,000 of stock for both inventions and both patents, together with any improvements that Halyburton might make thereon

is excessive, because of the want of success that Halyburton met with in raising the \$100,000. capital, with which to build a plant where the valves could be manufactured. We have already seen that down to October, 1910, it would probably be difficult to interest capital to that extent, and after that time success in raising capital for that purpose depended very largely, if not wholly, upon the personnel of the person who is seeking to interest capital. The evidence in this case does not make it hard to understand why people in our cities, who are hard-headed and skeptical concerning large investments, would be slow to become interested in a project introduced by Halyburton. In August, 1908, when the project of interesting capital, for the purpose of building a plant, was postponed because of Halyburton's failure, up to that time, to secure \$80,000., neither patent had been issued; and the next year and one-half was devoted by Halyburton, after procuring the catalogue, to having valves manufactured by outside parties, and they were so manufactured by Eynan & Evans of Philadelphia (p. 199, line 10), and the appointment of Osbourn & Robinson, of Philadelphia, as selling agents for the company (p. 200, line 5). How many valves were so manufactured and disposed of by these agents does not appear. Suffice it to say, that it was the undoubted purpose and intention of the parties temporarily to abandon the project of interesting capital in the erection of a plant at Hampton or elsewhere, and all hands, including Lepper, Transue and Baylor, supposed that Halyburton was interesting himself in that phase of the matter. In March, 1911, Halyburton left his family at Hampton, N. J., and Baylor did not see him again, although he made several efforts to do so, until June, 1911 (p. 61), when he was told by Halyburton of some fruitless efforts he had made to interest people in the building of a plant at Pennington, but that he expected to have some valves manufactured at Bristol. On page 77

Baylor swears he completely lost sight of Halyburton from that interview until May, 1914, when a Mr. Wademan told him of Halyburton's whereabouts. That in the meantime he had sent Mr. Staples several times to Philadelphia to hunt him up, and he, himself, had gone to Bristol (where Halyburton had said there was to be manufacturing undertaken) to find him. He further states (p. 78) that he wrote a number of letters to Transue trying to locate Halyburton. This is confirmed by Transue (p. 259). Transue further admits (p. 249) that while he was receiving these inquiries from Baylor as to Halyburton's whereabouts, and was familiar therewith, he did not tell him; in fact, he purposely refrained from telling him. On page 261 is a letter from Baylor to Transue in which he says:

"I am going to make another effort tomorrow to locate Halyburton. He is certainly keeping in the shade."

On page 263 he writes:

"I don't imagine you have any way of getting a line on Halyburton. Do you know of anyone in Philadelphia who knows anything about him? I wish you would take that up."

On page 272 Baylor states he had not the slightest idea where Halyburton was, and on page 275 Senator George H. Large testifies that Mr. Baylor was constantly trying, during 1911, 1912 and 1913, to find out where Halyburton was. When he finally did learn that Halyburton was somewhere in Pennsylvania manufacturing valves, he wrote, on the 13th of May, 1914 (Ex. C-11), to Mr. Rooney inquiring where he was. Finally Mr. Wademan (p. 62) informed him that Halyburton was connected with the Car Company, and Staples was immediately sent there to investigate (p. 62). On pages 117, 118 and 119 Staples describes his efforts, and Baylor's desire, during the years 1911, and 1912,

but without success, to find Halyburton. When the modified plan of having the valves manufactured by outside parties was adopted, and for that purpose the catalogue prepared, all of those who were interested in the company knew that Halyburton was making efforts in that direction with several parties, but not one of them dreamt that such efforts involved an abandonment of the complainant's rights in the result of such manufacture. Hence, Baylor's answer in the affirmative, on cross-examination (p. 74), to the inquiry:

“ You knew he was endeavoring to interest persons in his patent, and to erect a plant at Pennington and other places, you knew of it, did you? * * * The Pipe Concern in Philadelphia?”

must be compared and read in connection with his direct testimony on page 61, where he says:

“ Well, I told him that I understood he was trying to get money to build a plant at Pennington; he said that was all off, that the people over there wouldn't put up any more money, or something of the sort; he told me he was trying to raise money at Pennington to locate the plant there, and he couldn't do anything with those people over there, they wouldn't put up the money, but he now had it fixed up that, I think the United States Pipe Company, or the Standard Pipe Company of Philadelphia was going to manufacture the valves at Bristol, Pennsylvania.”

There is not a word in the evidence to indicate that any of the persons interested in this enterprise imagined that Halyburton's efforts to procure the valves to be manufactured by outside parties involved anything more than what concededly had been arranged to have done, and there is not the slightest foundation for the claim of the defendants that these efforts involved a disposal of the patents to, and a manufacture of the valves by, other concerns.

Some of the most successful and profitable inventions have been slow to attract capital, and yet they did have value. This is distinctively true of the early days of the Bell Telephone, and one of the greatest modern examples of industrial success—the scheme of industrial insurance—as projected by the late Senator Dryden, and constituting today his monument in the Prudential Insurance Company of America—limped around Newark for years, in vain seeking a few thousand dollars with which to start business. At a certain stage in the history of either of these conspicuously successful enterprises, and after long continued efforts to achieve success, the learned Vice Chancellor, with equal force and logic, might have judiciously declared the telephone or the industrial insurance scheme to be without substantial commercial value, and that any considerable valuation placed on it by the projectors of a company was wholly unwarranted, lacking in good faith, and in contravention to the policy of our corporation acts. But he would have been in error, as we claim he was in this case.

In estimating the value of the patents and inventions, with their improvements, we must put ourselves in the position the directors were at the time of the making of the contract, when Halyburton's personal peculiarities and inability to gratiate himself into the confidence of strangers, were unknown. He had an invention which a reliable engineer deemed to have a value of \$100,000. in excess of the amount of stock they determined to exchange for it. No one has ventured to contradict this view. When, finally, a concern having both the capital and technical knowledge to appreciate and exploit the valve, namely, the American Car and Foundry Company, became acquainted with it, its Vice President spent nine months negotiating with Halyburton, and finally entered into an agreement to pay a royalty that would yield a handsome income, and that required a preliminary expenditure on its part of \$100,000. The trouble with the Vice Chancellor's

view is that he puts the cart before the horse, and, disregarding the views that were entertained at the time the bargain was made, undertakes today to appraise the value of the inventions in the light of the experience that has since intervened. This experience, due, as we have seen, to so many extraneous elements, cannot be fairly considered. The appraisal must be made as of the time, and in the light, of what was fairly and legitimately believed when the contract was made. The learned Vice Chancellor does not, as a matter of fact, hold that there could not have been an "honest valuation" at \$200,000., because of facts known at the date of the agreement. He bases his conclusion on facts since disclosed, not on knowledge contemporaneous with the event. His opinion clothes *ex post facto* knowledge with the force and character of present day information, and seeks to hold the directors responsible for not knowing in advance what he thinks he sees in retrospect. Bad faith cannot be established by such reasoning.

The cases in our courts which have set aside contracts exchanging stock for patents are, without exception, cases where in the light of facts that then appeared excessive over-valuation was found. No one has yet questioned the right of a corporation to issue an equivalent of stock for patents, whose practical value has not yet been demonstrated. In such cases, to a certain extent, the future must be discounted. Where an individual has paid a small sum for a patent, and immediately has a corporation issue stock for many times that sum for the same invention, we have room for the claim of over-valuation, but that is not this situation.

In *Volney v. Nixon*, 2 Robb. 605, the decision was based on the conclusion of the court that at the time of the contract to issue the stock, it had been demonstrated by *experience* that the invention was not the equivalent in value of the stock issue, and that there was and could be no "honest judgment", that the property was worth the amount;

and in *Easton Nat. Bank v. The American Brick Co.*, 4 Robb. 732, the situation was practically the same. In both of these cases the then *present experience* and facts justified but one conclusion, and that was over-valuation.

In *Ecquadorian Asso. v. Ecuador Co.*, 1 Buch. 757, the parties knew the value was not in the property. This plainly appeared, and the mere fact that the directors had not adjudged the value of the stock, was referred to in the opinion as an additional reason for holding the transaction void, but not as making it void.

In *Donald v. American Smelting Co.*, 62 N. J. Eq. 729, the court was protecting stockholders from an issue of stock for property of obviously less value than the stock; it was not declaring an agreement to issue stock void, and against public policy, because events subsequently appearing, and experience subsequently had, was capable of the construction that the value was liberal.

As shown by the very recent case in this court of *McMahon v. Pneumatic Transit Co.*, 96 Atl. 999, something more than surmise is necessary to set aside a conclusion to issue stock for property. The fact that the directors in this company voted to issue the stock for the patents is *prima facie* evidence that in their opinion the patents were at that time fairly worth the issue. There is not any pretense of fraud in the transaction. They dealt at arm's length, and Halyburton by the request of Transue left the room at the time the resolution was passed. Each of the directors at the time had a high estimate of the value of the inventions. If the statements and actions of the Car and Foundry Company are to be believed, such conclusions were well founded.

Nor is there any foundation for the contention that it was expected that Halyburton was to donate to the treasury one-half, or any part, of the stock provided to be issued to him under the agreement of

January 30, 1909. The Vice Chancellor's conclusion to that effect (p. 318, line 20) is an error, and arises from some loose statements made by one or two of the witnesses with reference to the alleged conditional agreement or understanding that existed at the time the company was formed. For example, on page 220, at line 30, Transue is speaking of the original agreement at the time the company was organized, and not of the contract of January 30, 1909, when he says \$200,000 of the common stock was to be issued to Mr. Halyburton for his patent rights, and Mr. Halyburton was to donate \$50,000 of the common stock to the treasury. There was undoubtedly some agreement between Halyburton and Lepper, by which the former was to divide some of his common stock, when required, with Lepper, for services that Lepper had furnished to Halyburton, but that was a private matter between Lepper and Halyburton. The preferred stock that was issued to Baylor for the moneys advanced by him has had no common stock attached thereto, and you will search in vain throughout this record for a word to indicate that Halyburton agreed, at the time he made the contract of January 30, 1909, to donate any of the stock he was to acquire to the treasury of the company.

We, therefore, confidently contend that the Vice Chancellor was in error in his conclusion—based as it was upon a misapprehension as to what had really occurred in the intervening years, and not upon the facts and knowledge that existed, and the parties possessed, at the time the contract was made—that the contract was so flagrantly based upon an over-valuation as to be against public policy, and therefore should receive the condemnation of the court, although no one, by pleading or testimony, suggested the claim.

II.**The complainant is not barred by its laches.**

The contract is dated January 30, 1909. It called for an assignment of the patents when granted, and all improvements to be thereafter made thereon. The first patent was issued October 22, 1908, and the second October 25, 1910. If the patents were still solely controlled by Halyburton we contend that, under the circumstances of this case, a bill filed to require such assignments, as was this one, in September, 1914, would have availed.

Baylor's testimony to the effect (p. 74) that he requested Halyburton to make the promised assignment on several occasions, the last time being just before Halyburton left Hampton in March, 1911, to which Halyburton replied: "We can do that most any time", is uncontradicted by Halyburton. Halyburton, on his part, was keeping Lepper quiet by the statement in one of his letters (p. 96) to the effect that the stock would be issued later, so that in the meantime the company could save franchise taxes, its purpose to manufacture being, as we have seen, for the time being deferred. Another important element is the fact that Transue, the counsel of the company, was in letter after letter (pp. 297-303) advising inaction, and that the parties could safely rest secure in their then position. Baylor, who relied on Transue's judgment, and confided in him as the counsel of the company, can hardly be blamed for inaction at this time. The situation is more favorable than existed in the case of *Harrigan v. Smith*, 57 N. J. Eq. 635, a case of very similar import. There the agreement had been made to assign an interest in a patent in the Spring of 1891, the bill was not filed until January 16, 1896, although in the meantime the defendant had been constantly in the City of Newark, where the complainant resided.

The defense of laches was vigorously pleaded and relied on, and the bill was dismissed by Vice Chancellor Emery expressly upon that ground. This Court, however, declined to apply that defense to the claim for an assignment, stating (p. 641):

“ Mere lapse of time will not defeat a claim of equitable ownership in a patent. In *Clum v. Brewer, ubi supra*, the original agreement was made in 1838, and Judge Curtis, in 1855, said that the purchaser then had the right to call for an assignment of even an extension of the patent, which he held was necessarily implied in the sale of an interest in the invention.”

When we consider that Halyburton, from March, 1911, until December, 1912, was entirely out of touch with both Lepper and Baylor, and that from July, 1911, Transue, while in touch with Halyburton, was pretending to the contrary to Baylor (p. 231) and became so incensed at Baylor's abuse of Halyburton that he destroyed all letters received from Baylor after July or August, 1911 (p. 237), we cannot but conclude that so far as Halyburton is concerned this Court, following the precedent of *Harrigan v. Smith, supra*, would and should direct him, so far as he is able, to make good his contract, and not prevent the complainant from getting such relief upon the plea of laches, which is nowhere set up, either by Halyburton or the Car and Foundry Company, and which, as we understand it, must be pleaded. *Ruckman v. Decker*, 23 N. J. Eq. 283.

Halyburton's answer sets up but two defenses. First, the alleged condition attached to the contract to the effect that \$100,000 capital should first be obtained; which, as we have seen, he failed, in the opinion of the Vice Chancellor, to have established; and second, the claim that the contract, even if not founded upon this condition, had been abandoned. Against this theory of abandonment we advert to the following facts: Baylor's constant and persistent efforts to ascertain Halyburton's whereabouts after June, 1911, and Lepper's efforts in the same

direction, including his hiring of detectives to trace Halyburton.

As we have already remarked, the efforts of Halyburton to procure the valves to be manufactured in Philadelphia and Bristol, or elsewhere, are in no way inconsistent with the right of the company to own the patents, and itself to undertake the manufacture of the valves whenever supplied with sufficient capital for that purpose.

Nor did Halyburton, himself, in any way consider the project abandoned. The letters already quoted from him, and written during the intervening period, indicate the contrary, and a most important fact is his securing Glassey, Looney and Crabbs as preferred stockholders in the company on the original scheme as late as the Fall of 1912. On page 129 Glassey swears he was paying up his subscriptions for preferred stock to Halyburton until the latter part of 1912. He procured (p. 135) from Halyburton, one of the catalogues, and the arrangement that he and Looney were making with the company was to become preferred stockholders in amounts equal to their joint investment (p. 144). It thus appears that, notwithstanding the fact that Halyburton was, during the first nine months of 1912, in negotiation with the Car and Foundry Company concerning the matter, he must have intended to have accommodated these negotiations with the rights of the complainant, because during the same period and as late as the Fall of that year, he actually received subscriptions amounting to Eighteen hundred and seventy-five dollars, from Glassey and Looney, for preferred stock in the company, upon the theory that the company was to be the owner of the patents.

