In the Privy Council. 5, 1 . 1

No. 12 of 1950.

ON APPEAL

FROM THE SUPREME COURT OF CANADA

BETWEEN

BOILER INSPECTION AND INSURANCE COMPANY OF CANADA - - - - - - - - - *Appellant*

AND

THE SHERWIN WILLIAMS COMPANY OF CANADA LIMITED - - - - - - - - - *Respondent*

Record Vol. 4

Defendant's Evidence at Enquête

Plaintiff's Evidence in Rebuttal

Exhibits, Judgment and Notes, etc.

Pages 605 - 843

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DOMINION OF CANADA

In the Supreme Court of Canada

OTTAWA

On Appeal from a Judgment of the Court of King's Bench for the Province of Quebec (Appeal Side) District of Montreal.

BETWEEN:—

THE SHERWIN WILLIAMS COMPANY OF CANADA LIMITED,

(Plaintiff in the Superior Court and Respondent in the Court of King's Bench (Appeal Side),

APPELLANT,

— and —

BOILER INSPECTION AND INSURANCE COMPANY OF CANADA,

(Defendant in the Superior Court and Appellant in the Court of King's Bench (Appeal Side),

RESPONDENT.

JOINT CASE

VOL. IV — DEFENDANT'S EVIDENCE AT ENQUETE, PLAINTIFF'S EVIDENCE IN REBUTTAL, EXHIBITS, JUDGMENT AND NOTES &c. Pages 605 to 843.

Defendant's Evidence at Enquête

DEPOSITION OF F. A. JENNINGS

A witness on the part of Defendant.

On this fifth day of February, in the year of Our Lord nineteen hundred and forty-six, personally came and appeared, Frederick Alexander Jennings, aged 55, insurance agent and broker, residing at 780 Upper Belmont Avenue, in the City of Westmount, District of Montreal, who having been duly sworn doth depose and say as follows:—

Examined by Mr. John T. Hackett, K.C.:—

Q.—Mr. Jennings, you are the agent and legal representative of some of the more important of the twenty-two fire insurance companies that were on the risk which became a loss on the 2nd of August, 1942? A.—The firm of Johnson-Jennings Incorporated.

Q.—And you are an officer of that corporation? A.—Yes.

Q.—President? A.—President.

Q.—And I take it that on the 2nd of August, 1942, you were advised that, we will call it an accident, had occurred at the Sherwin-Williams Company's plant? A.—Yes.

Q.—And on that same day, about noon, I think, you communicated with the late Mr. Cheese? A.—I saw him at the premises.

Q.—But you telephoned him in the interval, to get him there? A.—Yes.

Q.—And then the next day, some time between 3 and 4 in the afternoon, you sent some kind of a communication, I think, to the Defendant? A.—I wrote a letter. I don't know if it was that particular time.

Q.—No, — you wrote a letter later; but you telephoned to Mr. Morrison, of the defendant company, sometime towards the end of Monday, August 3rd? A.—Yes.

Q.—And the next day, the 4th, Mr. Fitzgerald went to the scene of the loss?

Mr. Mann:—I draw your attention to P-3, which is dated the 3rd.

Mr. Hackett:—But that did not reach its destination until the next day.

Mr. Mann:—I am simply drawing your attention to the date, and it confirms the conversation with Mr. Morrison.

(The question, above, is read):

Witness:—Yes.

The Court:—Mr. Fitzgerald being. . . ?

Mr. Hackett:—Mr. Fitzgerald is in the Montreal office of the defendant Company.

Mr. Mann:—And he stated he was chief inspector. That is how he described himself.

By Mr. Hackett, K.C.:—

Q.—I am going to show you a document, Mr. Jennings, and I want to tell you that there was a red mark through the column added up to $68,815.84 which I rubbed out. We will put it back in a little while. I didn't know it was there when you left it, until I read a letter to which I will refer. I am instructed that this document, which I am handing to Mr. Mann and which I am going to ask you about, was delivered by you to the Defendant in January, 1943, and purported to show the loss suffered by the plaintiff company?

Mr. Mann:—All of the loss, isn't it, — both fire and explosion?

Mr. Hackett:—The loss suffered.

Mr. Mann:—I merely draw your attention to the fact there is no signature on this document.

The Court:—So far, there is no proof of value at all.

By Mr. Hackett, K.C.:—

Q.—I want to know if you will look at your file, Mr. Jennings, and see if you have a letter from Mr. de Merrall, of plaintiff company, sending you the document in question, and

if you have a memorandum of having taken it in to Mr. Fitzgerald and discussed it? That was in January, 1943. A.—(Witness Examines File).

Q.—You're not bothered about it ,are you? It was about the 20th of January, 1943. A.—I don't seem to have that letter. I know that one came with the form.

Q.—Would you mind looking at your record and see if you have a duplicate or something else that enables you to say that you did receive it? A.—These seem to be copies of the form you have shown me.

Q.—Will you produce this document, styled "Linseed Oil "Mill Fire", bearing no date and unsigned, and say if it is a copy of the original that is in your file? I would ask you to produce that as Exhibit D-8. A.—I would say, rather, that the ones in my file are copies of these.

Q.—You will produce the original as D-8, and the document in your file is a copy which you retain? A.—Yes.

Q.—You had some conversation with Mr. Fitzgerald about that in the month of January, 1943, about the 20th of January, 1943? A.—Yes.

Q.—You went to his office one afternoon? A.—I took it over to his office.

Q.—And left the document with him? A.—Yes.

Mr. Mann:—De Merrall sent it to him and then he went to Fitzgerald?

By Mr. Hackett, K.C.:—

Q.—You received this document from Mr. de Merrall, of the plaintiff company? A.—Yes.

Q.—In January, 1943? A.—I'm not sure of the date.

By Mr. Mann, K.C.:—

Q.—Somewhere around there? A.—Yes, around that time.

By Mr. Hackett, K.C.:—

Q.—This document shows that the total fire loss was $112,793.34 and the total explosion loss was $46,931.28? A.—Yes.

Q.—Do you represent all of the 22 fire companies for the purposes of this loss and explosion, if I may put it that way? A.—Shall we put it in another way: that I am chief agent or

my firm is chief agent of three companies representing possibly 50 per cent of the insurance in question. To the other companies we act as brokers and place this line.

Q.—Now, Mr. Jennings, there has been produced here a letter, as D-3, and it sets forth certain terms and conditions by which the companies that you represented waived certain delays within which action might be brought against them. The Clerk of the Court has now handed you Exhibit D-3. You are familiar with that document? A.—Yes.

Q.—And you signed it on behalf of the various companies, did you? A.—I signed this on behalf of three of these companies. The others signed it individually.

By Mr. Mann, K.C.:—

Q.—Which three? A.—The Aetna Insurance Company, the Pearl and the Camden.

By Mr. Hackett, K.C.:—

Q.—What was the total carried by these three companies? A.—Roughly 50 per cent.

Q.—Roughly fifty per cent of how many millions? A.—$6,125,000.00; or shall we put it this way: the insurance on this particular item was, I think, $2,625,000.00.

Q.—In any event, under the arrangement between the companies, the group that you represented were in the lead and the others followed? A.—Yes; that is usual.

Q.—Will you say whether the negotiations leading up to the writing of the letter Exhibit D-3 which you now hold in your hand were started by the insurance companies or the insured? A.—I rather fancy, the insurance companies.

Q.—So do I. And I will put the blunt question, Mr. Jennings:—Is it to your knowledge that there are any undertakings or obligations or agreements between the insurance companies or you as representing the insurance companies, — and when I say "you" I mean you as representing your company or you personally, — and the plaintiff company, which go beyond the terms of the letter D-3 which you hold in your hands?

Mr. Mann:—I really don't know where my friend is going. My friend hasn't pleaded anything to do with this.

The Court:—Consider the question carefully, Mr. Mann, and if you wish to make an objection, make it and tell me what motivates it.

Mr. Mann:—I make an objection to the question by reason of a lacuna in my friend's question, and the lacuna is with respect to the date of the service of the action. Now, that is all there is to it. Whether there is an agreement or not, it matters not. However, I am limiting it to what I have said: there is no mention of the date of the action.

The Court:—What is the date of the action?

Mr. Mann:—The 17th of September, 1943, was the date of service of the action. Payment is proved to have been made during the months of March and April or April and May, 1943, — that is, before the beginning of the action, — but there is no objection with regard to that. I say that the words "before the action was brought" should go into my friend's question. I will sit down and say no more if he adds that.

The Court:—Will you amend your question by putting that in, Mr. Hackett?

Mr. Hackett:—Yes, I will, for the time being.

By The Court:—

Q.—You understand the question? Was there any agreement, undertaking or understanding between you, Mr. Jennings, or the firm of which you are an officer or the companies some of which you represent or any of the group of companies concerned in this disaster other than the Boiler Inspection & Insurance Co., and the owner of the building, the Sherwin-Williams Co., which is not comprised in the terms of that letter, Exhibit D-3, up to the 17th of September, 1943? A.—There was definitely no agreement.

Q.—And, of course, when I say agreement or understanding I do not limit myself to writing, — any verbal undertaking? A.—Verbal or written.

Q.—There was nothing? A.—Nothing.

By Mr. Hackett, K.C.:—

Q.—I will ask you if there has been anything, since the action was taken, whereby the insurance companies have substituted their attorneys for the company's attorneys and have taken on the burden of this litigation?

Mr. Mann:—I don't think I need to re-argue the objection. There is no plea of arriere-continuance. I don't know where my friend is going unless he is driving at the proof of loss.

Mr. Hackett:—No.

Mr. Mann:—There is an additional objection to the question. It is entirely irrelevant and inadmissible. My authority for that is the well-known case in the Court of Appeal, Hebert & Rose. Whether there is an agreement or a payment or anything else is irrelevant. Your lordship is familiar with the case. Every lawyer ought to be and every Judge is, I venture to suggest, and if your lordship would care for me to read any passages from it I will.

The Court:—First, is the question covered by the pleadings as they now stand?

Mr. Hackett:—I read in the Particulars furnished of Paragraph 16 of the Plea:—"All the insurers on the risk, other "than Defendant, paid to Plaintiff prior to the production of "Defendant's Plea over $100,000.00 of the loss sustained by Plain- "tiff and since have paid or agreed to pay the balance of the "loss in the event of Plaintiff's action failing, and Defendant is "unable to say whether the undertaking to make a further pay- "ment is in writing or was verbal."

The Court:—That is very definitely pleaded.

Mr. Mann:—It relates to the date of the Defence, because, it is merely particulars of the Defence. It doesn't relate to the date the Particulars were filed. It relates to the Defence, and the Defence is dated, — I don't know really when it was served, but it doesn't matter, because it is so far back, — the 23rd of October, 1943. That was a motion to particularize what is said in the Defence.

The Court:—I was looking at your Answer to Paragraph 16 of the Plea.

Mr. Mann:—I have it here.

The Court:—There was no motion to reject or anything of that sort?

Mr. Mann:—No. I think the Defendant's Plea, my lord, may be a little bit mixed, inasmuch as the agreement to pay if we fail in this case is contained in Exhibit D-3. I think maybe that is the confusion. The agreement to pay is contained in D-3, — rather, not the agreement to pay, but a reserve. It reserves the right to recover if your lordship should decide that the loss is not all explosive loss but part of it fire loss. The exhibit makes the thing clear.

The Court:—The situation, as I see it now, seems to be this:—The question arises out of the pleadings, inasmuch as there is a specific allegation in Paragraph 3 of the Particulars furnished by the Defendant, which paragraph relates to Paragraph 16 of the Plea. In those Particulars there is a specific allegation that, prior to the production of Defendant's Plea, there was a payment or an agreement to pay. That alleges something which took place after the institution of the action. Now, generally speaking, the Court has to deal with a situation that exists as at the moment when an action is instituted. Nevertheless, the Code does provide for the raising of issues which have taken place, so to speak, after the issue is joined, — specifically under Article 199, by a Supplementary Plea. Now, instead of putting in a Supplementary Plea, the Defence has raised this point in a Particular to the Defence. That method of putting the issue forward was not objected to by Plaintiff either by a motion to reject or an exception to the form, and, as it is purely a matter of procedure and not one of fundamental law, I am inclined to think that from the procedural point of view the question is admissible.

Now I have to consider whether it is relevant or not, and it is upon that point you cite to me the case of Hebert & Rose. There has been jurisprudence since that case and there has even been legislation on that point since that case. I am not prepared to pronounce myself extempore on the weight of the jurisprudence, at the moment, read in the light of the comparatively recent amendment to one of the articles under the chapter of Insurance, and if the point is considered of importance by Counsel for Defendant I will either have to ask him to suspend the question until tomorrow, when I will give a ruling, or I can allow the question and answer in under reserve, to be dealt with by me later and possibly later still by the Court of Appeal. I would be inclined to let the evidence in under reserve if there was any doubt at all or any thought that any reasonable person could differ

from my opinion. I will either let the question be put under reserve of your objection, Mr. Mann, or I will ask Mr. Hackett to suspend it until I can give the matter some further thought and I will give my ruling in the morning.

Mr. Mann:—Your lordship was kind enough to ask me. I would prefer that your lordship decide it in the morning. I would prefer if your lordship gave mature reflection to it. Your lordship is familiar with the amendment to the Code which says no question of insurance has any relation to an action. There has been no signification or anything.

The Court:—Mr. Hackett, to facilitate my task, — does your question refer to an agreement to pay or a payment of the loss?

Mr. Hackett:—Yes.

Mr. Mann:—I'm not sure that the question is that at all.

The Court:—That is the purpose of it. Mr. Hackett wants to find out whether there is either a payment or a promise to pay if this litigation ends unfavorably to the Plaintiff.

Mr. Mann:—My answer is that it doesn't matter whether there is a payment or an agreement or promise to pay.

The Court:—I am inclined to think that the nature of the undertaking or the method of the payment, the agreement, might have some bearing on the subject, and I am wondering, inasmuch as there is no Jury, whether it would not be advisable for me to admit it under reserve so that I can decide its admissibility "en connaissance de cause", of all the details. I think that I can safely say that I can eliminate the matter from my mind if I find that in my opinion it is inadmissible, and I think in the circumstances I will allow the question under reserve, so that I may have the details before me when I study the admissibility.

(The question, Page 609, is read:—"Q.—I will ask you if "there has been anything, since the action was taken, whereby "the insurance companies have substituted their attorneys for "the company's attorneys and have taken on the burden of this "litigation?):

F. A. JENNINGS (for Defend. at Enq.) Examination in chief.

Mr. Mann:—That cannot be the question you want, Mr. Hackett. The substitution of attorneys is on the record.

The Court:—That is a rather different matter, isn't it?

Mr. Hackett:—Maybe.

The Court:—Would you not find it convenient, Mr. Hackett, to make it more specifically applicable to your allegation?

By Mr. Hackett, K.C.:—

Q.—Mr. Jennings, have you, your company, Johnson-Jennings Inc., or any of the fire companies paid to the Plaintiff any sum of money since the institution of the action arising out of the loss?

Mr. Mann:—I take it your lordship rules that that matter be taken under reserve?

The Court:—Yes. Counsel for Plaintiff has objected to the question. The Court takes the objection under reserve. That is my provisional ruling for the moment.

Mr. Mann:—With respect, Counsel for Plaintiff excepts to the ruling of the Court permitting an answer to the present inquiry by Counsel for Defendant under reserve.

I would ask that the witnesses be excluded from the room when this question is answered, all of them without any exception.

Mr. Hackett:—I just wonder now where we are going to. This is a Court of justice, and if there is going to be anything improper for the ears of the populace I am a little bit amazed.

The Court:—I am sure there is nothing in the nature of obscenity in the matter. It seems to me it is simply a question of disclosure of the company's business to the public.

Mr. Hackett:—That is an incident of every trial. I do not want to be put into a strait jacket in a case of this kind.

Mr. Mann:—It would be very easy to get out of it if you were.

F. A. JENNINGS (for Defend. at Enq.) Examination in chief.

Mr. Hackett:—I think the question is one that arises out of the litigation and should be dealt with in the ordinary course.

Mr. Mann:—I quite appreciate that. I am asking your lordship to exclude the witnesses, as you have a perfect right to do, with respect to this statement of fact.

The Court:—Any Counsel may ask for the exclusion of witnesses for the purpose of avoiding collusion, of course, on questions of fact.

Mr. Hackett:—We discussed that earlier in the trial.

The Court:—The article does not say it is for that purpose, but it is, isn't it?

Mr. Hackett:—We dealt with the matter of exclusion earlier in the trial, my lord, and we have a complete list of those that might remain. I think both Mr. Mann and I tried to be reasonable in the matter. I don't really mind, if your lordship thinks it is the proper thing to do.

The Court:—I don't know that it is the proper thing to do. Under Article 313 if I have an application for exclusion must I not grant it?

Mr. Hackett:—Not "must", — "may". Your lordship is master of the situation.

The Court:—Well, unless Mr. Mann can show me some reason for it, I am not inclined to grant his request. I can't foresee the possibility of anything obscene that would offend the ears of the public, and I can't on the face of it see that any valuable business secrets of the firm of Johnson-Jennings Inc. can be given away by the evidence. Is there any valuable secret?

Mr. Mann:—I prefer not to say. I made my application. If your lordship sees fit not to grant it, I am in your lordship's hands.

The Court:—On the situation as it now stands I see no reason for granting the request.

(The question, Page 613, is read to the witness):

Witness:—They have.

F. A. JENNINGS (for Defend. at Enq.) Examination in chief.

By Mr. Hackett, K.C.:—

Q.—How much? A.—$46,931.28.

The Court:—One has heard that figure before, I think.

Mr. Mann:—Yes, I think we have heard it before.

By Mr. Hackett, K.C.:—

Q.—So, as the matter now stands, the full amount owing to the plaintiff company has been paid to it? A.—Yes.

Mr. Mann:—By the fire companies.

Mr. Hackett:—By the fire companies.

By The Court:—

Q.—When was that payment made? A.—Around February, 1944.

Q.—And were there receipts given or was there a document of some kind executed at the time the payment was made? A.—There would be subrogation receipts that each company would receive.

The Court:—I think it would be well to have those before the Court.

By Mr. Hackett, K.C.:—

Q.—It is suggested by the Court, Mr. Jennings, that you produce the subrogation receipts given by the plaintiff company to the various fire companies concerned?

The Court:—Or, if there were many companies that received receipts, one receipt, if they were all in the same terms, would probably suffice.

Mr. Mann:—I'm not sure there are any subrogation receipts.

The Court:—The witness will say.

Mr. Mann:—Perhaps, Mr. Jennings, you had better tell us, because I am ignorant on the subject.

F. A. JENNINGS (for Defend. at Enq.) Examination in chief.

Witness:—These receipts normally would go to each insurance company. I wouldn't have them.

By The Court:—

Q.—Would you not have a copy of one or a form of one? I suppose the payment was made through you, Mr. Jennings, was it not? A.—Yes, it was.

Q.—Surely you would have a copy of the receipt or subrogation or a combination of both?

I am asking that because according to my present recollection of the jurisprudence there may be some importance in the wording of the document executed at the time of the payment. I haven't had occasion to look into those cases just recently, but I recall that that may be of some importance.

Witness:—I have one here.

Mr. Mann:—Well, I'm not familiar with it. I don't remember, at least. Is that a typical one?

Mr. Hackett:—I think in the circumstances it might be well to have them all.

Mr. Mann:—You had better get them from the companies.

Mr. Hackett:—I think Mr. Jennings has got copies of them.

Witness:—No; I have brought the Aetna Insurance Company's file here, and that forms part of it.

By The Court:—

Q.—Do you not think that all the receipt-subrogations, the combinations, would be in the same form? A.—Exactly in the same form, differing in amount only.

Q.—But the wording would be the same? A.—Yes, exactly the same.

By Mr. Hackett, K.C.:—

Q.—I notice that in the receipt dated March 3rd, 1944, being the receipt of the Aetna, the Sherwin-Williams Co. of

Canada Ltd., per P. W. Hollingworth, secretary-treasurer, states:—"In consideration of the aforesaid payment of $7,598.40 "to the undersigned, by the above-named company, the under- "signed hereby transfers, assigns and makes over unto the said "company in the proportion that the sum now paid bears to the "sum of $46,931.28, all the undersigned's rights, title and interest "in and to the claim of the undersigned against the said Boiler "Inspection & Insurance Company under the latter's policy No. "60350-B dated March 9th, 1940, issued in favor of the under- "signed, hereby subrogating and substituting the said Aetna "Insurance Company in all the undersigned's rights, title and "interest in and to said claim, as well as in and to the aforesaid "action and all proceedings had thereunder, with the right on the "part of the said Aetna Insurance Company to continue the said "action, but at its own expense as of the date thereof, in the name "of the undersigned and with the benefit unto said company of "all costs incurred and to be incurred by virtue of said action, "insofar and to the extent that the undersigned is able to deal "with such costs. — Montreal, March 3rd, 1944," — and after that there is, "February, 1944, the Sherwin-Williams Company "of Canada Limited, per P. W. Hollingworth, secretary-treas- "urer."

Will you file this document as Exhibit D-9? A.—Yes. The "February" there wouldn't count?

Q.—No. Now, would you be kind enough to file as D-10 the receipt of the Camden and as D-11 the receipt of the Pearl? A.—I don't think either of those copies is available in Montreal.

The Court:—Would it not be sufficient if the witness told us that to his knowledge all the receipts are in the same wording with the exception of the amounts involved and the dates, but the dates were all within the same. . . .

Witness:—All within the same week or so.

Mr. Hackett:—I think it would, my lord.

The Court:—They are all in the same wording, just as the letters were in the same wording, I take it.

Witness:—They are all identical except for the names of the companies and amounts.

The Court:—And the dates, I suppose. So we will regard D-9 as representative of the receipts given to all of the companies concerned.

Mr. Mann:—I take it, my lord, that all this evidence. . . .

The Court:— . . . . including the exhibit, is under reserve.

Mr. Mann:—And is subject, necessarily, to my exception?

The Court:—Quite. But I am confirmed in the advisability of my provisional ruling, because the production of that document will assist me, I think, or it may, in the task of deciding on the admissibility or otherwise of the evidence.

By Mr. Hackett, K.C.:—

Q.—Dealing with Exhibit D-8, — I understood from Mr. Moffat that you were by way of being spiritual adviser to his company in matters of insurance, and I ask you if you took any part in the preparation of the document Exhibit D-8? A.—This may have formed the subject of conversation. I don't think that I would have anything to do with the preparation of things that were distinctly theirs. We may have discussed certain insurance items, but when it comes to such things as so many bushels of flax seed destroyed, I know nothing of that, nor the costs of repairs of other items.

By Mr. Mann, K.C.:—

Q.—The subject matter you know nothing about? A.—That is right.

By Mr. Hackett, K.C.:—

Q.—You made no suggestions as to the allocation of the loss and its apportionment? Now, mind you, I'm asking that because it lurks in my mind that your name has been suggested in that regard. I'm not positive. A.—There were many, many discussions, and I would hardly like to answer your question negatively, because I may have.

Q.—It might happen in the ordinary course of your relationship with the Sherwin-Williams Co.? A.—Quite possibly.

Q.—I want to come back now to this D-9. Did you negotiate the settlement with the Sherwin-Williams Co. which is evi-

denced by this document? A.—I didn't negotiate with the Sherwin-Williams Co. I can put it another way and say that I persuaded the fire companies to pay this. There was no negotiation. A definite amount had been arrived at. My clients were out 46-odd thousand dollars, and I persuaded the fire companies to assume and pay this amount.

Q.—Now, Mr. Jennings, didn't you get the fire companies into that mood before the action was taken against the defendant company? A.—No.

Q.—Who came to you from the Sherwin-Williams Co. and complained that they were out 46-odd thousand dollars and you should pay it? A.—Nobody. The suggestion didn't come from the Sherwin-Williams Co. They had taken an action against the Boiler Company. I as an insurance broker felt that my clients were out this money and it would be a feather in my cap if I could persuade the fire companies to pay this and satisfy my clients.

By The Court:—

Q.—It would be reasonable to put it this way, would it, Mr. Jennings: you knew that your clients should get paid by somebody or other and you thought that the sooner they got paid the better? A.—Yes.

Q.—And leave it to the two groups of insurers to fight it out amongst themselves without your client having to wait for its money? A.—Yes.

Q.—That was the situation? A.—Yes.

The Court:—It was a very reasonable position from your point of view.

By Mr. Hackett, K.C.:—

Q.—You felt if the Defendant did not pay, your companies would have to pay? A.—They had already paid.

Q.—Now, let's not get into a misunderstanding. You have said that the reason. . . . A.—I beg your pardon.

Q.—. . . . for the making of D-9 is that your client, the Plaintiff, had sustained a loss and a balance of some forty-six thousand dollars had not been paid to them, and you felt that the amount should be paid and you prevailed upon the fire insurance companies to pay it? A.—Yes.

F. A. JENNINGS (for Defend. at Enq.) Cross-examination.

Cross-examined by Mr. J. A. Mann, K.C.:—

Q.—Exhibit D-3 is a copy of the original set of documents by which the acknowledged fire loss was paid: that is correct? A.—Yes.

Q.—And that is dated in May, 1943, and in that vicinity? A.—Yes.

Q.—Was there at any time, under any circumstances and with anybody in interest, any suggestion made by you with reference to the payment of the alleged explosion branch of the loss, prior to the inception of the action in 1943? A.—No.

Q.—And can you say approximately how long after the institution of the action in September, 1943, it was before your mind became fixed and you then acted upon your ideas of paying the amount alleged to be explosion loss? A.—It was in January or February, 1944.

Q.—Was there at any time, in the payment of that loss, any agreement, verbal or written, waiving the claim, by the present plaintiff company or by the fire insurance companies, of the sum claimed, namely, $46,931.28, now by a retraxit reduced to the sum of $45,791.38, which is now the amount claimed in the action? Briefly, was there any waiver of the claim of the sum of $46,931.28, now reduced to the amount of $45,791.38?

Mr. Hackett:—I submit we have a document here before the Court, signed by the Plaintiff. . . .

By The Court:—Perhaps you will allow me again to intervene. I'm afraid I am intervening very often.

Q.—Mr. Jennings, to your knowledge do the two documents, Exhibits D-3 and D-9, and the similar documents, constitute the entire agreement, understanding or undertaking as between the Plaintiff and the fire companies? A.—They do.

Q.—Thre was nothing, either in writing or verbal, to alter or add to the agreements set forth in those two documents: is that so? A.—That is so.

Q.—At any time? A.—At any time.

By Mr. Mann, K.C.:—

Q.—Now, Mr. Jennings, looking again at D-9, will you say if that document or if copies or duplicates of that document, or any one or all of the other documents similar to that, executed

by the plaintiff company in favor of the respective fire insuring companies, was ever sent to or signified upon the defendant company, the Boiler Inspection & Insurance Company?

Mr. Hackett:—I object to the question, as not being pleaded.

The Court:—I will admit the question under reserve.

(Question read):

Witness:—No.

Mr. Mann:—I take it the balance of that phase of the Defence is part of the reserve?

The Court:—Everything relating to the payment by the fire insurance companies of the amount of $46,931.28 has been taken under reserve.

And further deponent saith not.

H. Livingstone,
Official Court Stenographer.

DEPOSITION OF J. S. MOFFAT

A witness examined on the part of Defendant.

On this 5th day of February, A.D. 1946, personally came and reappeared: John S. Moffat, a witness already sworn and examined for Plaintiff in this case and who being now recalled and examined on the part of Defendant, under his oath already taken, doth depose and say as follows:—

Examined by Mr. John T. Hackett, K.C.:—

Q.—Mr. Moffat, you have already been sworn in this case? A.—Yes.

Q.—And, on the oath that you have taken, will you say if you recognize the signature of your company per its secretary-treasurer, P. W. Hollingworth? A.—Yes, that is Mr. Hollingworth's signature.

J. S. MOFFAT (for Defend. at Enq.) Examination in chief.

By The Court:—

Q.—On D-9? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—And it is to your knowledge that a sum of $46,931.28 has been paid by the different fire insurance companies to your company? A.—I understand that. They told me that it had been paid.

By The Court:—

Q.—That is not denied, I think, — in addition, of course, to the amount previously paid for the admittedly fire loss? A.—Yes.

Mr. Hackett:—Except that the statement by Mr. Jennings that it was paid would hardly be taken as an admission by the company that they had got it.

The Court:—I am taking it that they got it, unless I hear to the contrary.

Mr. Mann:—I have no hesitation in telling your lordship that they did get it.

And further deponent saith not.

H. Livingstone,
Official Court Stenographer.

(4.15 p.m., Feb. 5, — 10.15 a.m., Feb. 6, 1946).

P. McKEON (for Defend. at Enquete) Examination in chief.

10.15 a.m., February 6th, 1946

DEPOSITION OF PHILIP McKEON

A witness on the part of Defendant.

On this 6th day of February, in the year of Our Lord nineteen hundred and forty-six, personally came and appeared, Philip McKeon, aged 54, chief adjuster of the Hartford Steam Boiler Inspection & Insurance Company, residing at 577 Prospect Avenue, West Hartford, in the State of Connecticut, U.S.A., who having been duly sworn doth depose and say as follows:

Examined by Mr. John T. Hackett, K.C.:—

Q.—Mr. McKeon, you came to Montreal a few days after the loss at the Sherwin-Williams plant on the 2nd of August, 1942? A.—I did.

Q.—And did you have occasion to visit the plant? A.—Yes, sir.

Q.—And did you participate in the preparation of a document which is styled "Sketch Made by Fitzgerald and McKeon, "From Ross & Macdonald prints Nos. 303 and 303B Pertaining "to Building Plans Checked and Corrected and Objects In-"serted"? Would you state if you are the Mr. McKeon who collaborated in the preparation of that document? A.—Yes, sir.

The Court:—May I just look at that for a moment?

Mr. Hackett:—Yes. (Sketch Handed to Court).

Q.—(Continuing):—And you were given access to the Ross & Macdonald plans that have been referred to from time to time here in Court? A.—Yes.

Q.—By. . . ? A.—By Mr. Moffat.

Q.—The manager of the. . .? A.—Of the linseed oil mill.

Q.—Of the plaintiff company? A.—Yes.

Q.—That sketch is drawn to scale? A.—Yes.

Q.—Will you tell the Court whether or not it is a faithful reproduction of the building and equipment and sundry items thereon mentioned? A.—It is of the third floor, top floor plan.

Q.—Will you produce this document as Exhibit D-10? A.—Yes.

P. McKEON (for Defendant at Enquete) Cross-examination.

Mr. Mann:—Would the witness mind marking in Fire Escape, because it is not marked on the plan.

Witness:—Yes, I will. (Marks Fire Escape on D-10).

Cross-examined by Mr. J. A. Mann, K.C.:—

Q.—Mr. McKeon, you said you came to Montreal a few days after the incident which happened on the 2nd of August? A.—Yes, sir.

Q.—Could you approximate that date a little more closely than "a few days"? A.—The morning of August 8th, 1942.

Q.—Six days later, — August 8th? A.—Yes.

Q.—I take it, in order to prepare this plan, in addition to the examination of the plans of Ross & Macdonald, you went down to the premises? A.—Yes.

Q.—Who went with you? A.—Mr. Parker and Mr. Gregg.

Q.—Mr. Parker is who? A.—Assistant chief engineer.

Q.—Of. . . ? A.—Of the Hartford Steam Boiler Inspection & Insurance Co.

Q.—Who else? A.—Mr. Gregg.

Q.—Who is he? A.—Chief engineer, Boiler Inspection & Insurance Co. of Canada.

Q.—And anybody else? A.—Mr. Fitzgerald.

Q.—What is his rank? A.—His title now is chief inspector, Boiler Inspection & Insurance Co. of Canada. At the time he was the directing inspector.

Q.—Mr. Mudge died since this event, — or did he die before? A.—Since.

Q.—Mr. Mudge was the manager of the company defendant in Montreal? A.—Yes.

Q.—Is Mr. Fitzgerald in Mr. Mudge's shoes temporarily? A.—No.

Q.—Who is, here? A.—Mr. Wilkinson is manager, in Mr. Mudge's position.

Q.—Here in Montreal? A.—Yes.

Q.—Located in Montreal? A.—Yes.

Q.—Was he in the company before? A.—Yes.

Q.—Did he go with you to the plant to look at the objects or to visit the third floor? A.—No, sir.

Q.—So, there were just three. Now, the Hartford Steam Boiler Inspection & Insurance Co., I take it from what you say, has some relationship to the Defendant?

P. McKEON (for Defendant at Enquete) Cross-examination.

Mr. Hackett:—Objected to any relationship being established, as not arising out of the examination-in-chief.

The Court:—It arises in this sense: that an officer of another company went with an officer of the defendant company and made a plan or helped him to make a plan. It seems reasonable to deduce that there was some relationship between these companies, and it might be relevant to show that certain officers of the Defendant and officers of an associated company saw the premises at that time. I think the question is permissible. Objection dismissed.

(The question is read):

Witness:—Yes.

By Mr. Mann, K.C.:—

Q.—I won't pursue the intimate relationship, but generally speaking it is what might be termed the parent company or an associated company?

Mr. Hackett:—I don't want to be jumping up for the fun of it. I submit to your lordship that relationship is not a subject of inquiry and this does not arise from the examination-in-chief. If your lordship thinks otherwise, I don't wish to be objecting without purpose. I put the witness in the box to produce a plan, to establish certain measurements and he has been present in Court throughout the case. If it was felt expedient that any information of this type was required, the witness was here and could have offered proof. I therefore object to this question and to every question of a kindred nature. If the Court in its wisdom rules against me, I would ask that my objection be taken as one applying to all questions of this kind.

The Court:—The witness has already said there is some connection between the two companies. So far as I am personally concerned, I should be prepared to infer that whatever Mr. McKeon or any other official of his company, if I may say so, observed, would be communicated to the defendant company, and his knowledge would be, in my opinion, tantamount to the knowledge of the defendant company. I don't think it is necessary, Mr. Mann, to go into the precise relationship of the two companies. They are connected.

P. McKEON (for Defendant at Enquete) Cross-examination.

Mr. Mann:—I said I wasn't going into the precise nature of the relationship. It isn't for me to object to your lordship's ruling. I have no objection.

The Court:—I suggest you withdraw the question, because I don't think it is necessary.

Mr. Mann:—I will withdraw the question.

By Mr. Mann, K.C.:—

Q.—In any event, you and the gentlemen who went with you went on the request, did you not, of the present defendant company? A.—Yes, sir.

Q.—And you made the plan for its information and on its behalf? A.—Yes.

Q.—I think you said that was the 8th of August? A.—That is the day that I first went to the plant.

Q.—The day you first went to the plant? A.—Yes.

Q.—I note that the plan is dated, is it not, as being "checked "and corrected and objects inserted by Mr. Fitzgerald" on "8/11/42". Is that the American 8/11 or should it be 11/8? A.—That is intended to convey August 11th, 1942. That is an abbreviation we use.

Q.—Three days after? A.—Yes, three days after August 8th.

Q.—I think it is fair to point out to you that you have some red marks or marks in red ink. Those indicate, I would take it, the distances from the respective points? A.—Yes.

Q.—That is what those red marks indicate? A.—Yes.

Q.—Both surrounding the walls of the east room and the north wall of the west room and inside the building? A.—Yes. They are, however, approximately shown here. They don't fall within the scale.

Q.—They are not drawn to scale? A.—No.

Q.—You are conscious that we have an Exhibit P-10, of actual measurements, the different distances, and which the evidence states are drawn to scale. You would be prepared to accept those, with the slight variations that yours may show? A.—Well, I rather prefer to check one with the other before making any statement.

Q.—You are at liberty to do that. You can delay that and check them later. I don't think the Court would have any objection to that. However, I won't pursue that, Mr. McKeon, be-

cause the document you have in your hand, P-10, is made to scale, and you have stated yours is merely approximate.

The Court:—There is no striking difference?

Mr. Mann:—I mean, as long as there is no striking difference, I won't have any objection to Mr. McKeon's measurements.

Witness:—Then you don't want me to check them?

By Mr. Mann:—No, you don't need to bother.

Q.—On the 8th of August, when you three people went there, and on the 11th of August, when you personally checked these measurements and the insertion of the objects, were you at the plant? I am now referring to the 11th of August, when the checking was done. A.—I think it would be best explained if I tell you how the drawing was prepared.

Q.—I have no objection. A.—On the morning of the 8th I asked Mr. Fitzgerald if he had made inquiry about plans that we could procure a loan of. That is a routine detail of the investigation of an accident. He said he had, and as a result Mr. Moffat loaned us his plans that day. He and I worked that day, Saturday, Sunday and Monday, completing the drawing. That is how it was produced.

Q.—Now, would you mind if we go a little back of the 8th?

Were you in Hartford at the time this accident happened, or, were you away from Montreal at the time of the 2nd of August? A.—I was in Hartford.

Q.—And you had not been in Montreal between the 2nd and the 8th, had you? A.—No.

Q.—You got a communication advising you that the accident had happened? A.—Yes.

Q.—From whom? A.—I don't recall that now, — one of our officers.

Q.—In Montreal? A.—No, in Hartford.

Q.—One of your officers in Hartford? A.—Yes.

Q.—In any event, you were instructed by your Hartford office to the effect that an accident had happened in Montreal, and that is why you came up here? A.—Yes.

Q.—Now, you recognize the north side of the building, the St. Patrick Street side, don't you? (D-10). A.—Yes.

P. McKEON (for Defendant at Enquete) Cross-examination.

Q.—Would you mind showing me where the dust collectors are? A.—Well, as this print states, the objects were inserted by Mr. Fitzgerald. He will have to go into that with you.

Q.—What does "checked and corrected and objects inserted "by Mr. Fitzgerald, — P. M. McKeon, 8/11" mean? You did not take any responsibility whether objects were shown or not? A.—No, I didn't put that in the drawing.

Q.—The "P. M. McKeon" here is merely an identification of the plan, on the bottom? A.—No; I signed it.

Q.—But you did not put the objects in there? A.—No; and that is stated in there.

Q.—You don't know whether those objects were there or not? A.—Not insofar as this drawing is concerned.

Q.—You note that there is no cake or seed conveyor shown in that plan, don't you? A.— Yes.

Q.—I suppose you know there were these cake and seed conveyors on the floor? A.—Yes.

Q.—Why aren't they on the plan, do you know? A.—Yes, I know.

Q.—Why? A.—We just wanted a general outline of the top floor and the various objects such as are shown in there.

Q.—So that the system of conveyors was left out, with knowledge that they were there: is that correct? A.—No, sir.

Q.—What is correct, then? A.—Well, by August 8th much of the debris had been removed. In fact, this bleacher room or east room was practically cleaned out except for the structural steel and the things that are shown there.

Q.—So that you have no doubt that the seed conveyors and cake conveyors were not cleaned out? A.—Well, I cannot testify to the objects.

Q.—You cannot testify to that? A.—No.

Q.—Now let me go to the dust collectors. They do not appear on that plan, do they? The evidence appears to be that they were cleaned out by some force. They are not on the plan? A.—No.

Q.—You don't know where they were or what had happened to them, when that plan was made? A.—No.

Q.—Does the same answer apply to other articles that may have been cleaned out or may have been removed for repairs? A.—What articles are you referring to?

Q.—Any articles? A.—Well, I remember that they were talking about cans and they had been cleaned out.

Q.—I don't suppose the plan is supposed to show stock in trade? A.—No.

Q.—Or bags of linseed? There is nothing of that kind intended to be shown on the plan, is there? A.—No.

Q.—Now, I want to know why some reference is not made here to the dust collectors, which the evidence would indicate had been blown partly out of the wall and partly hanging out of the wall. Why aren't they shown? Remember, this is six days and nine days, — first of all, six days, and then checked nine days after that accident. A.—I personally cannot recall the status of the dust collectors.

Q.—And, insofar as that plan is concerned, personally you cannot recall the general layout or location of the materials within the plant? When I say "materials" I refer to articles. A.—Those that are shown there (D-10), yes.

Q.—You can recall? A.—Those that are shown.

Q.—You can recall those that are shown? A.—Well, with the aid of the print.

Q.—But did you make the print? A.—No, but I was back there later.

Q.—You were back there later? A.—Yes.

Q.—And you checked that the things were there? A.—I made observations.

Q.—That's all you did, — you made observations, and you won't swear that that oil tank was physically there when you made the observations? I am showing you the oil tank No. 6 in the east room, or, oil tank marked six feet in the east room? A.—No; I can only say there were oil tanks there.

Q.—When you say "there", you mean on the floor? A.—Yes, sir, on the floor.

Q.—And you see no record of any dust collectors there at all or any record of any convevors? A.—No, sir.

Q.—They are not there? A.—No, sir.

Q.—Does your observation take you far enough back to indicate that that plan fails to show other things that were there? Does your observation take you back that far? Do you understand the question? A.—Yes, I do. There were objects about there that are not in that plan.

Q.—For example, what? A.—Well, dust collector.

Q.—You know that is not on the plan? A.—That is right.

Q.—And if that is a faithful reproduction of the floor they could not be on the plan, could they? A.—Well, as I stated before, I left the detail to Mr. Fitzgerald.

Q.—You did, yes. Now, would you mind telling me how many times you visited that plant after you got here on the 8th of August, up to, let us say, the end of the year 1942?

P. McKEON (for Defendant at Enquete) Cross-examination.

Mr. Hackett:—I object to the question insofar as it goes beyond the plan. The witness may have gone to the plant half a dozen times.

The Court:—I am inclined to think the objection is well founded.

Mr. Mann:—I am asking him how many times he went there, because he has given his observations.

The Court:—After the plan was made?

Mr. Mann:—It is certified after it was made. I have asked him his observations, if there are things missing on the plan, and he says there are.

The Court:—I don't think in cross-examination you are entitled to go beyond the 11th of August. That is the period to which his testimony referred in chief.

Mr. Mann:—But I have asked him if he has observed at that plant if there were things on that floor that are not shown on the plan. Now, that is not confined to the 11th of August. It applies to his observations at any time, because he produces the plan today. I want to find out how many times he went there, in order to test his observation. He says, "I have been there and "I saw that there were some things that are not on the plan." I want to know when he made his observations and how far his observation goes.

Mr. Hackett:—I still submit that the plan is a document prepared as of a given date, and the visits of the witness to the premises up to the date of the signature of the plan may be relevant, but what he observed after that has no bearing on the document and can have no influence upon it. We have the same thing in this P-7. Mr. Newill prepared a plan, and he didn't know where. . . .

The Court:—But P-7 did not purport to be a detailed plan, the main outline, I think, was drawn to scale. Certain objects were put in not to scale.

Mr. Hackett:—The objects were put in not to scale, in the box here, but they were to scale. . . .

P. McKEON (for Defendant at Enquete) Cross-examination.

The Court:—As I looked at D-10, I took it to be a complete plan of the entire third floor with all what might be called the permanent articles thereon installed. Now, the witness has said in cross-examination that he recalls certain articles were in fact there which are not reproduced on the plan D-10.

Q.—That is so, is it not, Mr. McKeon? A.—Yes.

The Court:—So it is apparent now that the plan is incomplete insofar as the objects thereon shown are concerned. Now, Mr. McKeon has also said that, insofar as the objects are concerned, Mr. Fitzgerald had the chief responsibility and he, Mr. McKeon, was not concerned with the details of the objects as distinct from the premises.

Q.—That is in substance what you said, Mr. McKeon? A.—Yes.

The Court:—I wonder if it is useful to pursue the matter with Mr. McKeon, in view of his statement that he was not responsible for the details?

Mr. Mann:—I can limit it to that one question: when these observations were made: if your lordship will permit me to do that.

By The Court:—

Q.—When you stated a few moments ago that you had observed the presence of objects on the premises, which are not reproduced or indicated on the plan, to what period were you referring? A.—August 11th, when I was up there for a short time, obviously I could see things around that we hadn't got into the drawing, and I made no further reference to this drawing after this day. I went on to something else.

By Mr. Mann, K.C.:—

Q.—That is a perfect answer. It is as much as I could expect.

Now, did you arrive on the morning of the 8th? I take it you did, because you said you went to the plant. A.—I think we arrived in Montreal that morning, the night before or that morning.

P. McKEON (for Defendant at Enquete) Cross-examination.

Q.—And was I mistaken when I understood you to say you worked all day Saturday, Sunday and Monday? A.—Put in all these three days in preparing this.

Q.—That is, the 9th, 10th and 11th? A.—Yes.

Q.—Down at the plant? A.—Well, ...

Q.—Part of the time? A.—I should say the plant, the office, the hotel room.

Q.—The plant, the office of the plant. . . . A.—No, — the plant, the Boiler Inspection & Insurance Company's office, and the hotel room where we had our headquarters.

Q.—Did I understand you to say that the material, — that is to say, the stock in trade, — had been cleaned out at that time, pretty well? A.—In the east room.

Q.—In the east room material in the form of stock in trade had been cleaned out? A.—Yes.

Q.—Did you observe any dynamos that were on stands that had been knocked over, as has been stated in the evidence? A.—I don't recall that.

Q.—You don't recall that? A.—No.

Q.—Had you any information or did your observations lead you to understand that certain equipment had been removed for repair? A.—I can only say that the east room in a general way had the debris removed. To the extent that the machinery might have been involved I can't say.

Q.—You can't say? A.—No.

And further deponent saith not.

H. Livingstone,
Official Court Stenographer.

DEPOSITION OF L. T. GREGG

A witness on the part of Defendant.

On this 6th day of February, in the year of Our Lord nineteen hundred and forty-six, personally came and appeared, Linley Thomas Gregg, aged 68, secretary and chief adjuster for the Boiler Inspection Co. of Canada, and residing at 143 Eastbourne Avenue, in the City of Toronto, Province of Ontario, who having been duly sworn doth depose and say as follows:—

Examined By Mr. John T. Hackett, K.C.:—

Q.—Mr. Gregg, will you tell the Court what relationship, if any, the premium charged by the company defendant bears to combustion explosion?

Mr. Mann:—I certainly have a serious objection this time. Some of my objections have been overruled and some of them quite rightly perhaps. I submit the relationship between the premium and combustion explosion is something that is contractual. My friend has his contract and there it is. That's all there is to it. It is a contract, and, if there is a relationship stated, all right, in the contract. If there isn't, I'm afraid my friend can't go outside the contract to prove the relationship between any other type of risk or hazard and combustion explosion. Your lordship will remember the Curtis Harvey case, where it was attempted to show that the reduction in the premium or the rate of the premium was based upon certain conditions relative to the explosion of materials within the premises. Both the Court of Appeal and the first Court ruled out that evidence, — I think with Mr. Justice Guerin in the first Court and the Bench of the Court of Appeal was presided over by Sir Mathias Tellier. The evidence was completely ruled out, and I ask that the Court now rule out any evidence with regard to relationship of premium to risk or hazard, anything that is not in the contract itself.

Mr. Hackett:—I am going to read the ninth paragraph of the Plea, where Defendant says:—"And under reserve of the "foregoing Defendant further says: (9): That by the terms and "conditions of the said policy, Exhibit P-1, it appears that it was "not the intention of the parties to the said contract either that "the company defendant should insure or that the said company "plaintiff should be insured by said policy against loss or damage

"caused by fire, upon the premises of the said insured or else-
"where, and the contract was entered into and the rate of pre-
"mium or consideration therefor was established and agreed to
"upon such understanding and agreement, the whole as appears
"by said Exhibit P-1."

The Court:—There is no allegation on the part of the Plaintiff, as I understand its Declaration, that the defendant company is responsible for any loss by fire.

Mr. Mann:—It is all in the policy, — the exception of fire is in the policy, — and the premium is there and it is stated to be what it is for and the Schedules are there and the objects inserted are there, as regards damage. Now my friend wants to discuss somthing that is not in the policy, and an intention. Whether he pleads it or doesn't plead it, it is purely a question of law. Your lordship can deal with questions of law pleaded, without my being obliged to make inscriptions or anything else. You can deal with all intentions now, whether inscriptions in law are made or not.

The Court:—It is a question of the interpretation of the contract.

Mr. Mann:—Yes; and in effect my friend asks this witness to interpret it.

The Court:—What Counsel has just read says "the whole "as appears by said Exhibit P-1". That is surely where one finds the contract, in that exhibit. Does it matter to me, in deciding this case, what the premium was or how the premium was fixed? I do not see at the moment how I could vary my judgment according as the premium was established for this, that or the other thing. The company undertook to do certain things for a certain premium, and the things are set forth in P-1. That is where I must find the contract. I don't think I can look elsewhere to find the contract.

Mr. Hackett:—I can't be very vigorous in an argument against my friend's objection, but it did seem to me, where there is such a gulf between the coverage contended for by the Plaintiff and that contended for by the Defendant, that it might be of interest and some assistance to the Court to have evidence that the contract as contended for could not be written with any

measure of prudence or business sense for the premium paid for the contract in question.

The Court:—The problem, as I see it, which I shall have to solve, is what part of the damage was caused by explosion and what part by fire and whether the subsidiary defences apply to that part which was caused by explosion, and I do not think I can find any enlightenment on either of those two aspects of the question in the manner in which the premium was determined upon.

Mr. Hackett:—I assume your lordship is going to maintain my friend's objection. . . .

The Court:—I am willing to hear any further argment.

Mr. Hackett:—I cannot argue any further, but I will enter a respectful exception.

The Court:—The Court, having heard Counsel for both parties on the question, maintains the Plaintiff's objection.

Mr. Hackett:—I am entering a respectful exception to the ruling.

And further deponent saith not.

H. Livingstone,
Official Court Stenographer.

DEPOSITION OF WALTER PARKER

A witness on the part of Defendant.

On this 6th day of February, in the year of Our Lord nineteen hundred and forty-six, personally came and appeared, Walter Parker, aged 37, engineer, residing at 3 Durkin Street, Manchester, in the State of Connecticut, U.S.A., who having been duly sworn doth depose and say as follows:—

Examined by Mr. John T. Hackett, K.C.:—

Q.—Mr. Parker, you came to Montreal a few days after

the 2nd of August, 1942, and proceeded to the plant of the Sherwin-Williams Co.? A.—Yes.

Q.—I wish you to tell the Court what day you arrived and the purpose of your visit? A.—I arrived on the morning of August 8th, 1942, and the purpose of my visit was to make an investigation into the accident that had occurred at the Sherwin-Williams plant.

Q.—You have been in Court since the hearing in this case began sometime in the last century? A.—That is right.

Q.—Last year? A.—Yes.

Q.—And will you tell the Court your opinion of what occurred at the plant on the morning of the 2nd of August, 1942, taking as one of the bases for your answer the fact that Frazier said as he approached the north door he saw fire in the doorway...

Mr. Mann:—Just that he saw fire.

Q.—(By Mr. Hackett):— . . . and that Rymann said as he, Rymann, approached the south door he saw a flash or flame?

Mr. Mann:—A flash like fire.

By Mr. Hackett:—A flash like fire in the south door.

Q.—Will you tell the Court your opinion? A.—I think it is common grounds, on the testimony that has been presented so far, that the turpentine, the Fuller's Earth or Filtrol, that was in the bleacher tank No. 1. would, when treated as it was on the morning of August 2nd, develop an increase in pressure. I will start from that. There is no need to go over the ground before that in the proceedings; so I will start from that point.

Pressure would begin to build up in the bleacher tank No. 1 and turpentine vapor would be blown out of the open vent connection and, as the pressure continued to build up as the vent was unable to relieve the pressure as it increased, leakage would develop around the manhole door. A sizzling sound would result, which is the sizzling sound mentioned and noticed by the men in the bleacher room and, of course, which attracted their attention to the doors leading from the west room or filter press room into the bleacher room.

By The Court:—

Q.—You said the men in the bleacher room. Did you mean that? A.—I mean, the men in the filter press room.

WALTER PARKER (for Defendant at Enq.) Exam. in chief.

By Mr. Hackett, K.C.:—

Q.—The west room? A.—Yes.

The sizzling sound would attract their attention to the doors leading to the east room, and did.

The vapors escaping at high velocity, a velocity approaching or possibly exceeding to some extent 30,000 feet per minute, as testified by Dr. Lipsett, would mix with the air in the room and form a cloud of vapor which would spread and was seen by the men, Frazier and Rymann and others, in the north and south doors, Mr. Frazier stating that he saw the cloud of vapor at the north door and Mr. Rymann mentioning the south door. Next, Mr. Frazier saw what he has described as fire at the north door; and Mr. Rymann has described a flash of flame at the south door.

On seeing this phenomenon, the fire and flame, Mr. Rymann, Mr. Frazier and the other men left the building with little loss of time.

This fire or flame, as seen in the two doorways, probably originated from the same source. The material leaving the manhole, which is a combustible mixture when mixed with air, would find and did find a source of ignition and on being ignited would burn as witnessed by the men and, as there was a combustible mixture scattered probably the full length of the east room between the two doors, it would travel for that distance, which would account for the men seeing it at both doors.

This fire or flame would carry back to the source of the combustible mixture, which is the tank. This material leaving the tank was being mixed with air and, in an ever-increasing amount, due to the increasing pressure in the tank, was providing further combustible gases, additional combustible gases, which would continue burning once ignited. This would give you a fire in existence in the east room in the vicinity of the tank.

The pressure in the vessel was continuing to build up. It had got beyond the capacity of the vent connection to relieve and it had sprung, or had caused leakage at, the manhole opening, and eventually that opening was unable to relieve the pressure and the manhole door was blown off. The blowing-off of the manhole door released a large amount of turpentine vapor in

the room which, mixed with the air in the room, formed a combustible mixture, was ignited, and caused the serious explosion which was noted by the men and stopped them, using their own expressions, in their tracks, on the fire escape.

Mr. J. A. Mann, K.C.:—No cross-examination.

And further for the present deponent saith not.

H. Livingstone,
Official Court Stenographer.

DEPOSITION OF O. J. SCHIERHOLTZ

A witness on the part of Defendant.

On this 6th day of February, in the year of Our Lord nineteen hundred and forty-six, personally came and appeared, Otto J. Schierholtz, aged 53, research chemist, residing at 89 Braemar Avenue, in the City of Toronto, Province of Ontario, who having been duly sworn doth depose and say as follows:—

Examined by Mr. John T. Hackett, K.C.:—

Q.—Mr. Schierholtz, where did you follow the course of studies which led to your engaging in the career of chemist?
A.—At the University of Toronto.
Q.—You graduated from there in what year? A.—1921.
Q.—What did you do after that? A.—I spent five years with the Commercial Solvents Corporation.
Q.—Where? A.—Peoria, Illinois, — on the acetone butyl alcohol process, supervision of production.
Q.—What did you do after that? A.—I went to the Monsanto Chemical Company, St. Louis, manufacturers of organic chemicals.

By Mr. Mann, K.C.:—

Q.—How long ago was that? A.—That was about 1928. I was chemist in charge of the analytical and sales service laboratory.

O. J. SCHIERHOLTZ (for Defend. at Enq.) Exam. in Chief.

By Mr. Hackett, K.C.:—

Q.—What did you do after that? A.—I came to the Ontario Research Foundation.

By Mr. Mann, K.C.:—

Q.—On what date? A.—1932, September.

By Mr. Hackett, K.C.:—

Q.—In what capacity? A.—As research chemist in the field of applied organic chemistry.

Q.—What are you doing at the present time? A.—Still on that same work.

Q.—Did you hear the testimony of Mr. Parker this morning? A.—I did.

Q.—Have you any commentary to make on it? A.—I think it is a reasonable outline of the probable course of events during the accident.

Mr. J. A. Mann, K.C.:—No cross-examination.

And further deponent saith not.

H. Livingstone,
Official Court Stenographer.

Mr. Hackett:—I ask permission to recall Mr. Parker to ask him one question that I forgot, which has to do with the breaking of the glass in the back of the tank.

The Court:—Yes, that is quite reasonable.

WALKER PARKER (for Defend. at Enq., Recalled) Re-Exam.

DEPOSITION OF WALTER PARKER (Recalled)

On this 6th day of February, A.D. 1946, personally came and reappeared, Walter Parker, a witness already sworn and examined in this case and who being now recalled and further examined under his oath already taken doth depose and say as follows:—

Examined by Mr. John T. Hackett, K.C.:—

Q.—Mr. Parker, it has been suggested by at least one of the witnesses for the plaintiff company, in his examination-in-chief, that the glass in the peephole at the rear of tank No. 1 was blown out by the forces which had gathered within the tank. I invite your comment upon the opinion expressed and I ask you to tell the Court what in your opinion occurred? A.—The sight glass that was in the rear of the tank was approximately one-half inch in thickness. It was of a stronger glass than just plain window glass, we will say. It was pyrex or herculite glass.

Based on the exposed diameter of the glass of about six inches to the pressure that was within the tank, it is my opinion that that glass was entirely too strong to be blown out by the pressure, any pressure, to which the tank may have been subjected through the increase in pressure due to the reaction of the turpentine and the Fuller's Earth.

I base my comments on a formula which has been used in the States for calculating the allowable working pressure on glasses of this nature in industry, which indicates that this particular glass would be satisfactory for a working pressure in excess of eighty pounds per square inch on a factor of safety of ten. A factor of safety of ten is used for glass because, unlike steel, it is a little bit unpredictable; so they double the factor of safety, the factor of five being the normal factor of safety.

Q.—So you mean in excess of eight hundred pounds pressure? A.—Theoretical pressure, yes, to the square inch.

By Mr. Mann, K.C.:—

Q.—Eighty pounds to the square inch? A.—No, eighty pounds to the square inch, — eight hundred pounds theoretical bursting pressure or failing pressure, based on a factor of safety of ten.

WALKER PARKER (for Defend. at Enq., Recalled) Cross-ex.

By Mr. Hackett, K.C.:—

Q.—Now, what temperature would the glass be at if the contents of the tank were, — I think we got it up to 370 or 380 degrees Fahrenheit at one point? A.—The glass would be at about the same temperature.

Q.—Now, what would be the effect of water from a fire hose or from a sprinkler system or from any other source, coming into contact with the glass? A. Glass at that temperature, when subjected to the sudden shock and cooling effect of water coming in contact with it, would shatter.

Q.—Did you see this particular peephole? A.—Yes.

Q.—Did you see any residue of glass in it? A.—I saw some glass that supposedly came from the peephole. I didn't see it in the peephole.

Q.—Was there anything to indicate what had caused the disruption of the glass in the peephole? A.—Not definitely, because probably the looks of the glass would be about the same whether it was blown out or shattered and fell out due to water coming in contact with it. Your reaction would be similar, as in blowing out the force would be exerted from the inside and the tearing of the glass would give an indication of that pressure, and its being hit by water and contracting and shattering would have about the same effect on the glass, as the outer fibres would contract, which would allow them to break outward in the same manner.

Q.—I understood you to say, Mr. Parker, that the appearance would be practically the same in the shattered glass if it had been blown out or if it had been shattered as the result of application of water? A.—That is correct.

Q.—I ask you if you want to say on which surface you were assuming the water had been applied, — the inner or outer surface? A.—The outside surface.

Q.—The outside surface? A.—Yes.

Mr. Mann:—That almost goes without saying.

The Court:—Yes, I took it to be that, of course.

Cross-examined by Mr. J. A. Mann, K.C.:—

Q.—I have just one question, Mr. Parker. I didn't bother you much this morning and I won't bother you much this afternoon.

PAUL RIOUX (for Defend. at Enq.) Examination in chief.

You mentioned that this glass, I think you said, supposedly came from the peephole. Did somebody give you that glass? A.—I don't recall now, — it wasn't given to me, — I don't recall now where I saw the glass, but somewhere during my investigation of the accident I was shown fragments of glass, by some member of the assured's personnel in the plant, which purportedly was glass from the peephole.

Mr. Hackett:—That is my case, my lord.

And further deponent saith not.

H. Livingstone,
Official Court Stenographer.

DEPOSITION DE PAUL RIOUX

L'an mil neuf cent quarante-six, le six février, a comparu: Paul Rioux, âgé de cinquante-six ans, professeur de sciences, domicilié au 2810 Chemin Ste-Catherine, à Outremont, témoin produit de la part de la défense; Lequel, après serment prêté sur les saints Evangiles, dépose et dit:—

Interrogé par Me Hackett, C.R., avocat de la défense:—

D.—Monsieur le docteur, vous avez fait vos études secondaires, à quel endroit? R.—A Montréal.

D.—Dans quelle institution? R.—J'ai suivi les cours de l'Ecole Normale, et ensuite les cours des Hautes Etudes Commerciales.

D.—Vous avez terminé ces études-là en quelle année? R.—A l'Ecole des Hautes Etudes Commerciales en 1913.

D.—Et par la suite, avez-vous poursuivi vos études ailleurs? R.—En 1920, après la première guerre, je me suis rendu à Paris où j'ai suivi des cours à la Sorbonne, les cours des licences en science et je me suis inscrit au Laboratoire de M. Henri Le Chatelier, et j'ai préparé ma thèse de doctorat et j'ai reçu le titre de docteur ès-sciences physiques à L'Université de Paris en 1923.

D.—Vous avez poursuivi vos études en France pendant combien d'années? R.—Trois ans.

D.—Et vous dites que vous avez été l'élève de qui, en particulier? R.—De M. Henri Le Chatelier.

PAUL RIOUX (for Defend. at Enq.) Examination in chief.

D.—Je comprends que ce nom-là nous l'avons déjà rencontré, il me semble que nous l'avons vu dans un livre que M. le Professeur Lipsett nous a présenté hier ou avant-hier, n'est-ce pas? R.—Il est mentionné dans cet article-là. Je crois que tout le monde a vu son nom dans tous les livres élémentaires de chimie.

Par la Cour:—

D.—C'est un chimiste? R.—Oui.

Par Me Hackett, C.R.:—

D.—De grande renommée? R.—Oui.

D.—Vous pourriez peut-être dire un mot au sujet de ce maître Henri Le Chatelier, dont vous venez de parler? R.—C'est un grand chimiste.

D.—Il s'est spécialisé en explosifs et il a inventé la poudre sans fumée? R.—Non, ses travaux principaux sont sur les équilibres chimiques. Il a fait des travaux sur les explosifs lui-même avec Mallard et les travaux d'explosifs ont presque toujours été à l'ordre à son laboratoire.

Par la Cour:—

D.—C'est un Professeur à la Sorbonne? R.—Oui, à la Faculté des Sciences. Il était professeur aussi à l'Ecole des Mines, en même temps, je crois.

D.—Professeur de l'Etat? R.—Oui, Membre de L'Institut, etc.

Par Me Hackett, C.R.:—

D.—Voulez-vous dire à la Cour si vous faites partie d'aucune société quelconque, ici, au Canada ou ailleurs? R.—Ici, j'ai été professeur pendant quelques années à la Faculté des Sciences, professeur de chimie générale et de chimie industrielle à l'Ecole Polytechnique, pendant quelques années. Maintenant mes activités se confinent à l'Ecole des Hautes Etudes Commerciales. Je suis Membre des sociétés de Chimie ordinaires et je suis Président de l'Office de Recherches Scientifiques de la Province de Québec.

D.—Avant d'entrer dans le fond de la matière que nous avons à discuter, vous pourriez peut-être nous faire un commentaire sur l'expérience à laquelle M. le Professeur Lipsett nous

a référé hier, expérience pratiquée par Mason & Wheeler. Est-ce que vous vous rappelez de cette expérience? R.—Oui, je m'en souviens très bien. J'ai parcouru ici, à la Cour même, rapidement, cet article-là.

Evidemment, ce sont des choses techniques et on ne peut pas dire qu'une simple lecture nous permet de critiquer ou de trouver les défauts qu'il y a dans un article, parce que ce n'est pas un livre classique, c'est une publication scientifique faite dans une revue. Ces publications scientifiques ne passent pas du premier coup dans la littérature classique.

Le mémoire en question a pour titre "The uniform move-"ment during the propagation of flame". Et l'expérience, si j'ai bien compris dans le temps que j'ai employé à lire cet article, était faite dans un tube ouvert, de grand diamètre.

L'auteur a étudié après cela "The influence of the dia-"meter on the propagation of the flame."

Il faut admettre que c'est un cas particulier d'étude scientifique et je ne critique pas l'article, il est très bien fait et les auteurs sont des auteurs de renom. Mais le point sur lequel je ne suis pas d'accord avec mes distingués collègues c'est d'appliquer ce cas particulier à toutes les explosions, parce que, d'après le témoignage du docteur Lipsett, il a dit que les explosions — en laissant entendre que toutes les explosions, si j'ai bien compris ce qu'il a dit, — . . .

Par la Cour:—

D.—Sauf la dynamite. R.—Je parle des mélanges gazeux. Je fais une restriction tout de suite. Je ne parlerai pas pour le moment des explosifs solides; nous parlerons, et tout ce que je dirai, à moins que je n'indique le contraire, se rapportera à la combustion des mélanges gazeux combustibles.

Par la Cour:—

D.—J'ai bien compris du docteur Lipsett que ces phases dont il a parlé s'appliquaient à tous les mélanges des matières gazeuses? R.—Je crois avoir compris cela. Si tel est le cas, je voudrais exposer à la Cour, premièrement, comment, d'après les auteurs que j'ai sous la main on s'exprime au sujet de ces

premières phases; deuxièmement, vous faire la distinction entre les deux premières phases indiquées par le docteur Lipsett et la dernière qui est d'après les auteurs, un phénomène totalement différent et je le démontrerai par des exemples.

Les mélanges gazeux, c'est-à-dire mélanges d'hydro carbure et air, térébentine C-10H16, c'est un hydro carbure qui entre dans la classe des essences, quand on les mélange avec de l'air et qu'on les allume avec une flamme, une source quelconque de flamme, quelle que soit l'origine ces corps brûlent, ils brûlent avec des vitesses variables, c'est-à-dire qu'il y a des combustions qui sont lentes et d'autres qui sont plus rapides.

Par la Cour:—

D.—Selon la matière? R.—Non, suivant la façon dont on fait l'expérience et la façon dont on allume. Et je préciserai dans un instant.

Quand la flamme commence, évidemment, elle part de zéro, toujours par définition, et la combustion augmente suivant une courbe, et elle augmente très rapidemment — et ici, je produis un décalque de deux photographies qui ont été prises à la page 7, la figure No 1 et la figure No 2 qui sont des photographies prises par M. Lafitte, dans sa thèse de doctorat faite sous la direction de M. Henri Le Chatelier et publiée en 1925.

Par la Cour:—

D.—A Paris? R.—Oui, à Paris, dans le Laboratoire de M. Le Chatelier.

Cette photographie montre le point d'origine de la propagation de la flamme.

D.—Commençant par le haut? R.—Oui, commençant par le haut, et elle présente une courbe et une petite ligne droite et très courte ici.

Par Me Hackett, C.R.:—

D.—Ici? R.—Sur la photographie.
D.—Voulez-vous l'indiquer par une lettre? R.—La figure 1.

PAUL RIOUX (for Defend. at Enq.) Examination in chief.