We think, therefore, that so far as Halyburton is concerned, there is no trouble.

But it is claimed that the intervention of the Car Company makes a difference in the situation.

This company's answer, as we have seen, sets up the agreement between Halyburton and it (Schedule

A, p. 17) made the 12th of December, 1912, and claims that it acquired its rights—whatever they are—under this agreement *bona fide* and in ignorance of the complainant's alleged rights, and therefore claims to be a *bona fide* purchaser for value. This is its sole defence. The only witness produced by the Company is Mr. Dickerman, its Vice-President, who conducted all the negotiations with Halyburton, extending over a period of seven or eight months during the year 1912. He also signed the agreement as Vice President on behalf of the car company. It is uncontradicted that during his negotiations he was and became possessed of the complainant's catalogue (p. 101), and became aware that the complainant had some arrangement with Halyburton, and that a company had been organized, with which Halyburton had some deal, with the idea of manufacturing the valves. Notwithstanding this information Dickerman contented himself with Halyburton's assurance that this deal had been abandoned. The slightest precaution on his part required him to have communicated with the complainant, and ascertained if Halyburton's statements in that regard were true. Dickerman's evidence, which should be read, shows that it was this catalogue, and the name of the complainant printed thereon, that lead him to inquire of Halyburton concerning the arrangements he had with the complainant. This conversation produced information to Dickerman that it was his duty to have followed up, and if he had inquired of the company at Hampton, whose name and address appeared on the catalogue, he would have found the facts to be contrary to what Halyburton is said to have represented, although Staples swears (p. 120) that Halyburton told him he had told the car company about the arrangement. The provisions in the Federal statutes for recording patents are like our statutes with reference to recording deeds and mortgages, *and a search there is only available to bona fide purchasers without*

notice. The car company cannot escape from the evidence in this case, that before it spent a dollar it knew of the catalogue, and of the fact that the complainant had *some* arrangement with Halyburton with reference to the patents, but that it failed to follow up or pursue this information, blindly accepting Halyburton's false statements with reference thereto (see Dickerman's evidence, pp. 101, 102, 103, 104, 105 and 106). Now we insist, in view of the evidence of Dickerman, that the Car and Foundry Company is directly chargeable with knowledge of the relations of the complainant to these valves, that the catalogue and the conversation with Halyburton put Mr. Dickerman and the Car and Foundry Company upon inquiry, and charged them with the responsibility of ascertaining the exact facts in reference to the matter.

In *Haslet v. Stephany*, 55 N. J. Eq. 68, 36 Atl. 498, Vice Chancellor Pitney says:

"The general doctrine, that facts which are sufficient to put a party upon inquiry are sufficient to charge him with such knowledge as he would have acquired by a proper inquiry in the ordinary course of business, is, as I take it, thoroughly established in this State."

In *Raritan Water Power Co. v. Veghte*, 21 N. J. Eq., at page 478 (Court of Errors and Appeals), the Court said:

"An equitable estoppel will affect a subsequent purchaser to the same extent as his grantor, when he has had actual notice of the condition of things upon which it is based, or when the circumstances are such as to put him upon inquiry to ascertain the facts. The cases on this point are too numerous to cite; many are collected in the note to *LeNeve v. LeNeve*, 2 Lead. Cas. in Eq. 127. (See also 2 Am. Lead. Cas. 770, 4th ed.) Notice is either actual or constructive, and what amounts to constructive notice depends much upon the facts in each case. The recent case of *Hoy v. Bramhall* in this court, 4 C. E. Green, 563, well adopts the

general rule 'that whatever puts a party upon an inquiry amounts, in judgment of law, to notice, provided the inquiry became a duty, as in the case of Purchasers and creditors, and would lead to the knowledge of the requisite fact by the exercise of ordinary diligence and understanding.' That case also accepts the rule of Wigram, Vice Chancellor, in *Jones v. Smith*, 1 Hare, 43, that where the party has had actual notice that the property was in fact charged, encumbered, or in some way affected, the court has bound him with constructive notice of facts and instruments to the knowledge of which he would have been led by an inquiry after the charge, encumbrance, or other circumstances affecting the property, of which he had actual notice; or, as stated in the notice to *LeNeve v. LeNeve*, 2 Lead. Cas. in Eq. 160, gathered from the cases there cited, 'whatever is sufficient to direct the attention of a purchaser to the prior rights and equities of third persons, and to enable him to ascertain their nature by inquiry, will operate as notice'. And to show how far this doctrine has been applied, the case of *Hervey v. Smith*, 22 Beav. 299, is an illustration."

In *Hoy v. Bramhall*, 4 C. E. Green, 563-572 (Court of Errors and Appeals), Justice Depue says:

"In *Jones v. Smith*, 1 Hare, 43, Vice Chancellor Wigram resolves the cases in which constructive notice is established, into two classes: first, cases in which the party charged has had actual notice that the property in dispute was in fact charged, encumbered, or in some way affected, and the court has thereupon bound him with constructive notice of facts and instruments, to the knowledge of which he would have been led by an inquiry after the charge, encumbrance, or other circumstance affecting the property, of which he had actual notice; and, secondly, cases in which the court has been satisfied, from the evidence before it, that the party charged had, designedly, abstained from inquiry, for the very purpose of avoiding notice."

In *Gale v. Morris*, 3 Stew. 285 (Court of Errors and Appeals), cited by Justice Van Syckel in *U. S.*

Steel Corporation v. Hodge, 64 N. J. Eq. 815, 54 Atl. 1 (Court of Errors and Appeals), Justice Dixon said:

“The rule, so stated, has reference to those facts which lie outside of the notice itself, but which would be learned by such inquiry as a prudent man would make in consequence of the notice. If the party notified make reasonable investigation, he obtains actual knowledge of these facts; if he choose not to make it, he is charged constructively with knowledge of them. The rule merely prohibits him from taking advantage of his own imprudence to the detriment of another.”

In *Parker v. Parker*, 56 Atl. Rep. 1094, V. C. Grey said of the holder of a mortgage of prior legal record lien, but to which an equitable lien was claimed to be prior:

“Mr. Allen apparently did not see fit to make any inquiry upon the subject. Being put upon warning, and having chosen not to make the inquiry, he is charged constructively with knowledge of those facts which a reasonable investigation would have disclosed to him.”

In *Ogden et al. v. Del. River & A. R. R. Co.* (Court of Errors and Appeals), 80 N. J. Eq. 191, 83 Atl. 991, the Court says:

“Whatever puts a party upon inquiry amounts in judgment of law to notice provided the inquiry becomes a duty, and would lead to a knowledge of the facts by the exercise of ordinary intelligence and understanding.”

The position of the Car and Foundry Company is similar to that of the Iron Works Company in *Barnett Foundry Company v. Iron Works Co.*, 81 N. J. Eq. 412, and Mr. Dickerman, after receiving the notice that he did, with reference to the interest of the complainant in the patents, had no more right to ignore that information and shut his eyes to further inquiry, relying simply upon the records at

Washington, than a proposed purchaser of real estate, under the authorities above quoted, would have been justified in relying on the record title alone.

As this information was received by Mr. Dickerman during the negotiations and before he closed his deal, or spent a dollar, all steps taken by him thereafter regardless of any duty arising by him or his company were taken at their peril, and the plea of a *bona fide* purchaser for value must fail.

In order to escape from the effect of this principle, it is suggested that the complainant became aware of Halyburton's negotiations with the car company, and should have made known its claim before the latter invested its money in the project. This contention is founded wholly and solely upon the fact that after Transue—a clerk in the office of the Secretary of State, and a counsellor at law in Trenton—met Halyburton in Philadelphia the latter part of 1912, and was told by Halyburton (pp. 169, 170):

“ I (Halyburton) had negotiations with the American Car Foundry Company with the idea of getting them to manufacture these valves for me, and I thought it would go through.”

Transue replied that he hoped it would. Surely if this was the information that was given Transue, there was nothing in it to indicate that the American Car and Foundry Company was to occupy any other or different position than the other manufacturing companies did at Bristol and elsewhere, who had been employed to make the valves. Transue (pp. 226, 227), says:

“ In December, 1912, I received a telephone call from Halyburton to meet him in Philadelphia at Hotel Walton, and there Mr. Halyburton told me he closed the deal with the American Car and Foundry Company at Berwick, Pa.”

so there is nothing in the information that Transue received which indicated the making of the arrangement that was actually made, and the con-

structive notice that is sought to be imposed upon us, amounts to nothing. Transue admits that he never told Baylor of his conversation with Halyburton (p. 264). This information was acquired in December, 1912. More than a year previous thereto, namely, August, 1911 (p. 239), Transue destroyed all letters received from Baylor, because he was disgusted with him and wanted to forget his connection with the company. In other words, for a year previous to the time when Transue received the meagre information he did, touching Baylor's relations with the American Car & Foundry Company, Transue had been hostile and inimical to Baylor and the company, and so under the familiar principle enunciated in

Barnes v. Trenton Gas Co., 12 C. E. Gr. 33,
and

McKay v. Hackensack Water Co., 11 Stew.
158,

when an agent's interests are opposed to those of its principal, the presumption is that he will not communicate his knowledge, but that he will conceal it. And even if this hostility had not developed, under the circumstances of this case, whatever knowledge Transue received was not imputable to the complainant.

We contend, however, most strenuously that the complainant is in no wise bound by this conversation. True it is that Transue was at the time the President of the complainant. He had, however, no active duties, except to preside at the meetings. The active work of the company, beside Halyburton's efforts, was done by Mr. Baylor at the company's office in Hampton. Transue was a clerk in the Secretary of State's office, and had at the time the conversation occurred become very friendly with Halyburton, and so disgusted with Baylor that he tore up every letter the latter wrote him after August, 1911. The effort, under the authorities, to bind the complainant with the information casually obtained by

Transue on the occasion of his special trip to Philadelphia, in response to a telephone from his friend Halyburton, must inevitably fail. Transue at the time was in no way engaged in the company's business, and the company is in no way bound by the knowledge that Transue thus casually acquired, unless excluding Transue, it would obviously have otherwise and through other channels arrived at it. *Vulcan Detinning Co. v. American Can Co.*, 72 N. J. Eq. 387. Transue admits (p. 264) that he never told Baylor, or any one else, about the conversation, although on April 28, 1914, Baylor wrote him—"Have you heard anything of Halyburton, and do you know his whereabouts? I wish you would let me know". Halyburton admits (pp. 202, 203 and 204) that he kept both Lepper and Baylor in ignorance of his negotiations with the Foundry Company. Whether, therefore, the information concerning Halyburton's negotiations with the Foundry Company be regarded as having been casually and not officially obtained by Transue (*Vulcan Detinning Co. v. American Can Co.*, *supra*) or as received by him at a time when he was not loyally acting with his associates, but in opposition and hostility (*Campbell v. Perth Amboy Mutual Loan Ins. Co.*, 76 N. J. Eq. 347-355; *Camden Safe Deposit Co. v. Lord*, 67 *Id.* 489), the complainant is in no way chargeable with it.

It is conceded that neither Baylor nor Lepper, although they were making strenuous efforts to find Halyburton and insist upon the company's rights, had the slightest idea that the negotiations with the car company were under way until they were consummated, and Mr. Wademan notified Baylor. This was in May, 1914 (p. 76), and the bill in this case was filed in September then following.

III.

Even if the Car Company should be deemed to be innocent of the complainant's rights, the complainant is nevertheless entitled to a decree that it be substituted for Halyburton in his contract with the Car Company.

The exact nature of the interest acquired by the Car Company in its agreement with Halyburton (p. 17) is perhaps difficult of definition. The draftsman of the Car Company's answer evidently appreciated this difficulty, for on page 16 he only ventures to designate the rights acquired thereby as "any interest in the letters patent". This agreement recites that Halyburton is the owner of certain patents. It recites that the Car Company, though not then equipped for the manufacture of these patents, is to obtain the equipment therefor, and in consideration of the premises Halyburton gives to the company the exclusive right to manufacture, use and sell and to cause to be manufactured, used and sold, articles and devices embodying his inventions and also all inventions and improvements covered or intended to be covered by these letters patent and "by any and all letters patent or application therefor that shall hereafter be made, owned or controlled by Halyburton". The contract provides for the employment of Halyburton by the company for a period of five years from January 1st, 1913. There are, however, broad provisions in the contract in favor of the company with reference to the termination of the employment,—so as to put it practically within the power of the company to discontinue his employment at will. The contract provides that as long as Halyburton is employed by the company, he shall receive no sum "whether for licenses, royalties, or otherwise soever". There are

specific provisions with reference to this compensation during his employment for the first two years of the contract. The provision—however, which is probably effective now, is that he is to receive a commission of 1-1/2 per cent. on the selling price of all articles which contain the device or devices manufactured under his patents. The contract also provides that should the company cease to manufacture his articles, that its rights under the contract with reference to the patents are to be reassigned to Halyburton. The contract also provides that should Halyburton's employment be discontinued either at or before the expiration of the five-year period, that the company should nevertheless retain its exclusive rights in the patent, but that Halyburton should receive a commission of 1/2 per cent. upon the selling price of all goods sold containing the devices patented by him. It appears, therefore, plain that the contract estimate of the value of his services is 1 per cent. on the selling price and the contract estimate of the value of the royalties is 1/2 of 1 per cent. upon the selling price. It will be noted that while the right of the Car Company is exclusive, yet it may be ended at any time, and will not, necessarily, run for the life of the patent. While undoubtedly it was held by the Supreme Court of the United States in *Waterman v. Mackenzie*, 138 U. S. 252, that a conveyance of the exclusive right to make, use and sell for the life of the patent amounts to an assignment, it has, on the other hand, been distinctly held that such a right for a period less than the full life of the patent amounts to a mere license.

In *Moore, &c., Co. v. Cronk Hanger Co.*, 69 Fed. 998, it was held that an exclusive right to make, use and sell under Letters Patent throughout the United States for a period of six years, with the right upon the part of the Company granted the right to terminate the license at any time, amounted not to an assignment, but merely a license. Cox, J., said:

“The license is not for the full term of the patent, but six years only, a part of the consid-

eration being the yearly payment in semi-annual installments of \$3,000. 'as royalty or license fees'. The complainants have the right at any time to terminate said license. It is a personal license merely."

See, also, *Still v. Reading*, 9 Fed. 40, where it was held that the exclusive right to use, make and vend a new invention for a period of five years was only a license and not an assignment.

It is perfectly obvious that so long as the Car Company elects to enjoy the rights acquired under the agreement it must pay, whether Halyburton be employed by it or not, at least 1/2 per cent. royalty upon the price of all goods sold containing the patented device. Why cannot the complainant be substituted to Halyburton's rights under this agreement? He would be the principal beneficiary thereunder, because he would own the great majority of the stock, and we therefore contend that the least relief to which the complainant is entitled is a decree that Halyburton be compelled to make good his agreement with the complainant, and that it be substituted so far as royalties are concerned for Halyburton in his agreement with the Car Company.

It is, therefore, from every viewpoint, submitted that the decree below should be reversed.

Respectfully submitted,

LINTON SATTERTHWAITE,
ROBERT H. McCARTER,
Counsel for Appellant.

November Term, 1916.

New Jersey Court of Errors and Appeals.

Between

GARDNER VALVE MANUFACTURING
COMPANY,
Complainant-Appellant,

and

JOHN L. HALYBURTON and AMER-
ICAN CAR AND FOUNDRY COM-
PANY,
Defendants-Respondents.

**On appeal
from Decree
in Chancery.**

BRIEF FOR RESPONDENTS.

This controversy flows from an unsuccessful attempt by certain individuals to locate a manufacturing establishment in the Town of Hampton, New Jersey, to engage in the manufacture of certain valves known as straight-way valves with respect to which the defendant Halyburton has secured two patents—one issued in 1908, and the other in 1910.

In and before 1906 Halyburton had been working on a type of straight-way valve and was then engaged in an effort to interest capital in its exploitation (p. 175). He was at that time without the necessary capital to build a plant and manufacture his valve, but eventually drifted to Hampton, New Jersey, during the latter part of the summer of 1906.

There he met Baylor, the leading witness for the complainant and the moving factor behind this suit, and they discussed the possibility of obtaining the necessary capital for the erection of a plant at Hampton (pp. 148-9). There can be no doubt that the primary reason why Baylor became interested in this enterprise was to establish a plant in his home town. That fact appears at various places in his testimony (pp. 47; 51; 61 and 63). At page 61 he testifies as to a conversation which he said he had with Halyburton in Philadelphia in June, 1911, and says:

“I told him I had no interest in a plant at Bristol, that I went into this thing to get the works at Hampton.”

This same fact appears, furthermore, repeatedly throughout Baylor's correspondence.

From the outset and at all times thereafter, the one great object of the activities of the parties was to interest capital for the plant at Hampton. It was at that time agreed that the sum of \$100,000 cash was necessary in order to provide sufficient capital for the undertaking of this venture (p. 184). Of this sum Baylor undertook that he and his friends at Hampton would raise \$20,000, to be collected by him and deposited in the First National Bank of High Bridge, New Jersey (Defendants' Exhibit 2, p. 151; Baylor's testimony, p. 72). Baylor never raised this sum of \$20,000 (p. 73), nor was the \$100,000 ever raised (p. 225).

This sum of \$100,000.00 of working capital was to be obtained by the sale of preferred stock of the corporation which they should organize for the purpose of going into this business. From the very outset it was Halyburton's position that, under no circumstances, would he transfer his

patent to the corporation unless the necessary working capital had been procured and paid in.

This fact is not only established by the great preponderance of evidence, but is so obviously what a man in Halyburton's circumstances would insist upon that, we submit, there can be no doubt as to the fact that this condition not only existed at the outset, but was never abandoned. Why should Halyburton transfer his patent to an empty shell of a corporation without the means to build a plant and put the valve upon the market? What useful purpose could be accomplished by so fruitless a transaction? The transfer, under such circumstances, would neither get Halyburton, or any other person interested, any nearer to the object desired to be obtained than if no transfer had been made.

Following the preliminary discussions, the complainant corporation was formed in the month of October, 1906, in order to act as the vehicle through which these parties hoped to attain their purpose. A prospectus was prepared (Defendants' Exhibit 3, pp. 156-7); in which it is stated.

“For the purpose of raising \$100,000.00 expeditiously, which will be required for building and equipping the plant and also for operating expense purchasers of preferred stock will be given one-half share of common with each share of preferred purchased.

This \$100,000.00 after very careful consideration is the amount required for placing the business on a paying basis.”

This was prepared by Halyburton and by him sent to Baylor (p. 157) and Baylor mailed it to Transue at Trenton (p. 216) and Transue thereupon prepared the Certificate of Incorporation of the Gardner Valve Company.

Halyburton testified as to the verbal agreement:

“That as soon as we raised \$100,000 in cash for building and equipping a plant, at that time I would sign over my own patents to the company, when they issued to me \$100,000 of common stock personally; the understanding of course was that the whole common stock——” (p. 158).

And with respect to the balance of the common stock issued to him

“That was to go back into the treasury; fifty thousand of it was to go as a bonus with the preferred stock, and the other fifty thousand was to be used in any way the parties who subscribed the preferred stock would see fit” (p. 158).

He further testified:

“I said time and time again that I would never assign those patents to the Gardner Valve Manufacturing Company until one hundred thousand dollars cash was raised and we were ready to start business; that was understood by everybody that I ever talked to about the subject” (p. 207).

Glassey, who advanced money for this enterprise in precisely the same manner as Baylor, testified:

“If he succeeded in raising this one hundred thousand dollars, and they would start that plant, I was to get sufficient preferred stock to equal the amount of money that I gave to him; if they did not succeed in raising this one hundred thousand dollars why the thing was off; I took my chances with

that idea, and gave him the money" (p. 128).

And further with respect to his conversations with Halyburton in 1911 and 1912:

"Q. Did he tell you that the Gardner Valve Manufacturing Company owned the patents? He did, didn't he?"

* * * * *

A. He didn't tell me the Gardner Valve Manufacturing Company then owned the patents.

Q. Did he tell you he had agreed to assign them to them? A. Yes, when this hundred thousand dollars had been subscribed" (p. 136).

See also his testimony at pages 145-6; 138-9; 142; 128.

Transue, who also advanced money in the same manner as the others, testified as to what transpired at the first meeting:

"At that meeting there was discussed ways and means of raising the money and of locating the factory at Hampton, and I remember that Mr. Baylor expressed himself as being primarily responsible for two things, one was to secure certain subscriptions to stock at Hampton, and the other was the turning over of the factory site, which consisted of seven and a half acres, about, to the company" (pp. 218-9).

* * * * *

"A. That proposition was discussed, of raising one hundred thousand dollars.

Q. (By the Court.) Not what was discussed. What was agreed on? A. It was agreed to raise one hundred thousand dol-

lars by the sale of preferred stock, and to locate the plant at Hampton" (p. 220).

* * * * *

"Q. Was there any condition in the agreement, upon the transfer of the patents, for the common stock.

Mr. McCarter.—I object.

The Court.—What was said about the patents?

Q. What was said? A. That when the hundred thousand was raised—

Q. Hundred thousand of what? A. Of preferred stock was sold, Mr. Halyburton would assign his patent rights to the corporation and would receive two hundred thousand dollars of common stock" (p. 221).

Counsel for appellant argue that the "existence of the Company" was not dependent upon this condition, and that the best evidence thereof is to be found in the charter and By-Laws (p. 4). We do not claim, and never have claimed, that the existence of the Company was subject to such condition. Our contention, which is supported by uncontradicted evidence, is that the transfer of the patents was to be made only upon such condition.

Following the incorporation of this company, Halyburton employed himself in endeavoring to interest various parties and obtain the requisite amount of capital (p. 183). As he had no money of his own and as his efforts in this direction prevented him from earning his livelihood by other means (p. 204), he was put upon a small salary to cover his living and traveling expenses, etc., which

was advanced at first principally by Baylor and later by Transue, Glassey, Looney and others. That such represents the nature of the transaction there can be no doubt. Baylor has so testified (pp. 50-51; 59, 66). This money so paid to Halyburton was paid simply in the speculative undertaking of enabling him to devote his time to raising sufficient money to build a plant (pp. 51; 54).

At the outset we wish to call attention to the fact that, notwithstanding that this corporation was, in legal theory, a separate and distinct entity, it did not act as such. It had no property, engaged in no business, kept no books of account and had no tangible existence of any kind. Whatever was done, in connection with the enterprise in which it was hoped it would engage, is to be found in the informal discussions and actions of the parties interested. With the exception of a single meeting at which some stock was issued to Baylor and a resolution passed with respect to the acceptance of the proposal contained in the letter (Ex. C-2), drawn up at that meeting, no corporate action of any kind, bearing on the issues here involved, was ever had.

This is made the more apparent by the fact that complainant was wholly unable to confine its proof to acts of the corporation, as such. For example, the bill alleges that the company paid certain sums to Halyburton. The proof is that Baylor, from time to time, put his hand in his pocket and handed Halyburton various sums of money, or that he drew his individual checks to pay certain bills, both before and after the meeting of January, 1909. There was not even a pretense of having this money pass through a corporate channel. The books in which the account was kept were Baylor's private books (pp. 98-99) and not the books of the corporation.

Some time after the corporation was organized, Halyburton moved to Hampton and thereafter resided there with his family until March, 1911. His early efforts to raise capital had proved unavailing and it evidently became apparent to the parties some time during the latter part of 1908 that it would be impossible to raise such a sum as was required unless they had something tangible to show to parties whom they were endeavoring to interest. It was with this idea that they caused the catalogue in evidence to be printed and a few valves to be manufactured. Counsel for the complainant evidently consider that these facts indicate a change in the original understanding of the parties and as indicating that the original arrangement to secure the sum of \$100,000 as working capital was thereupon abandoned. No such inference is to be drawn from the facts; quite the contrary. The printing of the catalogue and the making, installation and demonstration of the valve under conditions of service were deemed necessary as a further step in the effort to secure the necessary working capital. The parties had evidently discovered that such a sum could not be obtained simply by the expression of optimistic hopes.

As testified by Transue, Halyburton asked him to advance some money "and by doing that we would manufacture the valves and create a market with a view of having some basis for raising the money for the corporation" (p. 224).

In January, 1909, a meeting of the people interested in the corporation was held at Baylor's office. It was at this meeting that preferred stock was issued to Baylor in an amount equal to the sums which he had advanced as salary to Halyburton up to that time and for various incidental expenses incurred in the enterprise. It was at this time that the letter in evidence was prepared which is designated by the counsel for complainant as the

contract. This document, however, is of the most informal nature and in the form of a letter from Halyburton to the company with endorsement of acceptance by Baylor and Transue as individuals.

Baylor has testified that he wanted such letter since he had advanced money and wanted some "protection" (p. 56). Taken in its proper sense, this is undoubtedly true. It does not, however, justify the inference, which counsel for complainant seek to draw, that this evidence of the agreement which was then drawn up in Baylor's office was freed and discharged from the condition as to the necessity of raising the \$100,000 requisite capital. The agreement to transfer on this condition constituted "protection." What Baylor said at that time is stated by Transue:

"He said he felt that, and in the event of Mr. Halyburton's death there would be nothing in writing to show that Mr. Halyburton had agreed to assign those patent rights to the corporation, and that if he died, and we went on and raised the money or the money was raised, we wanted something to show his son Fred, who would naturally have control of the patent rights.

Q. Halyburton's son Fred? A. Yes; that his father had agreed to assign these patent rights" (pp. 222-3).

As a consequence of this expression by Baylor the paper was prepared by Transue and taken to Halyburton, who had retired from the meeting and was at work in his room upstairs (p. 173), and Halyburton's signature to it was obtained as a result of the following conversation between them, as testified by Transue:

“Q. Did you draw it up then? A. Drew it up right then, yes, sir.

By the Court:

Q. What did you do with it? A. Took it to Mr. Halyburton.

Q. Why? A. For his signature.

Q. But I mean how did you come to take it to Halyburton; anybody ask you to take it to Halyburton? A. Yes, Mr. Baylor asked me.

Q. What did you tell Halyburton? A. I told Mr. Halyburton that in the event of his death Mr. Baylor was of the opinion that there was nothing to—the corporation would have nothing to show that he had agreed to assign these patent rights, that the money might be raised and nothing would be in writing to show that Mr. Halyburton had ever agreed to make the assignment” (p. 223).

Halyburton’s testimony is precisely to the same effect (pp. 166-7), and his signature to the document was procured under circumstances expressly negating any idea that this condition, which Halyburton deemed essential, was, in any respect, changed.

Both Transue and Halyburton have testified in the most positive manner that the condition, requiring that the capital be raised before Halyburton should transfer his patent, was never changed at this or any other time, and an arrangement for the immediate transfer of the patent substituted therefor (pp. 242; 185-6; 190-1-2).

The Court will notice that Baylor has nowhere testified that this condition was abandoned. He did not deny that the reason for the execution of the

document were due to his apprehensions as to Halyburton's health. Indeed his letters showed he had fears of Halyburton's death (p. 309, line 31; p. 304, line 36). He did not deny that the conversations above stated took place. All he has stated is that he wanted to have some protection and Halyburton agreed to sign the letter in evidence, which is in no manner inconsistent with the continuance of the arrangement which had always existed. The suggestion that the idea of raising the sum of \$100,000 was abandoned and a new arrangement made, is not to be found in the testimony of any witness. It is merely evolved as matter of conjecture founded on more or less ambiguous statements loosely made in a few letters later written by Transue which could not change, even if they professed to do so, the arrangement under which Halyburton was induced to sign the document.

Baylor's own letters are not consistent with the theory that the condition was abandoned.

On *February 10, 1911*, he wrote:

"I merely told Halyburton that when he once got down and out I would talk with my friends and that I did not know what they would do now but I could have interested them last fall under certain conditions. That was all that I said. Of course I don't know what he might of told you but I did say that nothing would please me more than getting out if I could do so whole. In fact I have told him that many times in the past two years. I don't believe that any one if they look up John will ever give him one hundred thousand to handle as he may think best" (p. 306).

On *July 1, 1911*, he wrote:

"Mr. Chrystie says my promise to go out

whole isn't worth anything. He says it won't cost me one cent to go with him to some able attorney. We can raise the money to carry out this proposition. We want a business and we want it here. The more I look into it the plainer it seems to me that we could go on raise the money and bring Halyburton to time" (p. 311).

The Court will notice the significance of the statement that it was only by raising the money that they "could bring Halyburton to time."

On *July 2, 1911*, Baylor again wrote:

"That fellow got all out of me that he could and then let me go to the devil, and he will still do me out of the money if he can. He has no use for anyone on earth. I said I would go out if I could go out whole. Don't you believe for a minute that I would go on the stand and swear to anything that was not true. He told me that he wanted me to stay in the other day and said he considered me a friend and said I would do more for him than any one on earth. I was to raise \$20,000 if they located the plant here and that was practically all subscribed" (p. 311).