Par Me Gadbois:—

D.—Où est votre ligne droite? R.—Le départ, ici, la courbe et la ligne droite, et un point qui est mal reproduit. Dans la gravure, c'est au bas, la dernière partie de la courbe c'est une ligne droite.

Par Me Hackett, C.R.:—

D.—Avant d'aller plus loin, je voudrais, si mon confrère a vu le document, le faire produire comme pièce D-11? R.—Oui.

D.—Comment décrivez-vous le document? R.—Le décalque d'une photographie.

D.—Faite au crayon de mine? R.—Oui.

D.—Ce M. Lafitte, dont vous avez parlé, comme étant l'élève de M. Le Chatelier, l'avez-vous connu? R.—C'est un de mes amis.

D.—C'est un de vos amis? R.—Oui.

D.—C'est un chimiste de renom? R.—Je ne sais pas actuellement ce qu'il fait, il était professeur avant la guerre à l'Université de Nancy.

Par la Cour:—

D.—Professeur de quoi? R.—De chimie.

Par Me Hackett, C.R.:—

D.—En France? R.—Oui.

D.—Je vous demande pardon de cette interruption, mais il a fallu identifier l'exhibit.

Est-ce que le point que vous avez indiqué à la Cour est indiqué à l'exhibit?

La Cour:—C'est facile à voir en suivant la photographie, il faut commencer par le haut de la photographie, n'est-ce pas? R.—Oui.

D.—Et la partie droite se trouve vers le bas de la photographie? R.—Oui.

Par Me Hackett, C.R.:—

D.—Peut-être voudriez-vous indiquer ce point par une

lettre "X"? R.—Comme c'est une reproduction de l'ouvrage. . . D'ailleurs, ce que je dirai tout à l'heure démontrera facilement ce que j'entends expliquer.

La partie courbe de la ligne est la partie qu'on appelle en français la combustion rapide et à laquelle certains auteurs donnent le nom de déflagration.

Cette partie qui est une combustion, je le répète plus ou moins rapide, qui part de zéro et qui va, en chiffre rond, je ne veux pas donner de détails, aux environs de 1000 mètres à la seconde, c'est-à-dire 3000 pieds à la seconde. Et ce qui caractérise cette phase, la phase combustion, c'est qu'elle est variable comme vitesse et avec les appareils, le système d'allumage, la grandeur de tube, etc.; elle est essentiellement variable avec les expériences. La deuxième partie est reproduite pour une autre expérience dans la figure No 2.

Par la Cour:—

D.—Qui se trouve aussi dans la pièce D-11? R.—Oui. Celle-ci est caractérisée par une droite, c'est la partie que l'on appelle l'onde explosive, et c'est cela, l'explosion réelle. Celle-là est une droite, elle est constante, à peu près constante comme vitesse, et, en plus, elle varie peu avec les différents facteurs que j'ai signalés tout à l'heure.

Maintenant, je voudrais démontrer à la Cour que les premières phases peuvent disparaître entièrement. Il y a probablement plusieurs cas où cela peut se produire. Je vous en signale deux que je connais bien, non seulement que je connais bien, mais que tout le monde connaît. La première, c'est lorsqu'on fait détonner, qu'on amorce plutôt l'explosion par un détonateur, c'est une capsule au fulminate de mercure, dans ce cas-là les premières phases n'existent pas, on passe dans l'onde explosive immédiatement.

Il y a un cas beaucoup plus patent parce qu'il a une application industrielle très connue, c'est le cas où on détermine l'onde explosive sans amorce et sans flamme et sans détonateur, c'est le cas du moteur Diesel où on a une compression d'air qui s'échauffe par compression et on fait une injection d'huile au lieu de mettre un allumeur, parce que vous savez que dans le moteur Diesel il n'y a pas d'allumage électrique, et vous avez

immédiatement l'onde explosive; les premières phases n'existent pas.

Par la Cour:—

D.—Sans feu? R.—Oui, il y a feu, mais pas amorcé par un autre feu.

D.—Alors, comment le feu se produit-il? A.—Nous comprimons l'air, le gaz comprimé s'échappe, il est très fortement comprimé par pistons, et au moment où les gaz deviennent très chauds, alors par le haut on injecte de l'huile qui se vaporise et forme un mélange gazeux. Les premières phases n'y sont pas.

Un autre cas où les phases n'y sont pas avec les temps qui ont été signalés par le docteur Lipsett — "une fraction de seconde à quelques minutes, si j'ai bien compris, plusieurs minutes cela veut dire au moins deux — c'est dans le moteur automobile où l'allumage se fait par ignition, "ignere" par conséquent flamme. Nous allumons par une étincelle électrique et si les phases qui durent de une seconde ou une demi-seconde à deux minutes existaient, l'automobile ne marcherait pas, il faut que l'explosion se produise en des fractions de seconde, et je dis que dans l'onde explosive la vitesse de l'onde dans le mélange gazeux ordinaire est dans les trois millimètres par seconde, entre deux et trois, suivant les cas, ce qui représente huit à neuf mille pieds par seconde, alors que dans la combustion rapide elle est d'entre 1000 et 1200 mètres par seconde.

Quand les deux phénomènes ne sont pas réunis, il y a une brisure dans la courbe, ce qui dénote qu'il y a là un phénomène différent et, sans entrer dans les explications techniques, je pourrais montrer la différence qu'il y a entre les deux. Tout ce que je peux dire, le premier est une combustion rapide et l'autre est une onde, on l'appelle en français "onde explosive".

Par Me Hackett, C.R.:—

D.—Avant d'aller plus loin on pourrait vous demander si le phénomène qui s'est produit dans le moteur Diesel ou le phénomène qui se produit dans l'automobile ordinaire pourrait se produire dans les conditions que l'on connaît à la Sherwin Williams, le matin du 2 août? R.—Il est évident que la réaction du moteur Diesel ne pouvait pas se produire parce qu'il faut que ce soit en vase clos et sous haute pression, la même chose pour

l'automobile, parce que les gaz sont sous pression. Nous n'aurions pas les mêmes conditions, mais le même phénomène peut se produire sans pression, car la pression dans la combustion n'a pas une influence très considérable, elle a une influence mais ce n'est pas le facteur principal, alors, c'est le point, sur cet article, que je voulais éclaircir devant la Cour.

D.—Comme conclusion, on nous a fait voir par cette expérience que la flamme pouvait prendre quelques secondes ou même quelques minutes pour traverser un nombre donné de pieds, une trentaine, je crois; pouvez-vous dire à la Cour, si dans les conditions que l'on vous a décrites chez Sherwin Williams la flamme génératrice prendrait un tel temps pour faire un trajet d'une trentaine de pieds? R.—Il n'est pas possible de dire le temps qu'aurait pris une flamme, parce que nous ne connaissons pas, et personne ne connaît les conditions exactes dans lesquelles la flamme ou la combustion s'est propagée dans le mélange gazeux initial, et je dis initial, parce que dans cet accident, il y a eu deux sources de mélanges gazeux combustibles et ces deux sources ne se sont pas produites en même temps; la première, c'est lorsque les gaz ont commencé, les vapeurs de térébentine, si nous pouvons dire, ont commencé sortir par la soupape de sûreté en suivant les calculs du docteur Lipsett, à une vitesse de 30,000 pieds à la minute.

Par Me Mann, C.R.:—

D.—Par la soupape? R.—Par le "vent pipe", en anglais. anglais.

Par la Cour:—

D.—Pour la vitesse donnée par le docteur Lipsett ne se rapportait qu'aux gaz qui s'échappaient du trou d'homme et non pas de la soupape de sûreté. R.—Après le bris de la porte?

La Cour:—Après l'ouverture partielle de la porte. Il a dit que le gaz s'échappait à une vitesse de tant. Il n'a pas donné la vitesse du gaz qui s'échappait de la soupape.

Par Me Hackett, C.R.:—

D.—Peut-être que je pourrais vous demander cette question: s'il est vrai, d'après le témoignage du docteur Lipsett que les gaz s'échappaient à une vitesse de 30,000 pieds à la minute, au trou d'homme, à quelle vitesse s'échapperaient les mêmes gaz

de la soupape ou de la "vent pipe", comme on dit en anglais? R.—Pas nécessairement la même vitesse, parce qu'il y a plus de frottement, il y a un détail, mais ce serait en tout cas très rapide.

D.—Les deux sources seraient soumises à la même pression? R.—Oui. Il y a plus de résistance dans le "vent pipe" que dans l'autre. De toute façon, étant donné qu'il est admis par mes collègues que les gaz se sont échappés par le "vent pipe" et par le tour du couvercle qui fermait le trou d'homme, l'un après l'autre ou en même temps, en tout cas, à un temps donné, ils étaient tous les deux en opération. Ces vapeurs, et je crois que c'est assez clair par les témoignages, ont pris feu et il s'est produit, ce qu'on appelle un "flash", en anglais, le point éclair, en français, c'est une flamme qui balaie la surface d'un liquide, qu'elle se soit produite en même temps, à l'une des portes ou à l'autre, cela, nous ne pouvons pas d'ailleurs savoir si ç'a été en même temps, nous n'avons aucune donné à ce sujet, seulement il reste une chose évidente, c'est qu'à ce moment-là il y a eu une flamme dans la pièce.

Par Me Mann, C.R.:—

D.—Dans la pièce? R.—Oui, dans la pièce est. Où? A l'ouverture des portes.

Comme les mélanges gazeux étaient dispersés dans toute la pièce parce que à la vitese à laquelle ils étaient lancés dans l'atmosphère, ils étaient repoussés et c'était un nuage qui se développait dans la pièce, je crois, c'est une opinion motivée et raisonnable, que les gaz se sont mis à brûler dans n'importe quelle direction puisqu'il n'y avait pas de direction privilégiée, et dans ces cas-là, le feu, les gaz brûlants doivent tendre à se rapprocher vers la source, ils doivent tendre, mais de toute façon, que ce soit rapproché ou non de la source. . . .

Par Me Hackett, C.R.:—

D.—De la source de quoi? R.—De la source de production des gaz.

Il y avait à ce moment-là, du feu dans la pièce, une source quelconque, par le feu, elle a continué d'exister, je ne sais pas, et cela c'est une devinette pour tout le monde, mais il y a un fait qui, je crois, est certain, c'est que la source de la flamme est restée. Où elle est restée à sa source ou à la naissance du feu, ou

elle est restée à la source de la production de la vapeur, un des deux, puisqu'il y a eu une autre explosion.

Il y a eu une explosion forte qui est une explosion par combustion et par conséquent il faut un allumage pour une explosion par combustion à moins que nous soyons sous pression.

Par la Cour:—

D.—Cette seconde explosion ce serait celle qui aurait été entendue par ceux qui s'échappaient par l'escalier de sauvetage? R.—Oui, et ce que l'on a qualifié par "explosion formidable". Là, encore, je diffère d'opinion avec mes collègues sur un point, c'est que ces messieurs ont cherché à démontrer que la combustion rapide, l'éclair du début était le début de la grande explosion et qu'elle était liée. . .

Par la Cour:—

D.—La première phase? R.—Oui, la première phase de l'explosion, c'est l'expression qu'ils ont employée, je crois. Eh bien, rationnellement, comme le premier éclair, ce qu'ils ont appelé la première phase, provenait d'une autre source que la grande explosion qui s'est produite par la décharge de la totalité de la térébentine, ce sont deux phénomènes différents qui se sont rencontrés, mais qui ne sont pas partis de la même source.

Par Me Mann, C.R.:—

D.—Même source ou même chemin? R.—Même point de départ. J'ai d'ailleurs représenté, j'ai fait ce que l'on appelle en anglais un "flow sheet", un schéma, en français, et que j'ai mis en anglais et que je voudrais produire.

Par la Cour:—

D.—Vous le produisez comme pièce D-12? R.—Oui. Nous avons les lettres "R", "right" et "L" "left", nous avons "boiler", ce qu'on a mis dans le "boiler", térébentine.

Il s'est produit une réaction bien connue que l'on appelle la polymérisation, réaction qui donne de la chaleur, qui a émis des vapeurs, et par conséquent développé une pression à l'intérieur du vase, là où des vapeurs se sont échappées.

PAUL RIOUX (for Defend. at Enq.) Cross-examination.

Si les vapeurs vont de côté sur la feuille, vont vers une source de feu, nous avons la ligne "A", le "flash". Maintenant, j'ai indiqué à partir de la source du feu, par les lettres "B" et "C", soit directement de la source du feu ou indirectement par la source des vapeurs, les lignes qui vont à l'explosion.

Au milieu il y a un pointillé qui nous indique que si on se dirige du côté gauche où il n'y a pas de source de feu, nous avons développement de la pression, bris de la porte, projection de la térébentine dans l'air et dispersion dans l'atmosphère sans qu'il se produise aucun autre phénomène que le bris de la porte qui retenait la térébentine.

Par la Cour:—

D.—Voulez-vous expliquer un peu plus en détail la partie qui se rapporte au mot "fire" et la lettre "A", "B", "C"? R.—J'appelle "fire" la source d'ignition.

D.—Qu'elle qu'elle soit? R.—Oui, quelle qu'elle soit, je ne la connais pas, personne ne la connaît, on peut la supposer, mais on ne la connait pas.

D.—Elle a dû exister? R.—Oui. il a fallu qu'elle existe. Suivant la ligne "A", cette source a agi sur les vapeurs de térébentine qui sortaient du "vent pipe" et du trou d'homme et nous avons eu la première combustion rapide, le "flash".

Maintenant, si on continue le schéma, si on descend jusqu'à ce que la térébentine, la totalité de la térébentine soit projetée hors du réservoir No 1, nous avons encore deux lignes, une ligne qui va vers l'air où il ne se produit rien, et une ligne qui nous dit ce qui va se passer quand ces vapeurs vont venir en contact avec la source de flamme. Je ne sais pas d'où elle vient cette source d'ignition, elle peut venir par la source première, par la ligne "B" ou de la source seconde par la ligne "C".

Contre-interrogé par Me Mann, C.R., Avocat de la demande:—

D.—Dans votre témoignage, docteur Rioux, vous avez parlé de MM. Mason & Wheeler, du Docteur Henri Le Chatelier, n'est-ce pas? R.—Oui, monsieur.

D.—Ce dernier, je comprends, était un de vos patrons à la Sorbonne, un de vos profeseurs? R.—Oui, M. le Chatelier était ce que nous appelons, comme vous le dites très bien, "le patron".

PAUL RIOUX (for Defend. at Enq.) Cross-examination.

D.—Est-ce que je peux dire que vous avez beaucoup de foi dans les écrits et les cours du docteur Le Chatelier, que vous avez beaucoup de foi dans ses opinions sur les questions d'explosions ? R.—Pendant que j'étais étudiant, M. Le Chatelier n'a pas donné de cours sur les explosifs, mais il y a un volume qu'on appelle "Le carbone", et que j'ai ici, et dans lequel il donne le cours qu'il a donné, je crois, que c'est la première année qu'il a été nommé à la Sorbonne, je ne suis pas certain, mais je crois que c'est la première année et dans lequel il parle du carbone. Il étudie la question des combustions rapides et de l'onde explosive. En plus, lorsque j'étais à son laboratoire, j'ai eu occasion de suivre avec un grand intérêt les travaux de mon camarade Lafitte.

Par la Cour:—

D.—Dont vous avez parlé tout à l'heure? R.—Oui, j'ai parlé de sa thèse qui a été publiée en 1925.

Par Me Mann, C.R.:—

D.—Pour le moment, je ne parle pas de M. Lafitte? R.—M. Lafitte était l'élève. . . .

Me Hackett s'oppose à ce qu'on interrompe le témoin.

R.—M. Le Chatelier était le Directeur des travaux et ses travaux sur les explosions étaient l'amusement du laboratoire, et comme je travaillais moi-même sur les vitesses de réaction et les combustions, qui sont des vitesses de réaction, j'ai suivi avec beaucoup d'intérêt les travaux de mon collègue et j'ai assisté à de nombreuses expériences, nombreuses explosions, et nous avons eu l'occasion de discuter de ces choses. c'est-à-dire que j'ai assisté plutôt aux discussions sur le sujet, discussions de M. Henri Le Chatelier.

Par Me Mann, C.R.:—

D.—Auriez-vous l'obligeance de nous dire, monsieur le docteur Rioux, quand vous avez assisté à une explosion commerciale, comme nous avons devant nous, maintenant, de térébentine mêlée avec le Filtrol et le Filter Cel? R.—Je n'ai jamais assisté à une explosion de térébentine dans les conditions qui se sont produites à la Sherwin Williams.

PAUL RIOUX (for Defend. at Enq.) Cross-examination.

Par la Cour:—

D.—Vous devez en remercier le Bon Dieu d'ailleurs. R.—Oui. C'est un cas unique, je crois dans l'histoire de l'industrie.

Par Me Mann, C.R.:—

D.—Connaisez-vous un ouvrage intitulé "Flame and Com-"bustion in gases" par Bone et Townend? R.—Je n'ai pas lu ce volume.

D.—Pourquoi pas, monsieur le docteur? R.—Parce qu'il n'était pas à notre biblothèque. J'ai sorti une dizaine de volumes sur le sujet.

D.—C'est en anglais? R.—Oui, je sais.

D.—Si vous ne le connaissez pas, il faut que je vous réfère à quelques passages dans ce livre, en français dans les mots de M. Le Chatelier. Avant de faire cela, savez-vous que c'est un ouvrage fameux le plus fameux dans la langue anglaise au monde, plutôt en Angleterre et aux Etats-Unis; je me limiterai même à l'Angleterre et au Canada? R.—Ça peut être un auteur très remarquable, je n'en doute pas, mais que ce soit l'auteur le plus fameux en Angleterre ou aux Etats-Unis, je ne suis pas obligé de le croire, parce que j'ai apporté ce matin un ouvrage que je n'avais pas lu, d'ailleurs, de M. Davis. . . .

D.—Reconnaissez-vous cette oeuvre comme une oeuvre "standard"? R.—Je n'ai pas d'objection à la reconnaître.

D.—Ce n'est pas une question d'objection. Le reconnaissez-vous comme un ouvrage "standard", vous souvenant tout le temps, monsieur le docteur, qu'il y a beaucoup de références à votre professeur Le Chatelier, là-dedans, comme appui des opinions des auteurs?

Me Hackett s'oppose à la demande comme illégale.

Par la Cour:—

D.—Seriez-vous prêt à reconnaître cet ouvrage comme un ouvrage connu et accepté dans le monde scientifique? R.—Votre Seigneurie, la réponse que j'allais donner, en retranchant tous les qualificatifs et l'histoire de M. Mann sur l'auteur, remarquez bien que je ne l'ai pas lu, et c'est un ouvrage comme les autres ouvrages, il doit être ausi bon que tous les autres. . .

D.—Vous avez entendu parler des auteurs? R.—Non, je ne les connais pas Votre Seigneurie. Je connais d'autres auteurs

anglais, Dickson, qui a fait de nombreux travaux. Je ne connais pas tous les travaux qu'il a faits, mais je sais que c'est un auteur reconnu. Il y a Davis, qui est un auteur récent de 1943.

Je n'ai pas d'objection, pour ma part, ça m'est absolument égal que les citations de M. Le Chatelier soient données, mais je ne suis pas prêt à discuter un ouvrage que je n'ai pas lu.

Par Me Mann, C.R.:—

D.—Quel est le nom du livre de M. Davis, dont vous venez de parler? R.—"Chemistry of Powder and Explosives". C'est un livre d'ailleurs que je n'ai pas vu, que j'ai trouvé dans la bibliothèque de mon collègue, ce matin, et que j'ai apporté ce matin à M. Sherose, pour qu'il s'amuse avec en attendant.

D.—Vous n'avez pas lu le livre? R.—Non, je ne l'ai pas lu.

D.—De sorte que vous ne pouvez pas me référer à quelque expérience dans les explosions des vapeurs de térébentine dans ce livre? R.—Non, je ne l'ai pas lu.

D.—Un autre peut peut-être faire cela, s'il y en a? R.—Si la Cour m'ordonne de le faire, je n'ai pas d'objection à le faire. Seulement, la seule objection que j'ai, Votre Seigneurie, c'est que je ne veux pas le faire pendant la séance de la Cour.

D.—Voulez-vous examiner l'index de ce livre, et voulez-vous dire à la Cour où il est mentionné des expériences des explosions. . .

Me Hackett s'oppose à la demande comme illégale, parce que le témoin vient de dire qu'il n'a pas lu ce livre, qu'il ne l'a jamais vu avant ce matin, il l'a apporté pour le passer à son collègue.

L'objection est maintenue.

La demande est retirée.

Par Me Mann, C.R.:—

D.—Auriez-vous l'obligeance, monsieur le docteur, d'examiner les références faites au Professeur Le Chatelier, en français, à la page 106, au livre de Bone and Townend et dire si vous êtes d'accord avec ce que MM. Mallard et Le Chatelier disent? R.—Je suis d'avance d'accord avec ce qu'il dit, parce que je sais que les chiffres qui sont rapportés là sont relatifs à des expériences qui ont été faites.

PAUL RIOUX (for Defend. at Enq.) Cross-examination.

D.—Merci beaucoup, monsieur le docteur. . . .

R.—Quand à les interpréter à la Cour, je demanderais à Votre Seigneurie de ne pas m'y forcer parce que je préfèrerais, si la Cour le demande, lire le chapitre en entier, parce que une citation tirée au milieu ne nous dit souvent pas ce que ça veut dire.

La Cour:—C'est très sage.

Par Me Mann, C.R.:—

D.—Je ne vous ai pas demandé d'interpréter aucune opinion, monsieur le docteur. Je vous demande si vous auriez l'obligeance de lire à la Cour ce que M. Mallard et M. Le Chatelier ont dit, page 106, c'est en français? R.—. . .

D.—Voulez-vous lire à la Cour, parce qu'il faut que ce soit dans le dossier?

Me Hackett:—Je suggère, qu'il plaise à la Cour, étant donné qu'on demande une appréciation d'un passage, que le témoin devrait avoir l'occasion de voir le chapitre dont le passage est un extrait, comme il l'a demandé à la Cour, avant de l'interpréter. R.—Je peux répondre, Votre Seigneurie.

Par Me Mann, C.R.:—

D.—Ce n'est pas une question, je vous demande avant de dire quelque chose, de lire le passage, de sorte que la Cour sache ce qu'il y a là-dedans?

La Cour:—La meilleure façon de le savoir, c'est de le lire.

(La Cour prend connaisance du document).

La Cour:—Je suggère que l'on demande au témoin de lire ce passage de l'ouvrage de Le Chatelier et Mallard, et ensuite, de nous dire s'il est prêt maintenant à exprimer sa propre opinion là-dessus, ou s'il désire, avant de répondre, lire tout le chapitre dans lequel se trouve cette citation.

R.—Votre Seigneurie, je suis prêt à lire la citation avec une seule différence c'est de l'expliquer et non pas de porter mon opinion sur l'opinion de mon patron. Je connais le passage, il est dans "Le Carbone", il est ici dans mon livre.

PAUL RIOUX (for Defend. at Enq.) Cross-examination.

La Cour:—Posez-lui la question, monsieur Mann.

Me Mann:—Je lui ai demandé simplement de le lire pour le mettre dans le dossier.

Par Me Mann, C.R.:—

D.—Voulez-vous le lire dans le dossier? R.—Je lis la citation d'un ouvrage de Mallard et Le Chatelier qui se trouve à la page 106, de l'ouvrage intitulé "Flame and combustion in gases" by Bone and Townend, publié à Londres.

Par Me Hackett, C.R.:—

D.—En quelle année? R.....En 1927.

Par la Cour:—

D.—Voulez-vous avoir l'obligeance de lire le passage de la citation?

Le Témoin:—Auriez-vous objection, Votre Seigneurie, à ce que je lise le paragraphe en entier?

La Cour:—Non.

R.—"The general conclusion which Mallard and Le Cha-"telier drew from this part of their work is best expressed in "their own words, as follows: 'C'est que lorsqu'on allume un " 'mélange gazeux explosif avec une flamme l'inflammation com-" 'mence toujours au début par se propager d'un mouvement " 'uniforme, la vitesse de ce mouvement uniforme qui se prolonge " 'pendant un temps plus ou moins long, suivant les cas, est " 'constante pour un même mélange gazeux brûlant dans les " 'mêmes conditions. Elle est toujours modérée et certainement " 'inférieure à 30 mètres par seconde pour tous les mélanges " 'étudiés jusqu'à présent'."

Par Me Mann, C.R.:—

D.—Ayant lu le passage, monsieur le docteur, voulez-vous dire à la Cour, s'il vous plaît, si possible, quelle différence vous trouvez pour penser qu'il y avait entre le gaz qui s'est échappé du "vent pipe" et le gaz qui s'est échappé de la porte? R.—Ce n'était pas le même gaz, c'est la seule réponse que je peux donner.

PAUL RIOUX (for Defend. at Enq.) Cross-examination.

D.—Ce n'était pas le même gaz? R.—Non.

D.—Nonobstant le fait que le gaz venait du même lieu, vous dites que ce n'était pas le même gaz? R.—Je vous demande pardon, je n'ai pas compris votre question. J'ai compris que vous me demandiez si les gaz qui avaient servi dans l'expérience de Le Chatelier et ceux qu'on a trouvé à Sherwin Williams, quelle différence il y avait. C'était les mêmes gaz.

D.—Ayant lu le passage à la page 106, ayant, j'ai dit "ayant", maintenant, voulez-vous dire la différence entre la nature du gaz qui s'est échappé du tuyau de sauvetage et le gaz qui s'est échappé de la porte de la machine à Sherwin Williams? R.—Les vapeurs, nous dirons, qui se sont échappées du "vent pipe" et les gaz qui se sont échappés par l'espace qui s'est produit entre le "tank" et la porte, avant que la porte ne saute, étaient probablement approximativement de même nature, mais quand la porte a sauté, ce qui s'est échappé n'était pas de même nature, c'était un mélange de gaz et de liquide, de térébentine liquide.

D.—Vous dites que la térébentine liquide à part du gaz s'est échappée de la porte? R.—Après que la porte a sauté.

D.—Après que la porte a sauté? R.—Il y avait un mélange de gaz et de vapeur semblable au premier et une autre partie de particules du liquide qui avait été projeté.

La déposition du témoin est alors ajournée à deux heures et trente.

Advenant deux heures et trente, le témoin continue sa déposition comme suit:

Interrogé par Me Hackett, C.R.:—

D.—Au moment de l'ajournement on vous a fait lire un passage non identifié de Mallard et Le Chatelier, avez-vous quelques explications ou quelques commentaires à faire au sujet de ce passage? D'abord, est-ce que l'on peut dire d'où est tiré ce pasage? A.—Il n'y a pas d'indication d'où il est tiré. Au moment où je l'ai parcouru, je croyais l'avoir vu dans le livre de M. Le Chatelier "Le Carbone" et j'ai retrouvé le paragraphe où M. Le Chatelier fait allusion à ce travail. Je dois dire que le travail de Chatelier a été fait de la même façon que celui, ou plutôt le travail de Mason & Wheeler a été fait de la même façon que celui de Le Chatelier, mais Wheeler a procédé dans des tubes plus grand, par conséquent, les mêmes conditions s'appli-

quaient. Je voudrais avec la permission de la Cour lire le paragraphe qui se rapporte à cette expérience, parce qu'il y a un complément très important.

Je lis à la page 273, ouvrage "Le Carbone" par Henri Le Chatelier.

"On constate dans ces conditions, lorsque l'inflammation "a été mise du côté de l'extrémité ouverte du tube", — je souligne cette partie-là moi-même pour indiquer que c'est bien le cas. — "Que la flamme se propage d'abord avec une vitesse "sensiblement uniforme, la courbe enregistrée est alors une "droite plus ou moins inclinée; il se développe bientôt des mou- "vements vibratoires dans la masse gazeuse qui prennent parfois "une violence extraordinaire. Le parcours présente des ondula- "tions très accentuées; enfin, dans certains cas, la propagation "de l'inflammation devient brusquement, en quelque sorte, ins- "tantanée, du moins tellement rapide qu'il est bien difficile de "reconnaître l'existence d'une vitesse définie.

"La période initiale uniforme de propagation correspond "à l'échange normale de chaleur par rayonnement." C'est l'explication du phénomène.

"Ou conductivité, sa durée n'est jamais très grande, elle "l'est d'autant plus que le diamètre du tube et sa longueur sont "plus considérables; ce régime uniforme initial ne se prolonge "guère au delà d'un parcours de la flamme de 0 M.25 à 1 mè- "tre."

Ce qui signifie que cette période initiale que l'on a signalée de 30 mètres à la seconde. . . .

Par Me Hackett, C.R.:—

D.—Combien est-ce que ça représente de pieds, cela? R.—Ça correspond à quelque chose comme cent pieds, aux environs, le chiffre n'est pas exact, — ne parcourt jamais plus qu'un mètre, par conséquent, cela représente une centaine de minutes, ...

D.—De minutes ou de secondes? R.—De secondes, pardon. Et quand c'est 25 centimètres c'est 1,400 de seconde, ce qui est au moins plus de quatre fois la longueur de cette salle. Pour revenir sur un point sur lequel j'ai insisté, les vapeurs du "vent

pipe", les premières vapeurs, et les premières vapeurs qui se sont échappées de la porte avant qu'elle ne soit brisée, se sont inflammées et ont continué ou discontinué de brûler, je ne sais pas et personne ne le sait, et le fait que cette flamme initiale parcourt 100 pieds en une seconde, un pied par centaine de secondes ou inversement, si elle allait quatre fois plus vite, si elle faisait un quart de mètre c'était un quatre centième de seconde pour parcourir tout cet espace.

Par conséquent, les deux origines restent bien distinctes et l'expérience de Le Chatelier, en aucun cas, ne vient changer le cours des évènements et la liaison entre les deux évènements qui ont des sources séparées.

D.—Dans le cas actuel? R.—Oui, dans le cas actuel et les deux travaux, ce sont des travaux qui cherchaient à démontrer un point. Ils sont aussi bon l'un que l'autre, d'abord, ils se confirment, mais ils ne se rapportent pas au cas qui nous intéresse.

Par la Cour:—

D.—Si je comprends bien ce que vous avez dit, vous êtes d'accord avec le docteur Lipsett pour dire que dans certaines circonstances une explosion se présente en trois phases, lesquelles il a décrites, en détail, mais que ces trois phases ne se trouvent pas dans toute explosion de matières gazeuses? R.—En général, la première phase qui est justement ce qui est cité par Le Chatelier, n'existe pas toujours. Cela dépend du procédé d'allumage et des conditions dans lesquelles on opère. Les deux auteurs spécifient: "Dans les conditions de l'expérience."

La deuxième phase peut être supprimée avec certains allumages, comme je l'ai montré, mais dans un cas d'inflammation elle existe toujours.

Par Me Hackett, C.R.:—

D.—Voulez-vous expliquer à la Cour ce que vous voulez dire par les mots "les deux origines sont distinctes", de quoi parlez-vous? R.—Je veux dire l'origine des vapeurs qui se sont échappées du "vent pipe" et par le contour de la porte et qui ont produit un "flash", un éclair, par conséquent une combustion qui a une origine séparée de la grande combustion de l'explosion qui s'est faite après que la masse de la térébentine soit sortie du réservoir numéro 1.

PAUL RIOUX (for Defend. at Enq.) Cross-examination.

D.—Je dois vous demander de préciser un peu davantage. De quels évènements s'agissait-il entre lesquels vous voulez faire une distinction. . .

Par la Cour:—

D.—Je crois avoir saisi. Le docteur Rioux parle d'abord du phénomène qui s'est produit après que les vapeurs se sont échappées du tuyau de sauvetage, du "vent pipe" et du contour de la porte ou de la porte même entr'ouverte, cela, c'est un phénomène, ensuite il s'est produit un autre phénomène lorsque la porte a éclaté et que le volume de vapeurs est sorti de la porte même, de l'ouverture même de la porte. C'est bien cela les deux phénomènes que vous distinguez comme deux sources différentes? R.—Oui, c'est bien cela, deux sources différentes de matières combustibles, c'est la même source, mais qui sont sorties à des moments différents et d'une façon différente. Ces vapeurs sont venues en contact avec une source de feu. La première a pris feu, le feu a continué ou non, je ne le sais pas, mais si le feu n'a pas continué, la source du feu est restée. Si le feu n'est pas resté les deux évènements, les deux incendies sont complètement séparés et si le feu a continué, le premier n'est pas le commencement de l'explosion, de la grande explosion, c'est une combustion à part.

Par Me Hackett, C.R.:—

D.—Vous avez entendu dire ici que le témoin Frazier a vu du feu dans la porte nord comme il s'avançait vers cette porte, et vous avez entendu que le témoin Rymann avait vu ce qu'il appelle un "flash of flame" dans la porte sud, comme il s'avançait. Voudriez-vous exprimer votre opinion professionnelle au sujet de ce phénomène et sa relation avec l'explosion qui a fait sauter le toît? R.—Si ce que Rymann et Frazier ont dit est arrivé, je ne le sais pas. Si un de ces hommes a vu du feu un dans la porte nord et un dans la porte sud, exprimé d'une façon différente, à leur façon, peu importe, il n'y a d'après moi que trois possibilités. Si on admet qu'il n'y avait pas de vapeur dans la chambre ouest, les flammes, par conséquent, n'ont pas pu communiquer par la chambre ouest, il fallait qu'elles communiquent par la chambre et puisque ces messieurs ont vu quelque chose comme la flamme, le "flash", dans les deux portes, ça peut indiquer que l'éclair a parcouru toute la chambre.

PAUL RIOUX (for Defend. at Enq.) Cross-examination.