The foregoing letters were written long *after* the meeting of January, 1909, when Halyburton signed the memorandum. Baylor was becoming more and more apprehensive that the speculation on which he had embarked would not meet with success and that he might lose his money. Throughout his constant complaints and his planning for a way to get his money back, however, there was never a suggestion that there had been

any change with respect to the condition of the necessary capital being raised. On the contrary, he repeatedly refers to this condition. Why should he so refer to it if the condition had long before been eliminated? It is simply impossible for Baylor to have written what he did in the years 1910 and 1911 if the plan involving the necessity for raising the \$100,000.00 had been abandoned in January, 1909. That suggestion is merely an afterthought owing its existence to the necessities of this suit.

Counsel for appellant makes much of the letters in evidence from Transue to Baylor (which were written about the same time as, or prior to, the dates of the foregoing letters from Baylor to him) stating that they had their rights as preferred stockholders; that his agreement would hold Halyburton; that he believed the patents to be valuable; and that, if Halyburton did not raise the money, they had their remedy.

Referring to these letters, Transue testified:

“Q. What protection did you refer to that Baylor had? A. If Mr. Baylor showed that he could raise this hundred thousand dollars, why he could always claim his right” (p. 270).

That this was thoroughly understood by Baylor is shown by his letters written during the same period of time. The fundamental necessity of raising this money is clearly shown to have always been present in the mind of every person connected with the venture.

Counsel for appellant endeavor to maintain that the short letter (Exhibit C-2) necessarily embodies all the terms and conditions of the agreement and makes much of the fact that no mention is made in that letter of the condition that the

sum of \$100,000.00 would have to be raised before the patent should be transferred.

Taking into consideration the facts surrounding the signing of this letter, the informal manner in which the parties dealt, and the fact that there were obviously other elements of the oral arrangement also left unprovided for, it is not remarkable that there was no thought of inserting the condition in the letter. That condition was always present and so thoroughly understood that the thought never occurred to Halyburton that there could be any question about it (pp. 208-9).

The understanding of the parties at all times was, further, that a portion of the common stock which was to be in form issued to Halyburton for the transfer of his patent was to be given as a bonus to the subscribers to the preferred stock (p. 220). If this instrument was intended to embody the entire arrangement between these individuals, why was not the matter of the disposal of the common stock therein, or by some other writing, provided for? The reason is obvious. None of the parties had any intention of giving to this document such ultimate and final character as that for which complainant's counsel contend.

After this meeting of January, 1909, Halyburton employed himself in the preparation of the catalogue, getting one or two valves manufactured, and in various efforts to interest parties to invest money in this manufacturing enterprise. Finally in March, 1911, the money raised for this purpose had been spent and the lack of any success caused him to abandon these efforts and he left Hampton. He went to Philadelphia and thereafter to Haddon Heights, making various efforts to interest different parties in his patents. He negotiated

with people at Pottstown, at Trenton Junction, at Pennington, and at Chester (p. 226). Transue told Baylor where he was (p. 249) and Baylor admits that he at least knew of Halyburton's negotiations at Pennington and with some Pipe Company of Philadelphia (p. 74). His counsel was also informed of the negotiations with the Cloud Pump Company at Singac Falls in December, 1911 (p. 266).

All of this was wholly inconsistent with the Gardner Valve Company project. It is true that it was hoped that some money might be realized from some of these negotiations which could be used to reimburse the parties who had lost money in their efforts to locate a plant at Hampton, but the essential feature is that they evidently contemplated other disposal of the patents and the manufacture of valves by other concerns.

All of these efforts proved fruitless, however. Finally Halyburton met the American Car and Foundry Company by responding to an advertisement which that company had inserted in the *Iron Age* (p. 103), and succeeded in interesting it in his valves. In December, 1912, the agreement in evidence (pp. 17-23) was entered into, and the Car Company created a department for the manufacture of the valves.

Baylor has testified that after Halyburton left Hampton he was thereafter unable to find him, except that he saw Halyburton in Philadelphia in June, 1911. He further stated that he sent his clerk, Staples, to Philadelphia to locate Halyburton, but Staples was unable to discover him. There is also a statement by Lepper that at some time or other he employed a detective to find Halyburton. He nowhere states however, when this was done, nor is it disclosed what, if any, efforts the detective made. These attempts to give a

somewhat sinister significance to the testimony and to endeavor to create an impression that Halyburton "disappeared" and was in hiding are completely shattered when the facts are examined.

The proof shows no attempt by Halyburton to conceal his future movements at the time he left Hampton. Baylor knew where he was and knew where he could be reached. He went to Philadelphia in June, 1911, and had a conversation with Halyburton (p. 61). His letter to Transue, written April 11, 1911, states:

"Don't imagine you have heard anything from Halyburton. It has now been three weeks since you have seen or heard from him. I am very much afraid he will land up in some job somewhere and finally say he is going to work them both together. That will end it so far as he is concerned. Of course he may have some new scheme in mind, God only knows what and I don't think he knows himself. He is stopping at his brother-in-law's, Martin Evoy, 2809 Diamond Street, Phila., and his telephone call is 455 Diamond—Bell phone" (p. 309).

And on June 9, 1911, Baylor wrote to Halyburton at 2809 Diamond street, Philadelphia, making no complaint of any kind and no inquiries as to Halyburton's past or future movements (Ex. D-5. p. 214).

On October 4, 1911, Baylor wrote to George R. Allen, evidently in reply to an inquiry received, and informed Allen that he would be likely to find Halyburton going to the offices of the West End Trust Company or the Whitehall-Tatum Company, adding: "I think he visits the latter place very often" (Ex. D-9; p. 233). It should be re-

membered that the witness Glassey was the superintendent of one of the departments of the Whitehall-Tatum Company (p. 125).

Furthermore, in July, 1912, nearly a year and a half after Halyburton left Hampton, Baylor wrote to Transue asking him to obtain certain blue prints. Transue replied asking Baylor to give him Halyburton's address, stating that the last he had heard from Halyburton was at Haddon Heights (p. 231). Baylor wrote Transue telling him to address Halyburton at Haddon Heights (pp. 230; 241). In August, 1912, Transue, in a conversation with Baylor at Hampton, told him that he had seen Halyburton in Philadelphia and Halyburton had said he had been making garden all summer at Haddon Heights (p. 232).

Glassey has shown that during the years 1911 and 1912, after Halyburton left Hampton, he was either in Philadelphia or, during the latter part of this period, at Haddon Heights; and, while he was in Philadelphia, he was to be found at the places of which Baylor knew, viz.: where he lived on Diamond street, at the West End Trust Company, or at the Whitehall-Tatum Company (pp. 131-2; 140-1; 144; 160-161).

Appellant asks the Court to draw the inference that Halyburton was hiding because Staples did not happen to find him on the two occasions when he visited Philadelphia, vaguely stated to have been in the fall of 1911 and the spring of 1912. There is no proof that Staples inquired at the residence of Halyburton's brother-in-law, where Baylor knew he lived. On the contrary, Staples' testimony is that he merely went to the Nelson Valve Company and Eynon & Evans (p. 117). Stress is laid upon the fact that Halyburton maintained no "headquarters" in Philadelphia where he could be reached (p. 141). Halyburton

had no money and could not maintain "headquarters" other than his place of residence and such fact must have been known to Baylor. Halyburton may have been temporarily out of the city at the time Staples arrived. He was not advised that Staples was coming and, therefore, why should he locate himself at some particular place upon some particular occasion of which he had no notice, at the risk of the charge that he was secreting himself?

Baylor's pretended ignorance of Halyburton's whereabouts during this period of time cannot bear close inspection. It is possibly literally true that Baylor could not have stated precisely where Halyburton was at any given moment. But the impression which is sought to be created for the purpose of this case that Baylor could not have found Halyburton, at any time he chose to make an honest effort to find him, is wholly incorrect.

The proof shows that Halyburton's family, during all of this time, resided at Hampton—his wife until August, 1912, and his son still resides there (pp. 169; 122). Why did Baylor not inquire of them where Halyburton was to be found. Baylor kept track of Halyburton's affairs to the extent even of knowing that Halyburton had sent to his wife for his spring coat (p. 308, line 14). Yet no witness for complainant has testified that inquiry was made of the members of Halyburton's family with the result of a refusal to give information, or an evasive reply.

Why did he not write to Halyburton in care of his brother-in-law, Martin Evoy, or in care of the West End Trust Company? Why did he not write Evoy asking for information? Why did he not write to Glassey, or to the Whitehall-Tatum Company, or to Looney?

It is quite obvious that there were many ave-

nues open to Baylor of which he knew, but of which he did not see fit to avail himself. As a matter of fact, although he may have had some idea of endeavoring to keep a secret watch on Halyburton's movements not known to Halyburton, he never made any attempt to reach him or get into communication with him until the year 1914 after he learned that the American Car and Foundry Company had taken up the manufacture of Halyburton's valves. Then, for the first time, he availed himself of one of the avenues of communication open to him and wrote to Mr. Looney, which immediately resulted in his being informed where Halyburton could be found. If he had any honest desire of attempting to locate Halyburton prior to that time, why did he not adopt the same method of inquiry which brought immediate results the first time he attempted to use it?

Not only are these facts clearly shown from the testimony and the documents in evidence, but Baylor's own letters to Transue during the period in which they were preserved also show that Baylor was keeping himself informed. It is true that he would from time to time, ask Transue if he knew what Halyburton was doing, but this would seem to be, which is quite in keeping with Baylor's character as evidenced by his letters, merely for the purpose of sounding out Transue and not because he (Baylor) was ignorant of Halyburton's whereabouts or of the means to reach him, for he frequently stated that he could lay his hand on Halyburton at any time he wanted him (p. 263).

For example, on *October 3, 1911*, Baylor wrote to Transue as follows:

"I am going to make another effort tomorrow to locate Halyburton; he is certainly keeping in the shade" (p. 261).

This is one of the letters on which counsel for complainant rely as showing that Baylor was entirely ignorant of Halyburton's whereabouts after his "disappearance" and was writing to Transue for information.

Yet, *on the next day* (October 4, 1911), we find Baylor writing to G. R. Allen, of Philadelphia, as follows:

"You will be more apt to find Halyburton going to the offices of the West End Trust Co., or the Whitehall-Tatum Co. I think he visits the latter place very often" (p. 233).

Is it surprising that Transue did not believe Baylor's questions as to Halyburton's whereabouts were "bona fide" or made for the purpose of obtaining information? (p. 263).

On *May 9, 1911*, Baylor wrote Transue:

"I learned to-day that Halyburton walked into Pennington, a perfect stranger, approached some people there, and told them about his valves and patents, and tried to interest them. They turned it over to a party in their town that is connected with the Pennington Post, and asked him to look up Halyburton's reputation, habits, etc., as well as the valuable patents he claims to have.

This was last week, and they have not gotten very far with the thing as yet. Halyburton stated that he had, or thought he had, some Philadelphia people interested. This don't look much like the Stamsbach people of Philadelphia" (p. 310).

It is extremely unfortunate that Transue retained none of Baylor's letters after the follow-

ing July for they would undoubtedly disclose, as do the letters which have been preserved, much that is contradictory of Baylor's testimony.

It is not strange that Transue should have finally become disgusted with the entire matter and wanted to completely forget the entire Gardner Valve Company venture (pp. 240; 269). He was constantly pestered with letters from Baylor, sometimes as many as four or five a day (p. 248), which heaped maledictions upon Halyburton and attacks upon his character, and it is small wonder that the writings of this tempestuous individual should have found the waste basket. Presumably, also, Transue believed that his duties in the office of the Secretary of State prevented him from devoting all his time to correspondence with Baylor.

Baylor's letters further show his attitude at the time when Halyburton left Hampton and thereafter. Did he complain because Halyburton did not come back, assign his patents to the Gardner Valve Company and receive the \$200,000.00 of common stock as provided in Exhibit C-2, on which this case is founded? He did not. On the contrary, he was through with Halyburton, never wanted to see him again, and was only interested in getting the money back he had lost in his speculation.

On *November 26, 1910*, he wrote:

"They are not all like J. L. H. I am afraid the other business is slipping again. He is one Hell of a man anyway. I want to get something here if I can. I lost Childs through him and I don't want to lose any more business. My only hope is those Pittsburgh people will put up the money, take him and the whole damn thing out there and give us our money" (pp. 305-6).

On *March 7, 1911*, he wrote:

“I am by no means sure that H. will be able to close with those people. They have plenty of money, if they want to go into the deal. I have just reached the point that I will be mighty glad to know of his getting money out of some one and I will get out” (p. 307).

There are many other similar statements in Baylor's letters showing that the original scheme of having the Gardner Valve Company build a plant and manufacture valves at Hampton, and of which the arrangement to transfer the patent formed a part, had been abandoned by 1911. Baylor knew that Halyburton was endeavoring to dispose of his patents elsewhere (p. 74), and, far from objecting, he hoped that Halyburton would succeed and would get money from which Baylor hoped to get back what he had lost.

Further evidence of the fact that the original plan was abandoned by all parties is, we submit, to be found in the fact that the land, which was designed as the site for the plant of the Gardner Valve Company in the event that the scheme of transferring the patents and manufacturing valves thereunder should go through, was subsequently employed for other purposes.

On *March 6, 1911*, Baylor wrote:

I would like you to go out if I do. I don't want you to be too sure we are not going on with something else here and take the property. I feel I would be better off and associated with better men which would be better in every way” (pp. 306-7).

And again on *March 30th, 1911*:

“We will take care of the factory site at Hampton too. It is useless for anyone to try to do business with him” (p. 308).

It is thus apparent that Baylor considered the use of the factory site for other purposes as inconsistent with the carrying out of the Gardner Valve Company venture. Unfortunately Baylor's letters were so voluminous that they could not be read at the time of the trial. They would, we think, have clearly shown the relevancy of the proof offered of the fulfillment by Baylor of his threat to transfer this factory site to another corporation. This was excluded by the Court (p. 236). Although not, perhaps, conclusive, the fact that Baylor procured the transfer of this factory site, the use of which constituted a part of and was bound up in the Gardner Company scheme, to the Conservation Company, another corporation in which he was interested, would seem to be persuasive evidence of abandonment, particularly when considered with reference to the other facts brought out in this case.

It is particularly significant that the majority of persons who lost their money in this Gardner Valve Company undertaking have no complaint whatever to make. Six men advanced money,—all in precisely the same manner and for the same purpose. They are, Baylor, Lepper, Transue, Glassey, Looney and Crabbs. Of these only Baylor and Lepper are instrumental in bringing this suit. The other four have no sympathy whatever with it and do not complain (pp. 128-9; 138-9; 143-4; 145-6; 162-3; 164; 227). It is impossible to believe that such could be the fact if any wrong had been done by Halyburton.

When Baylor wrote to Looney, shortly before the commencement of this suit, Mr. Looney replied as follows:

“So far as I understand the matter, your risk was simply a speculative one, and was of such a nature that Mr. Halyburton could not be held personally responsible for any loss you may have sustained. I have been acquainted with Mr. Halyburton for over twenty-seven years, and I have never known him to do a dishonest or dishonorable act” (pp. 162-3).