Par la Cour:—

D.—Toute la chambre est? R.—Oui, ou qu'il y avait deux feux dans chacune des portes. C'est une possibilité qui n'a pas été signalée mais c'est une possibilité. On ne sait pas. Et c'est les deux seules que je prévois. Quant à la réflection, c'est-à-dire, supposons que si l'éclair s'est produit d'une porte et que dans l'autre porte on n'ait vu que la réflexion, ce qui est encore une possibilité, je crois que c'est peu probable, et voici pourquoi. Nous étions en plein jour, je ne sais pas quelle température il faisait, s'il y avait du soleil, c'est encore moins probable, si devant les vapeurs lourdes et entassées de térébentine, ceux qui les ont vues le savent, c'est très intense et en plein jour il y a une soixantaine de pieds entre les deux portes, quelque chose comme cela, je ne suis pas certain, entre 50 et 75 pieds, en tout cas, je crois, là c'est une opinion qui est basée sur mon appréciation, Votre Seigneurie, mais je crois que ce serait assez difficile de voir l'éclair, seulement je ne lui accorde pas plus de valeur que cela.

Par la Cour:—

D.—La troisième possibilité, ce serait, d'après vous, la moins probable? R.—Oui, la moins probable. La deuxième aussi, les deux feux, ce n'est pas très probable.

D.—Alors, vous préférez la première? R.—Oui, c'est celle qui a le plus de sens, d'après moi. C'est une appréciation et elle ne vaut pas plus que ce que je pense.

Par Me Hackett, C.R.:—

D.—Quelle relation y aurait-il entre le feu qu'aurait vu Frazier et l'évènement qui a fait sauter le toît? R.—Comme j'ai expliqué, c'est une première combustion qui s'est produite, un premier éclair, ce feu a pu remonter vers la source de production de vapeurs ou il a pu cesser, mais la source du feu est encore là puisqu'on a eu une explosion après ça.

D.—Il y a eu deux évènements complètement séparés? R.—J'ai dit deux évènements séparés parce que les sources de matières combustibles ne se sont pas produites en même temps et c'est par raisonnement, comme vous le comprenez bien, Votre Seigneurie, que j'établis ce phénomène simplement.

Et le témoin ne dit rien de plus.

Jean McKay,
Sténographe.

Plaintiff's Evidence in Rebuttal

DEPOSITION OF DR. S. G. LIPSETT (In Rebuttal)

On this 6th day of February, in the year of Our Lord nineteen hundred and forty-six, personally came and appeared: Solomon George Lipsett, a witness already sworn and examined in this case and who being now recalled and further examined on the part of Plaintiff, in rebuttal, doth depose and say as follows, under the same oath:—

Examined by Mr. J. A. Mann, K.C.:—

Q.—You have already been sworn? A.—Yes.

Q.—Would you be kind enough, Dr. Lipsett, to look at Exhibit D-11, which was produced by Dr. Rioux for the Defence, and say what type of gases were being dealt with according to the very legend on the exhibit itself? A.—The legend states that these experiments were made with a mixture of carbon disulphide and oxygen.

Q.—Is carbon disulphide a hydrocarbon gas? A.—No.

Q.—So it was an entirely different gas from what we are dealing with? A.—Yes. And oxygen is not the same as air, — it is quite different, — and the results are not applicable to what might happen if you are dealing with a mixture of inflammable gas and air.

Q.—What is the difference? A.—The difference is most pronounced when you are dealing with experiments concerning detonation. Detonation occurs very much faster in mixtures with oxygen than it does with air. With air you may get a relatively long period, comprising the first and second stages of an explosion, whereas the same inflammable gas mixed with oxygen may show a very small period of time involved in the first two stages.

Q.—You were present when Dr. Rioux gave his evidence? A.—Yes.

Q.—Did you understand it ? A.—Not fully, no.

Q.—Well, I will be corrected if I misstate. I will endeavor not to. At one stage of Dr. Rioux's evidence he stated, substantially, that the second phenomenon or second phase of the accident following the blowing-out of the door and at that stage volumes of gas came out and as well liquid turpentine.

Mr. Hackett:—I haven't got the text before me. . . .

Mr. Mann:—Nor have I.

Mr. Hackett:— . . . . and, relying on my understanding, that is not what Dr. Rioux said. I can't say that Mr. Mann's understanding of what Dr. Rioux said is any less perfect than mine, but I most certainly did not understand Dr. Rioux to say that it was between the first and second phases of the explosion. . . .

Mr. Mann:—I didn't say that.

Mr. Hackett:— . . . . that the door of the tank came off.

The Court:—If I don't misinterpret the evidence of Dr. Rioux, I believe this is what he said, in effect:—He made a distinction between the two phenomena, the first of which was, if you like to put it that way, composed of two smaller phenomena: the escape of the vapors from the vent and the escape of the vapors from the partially opened door. That was one phenomenon. That was followed by certain results.

The second phenomenon, which Dr. Rioux wishes to distinguish from the first one, was what occurred when the door blew off the manhole of the tank, and he says it was after that phenomenon that the vapor and liquid came out.

That is my interpretation.

Mr. Mann:—I think that is exactly what I said.

The Court:—Well, not exactly.

Mr. Mann:—I don't mean in construction, — my construction was different, — but in import.

(The question, Page 663, is read):

The Court:—And Mr. Hackett objected to your summary, Mr. Mann, of that part of Dr. Rioux's testimony, and I endeavored to make it a little more precise and less objectionable from the point of view of Mr. Hackett, and I think I succeeded in so doing.

Taking my summary or paraphrase, Dr. Lipsett, will you now listen to the question Mr. Mann is about to put to you.

By Mr. Mann, K.C.:—

Q.—Following his lordship's paraphrase and my endeavor to summarize to you what I thought was the evidence, my question is: have you any comment to make with respect to that part of Dr. Rioux's evidence indicating that liquid turpentine was ejected from the open space which resulted from the absence of the door? A.—I can see no reason to assume that any more than faint traces of liquid turpentine would come out of the opening of the tank when the door blew off. The tank originally contained 850 gallons of turpentine, and when it contains that amount the level inside the tank is below the opening of the door, by an inch or two. Part of the contents of the tank had been emptied, and there were, according to the testimony, 685 gallons of turpentine left in the tank. That would lower the level, probably, to eight inches or ten inches below the opening of the door. The turpentine vapors inside the tank were under high pressure. There was no particular reason to assume liquid would come out when the door blew off.

Q.—I have forgotten how much turpentine, Dr. Lipsett, had been taken away to be filtered? A.—The difference between 850 and 685 gallons.

Q.—165 gallons? A.—I think about 150 were received in the filter press and about 15 gallons filled the pipelines on the way down.

Q.—That is, a quantity of 165 came out of the tank and 850 went in? 850 went in and 165 came out? A.—That is right.

Q.—You heard Dr. Rioux, I think, state, in substance, — and I am at the disadvantage of not having the deposition before me, — but I think on one or two occasions he said that the first mixture of gas came out of the vent, and when I say "first" I mean first in point of time.

Have you any comments to make as to the possibility or otherwise of determining when and at what moment vapor began to escape from that tank, whether it be the vent pipe or whether it be the door periphery or both together? A.—At the beginning of the reaction, before it had proceeded for more than a fraction of a second, there would probably be some vapors coming out of the vent pipe and none out of the door, but in a few seconds, a very few seconds, the pressure within the tank would be high

enough to have started the forcing of the door, and then I deduce it would come out of both places.

Q.—What about the quality or density of the gas from each place? A.—I think they would be identical.

Q.—Whether they came from the pipe or came from the periphery of the door or through the space that existed when the door was forced open? A.—Yes.

Mr. Hackett:—That is not in dispute.

Mr. Mann:—It was in dispute.

The Court:—Whether it is in dispute or not, it is there. If it is the same as Dr. Rioux said, tant mieux.

Mr. Mann:—If Mr. Hackett says it is not in dispute, that doesn't mean it was not in dispute.

Mr. Hackett:—I simply say there was a misunderstanding on that. When my friend was cross-examining Dr. Rioux, Dr. Rioux understood that Mr. Mann was asking him for the difference between the gas mentioned in the experiment in the book and the gas that was in the tank, and it came about that Mr. Mann made the doctor understand he was talking about the gas that emerged from the vent and the gas that emerged from the door, and Dr. Rioux said they were identical.

Mr. Mann:—You are quite right.

Q.—(By Mr. Mann, contg.):—We had in evidence this morning a discusion by Dr. Rioux in respect of tests or experiments carried out in small tubes and larger tubes. Do you remember that in his evidence? A.—Yes.

Q.—Have you any comments to make with reference to the reaction in small tubes as compared with large tubes, in connection with ignition, propagation and explosion of gases? Now, when I say "gases" I refer to similar types of gas to that with which we are dealing here, gases within the same category. A.—Speaking generally, the same type of action happens in tubes, let us say, of one inch in diameter or one foot in diameter or ten feet in diameter.

One of the investigators who carried out a lot of work on explosions was employed by the Mines Safety Committee in England to do work, and in order to find out. . . .

Mr. Hackett:—My lord, I must ask the doctor to tell the Court just how much he knows about these experiments that were carried out in England, before he goes much further, because I haven't any means of controlling the accuracy of what was done there.

By The Court:—

Q.—The tests or experiments to which you were about to refer, Dr. Lipsett, took place in England? A.—Yes.

Q.—You were not there, I presume? A.—No.

Q.—Are the results of these tests or the procedure followed in the tests published in any recognized scientific journal or volume? A.—Yes.

Q.—Have you the volume available? A.—I have. (To Mr. Mann):—Do you think it is advisable?

By Mr. Mann, K.C.:—

Q.—The Court asks you the question. You have it available here? A.—Yes.

The Court:—In those circumstances, Dr. Lipsett, if it is really relevant to the question that has been put to you, you may refer to the volume.

What the witness has said is that the diameter of the tube would not make any difference. I didn't know that was in dispute.

Mr. Hackett:—No.

Mr. Mann:—But I haven't got to the balance of my question yet.

The Court:—But, if the point is not in dispute, why should we need to refer to any experiment in England or elsewhere?

Mr. Mann:—My question was objected to before I got through with it. It is this:—

Q.—How do experiments in a tube apply in a case where the dfficulty or incident happens in the open air of a large room?

The Court:—I understand from the answer of Counsel for Defendant that it is not disputed that the reaction in a tube would be approximately the same whether it is one foot or three or ten feet in diameter. You need not elaborate on that point, then.

By Mr. Mann, K.C.:—

Q.—Did you say that the reaction as regards speed or propagation of flame would be the same in a one-foot or a three or ten-foot tube? A.—I said that generally speaking the reaction is similar, or words to that effect, in tubes one foot or ten feet in diameter.

Q.—What about the speed? A.—I was speaking generally. There are certain differences.

Q.—Well, go ahead. A.—Speaking particularly with reference to the velocity of flame movement in the first stage of an explosion, the velocity tends to increase as the size of the tube increases. With tubes that are over two inches in diameter the velocity is said to be proportional to the diameter of the tube, so that in a tube six feet in diameter we can assume that the velocity would be approximately double that of the same gas under similar conditions in a three-foot tube.

Q.—Now go on. When we get into an open room, what is the answer? There isn't a tube there at all except the four walls. A.—There isn't a tube there at all, and one is justified in applying the results of experiments made in tubes to conditions in open rooms, as those tests have been made by some of the foremost investigators in England. There might be slight differences. I don't want to maintain that because a gas moves at 33 feet in a tube it will move at the same rate, that is, 33 feet per second, in an open room. It may move at 40 feet per second.

By Mr. Hackett, K.C.:—

Q.—Or 140? A.—No, I didn't say that, but it would be a figure of similar order of magnitude.

By The Court:—

Q.—It would be something in the nature of 33, — not 500 or anything like that: that is what you mean, I gather? A.—Yes.

By Mr. Mann, K.C.:—

Q.—I think there was some reference in Dr. Rioux's evi-

dence, — it may have been in Mr. Parker's, — in any event, it was today, and I think it was in Dr. Rioux's evidence. — to flame brushing across, — the word used was the French word for sweeping across, — the liquid in the tank. Do you remember that? A.—I didn't follow that in the French.

Q.—The expression used was "balayer". That means to sweep as with a broom.

Mr. Lemay:—Mr. Mann, if I understand correctly, is referring to the liquid in the tank?

Mr. Mann:—That is what I understood.

Mr. Lemay:—Dr. Rioux, if my memory is correct, spoke of the flash in the room, not in the tank. The tank was clearly excluded earlier during the day.

Mr. Mann:—I don't want to spend very much time on this. We are getting near the end and I don't want to cause delay. If the Court will allow me to ask Dr. Rioux to say that, I will accept that.

The Court:—Perhaps I can clarify it.

Mr. Mann:—I would be glad if your lordship would.

The Court:—Referring to Mr. Mann's question asking the witness to comment on a statement which Mr. Mann thought the witness Dr. Rioux had made, investigaton makes it apparent that the statement was not made in Dr. Rioux's testimony. When Dr. Rioux used the expresion "balayer" in relation to a flame he was referring to a flame in the room and not within the tank. That being so, Mr. Mann's question becomes, I presume, unnecessary.

Mr. Mann:—That is right.

By Mr. Mann, K.C.:—

Q.—You heard an author referred to this morning as Lafitte? A.—Yes, I did.

Q.—Do you know that author? A.—I had not noticed his work previously.

Q.—Have you since? A.—Yes. I have seen reference to it, since.

Q.—How well known is that author, Lafitte? As far as you are concerned, how well known is he? A.—As far as I am concerned, he is unknown.

Q.—As far as you are concerned, he is unknown? A.—Yes.

Q.—You glanced at the work that was referred to this morning? A.—Yes.

Q.—What has that work relationship to? A.—That work is concerned principally with detonation. It should be available.

Q.—I hand you now the thesis of M. P. Lafitte, dated in Paris 1925 which has been handed me by Dr. Rioux. Is that the work that you understand I have referred to? A.—Yes, it is.

Q.—What does that work refer to? You say it refers to detonation?

By The Court:—

Q.—What is the title of the thesis? A.—The title is "Re-"cherches Expérimentales Sur l'Onde Explosive et l'Onde de "Choc." In other words, the title is that it is an experimental investigation on the explosive wave and the shock wave, which means detonation.

By Mr. Mann, K.C.:—

Q.—There is a sub-title, I see, or a second thesis. You have read the first "thèse" and then the second "thèse" is "Propo-"sitions données par la Faculté."

The Court:—That is the way they present their theses. They first put in the general work and then there are certain propositions they add.

By Mr. Mann, K.C.:—

Q.—Now, we have had discussed this morning two works on explosion, — Wheeler, and Bone & Townend. You have Bone & Townend before you and Wheeler is here somewhere. I hand you Bone & Townend, and Wheeler. Tell me what reputation those works have in your profession, as authoritative works, and what they particularly deal with? I don't want you to open them. A.—I think that the book entitled "Flame & Combustion in "Gases", by Bone & Townend, is regarded as the most authoritative work in the English language, on the general phenomena of explosions.

Q.—Now what about Wheeler? A.—Mr. R. V. Wheeler, — I should say Professor Wheeler, — has a very high reputation as a scientist in this field and I believe he has spent practically his whole life dealing with this subject.

By The Court:—

Q.—Where is he a professor? A.—I don't know whether he is still living at the present time.

Q.—Where was he? A.—He carried out investigations for over fifteen years with the Mines Safety Committee in England.

Mr. Mann:—I will just ask this:—

Q.—And that is the work to which you referred in your evidence?

Mr. Hackett:—No; the reference was to a paper Wheeler wrote and put into a journal.

Mr. Mann:—I will withdraw my question.

By The Court:—

Q.—That is the man who in association with Mason made the experiment which is recorded in the Journal of the Chemical Society to which reference has already been made? A.—Yes, sir.

Mr. Mann:—I have forgotten who in his evidence today mentioned Davis on "The Chemistry of Powder & Explosives".

Mr. Hackett:—Nobody mentioned it, except Dr. Rioux said he had found the book on a shelf and brought it along to amuse Mr. Schierholtz when he was waiting to testify.

Mr. Mann:—Has it been referred to in reference?

Mr. Hackett:—Not that I know.

The Court:—In other words, nobody has relied on it.

Cross-examined by Mr. John T. Hackett:—

Q.—Doctor, what was the gas that you said was not a carbon disulphide? A.—I said it wasn't a hydrocarbon.

Q.—What gas is not a hydrocarbon? A.—Carbon Disulphide.

Q.—Carbon disulphide is not a hydrocarbon? A.—That is correct.

Q.—You are familiar with both? A.—Yes.

Q.—Have you made experiments with both? A.—I have made experiments with both.

Q.—Comparable to the one that you made with the turpentine in this case? A.—No, not at all.

Q.—I think you did say that there was an emanation of vapor from the turpentine when heated to a degree of 165 Fahrenheit, through the vent? A.—I don't remember whether I did or not.

Q.—But you would be willing to admit it, wouldn't you? A.—I doubt whether there would be turpentine vapor emitted at 165 degrees Fahrenheit.

Q.—You have never made any experiment to find out? A.—Such an experiment would of necessity have to be made in a vessel the same size as the tank, and I haven't made it.

Q.—But the experiments which you made in your laboratory, for the purpose of getting at the points of view which you have expressed here, were not made in vessels of the same size as the tank? A.—No; that is quite true.

Q.—You also expressed some doubt as to any liquid having emerged from the tank when the cover came off? A.—Well, more than small amounts, yes.

Q.—When you say small amounts you mean. . . ?

By The Court:—

Q.—Negligible amounts? A.—Negligible amounts.

By Mr. Hackett, K.C.:—

Q.—I put it to you that when the contents of the tank were boiling, the entire interior of the tank was filled with something only a small portion of which was in liquid form? A.—Well, in my opinion that statement would be quite wrong.

Q.—When you put your turpentine, in the experiments which you made in your own laboratory, into a beaker, and put gas flame under it, the whole content of the beaker went up and out and burned up, I understand? A.—It didn't come out of its container. I simply said it boiled and the vapors formed by the boiling of the turpentine emerged.

Q.—They emerged to such an extent that there was only a very small percentage left when the experiment was over, I understood you to say? A.—Yes, I would say probably fifty per cent of the contents in that beaker evaporated, formed a vapor and distilled off.

Q.—And, when this door was opened, is it your opinion that almost the entire content of the tank did not emerge into the room immediately? A.—Quite. That is definitely my opinion. My experiments indicate that when the turpentine gets very hot, it boils vigorously, but it doesn't complete its boiling in one second. It takes somewhere in the neighborhood of a minute, or forty-five seconds to sixty seconds, I would judge, during which time it is boiling vigorously, like water boiling vigorously in a kettle on a hot fire. That is the type of action.

Q.—Do we not all know that when contents of a container boil vigorously they boil over and a substantial portion of the contents cease to be within the container? A.—Well, the turpentine in the tank had several inches of space to boil up into before it could boil over, and I see no reason for assuming that it would boil as high as that or go over.

Q.—Now, doctor, let us just suppose that you and I could have looked into the interior of that tank, — and I am telling you quite candidly that I am instructed that the interior of that tank was filled with a seething mass of something like foam as a result of the heat and the pressure generated by the heat upon the substances within? A.—You are referring to before the door blew off?

Q.—Yes? A.—My experiments don't indicate that. They would indicate that the condition inside the tank was probably that the 650-odd gallons of turpentine were boiling on the surface. If you looked inside, I doubt that you would be able to see any more than big bubbles on the surface.

Q.—You see, doctor, your experiments, — and you must not think me presumptuous if my question takes on the form of a statement, because I have no status to make it, — your experiments were carried on in an open beaker. It had no cover on it; there was no compression; the pressure or vapor escaped to the atmosphere; whereas in the tank there was complete compression, — and I submit to you as an elementary proposition that the pressure did have its effect upon the bodies within? A.—I would imagine that the pressure would have an effect. It would have the effect of reducing the amount of frothing inside. It is common practice to boil water under pressure in boilers and it is common practice to get steam off. Sometimes there is foaming,

but the majority of times the water boils without any particular degree of foaming.

Q.—But is it not your experience that, dealing with these particular commodities, and dealing with the reaction of the Filtrol with the turpentine, there was not only foaming but great foaming? Was that not an incident of the reaction? A.—No; the materials behaved as though they were boiling vigorously, and it was normal boiling. There wasn't any particular degree of foaming. There are some mixtures in chemical reaction which form a foam in their reaction, but this one didn't.

Q.—Doctor, what is your experience when you have a liquid body under pressure and the pressure is relieved? Is there not a surging in the whole liquid body itself? A.—I don't think I have observed that particular phenomenon.

Mr. Mann:—There is one question that perhaps does not arise out of the cross-examination but which I did forget to ask the witness. It is one single question and I want the witness's comments on it. Will your lordship permit it? It may arise out of the cross-examination. I don't think it does.

The Court:—Let us hope it arises in rebuttal, anyway.

Mr. Mann:—It is certainly proper for rebuttal.

Q.—(Continuing):—At the adjournment, between 12.30 and 2.30, did you have Dr. Roux's evidence read to you and translated to you, Dr. Lipsett? A.—Yes.

Mr. Hackett:—I heard some of the translations here in Court and if the poor witness has been depending on some of the translations I have heard here, I suggest that his testimony cannot be very helpful.

Mr. Mann:—Well, perhaps my question will elucidate as to whether it was helpful or not. I will ask this question:—

Q.—My understanding of what Dr. Rioux said, in substance, was that there were two events: do you remember that? A.—Yes.

Q.—He endeavored, — and I say "endeavored" advisedly, — to separate the event of the first ignition of the gases from the event which followed the opening of the door. Have you any comments to make in respect of that?

Mr. Hackett:—I submit that that is not rebuttal.

DR. S. G. ~~RIOUX~~ (For Plaintiff in Rebuttal) Cross-exam.

Mr. Mann:—It is rebuttal of your examination of Dr. Rioux.

Mr. Hackett:—No. You made your case and I attempted to meet it in defence.

Mr. Mann:—And I am attempting to answer your defence.

The Court:—The separation of the two phenomena was not mentioned by any of Plaintiff's witnesses that I recall. If I have seized correctly the general trend of the Plaintiff's evidence, it was that the whole sequence of phenomena were closely connected and formed part of one general phenomenon. Dr. Rioux has advanced the theory which I have already mentioned, a theory which differs from the trend of Plaintiff's evidence, in that he suggests that there was a distinct separation between two minor phenomena, so to speak, which together formed one, and a second phenomenon following that, which consisted of what occurred after the door was blown off, and Dr. Rioux makes it quite clear in his evidence that there is a distinct separation to be noted between them. That is a new aspect, and I think it is fair in rebuttal to have your expert comment on it, Mr. Mann,

By Mr. Mann, K.C.:—

Q.—Do you understand the question? A.—Yes.
Q.—With the Court's statement and my question, will you answer? A.—I cannot agree with Dr. Rioux's interpretation of the events at all. As far as I see the reaction, there was one accident. . . .

Mr. Hackett:—That is just a reiteration of what was said in chief.

By The Court:—He does not agree with Dr. Rioux's interpretation, particularly the aspect of separating those phenomena.

Q.—That is so? A.—That is so.
Q.—Why don't you agree with his interpretation? What is wrong with it? Don't tell us what you have already told us but, if you can, put the finger of criticism on the proposition or theory that Dr. Rioux advanced? A.—I see no actual physical line of demarcation. I see no point at which the first explosion

ceased and the second explosion started. The detonation that finally occurred was part of the explosion which originally started. The flash of flame seen by Mr. Rymann, — Mr. Rymann saw a flash of fire, I think he termed it. . . .

Q.—We have heard all that, but the point you make, if I understand it correctly, is that the chain of events was composed of links whcih were not separate one from the other? A.—Which were not broken.

Q.—Not broken? A.—That is right.

Q.—That is your point? A.—Yes.

And further deponent saith not.

H. Livingstone,
Official Court Stenographer.

DEPOSITION OF DR. LEON LORTIE (In Rebuttal)

On this 6th day of February, in the year of Our Lord nineteen hundred and forty-six, personally come and reappeared: Leon Lortie, a witness already sworn and examined in this case and who being now recalled and further examined on the part of Plaintiff, in rebuttal, doth depose and say as follows, under the same oath:—

Examined by Mr. J. A. Mann, K.C.:—

Q.—Have you looked, Dr. Lortie, at a book by M. P. Lafitte, dated Paris, 1925, to which I referred in questioning Dr. Lipsett but further reference to which I suspended until I got in the box? A.—Yes.

Q.—It is a French work? A.—Yes.

Q.—To what does that work refer? A.—This work, as the title implies, has to do with experimental research on explosive wave and shock wave, and there is first an historical part of a few pages, and we see that the work is divided into two main subjects, one dealing with gaseous mixtures, explosive mixtures, and the other one dealing with solid explosives like dynamite and picric acid.

Q.—I think we can leave out the dynamite? A.—There is on Page 16 a plan of the work. In the first chapter there is a plan of the method of photographic work on the light emitted

by the explosion, — I mean, that is, the explosion is recorded photographically by the light emitted during the combustion of the gases.

Q.—Dealing with the gases, what gases are used? For instance, do you find in that work anything dealing with hydrocarbon gas? A.—There is a list of the mixtures that were used. I find, on Pages 24, 25 and 26, the method of mixing the gases. The first mixtures contain carbon disulphide and oxygen in different concentrations.

Q.—That is not a hydrocarbon? A.—No; it is an explosive substance of a different kind.

There is a second lot of mixtures made of different concentrations of hydrogen and oxygen.

Q.—Are they similar substances to hydrocarbon? A.—Well, those are not hydrocarbons.

There is a third lot, being a series of mixtures of methane and oxygen.

Q.—Methane is a hydrocarbon, I understand? A.—Methane is a hydrocarbon, yes.

By The Court:—

So there is a hydrocarbon there? A.—Yes.

Q.—Methane? A.—Yes, and all the mixtures were made with oxygen.

By Mr. Mann, K.C.:—

Q.—Methane is a hydrocarbon? A.—Yes.

Q.—But it was mixed with oxygen, in the experiments in this book? A.—Yes.

Q.—Not with air? A.—No.

Q.—So far you have mentioned no hydrocarbon mixed with air? There is none referred to in that book? A.—Will you permit me to go on through the book?

Q.—Certainly. A.—There is in this book a study of the influence of the diameter of the tube.

By The Court:—Do we want to know what is in this book? I understand, — and Dr. Lortie will correct me if I am wrong, —

that this is a scientific thesis presented for a doctor's degree in the University of France? A.—Yes.

Q.—And it is based on two parts, which is the usual thing. It is no doubt a valuable work, or the man would not have got his doctorate, — but it is a post-graduate thesis? A.—Yes; and I may say that Lafitte was a student of Le Chatelier and he is a professor now in France.

Q.—Whatever the value of the work, the point now in dispute is whether or not it deals with the same kind of substance as that in which we are interested. Do you find in that book any experiment or exposition in any way concerning the hydrocarbons?

Mr. Mann:—Mixed with air.

By The Court:—We will come to that.

Q.—First, do you find anything to do with any hydrocarbon there? A.—Yes, methane.

Q.—How was that dealt with, or what was it treated with or mixed with? A.—It was mixed with oxygen in different proportions.

Q.—And oxygen as such is not the same as air? A.—It is one of the constituents of air.

By Mr. Mann, K.C.:—

Q.—But it is not air? A.—No.

By Mr. Hackett, K.C.:—

Q.—Air is not diluted oxygen? A.—It is not oxygen. You qualify it.

By The Court:—

Q.—Would the reaction of methane with oxygen be the same as the reaction of methane with air? A.—That is, the reaction will be more violent with oxygen, and the speed, as already mentioned by Dr. Lipsett, is much greater with oxygen than with air.

And substantially what is stated here on the pre-detonation part of the flame is substantially what has been stated already.

DR. LEON LORTIE (for Plaintiff in Rebuttal) Cross-exam-

Cross-examined by Mr. John T. Hackett, K.C.:—

Q.—Have you made any experiments, doctor, which will enable you to say how much a flame would be slowed up if it were dealing with a hydrocarbon and air instead of a hydrocarbon and pure oxygen? A.—Yes, indeed. This is part of my daily trade, or it was part of my daily trade when I taught the elementary part of chemistry.

When we mix, for instance, hydrogen or methane with oxygen on the one part, or hydrogen or methane with air on the other part, the reaction is much faster when we use oxygen than when we use air, and we have a much more violent explosion when we use. . . .

Q.—I have understood you to say that, doctor, but I was asking you to tell us if you could say how much faster? If we take units that are known to us, — if the flame travelled, as we were told it did, one hundred feet in. . . .

The Court:—First, does he know how much faster?

Witness:—Well, from personal experience, I must say I never calculated how much faster it would go. It is more than qualitative, of course, but not exactly quantitative, from my own experience. We could gather from the literature facts and figures that would tell us how much.

By Mr. Hackett, K.C.:—

Q.—But personally you don't know? A.—No, but I know that it is faster.

And further deponent saith not.

H. Livingstone,
Official Court Stenographer.

PART III — EXHIBITS

DEFENDANTS' EXHIBITS D-6-22 AT ENQUETE

Combination Policy of Insurance.
15 *November* 1939.

COMBINATION POLICY OF INSURANCE

No. CC 3041 — Amount $400,000. — Rate .55 (3 yr) (Average)
Premium $2,200.00

By this Policy of Insurance each of the persons, firms and Corporations, being and known as a Subscriber and/or Underwriter at

INDIVIDUAL UNDERWRITERS *and/or*
NEW YORK RECIPROCAL UNDERWRITERS *and/or*
AFFILIATED UNDERWRITERS *and/or*
FIREPROOF-SPRINKLERED UNDERWRITERS *and/or*
METROPOLITAN INTER-INSURERS *and/or*
AMERICAN EXCHANGE UNDERWRITERS

whose name appears on the "Record of Active Subscribers" and/or "Record of Active Underwriters" of one or more of the above named organizations, at 12 o'clock noon as of any day on or after the date on which this policy became effective (other than the Subscriber and/or Underwriter to or through whom this policy is granted), said Records being hereby made a part of this contract,

In Consideration of the Stipulations herein named and of a pro rata share of the "Premium" as hereinafter specified

does insure SHERWIN-WILLIAMS CO. OF CANADA, LIMITED and/or ALLIED OR SUBSIDIARY COMPANIES. and legal representatives, to the extent of the actual cash value ascertained with proper deductions for depreciation) of the property at the time of loss or damage, but not exceeding the amount which it would cost to repair or replace the same with material of like kind and quality within a reasonable time after such loss or damage, without allowance for any increased cost

of repair or reconstruction by reason of any ordinance or law regulating construction or repair and without compensation for loss resulting from interruption of business or manufacture, for the term of Three years from the 1st day of December 1939, at noon, to the 1st day of December 1942, at noon, against all DIRECT LOSS AND DAMAGE BY FIRE and by removal from premises endangered by Fire, except as herein provided, to an amount not exceeding his or its portion of Four hundred thousand Dollars divided and to separately apply as follows, to wit:

	Amount of Participation	*Premium Consideration*
Subscribers at Individual Underwriters	$ 60,000.	$ 294.00
Subscribers at New York Reciprocal Underwriters	60,000.	294.00
Underwriters at Affiliated Underwriters	22,000.	291.80
Underwriters at Fireproof-Sprinklered Underwriters	Nil	Nil
Underwriters at Metropolitan Inter-Insurers	35,000.	227.50
Subscribers at American Exchange Underwriters	223,000.	1,092.70
Totals	$ 400,000.	$2,200.00

apportioned, respectively, among the said Subscribers and/or Underwriters in accordance with the Agreements executed separately by them for each organization at which they function as such under this contract, to property while located and contained as described herein, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from fire, but not elsewhere, to wit:—

(*See Form attached to inside Page*)

PROVISIONS SPECIALLY APPLICABLE TO THIS COMBINATION POLICY

The intent of this policy is to indemnify the insured hereunder in the same sense as if a separate policy had been issued on the part of each organization herein named.

It is a condition of this contract that service of process, or of any notice or proof of loss required by this policy, upon any of the above named organizations shall be deemed to be service upon all.

(a) Each of the aforesaid Subscribers and/or Underwriters acts herein exclusively for himself or itself, and not for any other or others, in the same sense as if as many separate policies had been issued as there are Subscribers and/or Underwriters and each signed for the separate liability hereby assumed.

(b) Each Subcriber and/or Underwriter is represented herein under separate power of attorney by Ernest W. Brown Inc., herein called the Attorney-in-Fact, it being understood that wherever in any form, rider, stipulation or condition printed herein or attached hereto the word "Company" occurs, it shall be construed as meaning each of said Subscribers and/or Underwriters.

(c) The aforesaid Agreements are hereby made a part of this contract.

(d) Said Agreements stipulate that every Subscriber and/or Underwriter shall take insurance on his or its own property, and shall not be or become liable as an insurer of others for more than a maximum amount of ten times one annual premium on such insurance so taken and in force by reason of any one loss involving two or more risks insured under policies issued pursuant thereto, and that if in consequence of such loss the aggregate of the adjusted claims against any Subscriber or Underwriter shall exceed such maximum amount, each of said claims shall be ratably reduced to where such aggregate shall equal such maximum amount.

(e) The term "loss" as used in the preceding sentence shall be held to mean a general loss, such as a conflagration, windstorm, etc., and also any and all losses which may have joined with it, or which may have occurred practically simultaneously in the same municipality or community, whether or not they are separate and distinct, or whether or not they unite in one general loss.

(f) In case of the retirement of any Subscriber and/or Underwriter, the insurance granted hereunder by such may be underwritten as provided in said Agreements.