Messrs. Transue and Glassey have supplied the only disinterested testimony given on disputed questions. Indeed, it was more than disinterested, for they were rather testifying against their interest as any relief which the Court might give to complainant would leave them with the same claim to its benefit which Baylor or Lepper might have.

Their testimony is not to be explained by reason of any particular friendship for Halyburton. On the contrary, Transue was an old friend of Baylor (p. 216) and Halyburton was a stranger to him (p. 239). Glassey's relations with Halyburton were likewise rather of a business, and not of a personal or social, nature (pp. 139, 135).

It is quite obvious from this record that this Court would never have heard of a suit of this character if the American Car and Foundry Company had not become involved. No bill in equity for specific performance would ever have been filed if Halyburton had met with continued failure in his efforts to interest other parties in his valves. It is only after Baylor heard that Halyburton had become connected with a very large

manufacturing concern that we find him dragging forth this defunct corporation, holding the only corporate meeting had after a lapse of five and one-half years, and causing it to masquerade as party complainant in this suit.

I.

The American Car and Foundry Company is a bona fide purchaser for value without notice and the bill was properly dismissed as to it.

Of course all the defenses which Halyburton has, and which are hereafter considered in this brief, are equally available to the Car Company. If appellant has no equity against Halyburton, *a fortiori* it has none against the Car Company. At this time, therefore, we consider only the question of the Car Company as a bona fide purchaser for value.

The contract between Halyburton and the Car Company (Exhibit D-1) provides:

“Halyburton agrees to, and does hereby, give and grant unto Car Co. the exclusive right to manufacture, use and sell and to cause to be manufactured, used and sold, articles and devices embodying the inventions,” etc. (p. 18).

The legal effect of these words is that of an assignment of the patents to the American Car and Foundry Company.

In *Waterman vs. McKenzie*, 138 U. S., 252, Mr. Justice GRAY, said:

“Whether a transfer of a particular right or interest under a patent is an assignment or a license does not depend upon the name by which it calls itself, but upon the legal effect of its provisions. For instance, a grant of an exclusive right to make, use and vend two patented machines within a certain district is an assignment, and gives the grantee the right to sue in his own name for an infringement within the district, because the right, although limited to making, using and vending two machines, excludes all other persons, even the patentee, from making, using or vending like machines within the district.”

Waterman vs. McKenzie, on this proposition, was expressly approved and followed in *Macon Knitting Co. vs. Leicester Mills*, 65 N. J. Eq., 138, 148-9.

In consideration for this assignment the Car Company undertook (1) to pay to Halyburton a stated amount of compensation, which at first was to be the sum of \$250.00 per month, from which Halyburton was to pay certain expenses, and (2) to equip its Berwick plant with a new department for the manufacture of valves.

Under this contract the Car Company has not only paid a very considerable sum of money to Halyburton since the time of the making of this agreement, but had also, up to the time of the trial, expended the sum of \$96,000.00 in the valve department and had \$8,000.00 more under appropriation. This money was spent for development work, machinery, altering buildings, making patterns, drawings, etc., and accumulating a stock of valve parts, of which many had to be scrapped (pp. 110; 112).

That what the Car Company obligated itself to

do, and did, constitutes a valuable consideration, there can be no doubt.

Pomeroy, Equity Jurisprudence (3rd Ed.), Sec. 747.

This valve department had not yet proved to be profitable. A few valves had been sold in a small way which met with unsatisfactory results. Improvements were made, however, and the Car Company was ready to market the valves and hoped to put the department on its feet (p. 110).

As it is obvious that the Car Company cannot be put in the position it occupied prior to the making of this contract, and that the relief which complainant seeks will necessarily render worthless the results of an expenditure of upwards of \$100,000.00 in cash, to say nothing of a vast amount of time and labor lost, it is elementary that complainant must show the clearest and most compelling equity. It cannot request the Court to exercise the extraordinary power of specific performance after the lapse of many years upon evidence giving rise to mere suspicion or conjecture, or from which conflicting inferences may be drawn. The evidence must be clear, unambiguous and convincing to a high degree.

Of evidence that the Car Company knew of Halyburton's agreement of three years before with the Gardner Valve Company, there is none, but the positive evidence is to the contrary (pp. 104; 106). It is true that Baylor's clerk, Staples, assumed to say that Halyburton told him in 1914 that he (Halyburton) had mentioned the matter to the Car Company in 1912. This is denied by Halyburton (pp. 194-5), and the Court excluded the evidence as to the Car Company as clearly having no binding effect upon it (pp. 120; 274).

The evidence shows that the Car Company, be-

fore entering into the contract with Halyburton, made that investigation of the title to his patents upon which the business world customarily relies. It examined the records of the patent office and found the title clear (p. 104).

Section 4898 of the U. S. Rev. St. provides that all assignments, grants or conveyances of patents shall be void as against subsequent bona fide purchasers for a valuable consideration unless recorded in the Patent Office within three months from the date thereof.

Referring to this statute, the Court said, in *Campbell vs. James*, 18 Blatchf., 92, 106:

“He is a purchaser for valuable consideration, without notice of any such outstanding equitable claim to the patent, if it exists. The law relating to patents requires the title to the patent to be shown by the records of the Patent Office, and he had a right to rely upon the title there shown.”

In *Littlefield vs. Perry*, 88 U. S., 205, the Court said:

“The record is intended for the benefit of the public. Bona fide purchasers look to it for their protection.”

And in *Am., etc., Button Co. vs. Empire State Nail Co.*, 47 Fed., 741, Judge BROWN said:

“If a party takes an assignment of any interest which for any reason cannot be recorded, it is the same as if he had failed to record one that might have been recorded. The protection of the statute to subsequent purchasers applies in both cases alike. If it makes void a legal assignment of the patent itself, much more, it may be urged, should it be held to cover, by necessary im-

plication, a mere equitable transfer, as the greater includes the less. The fact that the complainant chose to take, and to rely on, a merely equitable assignment, not capable of being legally recorded, if such is the fact, cannot deprive the statute of its intended efficacy as a protection to the public against prior unknown transfers."

Appellant pins its faith solely to one circumstance in its claim that the Car Company cannot occupy the position of a bona fide purchaser for value without notice. This is that Dickerman, a vice-president of the Car Company, saw the catalogue of the Gardner Valve Company (Ex. C-3; p. 277), which these people had printed over three years before, while he was negotiating with Halyburton in 1912; and they claim that such put the Car Company upon inquiry and, in the absence of such inquiry, it acted at its peril.

It will be noted that there is no statement in this catalogue to the effect that the Gardner Valve Company claimed any ownership or interest in Halyburton's patents. The catalogue merely refers to the Gardner Company as the "manufacturer" of the valves. Dickerman formed his opinion of the merit of the valve, not from this catalogue, but from the drawings shown in the patents (p. 102).

Before passing to the question as to whether this single fact can be considered to have put the Car Company upon inquiry, there is another, though related, phase of the situation which requires comment.

Halyburton was constantly negotiating with various parties in the effort to interest them in his valves. After he left Hampton he was openly dealing with other manufacturing concerns, and

Baylor knew of at least some of these by his own admissions. Note, therefore, what Baylor says in his letters to Transue, written both a considerable period before, and after, Halyburton left Hampton.

On *March 16, 1911* he wrote:

“I believe he will do anybody on earth, if he has an opportunity” (p. 307).

On *November 26, 1910*:

“My only hope is those Pittsburgh people will put up the money, take him and the whole damn thing out there and give us our money” (pp. 305-6).

On *July 2, 1911*:

“That fellow got all out of me that he could and then let me go to the devil, and he will still do me out of the money if he can” (p. 311).

On *April 5, 1911*:

“It looks to me as if he had been laying his plans so if he failed to get the money, he would simply walk off with the valves and let us all go to thunder” (pp. 308-9).

These letters further show that Baylor, although he believed Halyburton was about to “do” other people out of their money, was nevertheless hoping that such event would occur if it resulted in him (Baylor) getting back the money he had lost.

The special significance of these letters, however, is this: Believing, as he professed to believe as early as 1910, that Halyburton was ready at any moment to throw him and the Gardner Valve Company over, and believing that Haly-

burton was likely to dispose of his patents to innocent third parties, what right had Baylor or this complainant to sit idly by and permit this alleged wrong to be committed?

Under such circumstances it was imperative that immediate steps be taken to put possible purchasers upon their guard with respect to the claim of the Gardner Valve Company. By ordinary business usage, as well as the statutes relating thereto, such notice is conveyed by the records of the Patent Office.

Granting that the letter which Halyburton signed (Ex. C-2) was not a recordable instrument, the agreement gave appellant, under its theory of this case, the right to compel a formal assignment of the patents, which could be recorded, at any time. Halyburton did not leave Hampton until more than two years after the meeting of January 30, 1909. Appellant denies the existence of any condition which could have prevented it from obtaining such assignment at any time it desired after January, 1909. What right had it to neglect to exercise this right, perfect its title, and thus render it impossible for innocent third parties to become involved, which Baylor believed was likely to occur?

The theory that one who is put upon inquiry is chargeable with notice of what a reasonable inquiry would disclose is largely founded upon his negligence in failing to make such inquiry.

Counsel for appellant would charge the Car Company with negligence because it did not diligently follow up what could be, at most, the merest shadow of a suspicion and they would visit upon the Car Company a loss of more than one hundred thousand dollars because thereof. But what is to be said about the gross negligence of this appellant that made this situation pos-

sible? If it had exercised the rights it claims to have had the Car Company would have discovered its claim of interest from the records and the situation found in this suit could never have arisen. Does it lie in the mouths of these complaining parties to so severely criticise the conduct of another, whom they would have sustain a large loss, when that loss would have been impossible had appellant exercised any proper measure of diligence on its part?

We submit that there was nothing in this catalogue which would put a person of ordinary diligence upon inquiry. We must place ourselves in the position which Dickerman occupied at the time when he was dealing with Halyburton—not in that of one who has knowledge of facts which have been testified to in this case.

Halyburton came to him, and Dickerman testifies as to what he said:

“Well, he told me that he had attempted to organize a company, and that he had been unsuccessful, that the people had not raised the money, and that he had been forced to abandon the plan, and later on tried to market the valves himself; then he had another scheme by which he would get someone to manufacture and he would sell on commission, and during this time he done a large amount of experimental work, which he told me he paid for” (p. 105).

It seems then that Halyburton at some time showed him the catalogue. There was nothing about that alone which was calculated to attract the attention of a person having no knowledge of any other circumstances tending to cast suspicion upon the truth of Halyburton's statements. It was

a mere printed pamphlet of date three years old, issued by a company as the "manufacturer" of the Halyburton valve. That company did not profess to describe itself as the owner of, or having any interest in, the patent which Halyburton had obtained. Only one patent had been issued to Halyburton at this time. The other was issued October 25th, 1910. There was no reason for inferring that an interest in the invention existed simply because a concern manufactured the article or had printed a small pamphlet describing it.

Halyburton had been negotiating with many concerns. There was no reason why Dickerman should view this Gardner Company in any different light from the others, or single it out for the purpose of special investigation, merely because some small printing had been done. He had the right to suppose that if any of these parties had acquired any interest in Halyburton's patents, they would have protected themselves in the customary manner and the records of the patent office would disclose that fact.

There was not sufficient before him to arouse a suspicion of the existence of a secret and unrecorded agreement, much less to require that a particular investigation should be made.

In the leading case of *Jones vs. Smith*, 1 Hare, 43, Vice-Chancellor WIGRAM said with respect to the necessity of inquiry:

"The proposition of law upon which the second class of cases proceeds is, not that the party charged had incautiously neglected to make inquiries, but that he had designedly abstained from making such inquiries for the purpose of avoiding knowledge—a purpose which, if proved, would clearly show that he had a suspicion of the truth,

and a fraudulent determination not to learn it. If, in short, there is not actual notice that the property is in some way affected, and no fraudulent turning away from a knowledge of facts which the *res gestae* would suggest to a prudent mind—if mere want of caution as distinguished from fraudulent and willful blindness is all that can be imputed to a purchaser—then the doctrine of constructive notice will not apply; then the purchaser will in equity be considered, as in fact he is, a bona fide purchaser without notice.”

Even assuming, however, that the facts had been sufficient to put Dickerman upon inquiry, there is still not enough to charge the Car Company with notice of the agreement evidenced by Exhibit C-2, since it is bound only by such facts as an inquiry, along the lines suggested by the circumstances, would have revealed if it had been made.

The rule is thus stated in 35 *Cyc*, 348:

“A purchaser is not, however, chargeable with notice of a fact, although a reasonable inquiry on his part would disclose its existence, unless the law casts upon him the duty of making such inquiry, and this duty exists only when he has knowledge of facts sufficient to excite such inquiry or which would naturally and reasonably be calculated to awaken a suspicion of the existence of the main fact with notice of which he is sought to be charged. No general rule can well be laid down as to what will or will not be sufficient to put the buyer upon inquiry in any particular case, but

the facts and circumstances must be sufficient to arouse the suspicion of an ordinarily prudent person, and the buyer is chargeable with notice only of such facts as by the use of ordinary care and diligence he would probably have discovered."

Notice of claims of one kind or character will not amount to notice of claims of another kind.

Wilson vs. Stewart, 69 Ala., 302.

In *Birdsall vs. Russell*, 29 N. Y., 220, the Court said:

"The rights of a purchaser are not to be affected by constructive notice, unless it clearly appear that the inquiry suggested by the facts disclosed at the time of the purchase would if fairly pursued result in the discovery of the defect existing but hidden at the time."

This catalogue could have put in motion nothing more than an inquiry as to whether, in fact, a certain concern called the Gardner Valve Company was engaged in manufacturing the Halyburton valve.

If, therefore, the Car Company had inquired as to whether the Gardner Valve Company was manufacturing the valves as the catalogue stated, the fact would have appeared that it was not; that it had no factory, and never had one, which would permit the manufacture of the valves; that it was never in business, and never had been; and that it had never in any manner manufactured any valves. In other words, a reasonable inquiry as to the facts purporting to be shown by the catalogue would have shown that the representation of the

Gardner Company as a "manufacturer" of valves was wholly false and untrue.

After those facts had developed the necessity of inquiring would have been exhausted. On those facts the Car Company could very well have assumed that either no arrangement had ever been made whereby the Gardner Company was to manufacture the Halyburton valves, or, if any such arrangement had been made, it had been abandoned. They would have found, as Dickerman said he understood, a "dead horse" (p. 107).

The claim that this catalogue alone deprived the purchase of the Car Company of a bona fide character is merely an attempt to magnify, out of all proportion, the significance of a slight and trivial incident. If matters of such kind could be permitted to upset dealings in the business world, the safety of contract would be largely impaired.

The Car Company was, in fact and substance an honest purchaser for value of these patents without notice of any conflicting rights or claims. has expended large sums and irrevocably changed its position in reliance upon its agreement, and under well established principles, has taken free from secret or latent equities.

Pomeroy, Equity Jurisprudence (3rd Ed.), Sec. 767;

Johnson vs. Hubbell, 10 N. J. Eq. 332;

Stanhope vs. Earl Verney, 2 Eden. 81, 85;

Jerrard vs. Saunders, 2 Ves., 454-458.

The rule has been applied many times to transfers of patents held to be taken free from all prior

equitable claims thereto, including executory agreements to assign.

Regan Co. vs. Pacific Co., 49 Fed., 68;

Eastern Dynamite Co. vs. Keystone Co., 164 Fed., 47;

National C. R. Co. vs. Watch Co., 129 Fed., 114;

Wright vs. Randall, 8 Fed., 591;

Faulkner vs. Empire Co., 67 Fed., 913;

Am. Button Co. vs. Empire Nail Co., 47 Fed., 741.

II.

The contract, evidenced by the letter (Exhibit C-2) and the resolutions of the directors of the Gardner Valve Company, cannot be enforced since no valuation was placed upon the property to be transferred for an original issue of stock of the corporation.

Appellant must stand or fall on the sufficiency of the acts of the parties in January, 1909, to constitute a valid and binding agreement. If there was, at that time, no valid acceptance by the corporation of the proposition contained in the letter, and a binding contract then made, the proposal of Halyburton consisted only of an unaccepted offer which has since been revoked by his acts inconsistent therewith and which are known to appellant.

We have, therefore, a letter from Halyburton

to the Gardner Valve Company, dated January 30th, 1909, in which he agrees to sell and assign his applications for patents, and the letters patent when granted if the corporation would issue to him 7,996 shares of its common stock, which stock was of the par value of \$199,900.

Then the board of directors of the Gardner Valve Company met. The directors at the time were Transue, Baylor and Halyburton (p. 35). Halyburton had retired from the meeting and the other two passed the following resolution:

“On motion of Frank Transue, the proposition of John L. Halyburton was accepted and the secretary directed to notify him that when the actual assignments covering all patents issued and applied for at the date of this meeting were made to the corporation there would be issued to him or such persons as he might nominate, common capital stock of this company amounting to 7,996 shares. On motion of E. P. Baylor the meeting was adjourned” (p. 37).

Thus it was resolved to make an original issue of stock of this company of the par value of \$199,900 in exchange for property. There was no action of the directors fixing the value of the property to be received at this large sum. Objection was duly made by counsel for defendants to complainant's proof on this ground (pp. 37-8; 83; 74).

Counsel for complainant endeavored to remedy the defect by having Lepper testify on the trial that, in his opinion, the value of the patents was equal to the par value of the stock to be issued. Although Lepper is styled as an “engineer,” he was not a man of education, having no degree and never having graduated from any institution (p.

91). That his opinion is of no value upon this subject is apparent from the fact that he had no knowledge of the condition of the valve art shown by other patents (p. 92), and confessed his inability to "go into details" in order to justify the opinion he gave (p. 93).

All this, however, is quite beside the point. Where an original issue of corporate stock is to be made for property instead of for cash, the valuation of that property, to justify the issue, must be made by the board of directors of the corporation, sitting as a board. The individual opinion of a person, given years later, cannot be substituted therefor, particularly where such person not only did not attend the meeting in question, but never attended any meeting of the board of directors (p. 91).

Counsel for complainant also endeavored to get Baylor to testify to the same effect, but were unsuccessful. In response to their questions, Baylor gave the following evidence:

"Q. The number of shares he was to get; how did you reach the value? A. What determined his value in the thing?

Q. Just pay attention to my question. Did you draw up figures and have him come down to 7996? A. There wasin't anything of that kind done at all; he fixed it just as he wanted it.

Q. The figures 7,996 were his figures? A. Yes" (p. 48).

Section 48 of the General Corporation Law of New Jersey provides that except as thereafter provided, "nothing but money shall be considered as payment of any part of the capital stock of any corporation."

Section 49 then provides:

“Any corporation formed under this act may purchase mines, manufactories or other property necessary for its business, * * * and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full-paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this act; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased shall be conclusive.”

We have, therefore, a statutory requirement which must be complied with before stock can be legally issued in exchange for property. We are not at liberty to indulge in presumptions as to what the directors of the Gardner Valve Company would or would not have done had the question of fixing a valuation upon the property been considered. There is no basis for the legal issue of this stock, if, *in fact*, they did not, comply with the statute.

In *Easton Natl. Bank vs. Am. Brick & Tile Co.*, 70 N. J. Eq., 740, PITNEY, J., said:

“The express prohibition of Sec. 54 and the whole spirit and policy of the act are so clearly opposed to any arrangement by which corporate stock shall be issued without receipt by the company of an equivalent in value to its par, that any agreement to this effect must be deemed void as contrary to the policy of the law. If any doubt has existed upon this question it must be taken as settled by the decision of this

Court in *Volney vs. Nixon*, 68 N. J. Eq., 605, 60 Atl., 189.”

In *Ecuadorian Assn. Ltd. vs. Ecuador Co.*, 71 N. J. Eq., 757, the Court of Errors and Appeals said with respect to the issue of stock for property:

“Moreover, the board of directors of the Ecuador Company never adjudged, even in form, that the value of the Ecuadorian Association stock to be acquired from Pruyn was equal in value to the nominal par of the Ecuador Company stock to be issued therefor. * * * If Pruyn had sought an enforcement of the agreement, the company might properly have said that it was without power to issue fully-paid stock for the consideration proposed. *Donald vs. American Smelting Co.*, 62 N. J. Eq. (17 Dick.), 729.

In an action by the company or its receivers Pruyn may, with equal propriety, urge the illegality of the contract in his defence. *Volney vs. Nixon*, 68 N. J. Eq. (2 Robb.), 605.”

In *Volney vs. Nixon*, 68 N. J. Eq., 605, the Court of Errors and Appeals said:

“Assuming the facts to be as the complainant insists, he is not entitled to the aid of this Court.

It must be remembered that under the laws of New Jersey the stock of a corporation can be originally issued for property purchased only to the amount of what is *honestly deemed by the directors* the value of the property. *Donald vs. American Smelting Co.*, 62 N. J. Eq. (17 Dick.), 729.

The evidence in this case satisfies us that

the contract set up by the complainant was in violation of this statutory policy; that there was no honest judgment on the part of anybody that the property for which it was intended that the company should issue \$350,000 of fully-paid stock was really worth that sum of money.* * * Although in the whole venture the parties seem to have expended about \$32,000, no income was obtained and no business was established, nor was it demonstrated that the processes of manufacture invented and patented by the complainant had any substantial value. * * * From these circumstances the only rational inference as to the worth of the property which these parties were about to exchange for corporate stock, is that it had but little value in comparison with the sum represented by the stock to be issued therefor. No one, by the exercise of honest judgment, did or could appraise that property at \$350,000."

In *Donald vs. Am. Smelting & Refining Co.*, 62 N. J. Eq., 729 (48 Atl., 771), the Court of Errors and Appeals said:

"The language of section 49 is even more explicit: The corporation may issue stock to the amount of the value of the property. The value of the property in the one case, just as the value of the money in the other, must at least equal the face value of the stock."

After stating that the judgment of the directors on value is not necessarily conclusive but subject to review, the Court continued:

"Their honest judgment, if reached with-

out due examination into the elements of the value, or if based in part upon an estimate of matters which really are not property, or if plainly warped by self-interest, may lead to a violation of this statutory rule, as surely as would corrupt motive.

* * * But the original issue of corporate stock is a special function, in the exercise of which the legislature has fixed the standard to be observed, and it is the duty of the courts, so far as their jurisdiction extends, to see that this standard is not violated, either intentionally or unintentionally. When corporate stock has once been issued for property purchased, then the legislature has directed the application of a different rule. * * * Under these provisions, after the property has been purchased and the stock issued therefor, nothing short of actual fraud in the transaction can impair the right of the holder to hold his stock as full-paid stock, free from further call."

Accord:

Ecuadorian Assn. vs. Ecuador Co., 70
N. J. Eq., 277, 289.

And in *Carver vs. Southern Iron & Steel Co.* (N. J. Eq.), 78 Atl., 240, 246, the Court referred to any arrangement contemplating the issue of stock for less than its true value as "a matter not only illegal and against public policy, but intimated to be almost immoral," and further stated that the Court should put this principle in operation whenever it is appealed to.

The mere fact that the board of directors voted to issue approximately \$200,000 par value of stock for the patent is no indication that the board actually placed a valuation of \$200,000 upon it.

If it was their intention, that fact must affirmatively appear in order to render their action valid.

In this case no presumption can exist. It cannot even be inferred that there might have been an intention to value the property at this sum since it affirmatively appears, from complainant's testimony, that the board of directors did *not* consider the subject. That no judgment of the board could have been expressed is shown by Baylor's testimony that Halyburton "fixed it just as he wanted it," and that the figures were "his figures" (p. 48). In other words, the amount was fixed at whatever valuation the seller of the property saw fit to place upon it. It is impossible that such can be deemed to constitute compliance with this statute.

Counsel for appellant urges that, though there was no lawful action by the directors, the Court should at this time endeavor to form some opinion of the value of this patent from the meagre evidence upon the subject, and cite *Holcombe vs. Trenton White City Co.*, 80 N. J. Eq., 22; *affd.* 82 N. J. Eq., 364, as authorizing the subsequent validation of an executory contract to issue stock where no proper appraisal was made by the board of directors.

Not only does the well-considered opinion in that case not justify the contention of counsel, but it stands for the principle, quite in harmony with the cases cited above, to the contrary effect.

That case involved a suit brought against stockholders to recover unpaid subscriptions on their stock upon the ground that it had been improperly issued as full paid for property. There had been a meeting of the stockholders of the company which voted to issue the stock as "full paid" in exchange for the property, the resolution stating,

not only that the property was very valuable, but that it was "indispensable" to the corporation. This meeting, however, did not expressly fix any valuation. The stockholders' meeting was followed by a meeting of the board of directors which passed a similar resolution, and, in addition, expressly appraised the property at the amount for which the stock was to be issued. This directors' meeting, however, was improperly held, since notice thereof had not been given and two directors were absent.

There was, therefore, the absence of any valid resolution of the board of directors appraising the property, and it was the absence of such action which furnished the entire foundation for the decree against the stockholders. It is apparent from the opinion that no judgment against them would have been given if the resolution had been validly passed. The Court acquitted the individuals concerned of any bad faith or improper motive, but was forced to hold that the stock could not be considered as "full paid" assigning as one of the reasons therefor the absence of any "actual appraisal of the property by the board of directors as contemplated by the statute" (p. 147).

The liability of the stockholders having thus been found, it remained to determine the amount for which they were liable. They were not liable for the full amount of the stock for which they had subscribed since the property had been conveyed to the corporation and was of some value. They were entitled to credit for that and were liable to account only for the deficiency, and the Court thereupon inquired into the question of value, not for the purpose of effecting a validation of the contract for the original issue, which was concededly invalid, but solely for the purpose of determining the amount for which the stockholders should receive credit.

This fact would have appeared from the quotation set out in appellant's brief had they not broken off in the middle of a sentence. The full quotation follows:

"If the directors had inventoried this lease and appraised it according to its rental value, but in doing so had given it a value in excess of that which it actually had, their judgment, in that regard, would not be reviewed by this Court unless the overvaluation was so great as to shock the conscience. But the directors did not do that, and as it now devolves upon the Court to perform the duty which they neglected, the Court will have to exercise its judgment now as of the time when they should have acted, in substitution for the judgment that they should have formed; and under this view the credit to be given to the stockholders by reason of the transfer of the lease to the company must be limited to the then fair value of the lease."

Acting upon the assumption that the Court will inquire into value in order to render valid the action of the directors, which was concededly invalid as left by them, counsel for appellant argue that the patents involved in the case at bar were worth the sum of \$200,000. There are no facts upon which to base a finding to this effect, however, even if the matter were open for discussion. Neither counsel nor the directors of the Gardner Valve Company appear to have had any knowledge whatever as to the scope of the patents or the extent to which its claims may be sustained. A patent may be, and frequently is, so limited in its advance upon the prior art that anyone can make substantially the same article, with but

slight alterations, without incurring the slightest danger of infringement.

Counsel refer to the Bell Telephone and the experience of Senator Dryden as indicating that great inventions frequently met with slight interest at the outset. That may be true, but the converse does not follow that all patents are likely to be of great value for that reason. On the contrary, probably most of the hundreds of thousands of patents on file are of little value. The remarks of *Judge COXE*, who has particular learning and experience in patent law, in *E. Bement & Sons Co. vs. La Dow*, 66 Fed., 185, are especially significant:

“It should also be borne in mind that no property is so uncertain as ‘patent rights’; no property more speculative in character or held by a more precarious tenure. An applicant who goes into the patent office with claims expanded to correspond with his unbounded faith in the invention, may emerge therefrom with a shriveled parchment which protects only that which any ingenious infringer can evade. Even this may be taken from him by the Courts. Indeed, it is only after a patentee has passed successfully the ordeal of judicial interpretation that he can speak with any real certainty as to the scope and character of his invention.”

The only expression of opinion in the case at bar to the effect that the patents were worth the sum of \$300,000, was that given by Lepper. He admitted that he had made no investigation of the patent art (p. 92, line 35) and admitted his entire inability to “go into details,” (p. 93, line 18), which was only another manner of stating that

he had no knowledge whatever of the valid scope of Halyburton's patents.

Counsel also rely upon some loose statements that the patents were "very valuable," and the like. Such are entirely worthless for the purpose of this case. To justify the issue of \$200,000 of stock they must be shown to be worth *that sum*. They might be worth less than half the sum of \$200,000 and still be "very valuable" in the opinion of those making such statements.

Finally the experience of the Car Company justifies no such appraisal. It did not undertake to pay Halyburton any such sum as \$200,000 for these patents. It is true it has spent upwards of \$100,000 on its valve department, but this is obviously greater than originally anticipated for the valve did not work properly in the form originally designed by Halyburton as shown by the fact that this expenditure included from ten to twelve thousand dollars of valve parts manufactured, which had to be scrapped as an actual loss (p. 112).

The Car Company undoubtedly hopes to make a success with them and has made improvements with that end in view. It believes the valve to be a good one, but the fact remains, however, that up to the present time, these valves have not been successfully sold by the Car Company or by anybody else (p. 110, line 22).