(g) An action or other proceedings to enforce the provisions of this policy may be brought against the Attorney-in-Fact, as representing all the Subscribers and/or Underwriters, each of whom hereby agrees to abide by the result of any suit or

proceedings so brought as fixing the proportionate amount of his or its individual liability hereunder.

This policy is made and accepted subject to the foregoing stipulations and conditions, and to the stipulations and conditions printed on the back hereof, which are hereby made a part of this policy, together with such other provisions, stipulations and conditions as may be endorsed hereon or added hereto as herein provided.

IN WITNESS WHEREOF, the said Ernest W. Brown Inc., as Attorney-in-Fact for the aforesaid Subscribers and/or Underwriters separately has, pursuant to the authority vested in it by the Agreements hereinbefore referred to, executed these presents this 15th day of November, 1939.

ERNEST W. BROWN INC.
Attorney-in-Fact.

E. W. Brown,
President.
by B. Donohue,
Assistant Secretary.

Quebec

New York, N.Y. November 1, 1941.

The Supplemental Contract now attached to this policy is hereby cancelled, and in lieu thereof the following shall apply: Associated Reciprocal Exchanges

LIMITED FORM SUPPLEMENTAL CONTRACT

The fire insurance policy to which this Supplemental Contract is attached is hereby extended, subject to the terms, conditions and limitations contained herein and in said policy, to cover direct loss or damage to the therein insured property caused by:

(a) fire and by leakage from within the fire protective equipment when such loss or damage is the result of riot or civil commotion, and by fire when such loss or damage is the result of earthquake;

(b) acts of destruction executed by order of a duly constituted governmental or civil authority at the time of and for the purpose of retarding a conflagration;

(c) explosion originating within the insured premises when such explosion results either from a hazard inherent in the business as conducted therein or from riot or civil commotion, but this Company shall not be liable under the terms of this clause for any loss or damage occasioned by or incident to the explosion, collapse, rupture or bursting of (1) steam boilers and other pressure containers, and pipes and apparatus connected therewith, or (2) moving or rotating parts of machinery, nor shall this Company be liable, under the terms of this clause for loss or damage for which under its terms it would otherwise be liable, if such loss or damage be more specifically insured against in whole or in part by any other insurance non-concurrent herewith which includes any of the hazards insured against by the terms of this clause;

(d) aircraft or by objects falling therefrom and by vehicles running on land or tracks, but this Company shall not be liable under the terms of this clause for (1) loss or damage caused by military aircraft (or by objects falling therefrom) or by military vehicles when such aircraft, objects or vehicles at the time of loss or damage are carrying explosives or ammunition, (2) loss or damage caused by any vehicle owned or operated by the Assured, or by any tenant of the premises on which the insured property is located, or by any agent, employee or member of the household of either, or (3) loss or damage to vehicles, fences, driveways, sidewalks or lawns.

This Supplemental Contract does not increase the amount or amounts of insurance provided in the fire insurance policy to which it is attached.

If said policy is divided into two or more items, the provisions of this Supplemental Contract shall apply to each item separately.

Apportionment Clause: This Company shall not be liable under this Supplemental Contract for a greater proportion of any loss or damages from any peril or perils herein insured against than

(1) the proportion that this Company would assume under the terms of the fire insurance policy to which this Supplemental Contract is attached were said loss or damage caused by fire, nor for a greater proportion than

(2) the amount of insurance applying under this Supplemental Contract bears to the whole amount of insurance, whether

valid or not and whether collectible or not, covering in any manner such loss or damage.

Substitution of Terms: In the application of the terms, conditions and limitations of this policy, including riders and endorsements (but not this endorsement), to the perils covered by this Supplemental Contract, wherever the word "fire" appears there shall be substituted therefor the peril involved or the loss caused thereby, as the case requires.

War Risk Exclusion: The insurance under this Supplemental Contract does not cover any loss or damage which, either in origin or extent, is caused directly or indirectly by or incident to war, invasion, civil war, insurrection, rebellion, revolution, or other warlike operations (whether war be declared or not), or civil strife arising therefrom.

Glass Pro Rata Distribution Clause: It is expressly stipulated as applicable to all perils included in this Supplemental Contract that only such proportion of the insurance under this policy on any building covers on plate, stained, leaded or cathedral glass therein as the value of such glass shall bear to the total value of said building; and the amount of insurance on such glass as thus ascertained shall apply to each plate in the proportion that the value of such plate bears to the total value of all such glass.

Application to other than a Direct Damage Policy: When this Supplemental Contract is attached to a policy covering Prospective Earnings, Use and Occupancy, Extra Expense, Rents, Leasehold Interest, or Profits and Commissions, the term "direct", as applied to loss or damage, means loss, as limited and conditioned in such policy, resulting from direct loss or damage to described property from perils insured against.

Attached to and forming part of

Policy No. CC-3041 *New York, N.Y.* Nov. 1, 1941.

Ernest W. Brown Inc.
Attorney-in-Fact.

E. W. Brown
President.

B. Donohue,
Assistant Secretary.

SHERWIN-WILLIAMS CO. OF CANADA, LIMITED
and/or Allied or Subsidiary Companies.

$400,000. On Buildings and contents and property on premises situated Centre St., Atwater Avenue and St. Patrick St., Montreal, Quebec. Plan S. 173, B. 971-2-3-4.

The words "Buildings and Contents and Property on "premises" shall be held to include and cover as follows, viz:—

On all buildings, additions, sheds, bridges, roofs, tanks, awnings, platforms, structures of every description, and all interior and exterior fixtures, entire outfit and equipment, machinery, sprinkler equipment, apparatus and appliances, signs, furniture and fixtures of every description, stock in trade, manufactured, and/or in process of manufacture, including advertising and printed matter, factory supplies and materials used in the business, and all other articles, materials, and supplies incidental to the manufacture, packing, sale and disposal thereof, and on all property not herein specified, including property upon which it is required under Statutory Condition No. 7 that liability be specifically assumed, the whole, their own, held in trust, on commission, on consignment, on storage, held for repairs, to be used by them, sold but not removed, and/or for which they may be liable, while contained, in, on, under or attached to buildings, additions, sheds, bridges, roofs, awnings, platforms, structures, courts, cellars, vaults, tunnels, cars on tracks, on or in premises, or within 100 feet thereof.

This Policy also covers tools and wearing apparel of officers and employees of the Insured, loss, if any, to be adjusted with and payable to the insured named in this policy.

Guaranteed Amount of Insurance Clause: It is part of the consideration of this policy, and the basis upon which the rate of premium is fixed, that the insured shall maintain insurance concurrent in form, range and wording with this policy, on the property hereby insured, to the extent of at least $2,000,000. and that falling so to do, the Asured shall be a co-insurer to the extent of an amount sufficient to make the aggregate insurance equal to $2,000,000. and, in that capacity, shall bear their proportion of any loss that may occur.

It is a condition of this policy, that if, at time of loss, the assured shall hold any policy of this or other company on the

property hereby insured, subject to condition of guaranty of insurance, co-insurance or average, this company's liability shall be limited thereby to the same extent as though such clause were contained in this policy.

Exclusions: It is understood and agreed that this insurance does not cover the following nor shall the same be included in the value or values for the purposes of applying the Guaranteed Amount of Insurance Clause herein recited.

1. Foundations of buildings and of machinery, piers, footings, lowest basement floor, and bearing walls, all below the level of the ground, buried pipes, cost of excavations, and the proportion of architect's fees applicable to the foregoing.

2. Accounts, bills, currency, deeds, evidences of debt, money, notes and securities.

3. Motor vehicles.

4. Coal.

5. Seed Tanks Nos. 156-157 and their contents.

Permission is granted, for other insurance, concurrent in form, range and wording, to make ordinary alterations and repairs and additions; but insofar as additions to sprinklered properties are concerned, this insurance shall not cover thereon or therein until such additions are equipped with automatic sprinklers to the approval of the C.F.U.A., or added to this policy by endorsement; to work at any or all times; to cease operations as occasion may require, for not exceeding thirty days at any one time and to keep and use all materials and supplies incidental to or required in the business.

The word Noon as used in this policy refers to Twelve o'clock Noon by "Standard" time at the place where the property insured by this policy is located.

The insurance shall be held binding as a special agreement, anything contained in the policy regarding ownership, mortgage, other insurance, trust deed or leased ground to the contrary notwithstanding.

Any plan reference wherever quoted in this policy is for the convenience of the insurance companies and is not binding upon the assured.

No release of, or agreement to release, any railroad, from liability for loss or damage to the property insured herein now or hereafter made by the assured shall affect the liability of this company to the assured hereunder.

It is understood and agreed that conditions of this policy relating to matters before the happening of any fire, breach of which would disentitle the assured to recover shall be read distributively, so that in the event of fire, breach of such conditions in any portion of the property neither damaged nor destroyed, shall not disentitle the assured to recover in respect of claim for loss to other portions of the property hereby covered that are damaged or destroyed by said fire, but in which no breach of such conditions has occurred.

Ordinary Electrical Apparatus Clause: "This policy also covers direct loss or damage by lightning to the property insured (meaning thereby the commonly accepted use of the term "lightning", and in no case to include loss or damage by cyclone, tornado or windstorm) whether fire ensues or not; but if dynamos, exciters, lamps, switches, motors or other electrical appliances or devices are insured, it is made a condition of this contract that any loss or damage to them such as may be caused by lightning or other electrical currents artificial or natural, is expressly excluded, and that this Company is liable only for such loss or damage to them as may occur from resultant fire or fire originating outside of the machines themselves. It is also understood and agreed and made a condition of this contract that if there is other insurance upon the property damaged, this Company shall be liable only for such proportion of any direct loss or damages by lightning (except as above stated) as the amount hereby insured bears to the whole amount insured thereon, whether such other insurance is with a similar clause or not."

Sprinkler Maintenance Clause: The rate of premium being fixed, having regard to the fact that the buildings described are partly under sprinkler protection, it is understood and agreed that the assured shall forthwith notify this Company, or the Canadian Fire Underwriters' Association of any interruption to, or flaw or defect in the sprinkler equipment coming to the knowledge of the assured.

Attached to and forming part of
Policy No. CC-3041
Issued by
Ernest W. Brown Inc.
Attorney-in-Fact.
E. W. Brown,
President.

B. Donohue,
Assistant Secretary.

11/14/39
Form 111
Name:.....

1¼% SPRINKLER LEAKAGE ENDORSEMENT

This policy also covers any direct loss or damage to the herein insured property caused by water or other substance discharged by the breakage of, or leakage from within, any part of the Fire Protective Equipment within the above described premises for an amount equal to one and a quarter per cent. (1¼%) of the amount insured hereunder against Fire under the same conditions as specified in this policy and subject to THE FOLLOWING PROVISIONS AND CONDITIONS WHICH ARE APPLICABLE ONLY TO COVERAGE AGAINST LOSS OR DAMAGE BY SPRINKLER LEAKAGE—

STATUTORY CONDITIONS: Except as limited or changed by the conditions herein specified as applicable to Sprinkler Leakage, paragraphs numbered 1 to 23 inclusive of this policy, are adopted herein and made a part hereof, and wherever the word "Fire" occurs it shall be held to mean "Sprinkler Leakage."

TANK CLAUSE AND EXCLUSIONS: This policy shall cover loss or damage resulting from the collapse or precipitation of sprinkler tanks (or by the component parts or supports of same) such loss or damage being considered as incidental to and part of the damage caused by water BUT EXCLUDES loss or damage by water or other substance discharged from all main or branch piping and the apparatus attached to such piping used entirely for manufacturing or domestic purposes and any loss or damage to the tanks or other fire protective equipment which fails.

HAZARDS NOT COVERED: This Company shall not be liable for loss or damage caused directly or indirectly by condensation or deposits on the Fire Protective Equipment, or by seepage or leakage of water through building walls, foundations, sidewalks or sidewalk lights, or by floods, inundation, or backing up of sewers or drains, by the influx of tide water or rising waters from sources other than the Fire Protective Equipment, or by lightning, cyclone, tornado, windstorm, earthquake, explosion, including explosion and/or ruptures of steam boilers and fly-wheels or by blasting; nor for loss or damage caused by water or other substance discharged from newly installed equipment and tanks, or by the collapse or precipitation of same until they have been properly tested and all defects remedied.

The conditions elsewhere in this policy relating to encumbrance, change in occupancy, artificial lighting and keeping explosives and inflammable oils shall not apply to Sprinkler Leakage Insurance granted hereunder.

LOSS CONTRIBUTION CLAUSE: This Company shall not be liable for a greater proportion of any loss or damage by Sprinkler Leakage to the property described herein than the amount herein insured against Fire bears to the total amount of Fire Insurance thereon, nor for more than the proportion which the Sprinkler Leakage Insurance hereunder bears to the total Sprinkler Leakage Insurance thereon. If the insurance under this policy be divided into two or more items, the foregoing shall apply to each item separately.

Attached to and forming part of Policy No. CC-3041.

ERNEST W. BROWN INC.
Attorney-in-Fact.

E. W. Brown,
President.

by B. DONOHUE,
Assistant Secretary.

CONTRIBUTION CLAUSE

It is understood and agreed that the total amount of insurance under this policy shall govern the total contribution of this policy to any loss hereunder regardless of the distribution of this total among the several groups of Underwriters herein named. It is further agreed that the original distribution of the total insurance as specified herein is provisional only, being based on an estimate of the probable distribution of values as between the several portions of the property insured. The actual contribution of each group of Underwriters to the payment of any loss due and payable hereunder shall be determined according to the following schedule and not otherwise to wit:—

	DISTRIBUTION				
	Individual Underwriters	*New York Reciprocal Underwriters*	*Affiliated Underwriters*	*Metropolitan Inter-Insurers*	*American Exchange Underwriters*
On all buildings & Contents protected by an approved system of Automatic Sprinklers	17.5%	17.5%	*Nil*	*Nil*	65%
On all buildings & Contents of fireproof construction not protected by an approved system of Automatic Sprinklers	*Nil*	*Nil*	*Nil*	100%	*Nil*
On all other buildings and contents not mentioned herein	*Nil*	*Nil*	100%	*Nil*	*Nil*

It is understood and agreed that any increases or cancellations of insurance ordered under this policy are to be pro rated among each of the groups of Underwriters named herein in proportion to the amounts of insurance assumed by each.

Attached to and forming part of
Policy No. CC-3041

Issued by
ERNEST W. BROWN INC.
Attorney-in-Fact.
E. W. Brown,
President.
by B. Donohue,
Assistant Secretary.

All moneys including premium payable under this policy shall be payable in lawful money of Canada at any office of the company in the United States or Canada. Dollars and cents as specified in this policy shall be construed to be dollars and cents of Canadian currency.

Attached to and forming part of
Policy No. CC-3041

ERNEST W. BROWN INC.
Attorney-in-Fact.
E. W. Brown,
President.
B. Donohue,
Assistant Secretary.

5/18/37
Province of Quebec

SUPPLEMENTAL CONTRACT

Fire and Leakage damage caused by Riot, etc. — Direct damage by Civil Authority, Inherent Explosion, Aircraft, and Self-Propelled Vehicles.

The fire insurance policy to which this Supplemental Contract is attached is hereby extended to insure the Insured named in said policy on the same property and in the same amount or amounts as specified in said policy and under the same terms, conditions and limitations, when not in conflict with this Supplemental Contract, against any direct loss or damage caused by:

(a) fire and/or leakage from the fire protective equipment when such loss or damage is the result of insurrection, riot, civil commotion, or military or usurped power; and by fire when such loss or damage is the result of earthquake;

(b) any and all acts of destruction executed by order of duly constituted governmental or civil authorities, or by military or usurped power, for the purpose of retarding a conflagration;

(c) explosion originating within the insured premises or when caused by the malicious use of dynamite or other explosives, but no liability is assumed under this Supplemental Contract for any loss or damage occasioned by or incident to the explosion of steam boilers and other pressure containers, and pipes and apparatus connected therewith or moving or rotating parts of machinery;

(d) airplanes, airships and other aerial crafts or by objects falling therefrom and by self-propelled vehicles.

If a material part of any building covered hereunder falls as a result of any of the hazards covered by this Supplemental Contract then this Company shall be liable for any direct loss or damage by fire to the insured property which immediately follows the fall of any such building.

This Company shall be liable for no greater proportion of any loss under this Supplemental Contract than the amount of

the fire insurance policy to which it is attached bears (a) to the total amount of fire insurance, whether valid or not, covering in any manner the interest(s) in the property covered by said fire insurance policy, or (b) to the total amount of fire insurance required under the terms of any average, co-insurance, contribution, or guaranteed amount of insurance clause attached to said fire insurance policy, nor for a greater proportion of any loss than the insurance applying hereunder bears to the whole amount of insurance, whether valid or not, covering in any manner such loss or damage.

The liability of this Company for loss or damage under said fire insurance policy and under this Supplemental Contract shall not in the aggregate exceed the amount stated in the fire insurance coverage of said policy as applying to each of the items thereof.

In case of cancellation, reduction or increase of said fire insurance policy, all liability under this Supplemental Contract shall immediately terminate or be proportionately reduced or increased to conform thereto.

Attached to and forming part of Policy No. CC-3041.

ERNEST W. BROWN INC.
Attorney-in-Fact.

E. W. Brown,
President.

B. Donohue,
Assistant Secretary.

PLAINTIFF'S EXHIBIT P-1 AT ENQUETE

Insuring Agreement No. 60 350-*B. Dated 9th March* 1940.

(See Supp. Book)

DEFENDANT'S EXHIBIT D-6-1 AT ENQUETE

Insurance Policy of Insurance Company of North America to Sherwin-Williams Co. of Canada, 1st Dec. 1941.

ENDORSEMENT

Company: Ins. Co. of North America — Insured: Sherwin-Williams Co. of Canada Ltd. — Policy No: 527794 — Expiration: 1st Dec. /44 — Extra Prem.: .96¢.

This policy which was reduced by the sum paid for loss of July 22nd, 1942, under item 14 of the schedule, is hereby reinstated to its full amount, in consideration of which an extra premium of .96¢ is charged.

Robert Hampson & Son, Limited,
Per: V. Linton, Agent.

Dated: 15th September 1942.

Robert Hampson & Son, Limited
Montreal P.Q.

Managers for
The Province of Quebec

By This Policy of Insurance
THE
INSURANCE COMPANY of NORTH-AMERICA

Incorporated
1794

Founded
1792

PHILADELPHIA
Stock Company

Agency: Johnson-Jennings Inc.

Policy No. 527794

Sum Insured: $83.945.00 — Rate: 1.2353 — Premium: $1,036.97. Term: 3 Yrs. — From noon December 1st 1941 to noon December 1st 1944.

WHEREAS The Sherwin-Williams Co. of Canada Limited and /or Allied or Subsidiary Companies,
(hereinafter called the Insured) having undertaken to pay to the
INSURANCE COMPANY OF NORTH AMERICA
(hereinafter called "The Company") the amount of premium above stated, "The Company" in consideration of the material representations, covenants and warranties of the Insured, and of the said Premium, and subject to the conditions and stipulations

contained herein or endorsed hereon, hereby insures the said Insured against direct loss or damage by fire (the amount of such loss or damage to be estimated according to the actual cash value of the property at the time of the loss or damage) if such loss or damage occurs between the times above stated, to an amount not exceeding the sums set opposite the several items below and not exceeding in the whole the sum above stated as the sum insured in respect of the property hereinafter described, namely:

INSURANCE CO. OF NORTH AMERICA
The Form hereto attached
is made part of this Policy
NORTH AMERICA

THE SHERWIN-WILLIAMS CO. OF CANADA LIMITED
and/or Allied or Subsidiary Companies
Insurance Schedule 1941 - 1944

CENTRE ST., MONTREAL, Que.

1.	On Buildings and contents and property on premises situated Centre St., Atwater Avenue and St. Patrick St., Montreal, Que. ..... Plan, S. 173, B. 971-2-3-4.	$2,125,000

HUNTER ST., MONTREAL, Que.

2.	On Buildings and contents and property on premises situated Nos. 1957-85 Hunter St., Montreal, Que. ..... Plan, S. 36, B. 252.	205,000

DE L'EPEE AVE., MONTREAL, Que.

3.	On Buildings and contents and property on premises situated on De L'Epée Avenue and Beaumont Avenue. Montreal, Que, ... Plan, S. 435, B. 3201.	500,000

SHERBROOKE ST., MONTREAL, Que.

4.	On Furniture. Fittings and Fixtures, while contained in the brick building situated No. 6080 Sherbrooke Street West, Montreal, Que. Plan, S. 727, B. 8051.	1,500

5.	On Stock, while contained in the building described in Item No. 4	7,500
	COMMON ST., MONTREAL, Que.	
6.	On Stock, while contained in the Steel, Brick and Concrete building, situated Nos. 369-79 Common St.. Montreal, Que. Plan, S. 12, B. 73.	1,000
	NOTRE DAME ST. EAST, MONTREAL, Que.	
7.	On Stock, while on the premises of Canadian Vickers Ltd., Notre Dame St. East, Montreal, Que. Plan, S. 813, B. 2535.	500
	PARK AVENUE, MONTREAL, Que.	
8.	On Stock, while contained in the brick building, situated No. 3455 Park Avenue, Montreal Que. Plan, S. 87, B. 549.	3,000
	QUEEN ST., MONTREAL, Que.	
9.	On Stock, while on the premises of John A. Little and Son, 161 Queen St., Montreal Que. Plan, S. 32, B. 229.	40,000
	PAPINEAU AVE., MONTREAL, Que.	
10.	On Furniture. Fittings and Fixtures, while contained in the brick encased building, situated No. 4343 Papineau Ave., Montreal, Que. Plan, S. 275, B. 1606.	1,000
11.	On Stock while contained in the building described in item No. 10	5,000
	WILLIAM ST., MONTREAL, Que.	
12.	On Stock, while contained in the brick building situated No. 1744 William St., Montreal, Que. Plan, S. 37, B. 261.	55,000
	NOTRE DAME ST. WEST, MONTREAL, Que.	
13.	On Stock, while contained in the brick and frame building situated No. West of 2070 Notre Dame St., West, Montreal, Que. Plan, S. 36, B. 251.	16,000
	REDMILL, Que.	
14.	On Buildings and contents and property on premises situated at Redmill, Que.	100,000

	QUEBEC, Que.	
15.	On Furniture, Fittings and Fixtures, while contained in the building situated No. 53 St. John St., Quebec, Que. ..... Plan, S. 10, B. 83A.	1,500
16.	On Stock, while contained in the building described in Item No. 15	3,000
	ROUYN, Que.	
17.	On Furniture, Fittings and Fixtures while contained in the building situated No. 389 Perreault St., Rouyn, Quebec. ..... Plan, S. 4, B. 14.	1,500
18.	On Stock, while contained in the building described in Item No. 17	8,500
	LAUZON, Que.	
19.	On Stock, while on the premises of the Davie Shipbuilding and Repairing Co., Lauzon, Que. Plan, S. 25, B. 252.	700
	ST. JOHNS, Que.	
20.	On Stock, while on the premises of Latour & Dupuis, 163 Collin St., St. Johns, Que. ..... Plan, S. 16, B. 66.	1,300
	SOREL, Que.	
21.	On Furniture, Fittings and Fixtures while contained in the three storey brick building situated 30 Augusta St., Sorel, Quebec ..... Plan, S. 2, B. 13.	1,500
22.	On Stock, while contained in the building described in item No. 21	5,500
	GRANBY, Que.	
23.	On Furniture, Fittings and Fixtures, while contained in the brick encased building situated No. 30 Main St., Granby, Que. ..... Plan, S. 5, B. 4.	1,000
24.	On Stock, while contained in the building described in item No. 23	5,000
	Total	$3,090,000

	Forward	$3,090,000
	LESLIE, ST., TORONTO, Ont.	
25.	On Buildings and contents and property on premises situated Leslie St. Toronto, Ont. ..... Plan, S. 428, B. 2141.	178,500
	CARLAW AVE., TORONTO, Ont.	
26.	On Buildings and contents and property on premises situated corner Gerard St. and Carlaw Avenue, Toronto, Ont. ..... Plan, S. 438, B. 2194.	135,000
	BLOOR ST. WEST, TORONTO, Ont.	
27.	On Furniture. Fittings and Fixtures, while contained in the brick building situated No. 2358 Bloor St. West, Toronto Ont. ..... Plan, S. 78, B. 10431.	1,500
28.	On Stock, while contained in the building described in Item No. 27	5,000
	DANFORTH AVE., TORONTO, Ont.	
29.	On Furniture. Fittings and Fixtures, while contained in the brick building situated No. 549 Danforth Avenue, Toronto, Ont. ..... Plan, S. , B.	1,500
30.	On Stock, while contained in the building described in Item No. 29	7,000
	ST. CLAIR AVE., TORONTO, Ont.	
31.	On Furniture. Fittings and Fixtures, while contained in the brick building situated No. 18 St. Clair Ave. West, Toronto, Ont. ..... Plan, S. 714, B. 5265.	1,500
32.	On Stock, while contained in the building described in Item No. 31	6,500

YONGE ST., TORONTO, Ont.

33.	On Stock, while contained in the brick building, situated No. 334 Yonge St., Toronto, Ont. Plan, S. 42, B. 233.	2,500
34.	On Stock, while on the premises of the Empire Wallpapers Ltd., 2470 Yonge St., Toronto, Ont. Plan, S. 723, B. 5180.	1,500

HAMILTON, ONT.

35.	On Furniture, Fittings and Fixtures, while contained in the stone and brick building situated No. 124-6 King St. West, Hamilton, Ont. Plan, S. 5, B. 8.	4,000
36.	On Stock, while contained in building described in Item No. 35	3,500

WINDSOR, Ont.

37.	On Furniture, Fittings and Fixtures, while contained in the brick building situated No. 15 Pitt Street West, Windsor, Ont. Plan, S. 4, B. 48.	3,000
38.	On Stock, while contained in building described in Item No. 37	15,000

OTTAWA, Ont.

39.	On Furniture, Fittings and Fixtures, while contained in the brick building situated No. 136-8 Bank Street, Ottawa, Ont. Plan, S. 111, B. 242.	5,500
40.	On Stock, while contained in building described in Item No. 39	11,500
41.	On stock, while contained in the brick building situated No. 72 Albert St., Ottawa, Ont. Plan, S. 113, B. 214.	2,500

KINGSTON, Ont.

42.	On Stock, while contained in the metal clad building situated No. 101c Toronto Street, Kingston, Ont. Plan, S. 20, B. 232A.	2,000

43.	On Furniture, Fittings and Fixtures while contained in the brick building situated No. 233 Princess St., Kingston, Ont. ..... Plai, S. 8, B. 52.	1,500
44.	On Stock, while contained in the building described in item No. 43	6,000
	FORT WILLIAM, Ont.	
45.	On Furniture, Fittings and Fixtures, while contained in the brick building situated No. 508 Victoria Ave., Fort William, Ont. ..... Plan, S. 5, B. 18.	1,500
46.	On Stock, while contained in the building described in Item No. 45	13,500
47.	On Stock, while on the premises of the Canadian Car & Foundry plant, situated at Fort William, Ont. ..... Plan, S. , B.	500
	CHATHAM, Ont.	
48.	On Furniture. Fittings and Fixtures, while contained in the building situated 161 King King St. West. Chatham, Ont. ..... Plan, S. 3, B. 17.	1,500
49.	On Stock. while contained in the building described in Item No. 48	4,500
	LONDON, Ont.	
50.	On Stock. while contained in the frame building situated No. 115 Wellington St., London, Ont. ..... Plan, S. 28, B. 166.	500
	BELLEVILLE, Ont.	
51.	On Furniture, Fittings and Fixtures while contained in the brick and stone building situated No. 282 Front St., Belleville, Ont.... Plan, S. 6, B. 10.	1,000
52.	On Stock, while contained in the building described in item No. 51	5,500
	Total.....	$3,513.500

	Forward	$3,513,500

BRANTFORD, Ont.

53.	On Furniture, Fittings and Fixtures while contained in the brick building situated No. 44 Market St., Brantford, Ont. Plan, S. 3, B. 16.	1,000
54.	On Stock while contained in the building described in item No. 53	10,000

KITCHENER, Ont.

55.	On Furniture, Fittings and Fixtures while contained in the brick building situated No. 54 Queen St. Kitchener, Ont. Plan, S. 4, B. 13.	1,000
56.	On Stock, while contained in the building described in Item No. 55	5,500

NIAGARA FALLS, Ont.

57.	On Furniture, Fittings and Fixtures while contained in the brick building situated No. 935 Victoria Ave., Niagara Falls, Ont. Plan, S. 10, B. 391.	1,000
58.	On Stock, while contained in the building described in Item No. 57	5,000

STRATFORD, Ont.

59.	On Furniture. Fittings and Fixtures, while contained in the brick building situated No. 48 Wellington St., Stratford, Ont. Plan, S. 4, B. 22.	1,500
60.	On Stock, while contained in the building described in item No. 59	7,500

UPPER WATER ST., HALIFAX, N.S.

61.	On Furniture, Fittings and Fixtures, while contained in the brick building situated No. 133 Upper Water Street, Halifax, N.S. Plan, S. 12, B. 172.	3,300

62. On Stock, while contained in the building described in Item No. 61 35,000

645-7 BARRINGTON ST., HALIFAX, N.S.

63. On Furniture, Fittings and Fixtures, while contained in the frame and brick building situated No. 645-7 Barrington Street, Halifax, N.S. 3,700
Plan, S. 12, B. 164.

64. On Stock, while contained in the building described in Item No. 63 19,000

MARKET SQ., ST. JOHN, N.B.

65. On Furniture, Fittings and Fixtures, while contained in the brick building situated No. 7 Market Square, St. John, N.B. 2,500
Plan, S. 3, B. 76

66. On Stock, while contained in the building described in Item No. 65 1,000

EAST ST. JOHN, N.B.

67. On Stock, while on the premises of the St. John Drydock & Shipbuilding Co., situated at East St. John. N.B. 500
Plan, S. 80, B. 831.

FREDERICTON, N.B.

68. On Stock, while contained in the brick building situated 390D Queen St., Fredericton, N.B. 4,500
Plan, S. 5, B. 17.

CHARLOTTETOWN, P.E.I.

69. On Stock, while contained in brick building, premises of R. T. Holman Ltd., situated at Nos. 129-31 Grafton Ave., Charlottetown, P.E.I. 4,000
Plan, S. 6, B. 43.

70. On Furniture, Fittings and Fixtures, while contained in the building situated Nos. 94-6 Queen St., Charlottetown, P.E.I. 2,000
Plan S. 6, B. 48.

71.	On Stock, while contained in the building described in Item No. 70	4,500

WINNIPEG, Man.

72.	On Buildings and contents, and property on premises situated Sutherland Ave., Winnipeg, Man. Plan, S. 214, B. 2146.	325,000
73.	On Stock, while contained in the brick building, situated No. 324 Donald St., Winnipeg, Man. Plan, S. 105, B. 1050.	4,000

CALGARY, Alta.

74.	On the brick building, including additions and extensions, and all landlord's fittings, situated No. 738 Eleventh Avenue S.W., Calgary, Alta. Plan, S. 211, B. 2111.	50,000
75.	On Furniture, Fittings and Fixtures, while contained in the building described under Item No. 74	300
76.	On Stock, while contained in the building described in Item No. 74	27,000
77.	On Furniture, Fittings and Fixtures while contained in the building situated No. 227, 7th Ave. S.W., Calgary, Alta. Plan, S. 116, B. 1161.	2,500
78.	On Stock, while contained in the building described in Item No. 77	10,000
	Total	$4,044,800

	Forward	$4,044,800

EDMONTON, Alta.

79.	On Stock, while contained in the reinforced concrete building, situated 10201, 104th St., Edmonton, Alta. Plan, S. 136, B. 1363.	12,000
80.	On Stock, while on the premises of the Canadian Fairbanks Morse Co. Ltd., situated No. 10169, 99th St., Edmonton, Alta. Plan, S. 172, B. 1724.	1,000
81.	On Furniture, Fittings and Fixtures, while contained in the brick building situated No. 10307 Jasper St., Edmonton, Alta. Plan, S. 147, B. 1471.	1,500
82.	On Stock, while contained in the building described in item No. 81	8,000

GRANDE PRAIRIE, Alta.

83.	On Stock, while contained in the brick building, situated Lot 3, Block 33, Plan 8315 A. K., Grande Prairie, Alta. Plan, S. 1, B. 173.	1,200

LETHBRIDGE, Alta.

84.	On Furniture, Fittings and Fixtures, while contained in the building situated No. 327 Seventh St., South, Lethbridge, Alta. Plan, S. 5, B. 52.	1,500
85.	On Stock, while contained in the building described in item 84	6,000

DRUMHELLER, Alta.

86.	On Stock, while contained in the building situated No. 358 First St., West, Drumheller, Alta. Plan, S. 4, B. 19.	1,000

MOOSE JAW, Sask.

87. On Stock, while contained in the brick and brick-veneered building, situated corner Manitoba Street West and Fourth Avenue, N.W., Moose Jaw, Sask. 7,500
Plan, S. 6, B. 62.

88. On Stock, while contained in the fireproof building situate No. 520 Fairford St. West, Moose Jaw, Sask. 2,000
Plan, S. B.

PRINCE ALBERT, Sask.

89. On Stock, while on the premises of Prince Albert Mfg. Co., 17th St. and 5th Ave., Prince Albert, Sask. 6,500
Plan, S. 26, B. 267.

90. On Stock, while contained in the building situated No. 1217 Central Ave., Prince Albert, Sask. 4,000
Plan, S. 3, B. 37.