The question, however, is not to be tested by subsequent events (see *Holcombe* case at p. 152) but by what existed at the time when the resolution to issue the stock was made. At that time the second patent, which counsel concede is the more valuable, was not even in existence. The only patent Halyburton then had was the first one which appears to be of no particular value as the Car Company does not even mention it in its catalogue (see p. 284). No proper valuation of

\$200,000 was then made, or could have been made, nor was it even professed to have been made.

Here the Court was asked to lend its active aid, and decree specific performance of a contract in which the statutory requirements have not been observed and the non-observance of which makes consummation of the transaction illegal. The mere statement of such a proposition carries its own answer.

III.

Complainant is barred from any right to equitable relief by reason of its laches.

The alleged agreement was made in January, 1909. The bill was filed September 22nd, 1914, or nearly *six years* thereafter and three and a half years after Halyburton left Hampton. The excuse for this long delay, as stated in the bill, is that complainant did not know what became of Halyburton after he left Hampton and awaited his return in order to perform his agreement with it. No excuse whatever is offered with respect to the delay of more than two years prior to Halyburton's departure from Hampton.

As we have shown by the evidence, however, this pretense of ignorance is wholly destroyed by the proof. There can be no doubt but that it was within the power of the complainant to have reached Halyburton at any time during the three and a half years after he had left Hampton if it had made an honest effort to find him through the channels at its disposal. There can be no doubt but that this delay constituted inexcusable laches,

particularly in view of the fact that rights of third parties have intervened.

The bill was, furthermore, not filed until nearly two years after the time when Halyburton concluded his contract with the American Car and Foundry Company. That complainant is charged with notice of the making of this contract is, we submit, amply sustained by the proof.

The evidence shows that immediately after the contract with the Car Company had been concluded, Halyburton notified Mr. Transue of that fact (pp. 226-7; 228). Transue was, at that time, the president of the Gardner Valve Company, and notice to him must be considered notice to the complainant corporation.

Counsel for appellant argue that such cannot constitute notice to the corporation because the officer to whom it was given had at that time an antagonistic feeling toward the corporation and it could not, therefore, be presumed that the notice would reach the corporation itself.

The only reason they advance as tending to show that Transue was hostile toward the corporation is that he did not preserve the numerous letters which Baylor wrote to him after July, 1911. This indicates no spirit of antagonism toward the corporation itself or to its affairs. That he may have become disgusted with the constant stream of letters pouring in upon him from Baylor, and did not deem it worth while to save them, shows no feeling of hostility toward the Gardner Valve Company and raises no inference that he would act against the interests of the corporation in which he had invested his money.

As a matter of fact, at the time when Halyburton wrote to Transue of the arrangement he had made with the Car Company, Transue then was, and Halyburton must have so regarded him as, a friend

of Baylor. Transue's friendship with Baylor was not broken until 1914 (p. 249). There was, therefore, no reason why Halyburton should not believe that Transue would have informed Baylor of his arrangement with the Car Company. Transue was Baylor's friend rather than his.

The fact that Halyburton did not write to Baylor himself was obviously not due to any design on his part to conceal from that individual what he had done. His relations with Baylor had apparently been for some time of a most unpleasant character. Baylor had for several years maligned him and attacked his character. The letters which Baylor wrote to Transue contained many statements which, if unfounded, are very close to libelous. He attacked Halyburton, his habits, his honor, his character and his reputation. We may say in passing that it is quite apparent that these attacks were without justification and that Baylor's opinion of Halyburton was never shared by the other parties connected with this Gardner Valve Company venture. Looney, Glassey, Transue and Crabbs (all of whom lost money in this undertaking as well as Baylor) have obviously not believed that the slurs which Baylor has cast have any justification in fact.

Under these circumstances it cannot be said that Halyburton was required to notify the complainant corporation by communication with one particular individual who had so deservedly proved to be obnoxious to him. He had every reason to believe that the information which he was transmitting to one of the other parties interested, with whom he had no unpleasant relations, would be sufficient. We therefore submit that, since the corporation could acquire notice only through its officers, and since such notice was given to an officer quite competent to receive it,

the corporation must be charged with notice of the fact that the Car Company had acquired the Halyburton patents in December, 1912, whether or not Transue discussed the matter with the other individuals.

Such being the case, we submit that it constituted further inexcusable laches that this corporation should have waited for a period of nearly two years, during which time the life of the patent was running and the Car Company was investing constantly increasing sums of money, before filing its bill.

Counsel for appellant argue that the delay is excusable because Baylor and Transue probably believed that Halyburton's efforts to interest third parties in his patents, after he left Hampton, were in pursuance of a scheme outlined in a letter to Lepper written three years before (Ex. C-8; p. 280), to the effect that they cause the valves to be manufactured by outside parties, the difference between the cost of manufacture and the selling price to be paid to the Gardner Valve Co. This professed to be merely a temporary expedient for that time, Halyburton stating: "If I can show that we can hold our own this way Baylor and Transue will raise the money for a plant next year" (p. 281, line 30).

This suggestion, made in 1908, was apparently merely one of a number of suggestions advanced from time to time. The sample valves which were built with the money advanced by Baylor and Transue were merely designed to assist in raising capital (p. 185).

There is nothing to show that, when Baylor and Transue knew of Halyburton's efforts to interest third parties in his patents three years later, they associated such efforts with this statement in Halyburton's letter to Lepper of 1908. That is a

mere assumption of counsel for appellant. There is not a word of testimony from Baylor that he indulged in any such supposition. When he wrote in May, 1911, to the effect that he had heard that Halyburton was endeavoring to interest people at Pennington in his patents and endeavoring to get money from them (pp. 309-10), how could he possibly have believed that Halyburton was arranging for the manufacture of the valves under the 1908 suggestion? That did not involve the getting of money by Halyburton for his patents.

Again, when Baylor wrote, on April 5, 1911: "It looks to me as if he had been laying his plans so if he failed to get the money, he would simply walk off with the valves and let us all go to thunder" (pp. 308-9), did that indicate a belief that Halyburton's dealings with third parties were in an effort to carry out this 1908 suggestion?

It is said that Transue probably thought, when he heard in 1912 that Halyburton had closed his deal with the Car Company, that it probably was the consummation of this 1908 suggestion. There is not the slightest evidence to support such an inference. If Transue thought what counsel ask the Court to believe he thought, why did he not inquire, during the following period of two and one-half years, what profits were being made for the Gardner Valve Co. upon the sale of the valves? It is impossible that he could have indulged in such belief without making immediate and further investigation into the nature of the deal Halyburton made with the Car Company.

It is obvious that, in the effort to make Halyburton's negotiations with third parties, after he left Hampton, appear to harmonize with the continued existence of the arrangement to transfer the patents to the Gardner Valve Co., counsel are

arguing, not upon the facts as they were, but as they would like them to have been.

Since the relief of specific performance is not a matter of right, but rests in the discretion of the Court, it has been frequently held that unexcused delay on the part of complainant will deprive him of right to relief.

Young vs. Young, 45 N. J. Eq., 27.
Ketcham vs. Owen, 55 N. J. Eq., 344;
Pyatt vs. Lyons, 51 N. J. Eq., 308,
 314;
Gall vs. Gall, 64 Hun, 600, 603; affd.
 138 N. Y., 675;
Davison vs. Davis, 125 U. S., 90;
Peters vs. Delaplaine, 49 N. Y., 362;
York vs. Passaic Rolling Mill Co., 30
 Fed., 471;
Ringler vs. Jetter, 35 Misc., 750.

In *Pyatt vs. Lyons* (*supra*), the Court stated that the party seeking specific performance "must show himself ready, desirous, prompt and eager to perform the contract on his part."

In *Haughwout vs. Murphy*, 21 N. J. Eq., 118, the Chancellor said:

"It is the doctrine of equity that specific performance will not be decreed in favor of a complainant who has been guilty of laches, either in performing his part of a contract, or in applying to the Court for relief. Lord Chancellor CRANWORTH says, in *Eads vs. Williams*, 4 DeG., McN. & G., 691; 'Specific performance is relief which this Court will not give unless in cases where the parties seeking it come promptly, and as soon as the nature of the case will permit.' And he

quotes with approbation *Watson vs. Reid*, 1 Russ. & M., 236, in which Sir JOHN LEACH considered a delay of twelve months unaccounted for, a ground to refuse relief; and *Southcomb vs. The Bishop of Exeter*, 6 Hare, 213, in which Vice-Chancellor WIGRAM held, that delay in bringing suit from February, 1842, to August, 1843, was fatal to relief."

N. Y. Paper-Bag Co. vs. Union Co., 32 Fed., 783, bears some resemblance to the case at bar. The facts were as follows:

Leinbach & Wolle and Deering were prosecuting applications for patents on paper bags which were adjudged interferences with each other. They then entered into a contract in January, 1880, by the terms of which Leinbach & Wolle withdrew their application and Deering was to proceed to obtain his patent, and when issued, was to transfer it to plaintiff corporation, then to be organized, for \$10,000 of its capital stock.

Leinbach & Wolle proceeded to form plaintiff corporation, but encountered difficulty in getting people interested and did not succeed in finally organizing the plaintiff company until December, 1884.

In the meantime, however, Deering became impatient and entered into negotiations with defendant and finally sold the patent to it for \$500 in April, 1881, and the assignment was recorded. Plaintiff thereafter tendered its stock, and brought action for specific performance. The bill was dismissed, the Court saying:

"Ordinarily time is not of the essence of contracts respecting either real or personal property. In special instances, how-

ever, it is. Here the circumstances were such as seem to have required prompt action. the life of the patent was running, and the lapse of every month tended to diminish its value. No precise time was specified for performance. The assignment was to be made to a company then 'about organizing.' It follows that Leinbach & Wolle were entitled to a reasonable period to organize the company, and no more. When organized, it was their duty to pay the consideration, and take the assignment. Some 15 months elapsed between the date of the contract with Leinbach & Wolle and the assignment of the defendants, a delay which, as before suggested, would be fatal to the plaintiff's claim, in the absence of proof that Deering acquiesced in it. He certainly led Leinbach & Wolle to believe he acquiesced; and the effect is the same as if he did. Subsequently to the assignment, however, there is no evidence that he justified Leinbach & Wolle in believing he continued to acquiesce. He declined to answer their communications, or to have any intercourse with them. His acquiescence after this event, however, would have been immaterial. The defendants had his title, and stood in his stead. They did not acquiesce in the delay. Leinbach & Wolle must be treated as having notice of this assignment, which was promptly recorded; and yet they allowed a year to pass without offering to perform. It is no excuse to say they were unaware of the record. * * * The situation required a high degree of vigilance, the exercise of which would have led to a discovery of the assignment soon

after its execution. Conceding that Leinbach & Wolle had a right to call for the execution of an assignment to themselves, instead of the company specified on paying the consideration, at the time of their tender in April, 1882, they were therefore too late, in our judgment, to be justified in demanding specific performance."

Appellant urges that *Harrigan vs. Smith*, 57 N. J. Eq., 635, is authority to the effect that its laches should not defeat its bill.

The facts of that case were entirely different from those of the case at bar. In that case the patentee had not changed his position during the period of delay and no intervening rights of a third party had accrued prior to the commencement of suit, so no particular injury was suffered because of the failure of the complainant to apply more promptly for equitable relief. Even so, the Court of Errors and Appeals admitted that the opinion below was "cogent" and "convincing" upon the subject of laches, but added that there was no objection in that particular case to enforcing the contract notwithstanding the delay.

In the case at bar, the patentee has transferred his invention, rights of an innocent third person have intervened under a contract with the patentee, and over \$100,000 has been expended under such contract. The cases are not similar.

Appellant further urges that the Court had no right to consider the complainant's laches, because laches was not pleaded by defendants. The only authority cited is *Ruckman vs. Decker*, 23 N. J. Eq., 283. That case has no bearing as it involved only the question of the necessity for pleading the Statute of Limitations.

Laches stands upon an entirely different ground. It is not so much a defense to be established by the defendant, but rather the necessity of showing freedom from laches is a part of complainant's case. The complainant, in equity, seeks to invoke the conscience of the Chancellor in his behalf, and, before that can be done, he must first establish the fact that he has shown all reasonable diligence on his part.

The practice in equity in the Federal Courts originates, as does the equity practice in this state, in that of the Court of Chancery of England (*Foster's Federal Practice* [5th ed.], §§81; 84), and the decisions of the Supreme Court of the United States upon this subject are, therefore, quite pertinent:

In *Sullivan vs. Railroad*, 94 U. S., 806, the Court said:

“To let in the defense that the claim is stale, and that the bill cannot, therefore, be supported, it is not necessary that a foundation shall be laid by any averment in the answer of the defendants. If the case, as it appears at the hearing, is liable to the objection by reason of the laches of the complainants the Court will, upon that ground, be passive, and refuse relief.”

Accord.

Richards vs. Mackall, 124 U. S., 183;
Badger vs. Badger, 2 Wall., 87, 95;
Natl. C. R. Co. vs. Union Co., 143
 Fed., 342, 346.

IV.

The complainant is estopped to deny that the scheme for transferring the patents to the Gardner Valve Company was abandoned and that the Car Company acquired a valid title to the patents.

It was obviously the understanding of all of the parties interested in the Gardner Valve Company that, in the spring of 1911, the plan of raising the capital necessary to build a plant, of taking over the patents from Halyburton, and the manufacture of the valves at Hampton, New Jersey, was found to be impracticable.

This conclusion was reached at the time when Halyburton gave up his efforts to secure capital for the plant at Hampton and left that place in order to negotiate with other parties and with other manufacturing concerns located elsewhere.

It is obvious that if the original understanding, evidenced by Exhibit C-2, was abandoned by the parties, such fact constitutes a complete defense with respect to both defendants.

In *Huffman vs. Hummer*, 18 N. J. Eq., 83, the Chancellor said:

“When the complainant has, by parol, waived or discharged a contract, and the defendant, by such action, has entered into obligations inconsistent with its performance, it is an equity that will bar the remedy by specific performance.”

In *Stoutenberg vs. Thompkins*, 9 N. J. Eq., 332, the Court said:

“A written contract may be abandoned

by parol, if not so as to destroy the rights of the parties at law, at least so far as to constitute a good defense to a bill for specific performance. So if it has been varied by a subsequent parol agreement, which has been carried out, and so acted upon by the parties that the written agreement cannot be enforced without injury to one party, it is a good ground of defense, and may be proved as such."

Accord:

Meidling vs. Trefz, 48 N. J. Eq., 638;
Railroad Co. vs. Trimble, 77 U. S.,
 367.

It is true that Baylor has testified that he has never had any intention of abandoning his interest. The facts which the record discloses, however, with respect to his conduct, both before and after the time when Halyburton left Hampton, clearly show that he is equitably estopped from making such a claim.