SASKATOON, Sask.

91. On Stock, while contained in the metal clad building situated 443 Avenue "C" South, Saskatoon, Sask. 20,000
Plan, S. 319, B. 3190.

92. On Furniture, Fittings and Fixtures while contained in the building situated No. 100, 3rd Ave., South, Saskatoon, Sask. 2,500
Plant, S. 8, B. 80.

93. On Stock, while contained in the building described in Item No. 92. 5,000

SWIFT CURRENT, Sask.

94. On Stock, while contained in the building situated No. Railway St. West, Swift Current, Sask. 1,500
Plan, S. B. 201.

REGINA, Sask.

95.	On Furniture, Fittings and Fixtures, while contained in the building situated No. 2312 Eleventh Ave., Regina, Sask. ..... Plan, S. 5, B. 55.	2,000
96.	On Stock, while contained in the building described in item No. 95	8,000

VANCOUVER, B.C.

97.	On Furniture, Fittings and Fixtures while contained in the frame building situated 1507 Powell Street, Vancouver, B.C. ..... Plan, S. 307, B. 3070.	1,500
98.	On Stock, while contained in the building described in Item No. 97	58,000
99.	On Stock, while contained in the brick building, situated No. 726 Seymour St., Vancouver, B.C. ..... Plan, S. 120, B. 1203.	250
100.	On Stock, while contained in the frame building, situated No. 2835 West Fourth Ave., Vancouver. B.C. ..... Plan, S. 224, B. 2240.	500
101.	On Stock, while contained in the frame building situated 1497 Marine Drive, West Vancouver. B.C. ..... Plan, S. 2411, B. 24112.	450
102.	On Stock, while contained on the premises of Kydd Bros. Ltd. situated No. 120 West Hastings St., Vancouver, B.C. ..... Plan, S. 111, B. 1116.	300

McBRIDE, B.C.

103.	On Stock, while contained in the building situated East side Main St., McBride, B.C. ..... Plan, S. B. 6.	250
	Total	$4,197,250

The words "Buildings and Contents and Property on "premises" shall be held to include and cover as follows, viz:—

ON all buildings, additions, sheds, bridges, roofs, awnings, platforms, structures of every description, and all interior and exterior fixtures, entire outfit and equipment, machinery, sprinkler equipment, apparatus and appliances, signs, furniture and fixtures of every description, stock in trade, manufactures, and/or in process of manufacture, including advertising and printed matter, factory supplies and materials used in the business, and all other articles, materials and supplies incidental to the manufacture, packng, sale and disposal thereof, and on all property not herein specified, including property upon which it is required under Statutory Condition No. 7 that liability be specifically assumed. The whole, their own, held in trust, on commission, on consignment, on storage, held for repairs, to be used by them, sold but not removed, and/or for which they may be liable, while contained, in, on, under or attached to buildings, additions, sheds, bridges, roofs, awnings, platforms, structures, courts, cellars, vaults, tunnels, cars on tracks, on or in premises, or within 100 feet thereof.

The word "Buildings" shall be held to include and cover as follows, viz:—

On Buildings, including additions, attachments and extensions, communicating and in contact therewith, landlord's fixtures and fittings, hoists, gas and electric fixtures, heating apparatus, double windows, plate glass, blinds and awnings, whether in place or elsewhere on the premises.

The words "Furniture, Fittings and Fixtures" shall be held to include and cover as follows, viz:—

On warehouse and office furniture, fittings and fixtures of every description, including shelving, utensils and all other trade and office contents, including property upon which it is required under Statutory Condition No. 7 that liability be specifically assumed (excluding stock in trade) while contained, in, or on the above described building.

The word "Stock" shall be held to include and cover as follows, viz:—

On Stock consisting principally of paints, oils, varnishes, lacquers, dry colors, wallpaper, insecticides and all other ma-

terials usual to their business, manufactured, unmanufactured and in process thereof, the property of the assured, or held in trust or on commission or sold, but not removed or for which they may be responsible together with samples, advertising matter and all materials and supplies used in the packing and shipping of same.

Item No. 1 is subject to the following Guaranteed Amount of Insurance Clause:

It is part of the consideration of this policy, and the basis upon which the rate of premium is fixed, that the Assured shall maintain insurance concurrent in form, range and wording with this policy, on the property hereby insured, to the extent of at least $2,625,000, and that, failing so to do, the Assured shall be a co-insurer to the extent of an amount sufficient to make the aggregate insurance equal to $2,625,000. and, in that capacity, shall bear their proportion of any loss that may occur.

Item No. 3 is subject to the following Guaranteed Amount of Insurance Clause:

It is part of the consideration of this policy, and the basis upon which the rate of premium is fixed, that the Assured shall maintain insurance concurrent in form, range and wording with this policy, on the property hereby insured, to the extent of at least $600,000. and that, failing so to do the Assured shall be a co-insurer to the extent of an amount sufficient to make the aggregate insurance equal to $600,000. and, in that capacity, shall bear their proportion of any loss that may occur.

Items Nos. 1 and 3 subject to the following clause:

The rate of premium being based, in accordance with a statement of values, on the maintenance of a minimum amount of insurance, the Insured undertakes to furnish a new statement of values, whenever requested, and, based on such statement of values, agrees to revision by endorsement of the amount of total concurrent insurance required to be maintained by the terms of the Guaranteed Amount Co-Insurance Clause in this policy. Nothing herein shall, however be deemed to alter the amount insured under this policy unless or until the amount insured is changed by endorsement thereon.

Items 2, 7, 8, 12, 14, 19, 20, 25, 26, 41, 47, 65, 66, 67, 68, 72, 97, 98 only are separately subject to the following 90% Co-insurance clause and waiver.

It is part of the consideration of this policy and the basis upon which the rate of premium is fixed, that the insured shall maintain insurance concurrent in form, range and wording with this policy, on the property hereby insured, to the extent of at least 90 per cent. of the actual cash value thereof, and that, failing so to do the insured shall be a co-insurer to the extent of an amount sufficient to make the aggregate insurance equal to 90 per cent. of the actual cash value of the property hereby insured, and in that capacity, shall bear their proportion of any loss that may occur.

In case any claim for loss shall not exceed 5% of the sum insured on the involved item or items of this schedule no special inventory or appraisement of the undamaged property shall be required.

Items 4, 5, 6, 9, 10, 11, 13, 15, 16, 17, 18, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 69, 70, 71, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 99, 100, 101, 102, 103 only are separately subject to the following 80% co-insurance clause and waiver.

It is a part of the consideration of this policy and the basis upon which the rate of premium is fixed, that the insured shall maintain insurance concurrent in form with this Policy, on the property hereby insured, to the extent of at least 80 per cent. of the actual cash value thereof, and that failing so to do, the insured shall be a co-insurer to the extent of an amount sufficient to make the aggregate insurance equal to 80 per cent. of the actual cash value of the property hereby insured and in that capacity, shall bear their proportion of any loss that may occur.

In case any claim for loss shall not exceed 5% of the sum insured on the involved item or items of this schedule, no special inventory or appraisement of the undamaged property shall be required.

This Policy also covers tools and wearing apparel of officers and employees of the Insured, loss, if any, to be adjusted with and payable to the Insured named in this policy.

Statutory Condition 10B is hereby waived as regards the exemption of fire losses caused by Earthquake and Volcanic Eruption.

PRO RATA CLAUSE.—It is understood and agreed that the amount of this policy may be increased or decreased by endorsement on a pro rata basis if for the sole purpose of taking care of changes in values and provided this purpose is stated on such endorsements.

EXCLUSIONS.—It is understood and agreed that this insurance does not cover the following nor shall the same be included in the value or values for the purposes of applying the Co-Insurance Clauses herein recited.

1. Foundations of buildings and of machinery, piers, footings, lowest basement floor, and bearing walls, all below the level of the ground, buried pipes, cost of excavations, and the proportion of architect's fees applicable to the foregoing

2. Accounts, bills, currency, deeds, evidences of debt, money, notes and securities.

3. Motor vehicles.

4. Coal.

5. Seed Tanks Nos. 156-157 and their contents described under Item 1.

6. Grain or seed in Elevators, described under Item 72.

Permission is granted, for other insurance, concurrent in form, range and wording, to make ordinary alterations and repairs and additions; but insofar as additions to sprinklered properties are concerned, this insurance shall not cover thereon or therein until such additions are equipped with automatic sprinklers to the approval of the C. U. A., or added to this policy by endorsement; to work at any or all times; to cease operations as occasion may require, for not exceeding thirty days at any one time and to keep and use all materials and supplies incidental to or required in the business.

The word Noon as used in this policy refers to Twelve o'clock Noon by "Standard" time at the place where the property insured by this policy is located.

The insurance shall be held binding as a special agreement, anything contained in the policy regarding ownership mortgage, other insurance, Trust deed or leased ground to the contrary notwithstanding.

Any plan reference wherever quoted in this policy is for the convenience of the insurance companies and is not binding upon the assured.

No release of, or agreement to release, any railroad, from liability for loss or damage to the property insured herein now or hereafter made by the assured shall affect the liability of this Company to the assured hereunder.

It is understood and agreed that conditions of this policy relating to matters before the happening of any fire, breach of which would disentitle the assured to recover shall be read distributively, so that in the event of fire, breach of such conditions in any portion of the property neither damaged nor destroyed, shall not disentitled the assured to recover in respect of claim for loss to other portions of the property hereby covered that are damaged or destroyed by said fire, but in which no breach of such conditions has occurred.

ORDINARY ELECTRICAL APPARATUS CLAUSE

"This policy also covers direct loss or damage by lightning to the property insured (meaning thereby the commonly accepted use of the term "lightning", and in no case to include loss or damage by cyclone, tornado or wind storm) whether fire ensues or not; but if dynamos, exciters, lamps, switches, motors or other electrical appliances or devices are insured, it is made a condition of this contract that any loss or damage to them such as may be caused by lightning or other electrical currents artificial or natural, is expressly excluded, and that this Company is liable only for such loss or damage to them as may occur from resultant fire or fire originating outside of the machines themselves. It is also understood and agreed and made a condition of this contract that if there is other insurance upon the property damaged, this Company shall be liable only for such proportion of any direct loss or damage by lghtning (except as above stated) as the amount hereby insured bears to the whole amount insured thereon, whether such other insurance is with a similar clause or not".

It is understood and agreed between the Assured and this Company, that advice to Messrs. Johnson-Jennings, Inc., shall be binding to the extent of its participation in this schedule for any additional insurance that may be required by the Assured.

SPRINKLER MAINTENANCE CLAUSE.—The rate of premium being fixed, having regard to the fact that the certain buildings described under items 1, 3, 7, 8, 12, 20, 41, 47, 67, 68, 72, 97, 98 are partly under sprinkler protection, it is understood and agreed that the assured shall forthwith notify this Company, the Canadian Underwriters' Association, the Western Canada Insurance Underwriters' Association, or British Columbia Insurance Underwriters' Association, or New Brunswick or Nova Scotia Board of Fire Underwriters' of any interruption to, or flaw or defect in the sprinkler equipment coming to the knowledge of the assured.

Items Nos. 2 and 72, subject to following:

Warranted that a Watchman's Supervisory System be maintained, nights, Sundays, holidays and at all times when plant is not in operation.

It is understood and agreed that Statutory Conditions of the various Provinces are applicable to risks in those Provinces underwritten in this schedule, except as set forth on this printed schedule.

Attached to and forming part of Policy No. 527794 of the Insurance Company of North America which covers 2% of each and every item.

JOHNSON-JENNINGS, Inc.
Insurance
Coristine Bldg., - Montreal

Robert Hampson & Son, Limited
Director.

In Witness Whereof, the undersigned, being fully authorised, hereunto have subscribed their names to these presents as under, at the following places:—

ONTARIO: M. MacKenzie.

MANITOBA: ? ? ?

ALBERTA: Toole, Peet & Co. Ltd., per G. W. Eaton.

SASKATCHEWAN: J. A. Edward.

BRITISH COLUMBIA: John Braddock.

NEW BRUNSWICK: Provincial Insurance Agency
per ? ? ?

NOVA SCOTIA: Alfred J. Bell & Co. Limited
per E. Noseworthy.

P. E. I.: H. M. Davison Ltd., per L. H. Davison, Sec'y-Treas.
W. Florence Quinn, Atty.

THIS POLICY IS MADE AND ACCEPTED SUBJECT TO THE FOREGOING STIPULATIONS, AND TO THE CONDITIONS ON THE BACK THEREOF, together with such other provisions, agreements, or conditions as may be endorsed hereon or added hereto, and no officer, agent, or other representative of this Company shall have power to waive any provision or condition except such as by the terms of this Policy may be the subject of agreement endorsed hereon or added hereto, and as to such provisions and conditions no officer, agent, or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this Policy exist or be claimed by the Insured unless so written or attached.

IN WITNESS WHEREOF, this Company has executed and attested these presents, but this Policy shall not be valid unless countersigned by an official or duly authorized Agent of the Company.

John O. Scott.
President.

Robert, Hampson & Son, Limited,
? ? ? Director.

Dated and countersigned at Montreal, Que.
this 1st. day of December 1941.

VARIATIONS IN CONDITIONS

This policy is issued on the above Conditions with the following additions and variations:—

CO-INSURANCE CLAUSE

This insurance shall be subject to the following Co-Insurance Clause, if so stated in this Policy or in any form or endorsement attached hereto:—

It is part of the consideration of this policy and the basis upon which the rate of premium is fixed that the assured shall maintain insurance concurrent in form with this policy on the property hereby insured (or such item or items thereof as are stated to be subject to this Clause) to such percentage of the cash

value thereof as is stated in this policy or in any form or endorsement attached hereto, and if the assured fails to do so this company shall be liable only for that proportion of any loss for which it would have been liable if such amount of concurrent insurance had been maintained.

CONDITION NO. 11 IS VARIED TO READ AS FOLLOWS, AND NOT AS ABOVE:

11. The Company shall make good: loss caused by the explosion of natural or coal gas, in a building not forming part of gas works, and all other loss caused by fire resulting from an explosion, and also direct loss or damage by lightning to the property insured (meaning thereby the commonly accepted use of the term "lightning" and in no case to include loss or damage by cyclone, tornado or windstorm) whether fire ensues or not; but if dynamos, exciters, lamps, switches, motors or other electrical appliances or devices are insured, it is made a condition of this contract that any loss or damage to them such as may be caused by lightning or other electrical currents, artificial or natural, is expressly excluded, and that this Company is liable only for such loss or damage to them as may occur from resultant fire or fire originating outside of the machines themselves. It is also understood and agreed and made a condition of this contract that if there is other insurance upon the property damaged, this Company shall be liable only for such proportion of any direct loss or damage by lightning (except as above stated) as the amount hereby insured bears to the whole amount insured thereon, whether such other insurance is with a similar clause or not.

It is hereby understood and agreed that Statutory Condition No. 10 (b) is waived as regards the exemption of fire losses caused by earthquake and volcanic eruption.

These variations and additions are made by virtue of the Quebec Insurance Act, and shall have effect insofar as, by the Court or Judge before whom a question is tried relating thereto, they shall be held to be just and reasonable requirements on the part of the company.

ENDOS

Policy No. 527794

Insured: The Sherwin-Williams Co. of Canada Limited and/or Subsidiary Companies.

Amount: $83,945. Premium: $1036.97 Property: As per Form.

Expires: December 1st, 1944 at 12 o'clock noon.

INSURANCE COMPANY of NORTH AMERICA
Founded 1792

Capital $12,000,000

JOHNSON - JENNINGS, Inc.
Insurance
Coristine Bldg. Montreal

N.B.—Please examine your Policy, and if you find any error, return it immediately to be rectified, and if you effect or have effected Insurances on same Property with other Offices, you are particularly requested to see that the wording and terms of the Policies coincide, so that in the event of a loss, delay in the settlement may be avoided.

DEFENDANT'S EXHIBIT D-8 AT ENQUETE

Statement of Linseed Oil Mill Fire.

LINSEED OIL MILL FIRE

					Fire	Total	Explosion	Total
1.	Building	Foundation Co.		$56,519.97				
		Ross & McDonald		3,227.54				
		Elevator		970.00				
		Shed Roofing		23.74				
		Estimated expenditures for Painting & repairs to floors		8,031.00		31,457.22		37,358.62
					$68,815.84			
2.	Merchandise	Flaxseed	4,199 Bus. destroyed		$7,262.80			
		Oil Meal	76.8 Tons "		3,074.57			
		Linseed Oil	3,933 Gals "		3,019.05			
		Turpentine	1,700 " "		957.78		957.78	
		Bags	41,900 "		10,865.12			
		Filter Aid Bleaching Earth	38,600 Lbs. "		1,301.14			
		Returnable Drums	219 "		438.00		1,314.00	
		Cans	112.486 "		9,167.83		1,018.65	
		One Way Drums	205 "		365.29		1,095.85	
						$36,451.58		4,386.28
3.	Salvage	Labour Cleaning Building & Equipment	10,825 Hrs.		$3,767.20		$941.80	
		Labour Cleaning, handling Mdse. Bags, Soap, etc.	2,377½ "		827.20		206.80	
		Labour Salvaging, Cleaning 450,000 Cans & Covers	14,374½ "		4,169.05			
		Bags			217.10			
						$8,980.55		1,148.60
4.	Equipment	Seed Scale			$913,12			
		Grinder			1,441.96			
		Platform Scale,			143.98			
		Seed Cleaner			3,503.52			
		Sheet Metal Work			2,642.93			
		Plumbing & Steamfitting			4,863.14			
		Conveyors, Elevators, etc.			1,000.37			
		Belting			280.80			
		Super Cylinder Oils			380.62			
		Iron Covers for Vessel					$124.57	
		Manhole Doors					120.00	
		Repair Pressure Gauges					45.55	
		Repair Seams of Vessel					28.00	
		Repair Dust Collectors					287.54	
		Sundry Equipment			4,744.75			
						$19,915.19		$ 605.66
		Labour dismantling, reconditioning equipment	8,766 Hrs.		$2,813.24		$1,000.00	
		Electrical Installations, drying, rewinding motors, etc.			12,750.00		2,250.00	
						15,563.24		3,250.00
5.	Personal Claims	Employees Losses				425.56		
		Damage to other properties						182.12
						$112,793.34		$46,931.28

		Fire	Explosion
Total value electrical installations, etc.	$15,000.00		
Proportionate value top floor 15%	2,250.00	$1,125.00	$1,125.00
Proportionate value middle floor 30%	4,500.00	3,375.00	1,125.00

PLAINTIFF'S EXHIBIT P-2 AT ENQUETE

Copy of letter from Johnson-Jennings Inc., to Boiler Inspection and Ins. Co. of Canada. Dated 3rd August 1942.

3rd August, 1942.

Boiler Inspection and Ins. Co. of Canada
437 St. James St. West,
Montreal.

Gentlemen,

Sherwin-Williams Co. of Canada Ltd.,
Policy 60350B

Confirming our conversation with your Mr. Morrison, we wish to report a loss under the above policy. On Sunday, August 2nd, 1942, about 10 A.M., one or all of the objects shown on page 1F of the above policy exploded doing considerable damage to machinery and buildings, and causing a fire.

We understand that you will have your adjuster at the plant on Tuesday.

Yours very truly,

Johnson-Jennings, Inc.
F.A.J.

FAJ/RG

PLAINTIFF'S EXHIBIT P-3 AT ENQUETE

Copy of Letter from the Sherwin-Williams Company of Canada Limited to Boiler Inspection & Insurance Co. of Canada. Dated August 7, 1942.

Johnson-Jennings, Inc. — Received — Aug. 10, 1942

August 7, 1942

Boiler Inspection & Insurance Co. of Canada,
437 St. James Street W.,
Montreal.

Dear Sirs:—

On August 3rd, 1942, Messrs. Johnson-Jennings Inc., reported on our behalf a loss under policy No. 60350-B, which occurred on August 2nd, 1942, at approximately 10 o'clock A.M.

This morning, in conversation with Mr. Greig, we pointed out to him the urgency of our getting the plant operating again as soon as possible. Messrs. Ross & Macdonald, Architects, and The Foundation Company of Canada Limited are about to proceed with the necessary repairs, and we presume that you have already obtained or will obtain from them the information you will require in connection with this loss.

Yours very truly,

The Sherwin-Williams Company
of Canada, Limited.
Secretary-Treasurer.

PWH.-R

PLAINTIFF'S EXHIBIT P-16 AT ENQUETE

Memorandum of Meeting held at 10 *a.m. on August* 10*th* 1942.
Dated 10*th August* 1942.

Re SHERWIN WILLIAMS COMPANY

A meeting was held at 10 a.m. on August 10th, 1942, in the office of Sherwin-Williams Company, and there were present:

Messrs. Hollingsworth,
Moffatt,
Jennings,
Rutledge (Foundation)
McKeon (Boiler Insurance)
Thompson (Foundation)
Cheese,
Gregg (Boiler Insurance)
Ross Jr. (R. McKeon)
Douglas (McKeon)
Ross Snr. "
Fitzgerald (Boiler Insurance) and
Debbage.

A discussion took place as to what had to be done, and it was quickly decided by all present that the work of establishing the loss should be proceeded with at once. A difference of opinion arose between the representatives of the Boiler Insurance Company and the Adjusters for the Fire Companies over what figures should be established by the representatives of the three parties (Sherwin-Williams, Boiler Insurance and Fire Com-

panies), but it was eventually unanimously agreed that, working under a gentlemen's agreement, these representatives would have to establish the total amount of the loss, showing how much of this was caused by the fire that resulted. In the preliminary discussion, it was stated by representatives of the Boiler Insurance that they had come to the conclusion (temporarily) that a fire occurred prior to any explosion. They stated that, consequently, they could not, and would not, admit any liability for any loss until such time as they had been able to make further investigations and examine further witnesses.

It was agreed that Messrs. Ross & McDonald in conjunction with the Foundation Company would act for Sherwin-Williams. Mr. Fitzgerald would represent the Boiler Insurance, and the meeting was informed that Mr. W. M. Irving, with an assistant to be named, would represent the Fire Companies. A meeting of these representatives was made for 2 P.M. on August 10th, 1942..

wbd/nt
August 10th, 1942.
Montreal, November 22, 1945.
Copy of Record on my file.
W. B. Debbage.

DEFENDANT'S EXHIBIT D-1 AT ENQUETE

Statement by Mr. Frazier concerning accident at Linseed Oil Mill, which occurred Sunday, August 2nd.
Dated August 10, 1942.

August 10, 1942.

Statement by Mr. Frazier concerning accident at Linseed Oil Mill, which occurred Sunday, August 2nd.

I arrived on the third floor of the mill about five minutes to ten.

Walked around, glanced at machinery ,was running O.K. Walked over to press, picked up a bottle, looked at the liquid, This was not O.K. to my knowledge. then decided to discuss color with man in charge, Mr. Rymann. While discussing it I heard a sizzling noise in the bleaching room. Was going to walk over to investigate and just as I walked towards the press I glanced at the North side and saw fumes or vapors, then saw fire and

called to the men to get out. Some were going to the staircase but I said, no, the fire escape. I went with them.

As I put my foot on the fire escape I heard a noise like a boom. When we got down to around the second storey I heard the second noise which was louder. We stood paralyzed for about two seconds. Could not move.

Went to bottom of ladder and crawled out under platform to railway tracks.

The whole thing happened in 5 to 7 minutes at the most.

H. A. Frazier.

Witness: J. Moffat.

DEFENDANT'S EXHIBIT D-2 AT ENQUETE

Statement by Mr. A. Rymann concerning accident at Linseed Oil Mill, which occurred Sunday, August 2nd. Dated August 10/1942.

August 10, 1942.

Statement by Mr. A. Rymann concerning accident at Linseed Oil Mill, which occurred Sunday August 2nd.

Came in 15 minutes before explosion, approximately 9.45.

Was over at tank, looked at it, temperature was up to 165. Sent Henry down to the pump to start it. Stopped close to filter while he went down to pump. Stayed at filter until explosion happened.

I stayed at the filter and watched it come up, looked at it and stayed 5 minutes or so. All at once Mr. Frazier walked in. He was telling me the stuff did not look very good and decided to stop the pump and change cloths. Henry stopped the pump. We waited until everything stopped and then figured would change the cloths in the filter. All of a sudden we heard a sizzling noise like a steam valve breaking. Saw steam coming around the North door and figured would walk to the South door to see what was the matter. The doorway was full of vapors. Saw a big flash like fire. We had to get out by fire escape. While out on the fire escape heard an explosion. Did not wait but went downstairs and saw that walls had fallen.

I left building last. Henry was in front of me.

Explosion took place while I was at filter press. Was just starting down fire escape when second explosion occurred.

A. Rymann.

Witness: J. S. Moffat.

DEFENDANT'S EXHIBIT D-4 AT ENQUETE

Statement by Mr. H. Asselin concerning accident at Linseed Oil Mill, which occurred Sunday, August 2nd.
Dated August 10, 1942.

August 10, 1942.

Statement by Mr. H. Asselin concerning accident at Linseed Oil Mill, which occurred Sunday, August 2nd.

Came in at 7 o'clock.

First thing I started to pump Turpentine into the tank. I bleached it, put the bleaching earth in, put the steam on to heat it up to 165, then I rested it for 30 minutes. Agitator was going but no heat.

I went downstairs, everything was O.K. to start filtering. Went downstairs and came up again to third floor to start filtering. Mr. Frazier came in and I had to go down to shut off the pump. I stayed at the filter, then went back to the pump downstairs and stopped it. Came back again and was discussing with Mr. Frazier about changing cloths.

I heard a hissing, not sure if I saw flames or fumes. Was looking towards the South door. I went towards it two or three steps. It must have been flames so I turned around. Frazier caught me and told me to use the fire escape. I went down. I heard a noise but could not tell where. The first noise was not an explosion, like a roar. I came down by the fire escape and went towards the yard.

H. Asselin.

Witness: J. S. Moffat.

PLAINTIFF'S EXHIBIT P-4 AT ENQUETE

Copy of letter from Boiler Inspection and Insurance Company of Canada to the Sherwin Williams Co. of Canada Limited. Dated August 14th, 1942.

The Boiler Inspector and Insurance Company of Canada
Johnson & Jennings — Received — Aug. 17, 1942.

August 14th, 1942.

WITHOUT PREJUDICE

Messrs. The Sherwin-Williams Co. of Canada, Limited,
2875 Centre Street,
Montreal, P.Q.
Att'n Mr. P. M. Hollingsworth,
Secretary Treasurer.

Dear Sirs:—

Re: *Policy* #60350-B. *Loss August 2nd,* 1942.

This will acknowledge receipt of your letter of August 7th, 1942.

We confirm the statements of Messrs. Gregg, Fitzgerald, Parker and McKeon made at the time of the meeting with you, representatives of Ross and Macdonald, The Foundation Company and the Fire Insurers held on August 10th, 1942.

We are agreeable to the Sherwin-Williams Company proceeding with repairs to the damaged property without prejudice to all of our rights and obligations under the terms of the policy, while investigation as to the cause of the occurrence is continued.

Concerning the employment of Ross and MacDonald, Architects, and The Foundation Company, Contractors, which concerns you desire to make repairs, we shall, if in the final analysis our Company is liable, accept their costs which you will incur as the basis for adjustment of the loss in accordance with the provisions of the policy contract.

It was also stated we would proceed with representatives of your Company, the Fire Insurers and our Company in the

preparation of lists of damage, one headed "Explosion" and the other headed "Fire", notwithstanding our recommendation for an alternative.

The purpose of making this agreement on these points was to permit you to proceed as quickly as possible with repairs, pending completion of our investigation, with the distinct understanding and agreement that all questions of liability under the insurance policy of The Boiler Inspection and Insurance Company of Canada are reserved for future determination.

Yours very truly,

The Boiler Inspection and Insurance Company of Canada.

Harold Mudge,
Manager.

PM/MN
copy sent: Johnston-Jennings, Inc.

PLAINTIFF'S EXHIBIT P-13 AT ENQUETE

Report concerning Fire and Explosion damage Re Linseed Oil Mill signed H. M. Patterson. Dated August 14th, 1942.

ROSS & MACDONALD Inc.

C O P Y

August 14th, 1942.

Messrs. Sherwin-Williams Co. of Canada Ltd.,
2875 Centre Street,
Montreal.

Dear Sirs:—

Re: *Linseed Oil Mill.*

We beg to enclose herewith for your records and information three copies of our report covering Fire and Explosion damage to the above mentioned building.

we are,

Yours respectfully,

(sgd) H. M. Patterson.

Encls.

SHERWIN-WILLIAMS CO. OF CANADA LTD., REPORT ON FIRE AND EXPLOSION DAMAGE TO LINSEED OIL MILL.

August 12, 1942.

As arranged at the general meeting held in the office of the Sherwin-Williams Co. of Canada Ltd., on Monday morning last, August 10th, 1942, the following met at the Linseed Oil Mill, Tuesday, August 11th, to inspect the Mill and to determine, if possible, the damage caused by the explosion, and the damage caused by the fire.

Mr. McKeon (Representing the Boiler Inspection &
Mr. Fitzgerald) Insurance Co. of Canada.

Mr. Irving (Representing Messrs. Cheese & Debbage,
Mr. Newill) Insurance Adjusters.

Mr. Thompson (Representing the Foundation Co. of
Mr. Benjafield) Canada, Contractors.

Mr. Patterson (Representing Ross & Macdonald, Inc.,
Mr. J. K. Ross) Architects and Engineers.

For the purpose of this report all damage to the buildings, exclusive of damage to manufacturing equipment, has been divided into three general groups, namely — Explosion, Fire and Water damage. It should be noted, however, that damage to certain items in these groups can be attributed to both fire and explosion and that the proportion of damage to these items will have to be determined at a later date.

IDENTIFICATION:

"Old Building" refers to the original mill on the corner of St. Patrick St. and Atwater Ave. and is shown on our plans under Job. No. 251.

"New Building" refers to the addition to the East of the Old Building, and is shown on our plans under Job No. 242.

"North Wall" refers to St. Patrick St. elevation.

"West Wall" refers to Atwater Ave. elevation.

EXPLOSION DAMAGE, NEW BUILDING:

South Wall:

Upper part of this wall was blown completely out.
The remaining portion of the wall, that is out of line, is to be taken down to the Second Floor level and the whole wall rebuilt.
Canopy over the trucking doors was knocked down by the falling wall and is to be rebuilt.
Wood stairs and bumper to trucking doors are to be repaired.

East Wall:

The upper south portion of this wall was blown completely out and the remainder of the wall that is out of line is to be taken down as follows:

North part between cols. A and C to be taken down to 2nd. Floor window sill, center part between Cols. C and E to 2nd. Floor level, and the south part between Cols. E and G to the 1st Floor wndow head. Wall to be rebuilt.

North Wall:

Third Floor windows blown out and the brick veneer pushed out of line. This wall is to be taken down to the 3d Floor level and rebuilt.
Two windows and window sills on 2nd Floor to be replaced and brick jambs renewed. One window to be repaired.
Replace 3 window sills on the 1st Floor and straighten steel sash.

Party Wall:

South part of this wall was blown out of line.
This wall to be taken down to 3rd Floor level, south of fire doors between Cols. E and F. Wall to be rebuilt.

Elevator Enclosure:

All block walls around elevator shaft were blown out of line and are to be taken down to 1st Floor level and rebuilt. Parts of these walls were blown out completely.

Stair:

All block walls around stair blown out of line.
These walls to be taken down to 2nd Floor level and rebuilt. Parts of these walls were blown out completely.
Wood stair to be rebuilt.

Wood Partitions:

Repair Wood partitions to Press Room on 1st Floor.

FIRE DAMAGE, NEW BUILDING:

Roof:

Mill roof completely burned.
Some steel roof beams twisted by the heat and must be replaced, others can be repaired and re-used.
Certain columns twisted by the heat require straightening.

Floor:

The ends of the mill floor at East Wall 3d Floor, were charred and may require replacing.
Portions of the hardwood flooring on 3d Floor were burnt and are to be replaced.

EXPLOSION DAMAGE, OLD BUILDING:

South Wall:

This wall was blown out of line about 1½″ between Cols. 12 and 14 and is to be taken down to the Third Floor door head level and rebuilt.
Wall between Cols. 8 and 11 to be taken down to window head and replaced.

West Wall:

West wall was blown out of line at the center, about 6″. It is to be taken down to the 3d Floor level and rebuilt.

North Wall:

Four Third Floor windows blown out. These windows to be replaced and brick Jambs renewed.

Roof:

About 6 wood roof beams cracked by the explosion have to be replaced.
The mill roof was blown upwards free of the roof beams and the slopes of the built-up roof changed. Mill roof to be re-set and bolted to roof beams. Replace runners and 7/8" roof deck to correct slope. Lay new tar and gravel roofing and new galvanized iron flashing.

Wood Partitions:

Wood partitions around 3d Floor store room blown out of line and to be rebuilt.
Wood and glass partitions to 3d Floor office and laboratory blown out of line and to be rebuilt.

Windows:

All windows on 3d Floor blown out and to be replaced and brick jambs renewed.

WATER DAMAGE, OLD AND NEW BUILDINGS:

Floors:

All hardwood floors that may buckle, due to being saturated with water, are to be taken up and replaced.
Floor areas not replaced are to be sanded and refinished.

Cleaning & Painting:

All woodwork, block walls, kalamein doors, to be cleaned down and painted as called for in the original specifications.

Because of water, etc., in the Basement, it was impossible to make a survey of the damage done in this area. This will be covered in a future report.

The Turnbull Elevator Company report as follows on the condition of the elevator and elevator machinery:—

Break pot and coils full of water.
Main motor must be dried and tested.
Wires and coils on controls, burnt and broken.
Car not much damaged.