He believed, or suspected, as his testimony and letters show, that Halyburton was endeavoring to interest other concerns in his patents and he knew of at least two of the negotiations in which Halyburton engaged after he left Hampton. He further knew that those negotiations, if successful, would probably result in a transfer of the patents by Halyburton to some third party.

Notwithstanding all this, we find him making no objection and apparently quite willing that these transactions should be completed, provided only that he (Baylor) got back the money which he had lost.

It is true that he did not know of the particular negotiations which Halyburton had with the

American Car and Foundry Company, but he did know that Halyburton was dealing with third parties in general. Under such circumstances, it was his obvious duty to have prevented the consummation of the alleged wrong so far as *any* third party was concerned. The fact that he was ignorant of the identity of the particular third party who ultimately purchased the patents should make no difference in this respect. By reason of his silence at a time when he should have spoken, he is equitably estopped from denying the acquiescence which his conduct at that time apparently showed.

It is likewise true that Baylor is equitably estopped so far as Halyburton is concerned. Halyburton left Hampton with the obvious belief that the Gardner Valve project had been a failure and had been abandoned, and that belief was reflected in his subsequent conduct when he was endeavoring to dispose of his patents to third parties. If Baylor had any objection to make because of Halyburton's efforts to dispose of his patents, he should have made them at the time. Halyburton evidently believed that the old deal was off and there is nothing to show that Baylor indicated, in any manner to Halyburton that he objected or that Halyburton was committing any wrong. We find no effort by Baylor to interfere with Halyburton's negotiations or to notify the parties with whom he was dealing and of many of whom Baylor knew, that the Gardner Valve Company claimed any interest in the Halyburton patents.

Baylor is therefore not in a position to deny that Halyburton had the right to believe that the Gardner Valve venture had been abandoned when his silence gave apparent acquiescence.

In *Pomeroy, Equity Jurisprudence*, Sec. 818, the author says:

“Acquiescence consisting of mere silence may also operate as a true estoppel in equity to proclude a party from asserting legal title and rights of property real or personal, or rights of contract. The requisites of such estoppel have been described. A fraudulent intention to deceive or mislead is not essential. All instances of this class, in equity, rest upon the principle: If one maintain silence when in conscience he ought to speak, equity will debar him from speaking when in conscience he ought to remain silent. A most important application includes all cases where an owner of property, A, stands by and knowingly permits another person, B, to deal with the property as though it were his, or as though he were rightfully dealing with it, without interposing any objection, as by expending money upon it, making improvements, erecting buildings, and the like.”

In *Kirk vs. Hamilton*, 102 U. S., 68, Mr. Justice HARLAN said:

“The same principle is thus stated by Chancellor Kent in *Wendell vs. Van Rensselaier*, 1 Johns. Ch., 344: ‘There is no principle better established, nor one founded on more solid considerations of equity and public utility than that which declares that a man who, knowingly, though he does it passively, looks on and suffers another to purchase and expend money on land under an erroneous opinion of title, without making known his own claim, shall not be permitted to exercise his legal right against such person. It would be an act of fraud and injustice, and his conscience is bound by this equitable estoppel.’”

In *Crawford vs. Bertholf*, 1 N. J. Eq., 458, the Court said:

“It is a general rule in equity that where a person having rights, and knowing these rights, sees another person take a mortgage upon property without disclosing his title, he shall not be allowed afterwards to set up his title to defeat the mortgage. Thus, if a first mortgagee stand by and suffer a second mortgagee to advance his money, on the supposition that he is about to have the legal estate, without disclosing his own prior incumbrance, it is an acquiescence in the transaction, and the sufferance of a fraudulent treaty to go on, for which he will lose his priority.”

In *Rothschild vs. Title G. & T. Co.*, 204 N. Y., 458, the Court said:

“Where a person wronged is silent under a duty to speak, or by an act or declaration recognizes the wrong as an existing and valid transaction, and in some degree, at least, gives it effect so as to benefit himself or so as to affect the rights or relations created by it between the wrongdoer and a third person, he acquiesces in and assents to it and is equitably estopped from impeaching it.”

In *Boardman vs. R. R.*, 84 N. Y., 157, 182, the Court said:

“The principle applicable to such a case is laid down by Lord Denman in *Pickard vs. Sears*, 6 Ad. & El., 474, as follows. ‘The rule of law is clear that where one, by his words or conduct, wilfully causes another to be-

lieve the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time.' Nor is it essential to an equitable estoppel that the party should design to mislead, and it is sufficient if his acts were calculated to mislead and have misled another acting upon it in good faith and exercising reasonable care. (*Manuf. Bank vs. Hazzard*, 30 N. Y., 226)."

In *Riddle vs. Clabby*, 59 N. J. Eq., 573, the Court said:

"Estoppels in relation to sales of land usually lie in parol, and are based upon the fraud which would be perpetrated by a successful attempt of a person who, by his assent, has led opposing parties into a certain line of conduct to ignore such assent."

Further cases applying the principle of equitable estoppel against one, who stood by in silence, from later attacking the transaction in which he apparently acquiesced are:

- Martin vs. Richter*, 10 N. J. Eq., 510;
- Society, etc. vs. L. V. R. R. Co.*, 32 N. J. Eq., 329;
- Meidling vs. Trefz*, 48 N. J. Eq., 638;
- Van Syckel vs. O'Hearn*, 50 N. J. Eq., 173;
- Ruckelshaus vs. Borchering*, 57 N. J. Eq., 344;
- Kelley vs. Repetto*, 62 N. J. Eq., 246.

V.

The testimony showing that the letter in evidence (Exhibit C-2), relating to the transfer of the patents for stock of the Gardner Company, was to become effective only in the event that the sum of \$100,000 cash capital was raised, was properly admitted.

The evidence shows that this letter was drawn and executed because of Baylor's apprehensions as to Halyburton's health and was intended to be used in case of his death. It was never to have any force or effect except upon the condition that the sum of \$100,000.00 cash capital was raised for the corporation.

Counsel for appellant contend that the admission of testimony, showing the existence of this condition, violates the rule that parol testimony may not be admitted to vary or contradict a written instrument. They say that such is the rule at law, and that the rule in equity is, or should be, the same. The meagre authority they cite, and the little discussion they give to this subject, however, indicate that they have not much confidence in the accuracy of their statement.

That their statement of the rule is incorrect in both particulars is readily shown by the authorities.

In the first place, that equity does not follow the rigid rules of the common law with respect to evidence of this character, is shown by the following case.

O'Brien vs. Paterson Brew. Co., 69 N. J. Eq.,

117, was an action to restrain the enforcement of a note and mortgage given by a saloon-keeper to a brewing company, on the ground that there was a parol agreement at the time such securities were given that the defendant would not enforce them so long as complainant would purchase his beer from defendant. Held: Evidence of the parol agreement was admissible.

PITNEY, *V. C.*, said:

“Against any relief is urged the time-honored rule that parol evidence cannot be used to vary or contradict the terms of a written contract.

Without stopping at this moment to enumerate and classify the numerous exceptions to that rule, especially in a court of equity, it is sufficient to say that the evidence here relied upon does not tend to vary the terms of the contract. * * *
What he does contend is that it never had any binding effect upon him. * * *

It has been said that the rule sustaining the sanctity of written contracts against parol evidence is as strictly maintained in equity as at law, but I cannot admit the accuracy of that statement.

I have made a careful examination of the authorities upon that subject and find they do not sustain it, except in the matter of the true construction of a contract. But when we come to the inquiring into the objects and purposes of a writing, equity is more liberal, and will not permit a written contract to be used for purposes for which it was not intended.”

The above case was expressly approved by the

Court of Errors and Appeals in *Wilbur vs. Jones*, 80 N. J. Eq., 520.

See, also :

Stoutenberg vs. Thompkins, 9 N. J. Eq., 332.

Secondly, parol evidence to show that a written instrument was not to become effective except upon the performance of some condition, is admissible at law as well as in equity. Such evidence does not tend to vary or contradict the terms of a written instrument. It merely shows that what purports, on its face, to be an agreement, never became one.

In *Naumberg vs. Young*, 15 Vr., 331, the leading case in this state upon the subject of parol testimony as affecting written instruments, DEPUE, J., said (p. 336) :

“Another class of cases in which oral testimony of an agreement by the parties is held to be competent, are those in which the evidence is offered to show that the written agreement was made to take effect upon a condition which was not performed. *Pym vs. Campbell*, 6 E. & B., 370, and *Wallace vs. Littell*, 11 C. B. (N. S.), 369, are cases of this class. In the first of these cases the action was for the non-performance of an agreement to sell. The plaintiff produced the written agreement, signed by the defendant. The defendant was allowed to prove, by oral testimony, that the agreement was drawn up and signed with the understanding that it should be no bargain until approved by A. and that A did not approve of it. In the second of these cases the plaintiff declared on an agreement in

writing by the defendant to transfer to him a farm the latter held under Lord S., upon the terms and conditions under which the same was held by the defendant under Lord S. In an action for refusing to transfer the farm, the defendant was allowed to prove, by parol, that the agreement was subject to the condition that it should be null and void if Lord S. should not, within a reasonable time, consent and agree to the transfer of the farm to the plaintiff. *In cases of this class the oral testimony is received, not with a view to add an additional term to the written agreement in defeasance of it, but for the purpose of showing that the latter did not become an agreement at all.*"

In *Guardhouse vs. Blackburne*, L. R. 1 P., 109; 14 L. T. Rep. (N. S.), 69, LORD WILDE said:

"The truth is, that the rules excluding parol evidence have no place in any inquiry in which the court has not got before it some ascertained paper beyond question binding and of full effect. Nor, indeed, are these rules pressed in the courts, either of law or equity, beyond this mark. For if the written document is alleged to have been signed under condition that it should not operate except in certain events, parol evidence has been admitted at law to prove such condition, and the breach of it. (See *Pym vs. Campbell*, 6 E. & B., 370.)"

This rule has universal recognition.

Burke vs. Dulaney, 153 U. S., 228;
Elastic Tip Co. vs. Graham, 185
 Mass., 597;

- Hinsdale vs. McCune*, 135 Ia., 682;
Smith vs. Dotterweich, 200 N. Y.,
 299;
*New Haven Mfg. Co. vs. N. H. P. &
 B. Co.*, 76 Conn., 126;
McFarland vs. Sikes, 54 Conn., 250;
Hathaway vs. Cook, 258 Ill., 92;
Hartford Ins. Co. vs. Wilson, 187 U.
 S., 466;
Howell vs. Ware, 175 Fed., 742.

VI.

**A decree that appellant be substituted
 for Halyburton, in his contract with the
 Car Company, should not be made.**

This claim is merely an afterthought. No such relief was prayed for in the bill of complaint and no such relief was asked from the Court below; nor was the matter complained of in the petition of appeal. Complainant did ask for a personal judgment against Halyburton for the sums paid to him, but no suggestion has ever been made before, that complainant be substituted in any respect in Halyburton's contract with the Car Company. The point is made for the first time in the brief of counsel for appellant on this appeal.

Questions cannot be considered in this Court which were not raised below, nor will relief be granted which was not demanded below.

- Penn. Ins. Co. vs. Semple*, 38 N. J. Eq.
 (11 Stew.), 575, 586;
Cumberland Co. vs. Clinton Co., 57
 N. J. Eq. (12 Dick.), 627;

- Polhemus vs. Holland Trust Co.*, 61 N. J. Eq. (16 Dick.), 654;
Boice vs. Conover, 63 N. J. Eq. (18 Dick.), 273;
Myer vs. Steel Machine Co., 68 N. J. Eq. (2 Robb.), 795.

Even if such question were open for discussion, we submit that no such decree is warranted by the facts of this case, and could not be granted without doing violence to the existing contracts.

The obligations of the Car Company under its contract with Halyburton required it to equip a department for the manufacture of valves (which it has done at a very large expense), and to employ Halyburton as selling agent at a salary of \$250 per month, to be later resolved into a commission of 1½%, provided such was warranted by sales in sufficient volume.

The contract further provides that, so long as Halyburton remains in the employ of the Car Company as selling agent, no royalty whatever shall be paid by it for the use of the patent (p. 19, line 10), so that the entire 1½% is intended to be compensation to Halyburton. This is not, however, entirely for his personal benefit, for it is expressly provided that the expenses of the selling agency shall be defrayed from this sum (p. 23, line 7).

This point of appellant is expressly predicated upon the Car Company being considered as an innocent purchaser, and yet the scheme proposed would seriously imperil a contract which is entitled to full protection. It would result in the payment to the Gardner Valve Co. of a full third of the sum from which the selling expenses must be met and the consequent decrease in efficiency of that department. It would further result in a

loss to the Car Company by largely taking from Halyburton his incentive to do good work. The expenses of the selling agency may (and probably do) require at least one per cent. and the remainder can constitute Halyburton's sole personal compensation. If that were ordered to be turned over to the complainant it would leave his contract with the Car Company largely a barren obligation so far as Halyburton is concerned. It is not human nature for a person to render satisfactory, or even indifferent, services under such circumstances. Halyburton has entire charge of the selling end, under this contract, and it can only be through efficient work in his department that the Car Company can hope to recoup the large losses it has thus far sustained.

There is also the further obstacle that such an arrangement would be making an entirely new contract between Halyburton and the Gardner Valve Co. Counsel seem to concede that complainant could not receive the benefits of their proposed scheme without being obliged to issue the \$200,000 of stock to Halyburton (p. 39, their brief). What justification can there be for such arrangement? Neither Halyburton nor complainant have ever made a contract dealing in Halyburton's interest in the Car Company contract and there is no conceivable basis for the lawful issue of such stock.

There is, however, no basis whatever for any decree against Halyburton. The sums paid to him constituted the payment of a very small salary or were otherwise employed for the purpose of endeavoring to raise capital for the corporation. There is nothing to indicate that Halyburton did not render the services required to the best of his ability, and there is, therefore, no conceivable basis for any personal obligation on his part to repay these sums.

This record clearly shows that Baylor spent his money in an effort to interest capital and to locate a manufacturing plant at Hampton from which he unquestionably hoped to benefit in many ways. The parties worked for several years to accomplish the desired result but failed, and it does not appear that such failure was due to any fault on the part of Halyburton. It is true that Baylor spent some money, but it is also true that Halyburton devoted several years of his life to the same end, and both lost.

Complainant's real grievance is that Halyburton did not remain a failure but finally induced a large manufacturing concern to take up his valves. Then complainant conceived the idea of endeavoring to recover what was lost in the vain endeavor to locate a manufacturing plant at Hampton. If courts of equity would hold open their doors to everyone who lost money in improvident speculations, they would have little time for other business.

It is submitted that the decree below was right and should be affirmed.

Respectfully submitted,

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