Hatchway wires to be tested.
Lifting cables have been replaced recently.
Governor cables are not much damaged.
Main rails are not damaged.
Peellee doors to be repaired and replaced.

The electrical conduits and heating piping on the Third Floor, New Building, have been badly damaged and have to be replaced. The Third Floor unit heaters may have to be replaced.

1st and 2nd Floor conduit in New Building is wet and will have to be rewired.

2nd and 3d Floor conduit in Old Building appears to be in good condition, but the 1st Floor conduit is wet and will require drying and rewiring.

Panel boxes on 3rd Floor, New Building, are badly damaged and will have to be replaced.

Certain other panel boxes require repairing.

Lighting fixtures, 3d Floor, New Building, will have to be replaced.

J. K. Ross.

DEFENDANT'S EXHIBIT D-5 AT ENQUETE

Statement by Mr. Alphonse Boucher concerning accident at the Linseed Oil Mill which occurred Sunday August 2, 1942. *Dated August* 17/1942.

August 17, 1942.

Statement by Mr. Alphonse Boucher concerning accident at the Linseed Oil Mill which occurred Sunday, August 2, 1942.

Commencing 9:30 I was bringing drums up and down by elevator with Durocher. When I was taking up the second load Mr. Frazier came up. When we got to the top floor I heard Mr. Frazier say he was going to No. 6 press and instead of taking the drums off I walked over to No. 6 press. Durocher pulled a drum off and both of us went over to the press. I was standing in the middle between No. 4 and No. 6 press, facing the sewing machine and seed tanks.

I heard a noise and on hearing it I turned around facing the North door. When I turned around I saw blue-white smoke

Before I saw that I heard something like a safety valve popping. From the press I went South.

When I saw the smoke I was frightened. When I heard Mr. Frazier tell the boys to get out I was at the door. When I was on the fire escape I did not hear anything or notice anything until I got near the second floor when I heard what I think was the second shock. It sent me against the railing and I hit my leg. When I got to the bottom I jumped onto the platform, went down about six steps and along the track and through the seed elevator.

Compte rendu de Monsieur Alphonse Boucher concernant l'accident survenu aux Moulins d'Huile de lin, Dimanche le 2 août, 1942.

Commencer à neuf heures et demie, et je montais et descendais des drums par l'ascenseur avec Durocher. Comme j'étais à remonter le deuxième chargement, Monsieur Frazier est arrivé. Lorsque nous avons atteint le plancher du haut, j'ai entendu Mons. Frazier dire qu'il allait à la presse No. 6, et au lieu d'enlever les drums, j'ai marché jusqu'à la presse No. 6. Durocher a retiré un drum, et tous deux nous nous sommes rendus à la presse. J'étais debout au milieu, entre les presses No. 4 et 6, faisant face à la machine à coudre et les réservoirs à graine.

J'ai entendu un bruit, et je me suis tourné vers la porte Nord. Lorsque je me suis retourné, j'ai vu une fumée d'un blanc bleu. Avant de voir celà, j'ai entendu un bruit comme une soupape de sûreté qui marche rapidement. De la presse je suis allé au Sud.

Lorsque j'ai vu la fumée, j'ai eu peur. Lorsque j'ai entendu Mons. Frazier dire aux garçons de sortir, j'étais à la porte. Sur l'escalier de sauvetage, je n'ai rien entendu ni rien remarqué jusqu'à ce que j'ai atteint le deuxième plancher, alors que j'ai entendu ce que je crois être le deuxième choc. J'ai été projeté contre la rampe et j'ai frappé ma jambe. Lorsque je suis arrivé en bas, j'ai sauté sur la plateforme, j'ai descendu à peu près six marches, j'ai couru le long du chemin de fer, et au travers des élévateurs à grain.

Alphonse Boucher.

Witness: J. S. Moffat.

PLAINTIFF'S EXHIBIT P-12 AT ENQUETE

Statement by Mr. Halsey Gosselin concerning accident at Linseed Oil Mill which occurred Sunday August 2, 1942. *Dated August* 17, 1942.

August 17, 1942.

Statement by Mr. Halsey Gosselin concerning accident at Linseed Oil Mill which occurred Sunday, August 2, 1942.

At 9:45 I was emptying drums by vacuum into the tank for Turpentine. The other tank was just finished. The empties were moved away. I was watching the steam and thermometer. The thermometer was at 165 and the steam was off.

While Mr. Frazier went around the North door to the filter I went around the South door to the filter. I was on the side of the filter press with taps looking North to St. Patrick St. I remember hearing a noise and seeing smoke. I did not see any fire.

I went out by the fire escape. I do not remember hearing any noise while on the fire escape. When I got to the bottom everything was down. I went along the railway track.

Compte rendu de Monsieur Halsey Gosselin concernant l'accident survenu aux Moulins d'Huile de lin, Dimanche, le 2 août, 1942.

A neuf heures et quarante cinq, je vidais des drums par vacuum dans le réservoir à térébentine. L'autre réservoir était fini. Les contenants vides furent enlevés des lieux. Je surveillais la vapeur et le thermomètre. Le thermomètre marquait 165, et la vapeur était fermé.

Durant que Mons. Frazier s'est rendu à la porte du côté Nord pour aller au filtre, je suis allé à la porte du côté sud, au filtre. J'étais au côté de la presse à filtrer avec chantepleures faisant face au nord, rue St. Patrick, lorsque j'entendis un bruit et j'ai vu de la fumée. Je n'ai pas vu de feu.

J'ai sorti par l'escalier de sauvetage. Je ne me rappelle pas avoir entendu aucun bruit pendant que j'étais sur l'escalier de sauvetage, mais quand je suis arrivé en bas, tout s'était effondré. Je me suis rendu sur le rail du chemin de fer.

Halsey Gosselin.

Witness: J. S. Moffat.

PLAINTIFF'S EXHIBIT P-19 AT ENQUETE

Letter of Mr. J. P. Fitzgerald to the Sherwin-Williams Company Dated August 27, 1942.

Boiler Inspection and Insurance Company of Canada

August 27, 1942.

The Sherwin-Williams Company,
2875 Center Street,
Montreal, P.Q., Canada

Attention: Mr. P. M. Hollingsworth,
Secretary-Treasurer

Gentlemen:

Loss August 2, 1942.

As requested at the meeting held in your plant on August 19th, we are setting forth our conclusion as to the cause of the damage to your property, this being based on the testimony of the operatives, examination of the property, and investigation into the operation being performed on the day of the occurrence.

The testimony of those present is to the effect that at or about 10 A.M., August 2nd, while they were gathered around the filter press, they heard what has been variously described as a hissing or sizzling noise, and subsequently saw vapor, smoke, flame and fire within an adjoining room in which the No. 1 Bleacher Tank is situated. At this point, all observing this situation sensed the impending danger and made for the fire escape. Shortly thereafter a roar or minor explosion was heard and when these men were descending the fire escape, a second severe explosion was heard and felt. The fire on the premises was not entirely extinguished until several hours later.

We understand that a part of the system normally designed and always used previously for the purpose of bleaching linseed oil was utilized on August 2nd for the first time to clarify a quantity of turpentine. Turpentine with Fuller's Earth and other ingredients were placed in #1 Bleacher Tank. The vessel was heated and the mixture agitated mechanically. The heat was turned off but agitation continued until the contents were considered in condition for withdrawal. Part of the contents were then drawn off and were being filtered. Just prior to the occur-

rence the operators, being gathered about the filter press, were discussing the unsatisfactory condition of the sample of treated turpentine. The damage to the building and contents was extensive but the damage to the No. 1 Bleacher Tank was confined to the manhole cover and securing bolt and sight glass in rear head.

It is our conclusion that the system which was designed for use in the processing of linseed oil had not been made adaptable for the process of clarifying turpentine. The method of treating the turpentine with the presence of linseed oil in the vessel, the absorption of oxygen in the process and consequent formation of peroxides caused a chemical reaction in the form of internal heating of the turpentine. With the combination of Fuller's Earth which acted as a catalyst, a pressure was built up within the vessel. Some of these vapors escaped to the atmosphere and caught on fire. Pressure continued to build up within the vessel to a point where the manhole cover which was designed to operate under vacuum, was forced off, thus releasing a very large volume of turpentine and its vapors which were ignited by the fire, causing a severe combustion explosion in the room.

We understand you have not as yet made your own investigation but after you have had an opportunity to do so, and to analyze what we are submitting, you will discuss the matter with us further. Meanwhile, the question of liability is to be left for future determination as outlined in our letter to you of August 14th.

We will gladly render all possible assistance in the matter of getting your plant back into service.

We very much appreciate your co-operation in this matter.

Yours very truly,

I. P. Fitzgerald.

Copy sent to:
Mr. F. A. Jennings,
Johnson-Jennings Inc.,
410 St. Nicholas St.,
Montreal, P.Q.

PLAINTIFF'S EXHIBIT P-17 AT ENQUETE

Copy of Memorandum from W. M. Irving to Messrs. Cheese & Debbage. Dated Dec. 3rd. 1942.

Re Loss Sherwin-Williams Company of Canada Ltd.
Center St. Montreal.

Messrs. Cheese & Debbage,
Adjusters,
Montreal, Que.

Gentlemen:

I have to advise you that I have completed checking up the losses caused to the Buildings of the Sherwin-Williams Company of Canada Limited by the explosion and the fire that occurred on August 2nd, 1942 and I find that the loss caused by the explosion amounts to the sum of Thirty-Seven Thousand, Eight Hundred and Twenty-nine 52/100ths. Dollars ($37,829.52) and the damage caused by the fire amounts to the sum of Thirty-three Thousand, Three hundred and Forty 82/100ths Dollars ($33,340.82).

Details of the above figures are on file in my office.

Yours very truly,

W. M. Irving.

Montreal, Dec. 3rd. 1942.

PLAINTIFF'S EXHIBIT P-14 AT ENQUETE

Appraisal of Value & Loss of the Sherwin-Williams Co., signed George E. Newill. Dated Jan. 14, 1943.

GEORGE E. NEWILL, M.E.I.C.
1178 Phillips Place
Montreal.

Loss: August 2nd, 1942.

Stock			Loss	Explosion	Fire
Flax Seed	4199 Bu.	Destroyed	7262.80		7262.80
Oil Meal	768 Tons	"	3074.57		3074.57
Linseed Oil	3933 Gals.	"	3019.05		3019.05
Turpentine	1700 "	"	1915.56	957.78	957.78
Bags	41910 Bags	"	10865.12		10865.12
Filter Bleaching Earth	38600 Lbs.	"	1301.14		1301.14
Returnable Drums	219 Drums	"	1752.00	1314.00	438.00
Cans	112486 Cans	"	10186.48	1018.65	9167.83
One Way Drums	205 Drums	"	1461.14	1095.85	365.29
Labour & Material salvaging merchandise			1034.00	206.80	827.20
Labour cleaning	450000 Cans	"	4169.05		4169.05
Bags			217.10		217.10
			$46,258.01	$4593.08	$41664.93
				4508.68	
Explosion Loss on Machinery & Equipment				$9101.76	

Established January 14th, 1943.

George E. Newill, P.E.Q.

SHERWIN WILLIAMS COMPANY OF CANADA LTD.

Machinery & Equipment	Total Loss	Explosion	Fire
Seed Scale	913.12		913.12
Grinder	1441.96		1441.96
Platform Scale	143.98		143.98
Seed Cleaner	3503.52		3503.52
Sheet Metal tank	2642.93		2642.93
Plumbing & Steamfitting	4863.14		4863.14
Conveyors & elevators	1000.37		1000.37
Belting	280.80		280.80
Cylinder oils	380.62		380.62
Iron cover for vessel	124.57	124.57	
Manhole Doors	120.00	120.00	
Repair Pressure Gauges	45.55	45.55	
Repair seams of vessel	28.00	28.00	
Repairs Dust Collectors	287.54	287.54	
Sundry Equipment	4744.75		4744.75
	20520.85	605.66	19915.19
Labour Dismantling & Reconditioning 8766 Hours	3813.24	1000.00	2813.24
Repairs Electrical Installation Motors etc.	15000.00	2250.00	12750.00
Employees Losses Etc.	607.68	182.12	425.56
Proportion of $4709.00 for cleaning up (½ Bldg. ½ Mchy)	2354.00	470.90	1883.60
	$42296.27	$4508.68	$37787.59

George E. Newill,
P.E.Q.

PLAINTIFF'S EXHIBIT P-15 AT ENQUETE

Letter of The Foundation Company to Mr. W. M. Irving and detailed statement showing a division of the total cost of the reconstruction of fire damage to the Linseed Oil Mill. Dated January 18, 1943.

THE FOUNDATION COMPANY OF CANADA
LIMITED
Guy and Sherbrooke Streets
MONTREAL

January 18, 1943.

Mr. W. M. Irving,
Cheese & Debbage,
240 St. James St. W.,
Montreal.

Dear Sir,

Re: *Sherwin-Williams.*

In accordance with instructions from Mr. Kerr of the Sherwin-Williams Company, we enclose a detailed statement in triplicate showing a division of the total cost of the reconstruction of fire damage to the Linseed Oil Mill of the Sherwin-Williams plant on St. Patrick Street.

This cost has been divided into loss by explosion and loss by fire in accordance with the report of Ross & MacDonald, Architects. This statement has been prepared with your aid and we feel sure that the distribution is fair and reasonable. We trust that this statement meets with your requirements.

Yours very truly,

The Foundation Co. of Canada Limited,
A. R. Thomson,
District Manager.

ART:LT
3438
Encl.

SHERWIN-WILLIAMS LINSEED OIL MILL
St. Patrick Street

DETAIL OF COSTS

Operation	Labour	Material	Subs	Explosion	Fire	Remarks
DEMOLITION						
Remove roof	311.12				311.12	
Remove brick walls	470.53			470.53		
Remove hardwood floor	103.42			25.86	77.56	
Remove sash	26.70			26.70		
Remove broken beams	15.38			15.38		
Remove rubbish	2203.29	1166.50		1684.89	1684.90	
Repair broken glass adjoining property			3.45	3.45		
Welding & burning		77.20		38.60	38.60	
MASONRY						
Scaffolding	992.06	709.02		1701.08		
Mortar		1003.19		1003.19		
Lay bricks & blocks	4229.68	3840.68		8070.36		
Clean bricks	351.03			351.03		
Grout in windows	17.92			17.92		
CARPENTRY						
Scaffolding	186.06	371.35		278.71	278.70	
Bracing brick wall	18.56			18.56		
Tower for hoist	171.55	162.09		333.64		
Walkways	121.76	160.72			282.48	
Set steel sash	371.05			371.05		
Brace roof	18.90			18.90		
Caulk windows		14.58		14.58		
Repair roof and beams	484.22	1235.15		1719.37		
Partitions	220.22	152.24		372.46		
Window sills & lintels	450.73	74.42		525.15		
Bolt runners	31.96	58.83			90.79	
Mill roof deck	901.30	1077.85			1979.15	
Stairs	161.51	92.48		126.90	126.89	
Plank coping	39.66				39.66	
Cant strip		15.10			15.10	
Hardwood floor	1312.59	1616.92		732.37	2197.14	
Finished hardware	35.56	54.14			89.70	
Monitor	354.84	383.92			738.76	
Roof boarding	214.41	33.05			247.46	
Insulation	249.47	73.86			323.33	
Roof framing	354.71				354.71	
Celboard	75.90	946.74			1022.64	
Parapet wall	22.80			22.80		
Shelter	86.39	87.96		174.35		
Milldeck 3rd floor	22.80				22.80	
Millwork	385.78			192.89	192.89	

Operation	Labour	Material	Subs	Explosion	Fire	Remarks
OVERHEAD acc: Ex. 60%						
Fire 40%						
Acc. & Pur.	688.76			413.25	275.51	
Supervision	1584.33			950.60	633.73	
Watchman	209.86			125.92	83.94	
Office & Telephone		182.17		109.30	72.87	
Storekeeper	459.87			275.92	183.95	
Q.W.C.		857.37		514.42	342.95	
Building Trade		83.20		49.92	33.28	
U.I.C.		136.88		82.13	54.75	
GENERAL Acc.						
Permits		338.04		202.82	135.22	
Insurance		618.31		370.98	247.33	
Temp. water		36.46		21.87	14.59	
" heat		55.54		33.33	22.21	
" light		5.55		3.33	2.22	
" buildings	125.46	372.07		298.52	199.01	
" barricades	49.36	72.50		73.12	48.74	
" shelter	100.00			60.00	40.00	
Gas & oil		50.41		30.25	20.16	
Pump water	68.37	9.80		46.90	31.27	
Clean up	744.02	191.50		561.31	374.21	
PLANT & TOOL Acc.						
Plant depreciation		531.14		318.68	212.46	
" installation	8.90			5.34	3.56	
" transportation		57.14		34.28	22.86	
Small tools		154.64		92.78	61.86	
Load and unload plant, etc.		44.90		26.94	17.96	
Rough Hdwre.		26.74		16.04	10.70	
SUB-TRADES						
Glass, glazing & cleaning			1853.71	1853.71		
Roofing & sheet metal			2220.00	1110.00	1110.00	
Steel sash			1388.30	1388.30		
Structural steel			3175.32	158.77	3016.55	
Checkered plates			152.00	152.00		
Caulking			75.00	75.00		
Millwork			425.00	212.50	212.50	
Steel framing			372.00		372.00	
Sprinklers			1160.00	580.00	580.00	
Plumbing & Heating			1135.97	567.99	567.98	
Electric Wiring			2283.00	570.75	1712.25	
Kalamein doors			65.00	32.50	32.50	
Discounts on materials		Cr. 343.70		Cr. 206.22	Cr. 137.48	
	19052.59	16888.65	14308.75	29523.97	20726.02	
Foundation Co. Fee 10%				2952.40	2072.60	
Misc. small items		186.53		93.26	93.27	
Elevator			970.00	242.50	727.50	
Shed roofing			23.74	23.74		
Painting			6131.00	1226.00	4905.00	
Repairs to floors		1800.00		450.00	1350.00	
Ross & MacDonald fee			3160.62	1901.78	1267.84	
F.C.C. Final bill mostly Ballantyne				944.97	314.99	
				27358.62	31457.22	$68815.84

PLAINTIFF'S EXHIBIT P-18 AT ENQUETE

Report of Mr. G. Newill to Messrs. Debbage & Hewitson Inc. Dated January 25th, 1943.

Re Loss — Sherwin-Williams Company of Canada Ltd.
Center St. Montreal.

Montreal, January 25th, 1943.

Messrs. Debbage & Hewitson Inc.,
Adjusters,
Montreal, Que.

Gentlemen:—

I have completed checking up the loss and damage caused to the Machinery and Equipment of the Sherwin-Williams Company of Canada Limited by the explosion and the fire that occurred on August 2nd, 1942, and I find the explosion loss is $4,508.68 and the fire loss is $37,787.59 as follows:

Item	*Loss Explosion*	*Loss Fire*
1	605.66	19,915.19
2	1,000.00	2,813.24
3	2,250.00	12,750.00
4	182.12	425.56
5	470.90	1,883.60
	$ 4,508.68	$37,787.59

Details of the above are on file in my office.

Yours very truly,

George E. Newill.

PLAINTIFF'S EXHIBIT P-5 AT ENQUETE

Proof of Loss. Dated May 31st 1943.

PROOF OF LOSS

May 31st, 1943

TO:
The Boiler Inspection and Insurance Company of Canada,
437 St. James Street West,
Montreal, Que.

We, the undersigned, THE SHERWIN - WILLIAMS COMPANY OF CANADA LIMITED, of 2875 Centre Street, Montreal, assured under Policy No. 60350B of The Boiler Inspection and Insurance Company of Canada hereby make claim in the sum of $46,931.28 for indemnity thereunder because of accident to steam jacketted bleacher tank and in accordance with the terms and conditions of the said policy and all forms of endorsement attached thereto.

1. *Description of object as shown on policy.*

Steam jacketted bleacher tank 5'4" x 12'5".

2. *Describe briefly what occurred and extent of damage done.*

On the morning of August 2nd, 1942, there occurred an accident consisting of a sudden and accidental tearing asunder of the steam jacketted bleacher tank or parts thereof caused by pressure of steam, air, gas, water or other liquid therein or a sudden and accidental cracking of cast iron parts of the object (as defined in the policy) which permitted the leakage of such steam, air gas, water or other liquid, while the object was in use or connected ready for use at the location specified for it in the schedule to the policy where it is described.

The total loss on the property of the assured directly damaged amounted to $159,724.62 consisting generally of damage to the object, the buildings and things in and about the buildings as reported to you and examined by you following the accident and before repairs were undertaken or physical evidence of the accident was removed.

3. There is other insurance, being fire insurance, applicable to this loss of $159,724.62 to the extent that it may have resulted from fire. Notice of the loss and proofs of loss as required by such fire insurance policies have been filed and all other provisions of such policies have been duly complied with.

The fire insurance policies to which reference is herein made are the following:

Name of Company	Policy Number	Expiration Date	Amount
Aetna Insurance Co.	87263	Dec. 1/44	$425.000
Pearl Assurance Company Ltd	2096617	"	531,250
Camden Fire Insurance Assoc.	21909	"	212,500
The Mercantile Fire Insur. Co. of Toronto Ont.	360956	"	85,000
The Pacific Coast Fire Insur. Co.	202251	"	85,000
Imperial Assur. Company	330244	"	85,000
The North West Fire Insur. Co.	204204	"	63,750
Eagle Star Insur. Company Ltd.	1153872	"	63,750
Hudson Bay Insur. Company	178003	"	63,750
St. Paul Fire & Marine Insur. Company	MF7977	"	63,750
The Canadian Fire Insur. Co.	505151	"	63,750
Fireman's Fund Insurance Co.	1379176	"	53,125
The Westminster Fire Office of London, England	1224191	"	53,125
Insurance Company of North America	527794	"	42,500
Norwich Union Fire Insurance Society Limited of Norwich, England	10380754	Dec. 1/44	$42,500
North British and Mercantile Insurance Company Limited	635846	"	42,500
Great American Insurance Company, New York	116905	"	42,500
Great American Insurance Company New York issued through The Rochester Underwriters Agency	361398	"	42,500
British Northwestern Fire Insurance Company	7106	"	42,500
Hartford Fire Insurance Co.	43539	"	21,250
The Home Insurance Company	80060	"	100,000
Individual Underwriter	CC3041	Dec. 1/42	70,000
New York Reciprocal Underwriters	CC3041	"	70,000
American Exchange Underwriters	CC3041	"	260,000

4. Attached hereto is an itemized statement showing the cost of repairs for which claim is made hereunder by the assured.

DATED at Montreal, Quebec, this 31st day of May 1943.

The Sherwin-Williams Company of Canada Limited

(Per) P. W. Hollingworth,
Secretary-Treasurer.

Canada
Province of Quebec
District of Montreal

I, the undersigned, PERCY W. HOLLINGWORTH, Executive, residing and domiciled at civic number 777 Beatty Avenue in the City of Verdun in the Province of Quebec, being duly sworn on the Holy Evangelists, do depose and say:

1. THAT I am the Secretary-Treasurer of The Sherwin-Williams Company of Canada Limited and duly authorized for the purposes hereof.

2. THAT I have taken communication of the foregoing proof of loss and the itemized statement thereto attached and each and every one of the declarations and details contained in the said proof of loss and the said itemized statement are true to the best of my knowledge and belief.

3. THAT the said itemized statement is identified by the undersigned Commissioner of the Superior Court as Exhibit "A" to this my affidavit.

And I have signed:

P. W. Hollingworth.

SWORN to before me at the City of Montreal
this 31st day of May 1943.

Wm. Howard Herd,
A Commissioner of the Superior Court
in and for the District of Montreal.

THE SHERWIN-WILLIAMS COMPANY OF CANADA LIMITED
LOSS OR DAMAGE AT LINSEED OIL OIL PLANT
St. Patrick Street, Montreal, Que.

BUILDING

Operation	Damage
Demolition	
Remove brick walls	470.53
Remove hardwood floor	25.86
Remove sash	26.70
Remove broken beams	15.38
Remove rubbish	1684.89
Repair broken glass adjoining property	3.45
Welding and burning	38.60
Masonry	
Scaffolding	1701.08
Mortar	1003.19
Lay bricks and blocks	8070.36
Clean bricks	351.03
Grout in windows	17.92
Carpentry	
Scaffolding	278.71
Bracing brick wall	18.56
Tower for hoist	333.64
Set steel sash	371.05
Brace roof	18.90
Caulk windows	14.58
Repair roof and beams	1719.37
Partitions	372.46
Window sills and lintels	525.15
Stairs	126.90
Hardwood floor	732.37
Parapet wall	22.80
Shelter	174.35
Millwork	192.89
Accounting and purchasing	413.25
Supervision	950.60
Watchman	125.92
Office and telephone	109.30
Storekeeper	275.92
Quebec Workmen's Comp. Commission	514.42
Building trade	49.92
Unemployment Insurance Commission	82.13
General Account	
Permits	202.82
Insurance	370.98
Forward	$21,405.98

Operation		Damage
	Forward	$21,405.98
Temp. Water		21.87
" heat		33.33
" light		3.33
" Buildings		298.52
" barricades		73.12
" shelter		60.00
Gas and oil		30.25
Pump Water		46.90
Clean up		561.31
Plant & Tool Acct.		
Plant depreciation		318.68
" installation		5.34
" transportation		34.28
Small tools		92.78
Load and unload plant, etc.		26.94
Rough hardware		16.04
Sub-Trades		
Glass, glazing and cleaning		1853.71
Roofing and sheet metal		1110.00
Steel sash		1388.30
Structural steel		158.77
Checkered plates		152.00
Caulking		75.00
Millwork		212.50
Sprinklers		580.00
Plumbing and heating		567.99
Electric wiring		570.75
Kalamein doors		32.50
Discounts on materials		Cr. 206.22
Misc. small items		93.26
Elevator		242.50
Shed roofing		23.74
Painting		1226.00
Repairs to floors		450.00
Ross & MacDonald fee		1901.78
Foundation Company of Canada Limited, fees and final account		3897.37
		$37,358.62

FURTHER LOSS OR DAMAGE

Merchandise:		
Turpentine		957.76
Returnable drums		1314.00
Cans		1018.65
One-way drums		1095.85
Salvage:		
Labour cleaning building and equipment		941.80
Labour cleaning handling merchandise, bags, soap, etc.		206.80
	Forward	$5,534.88

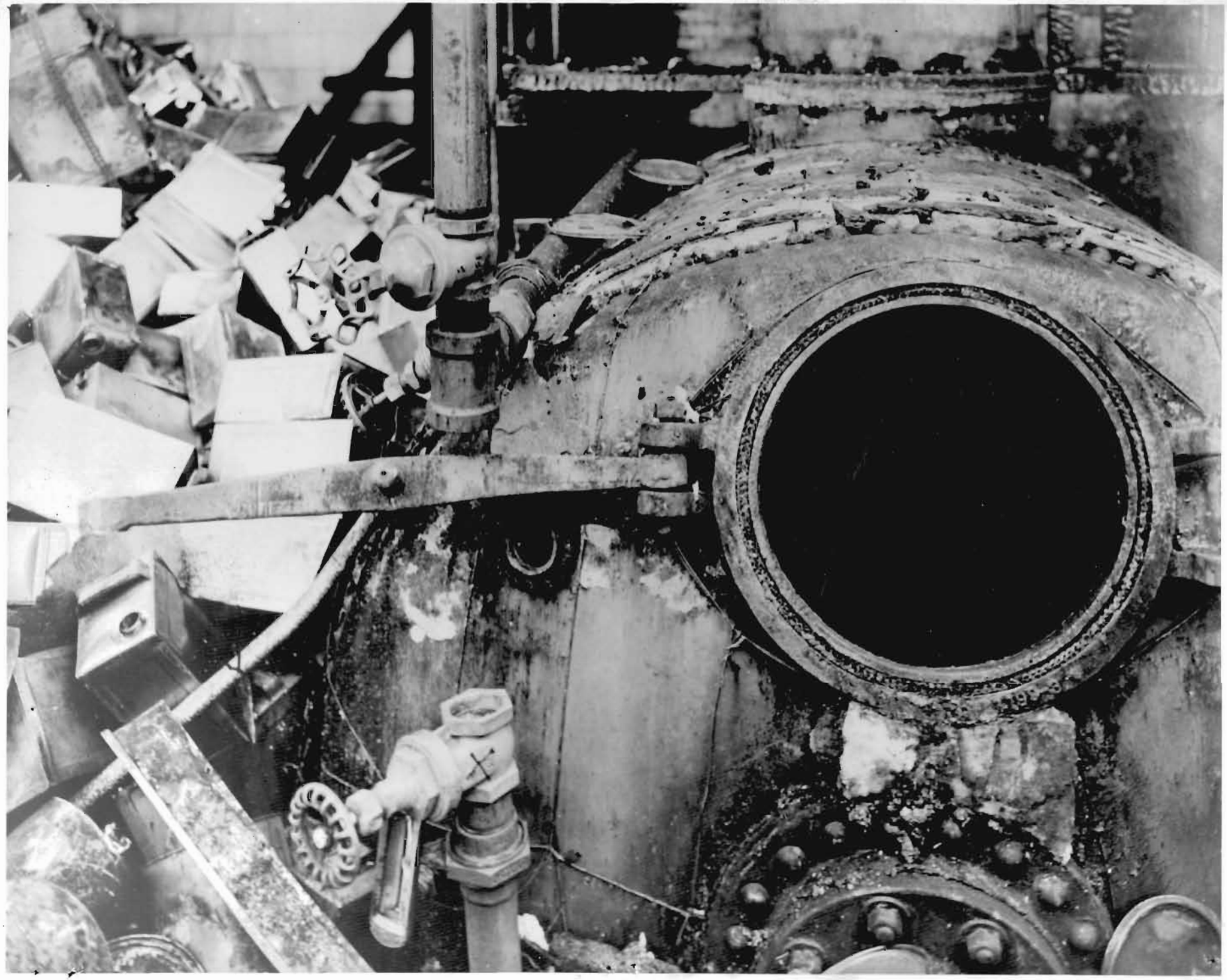
Operation		Damage	
	Forward	$5,534.88	$37,358.62
Equipment:			
Iron cover for vessel		124.57	
Manhole doors		120.00	
Repair pressure gauges		45.55	
Repair seams of vessel		28.00	
Repair dust collectors		287.54	
Labour dismantling and reconditioning equipment		1000.00	
Electrical installations, drying, rewinding motors, etc.		2250.00	
Personal claims:			
Damage to other properties		182.12	
			9,572.66
			$46,931.28

This is Exhibit "A" attached to the Proof of Loss of The Sherwin-Williams Company of Canada Limited dated May 31st, 1943, and addressed to The Boiler Inspection and Insurance Company of Canada to which reference is made in the Affidavit of Percy W. Hollingworth taken before me this 31st day of May, 1943.

Wm. Howard Herd,
A Commissioner of the Superior Court
in and for the District of Montreal.

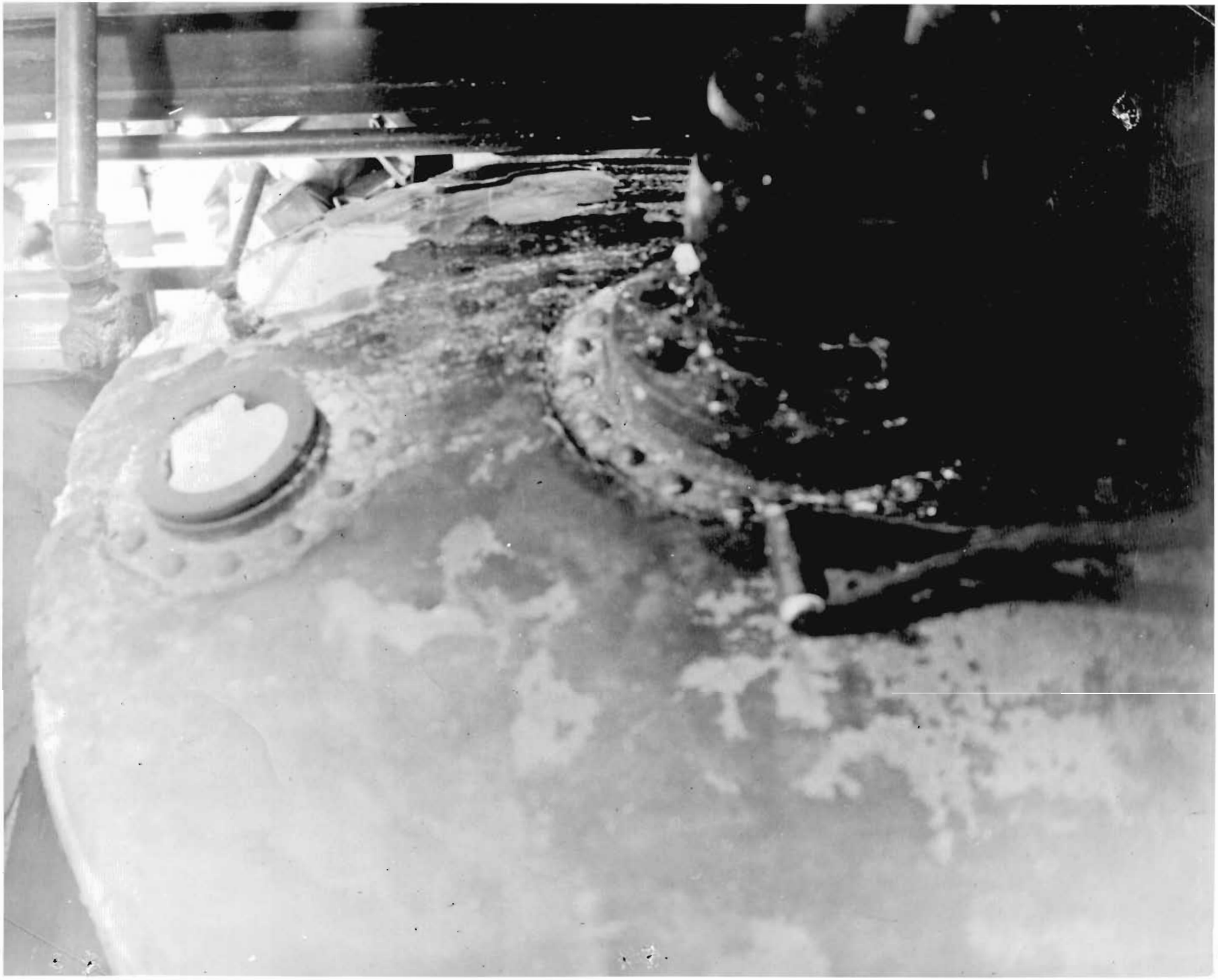
PLAINTIFF'S EXHIBIT P-6-A AT ENQUETE

PHOTO OF TANK



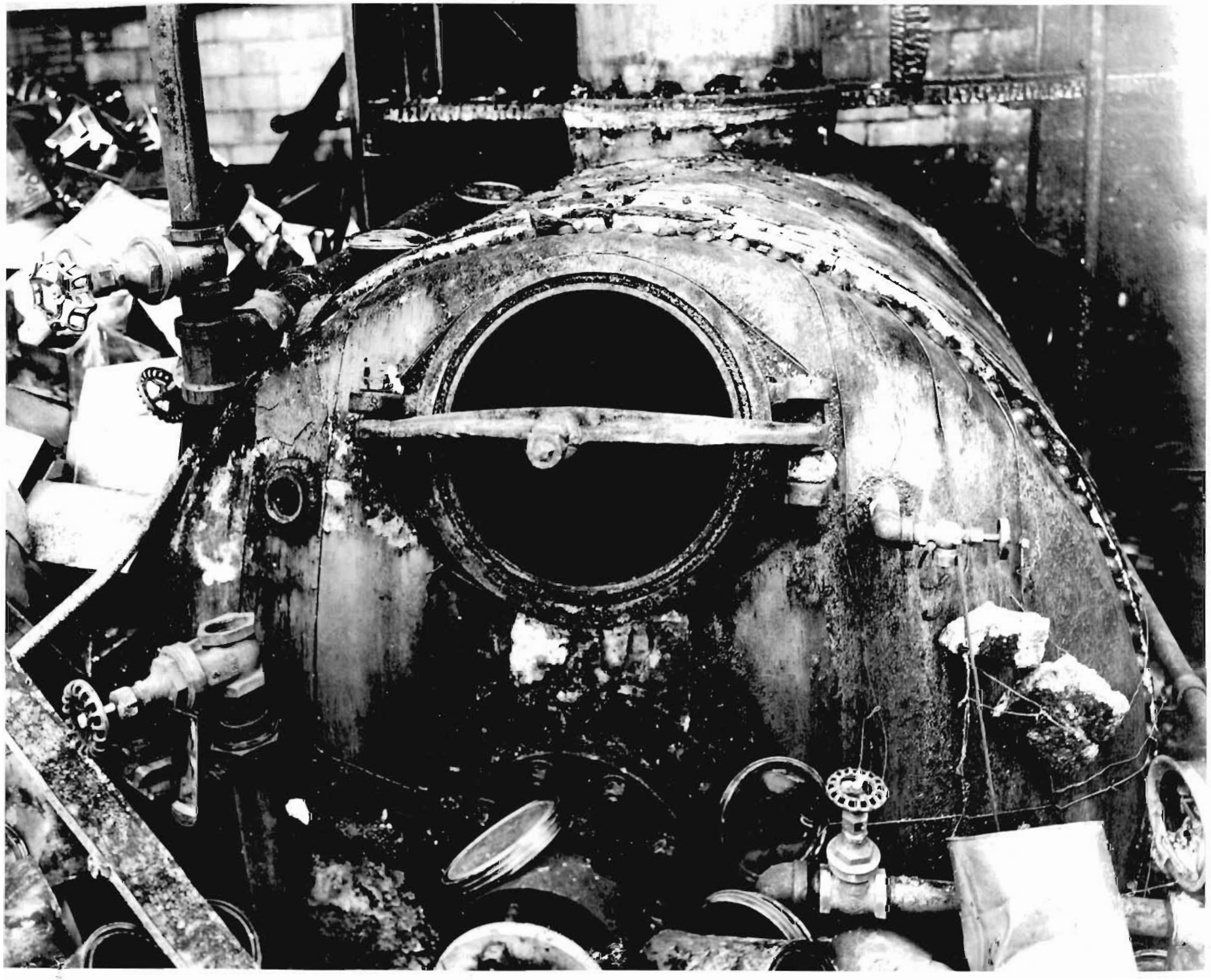
PLAINTIFF'S EXHIBIT P-6-B AT ENQUETE

PHOTO OF TANK



PLAINTIFF'S EXHIBIT P-6-C AT ENQUETE

PHOTO OF TANK



PLAINTIFF'S EXHIBIT P-6-D AT ENQUETE

PHOTO OF INSIDE OF BUILDING

PLAINTIFF'S EXHIBIT P-6-E AT ENQUETE

PHOTO OF BUILDING

PLAINTIFF'S EXHIBIT P-6-F AT ENQUETE

PHOTO OF BUILDING

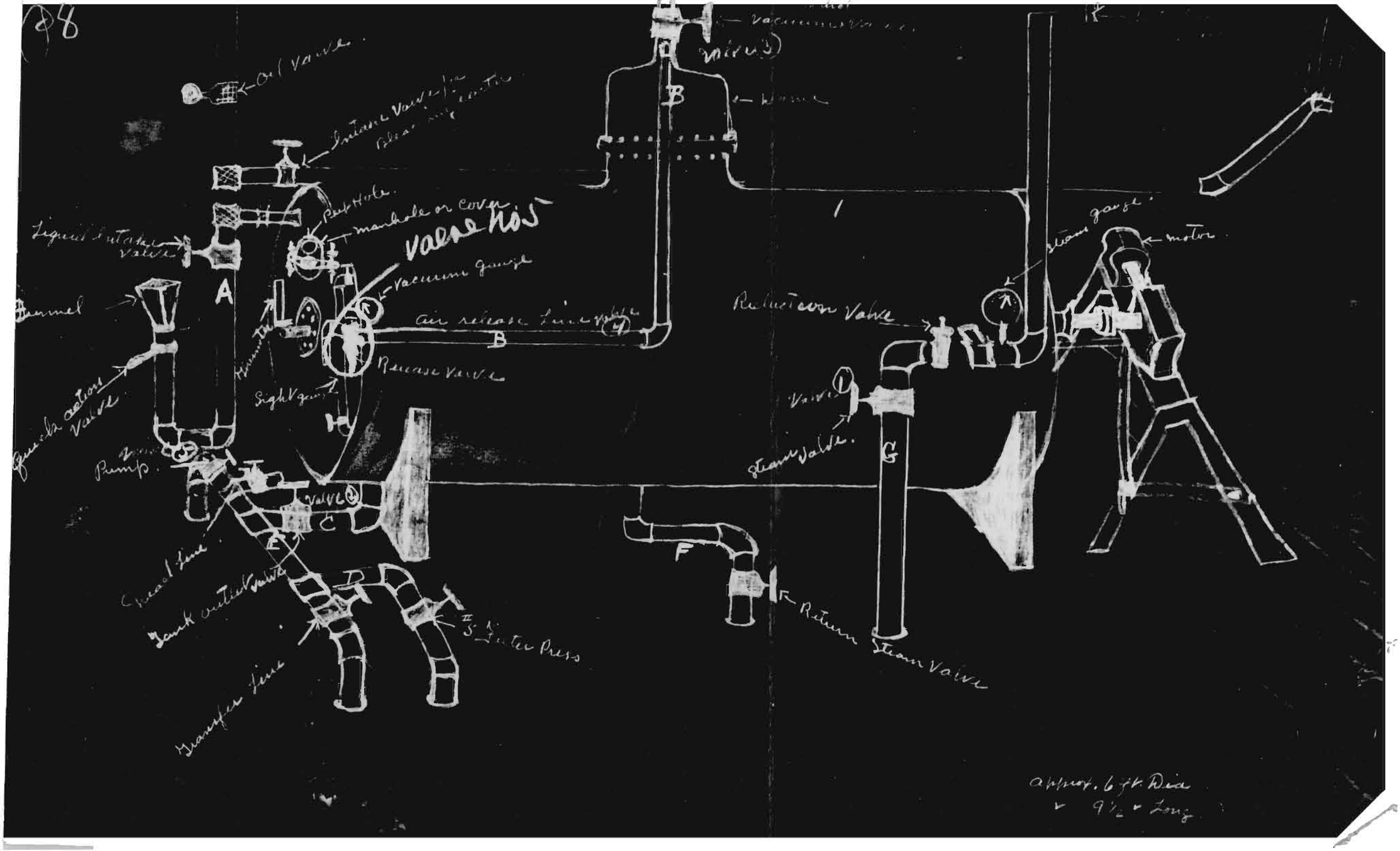
PLAINTIFF'S EXHIBIT P-7 AT ENQUETE

Plan of Top Floor of Linseed Oil Building.

St PATRICK STREET
54'-6"
51'-7"
West Room
East Room
PORTION OF THIS WALL OUT OF PLUMB
Filter Presses
Filter Press
Shed
WOODEN PARTITION
94'-0"
73'-0"
Condenser
Air Wash Vacuum Tank
Air Pump.
Elevator.
Stairway.
EXPLOSION - RED
SHERWIN-WILLIAMS Co OF CANADA LTD.
PLAN OF TOP FLOOR.
LINSEED OIL BUILDING
Scale 1/8" = 1 Foot.

PLAINTIFF'S EXHIBIT P-8 AT ENQUETE

Sketch of Tank No. 1 that exploded.


98
Oil Valve.
Peep Hole.
Manhole or Cover
Vacuum gauge
Liquid Intake Valve
Air release Line
Release Valve
Sight Vacuum
Reduction Valve
Steam gauge.
motor
Steam Valve.
Pump.
Valve
Return
Steam Valve
Approx. 6 ft. Dia
9½ ft Long.

DEFENDANT'S EXHIBIT D-7-A AT ENQUETE

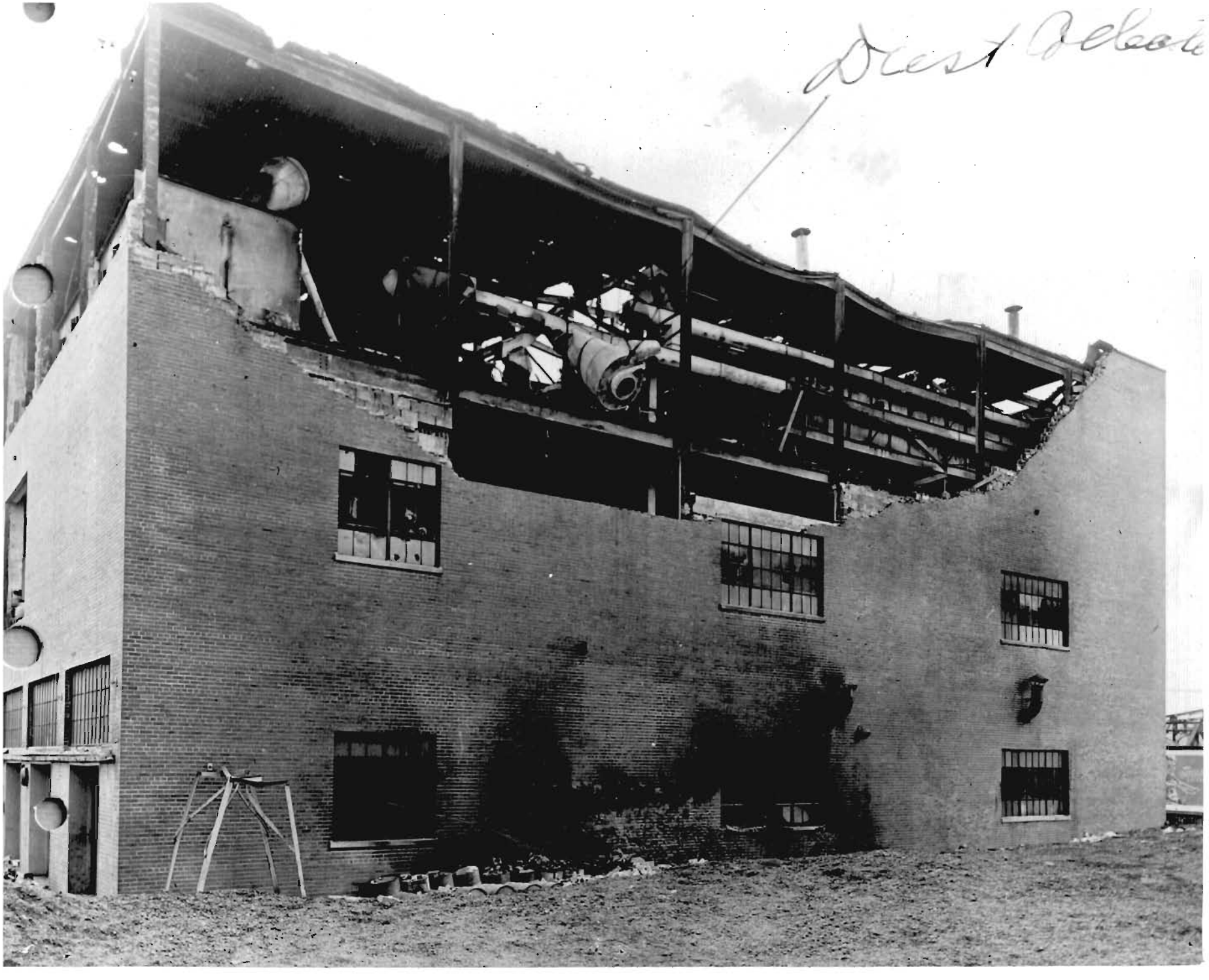
PHOTO

DEFENDANT'S EXHIBIT D-7-B AT ENQUETE

PHOTO

DEFENDANT'S EXHIBIT D-7-C AT ENQUETE

PHOTO

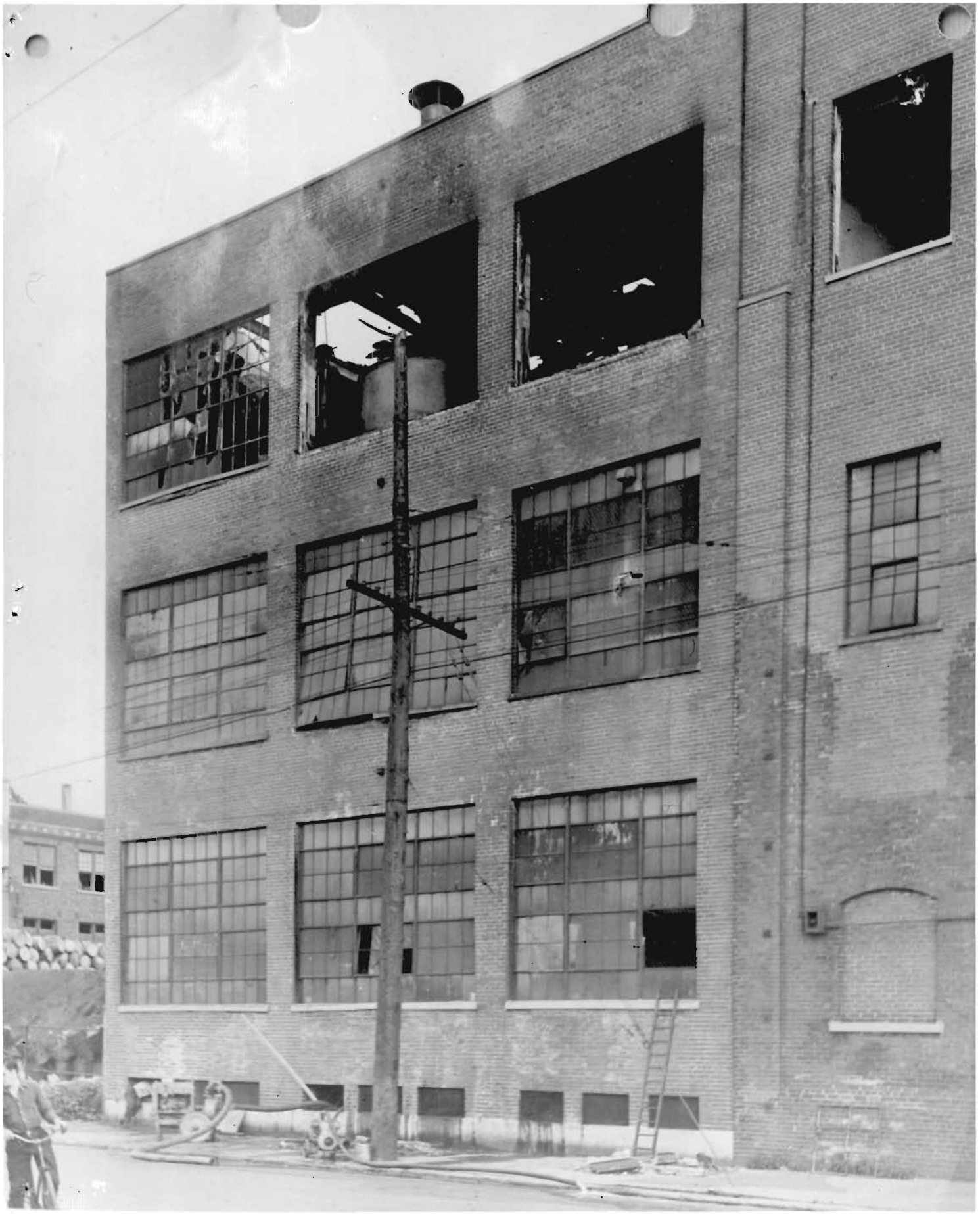


DEFENDANT'S EXHIBIT D-7-D AT ENQUETE

PHOTO

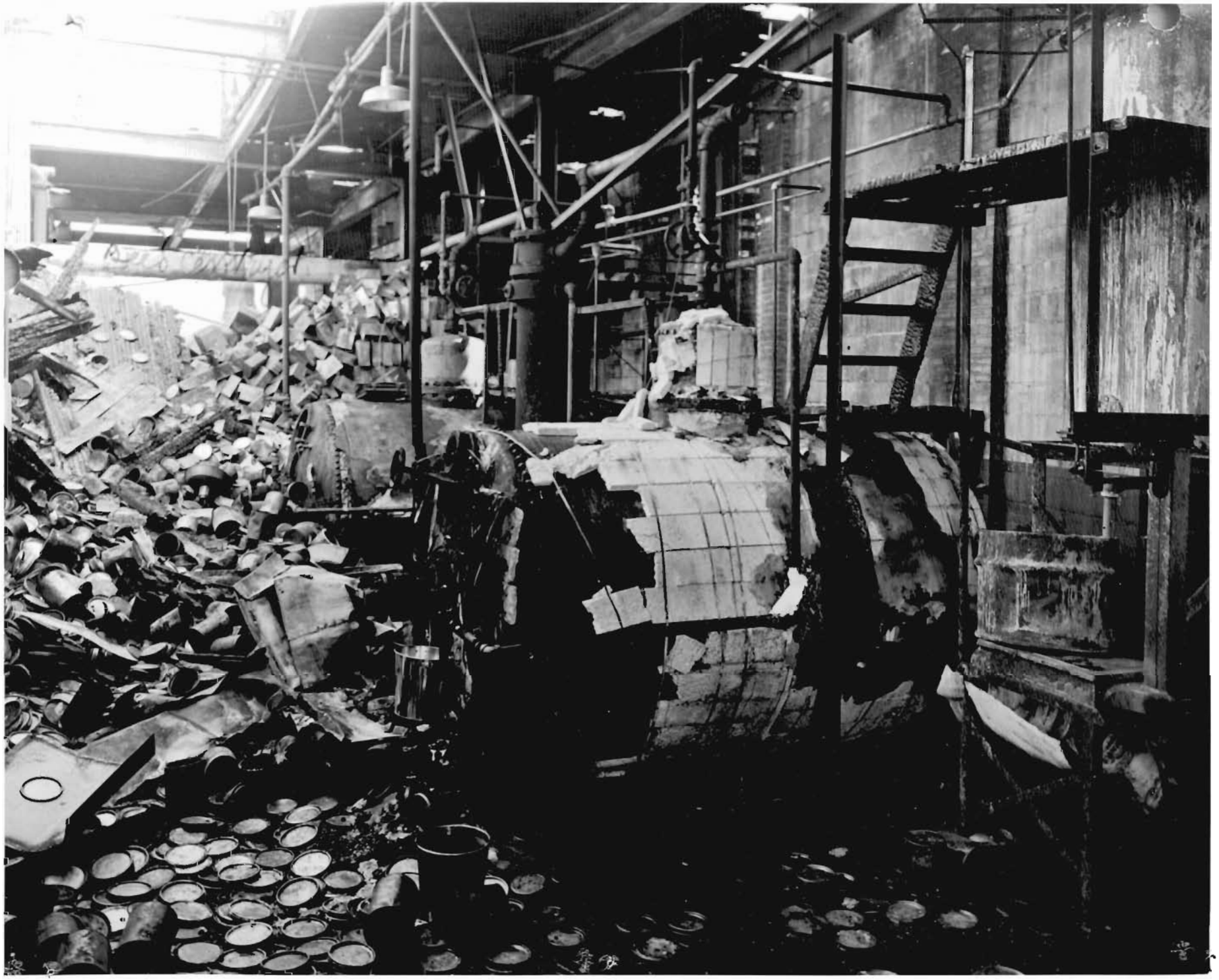
DEFENDANT'S EXHIBIT D-7-E AT ENQUETE

PHOTO



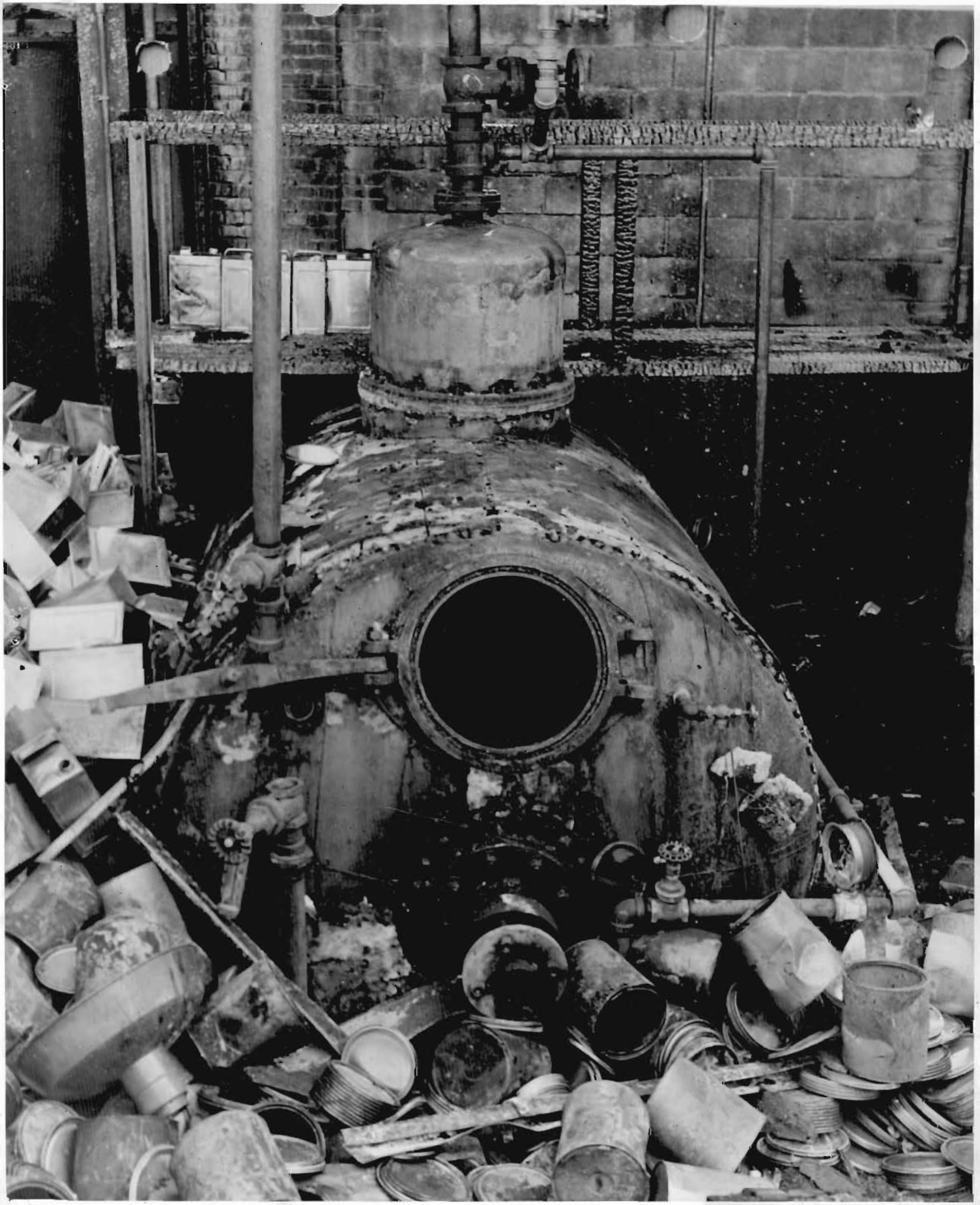
DEFENDANT'S EXHIBIT D-7-F AT ENQUETE

PHOTO



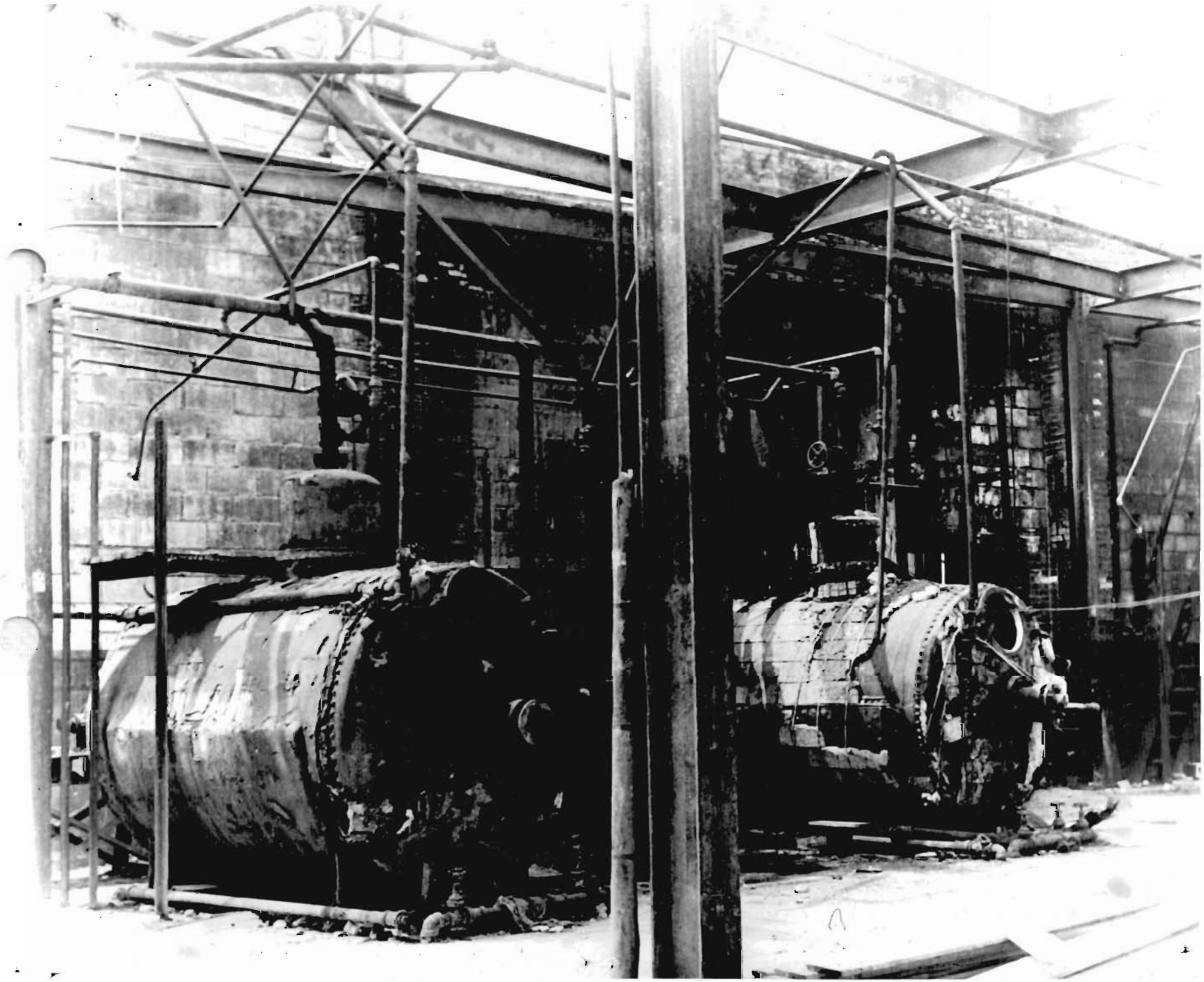
DEFENDANT'S EXHIBIT D-7-G AT ENQUETE

PHOTO



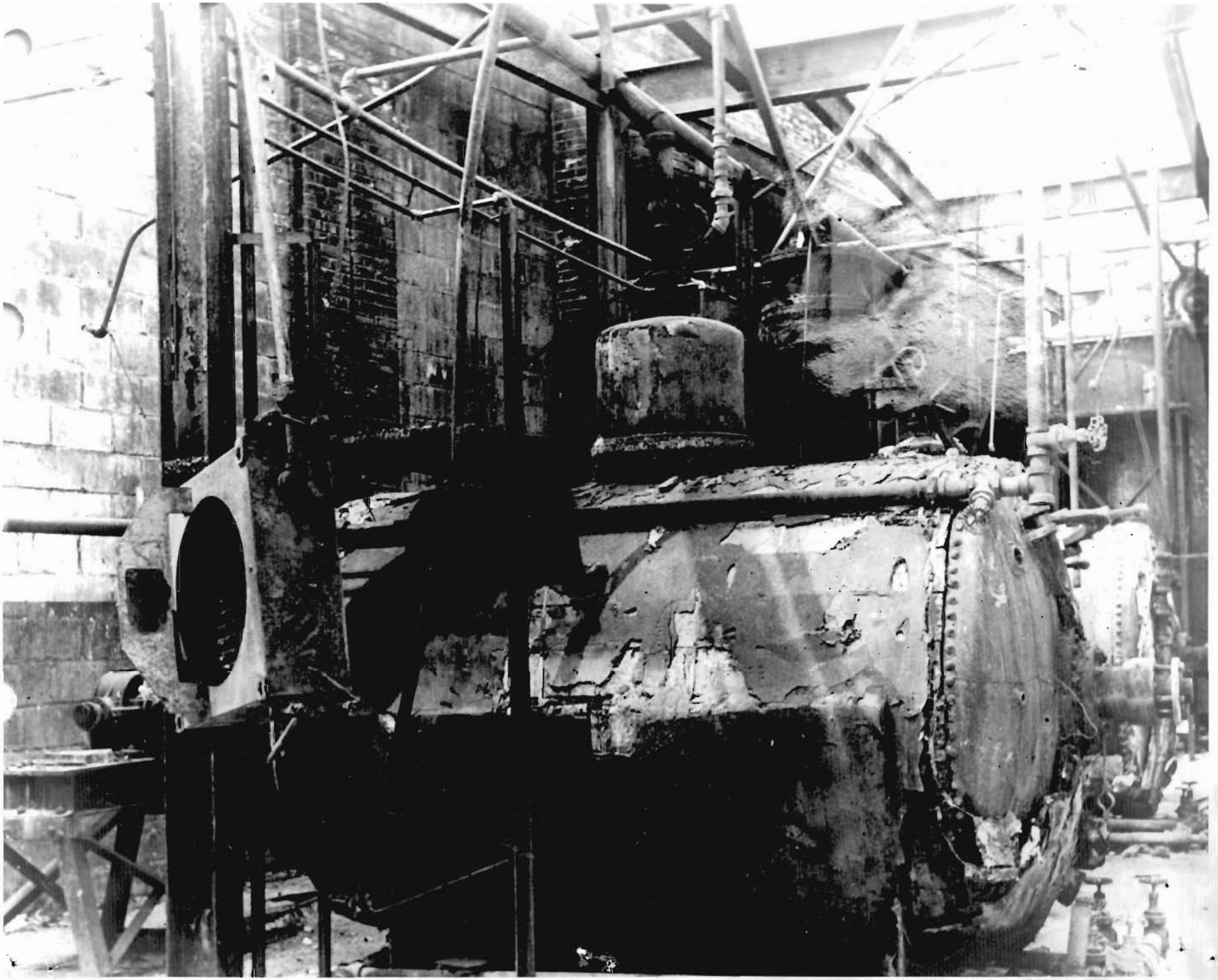
DEFENDANT'S EXHIBIT D-7-H AT ENQUETE

PHOTO



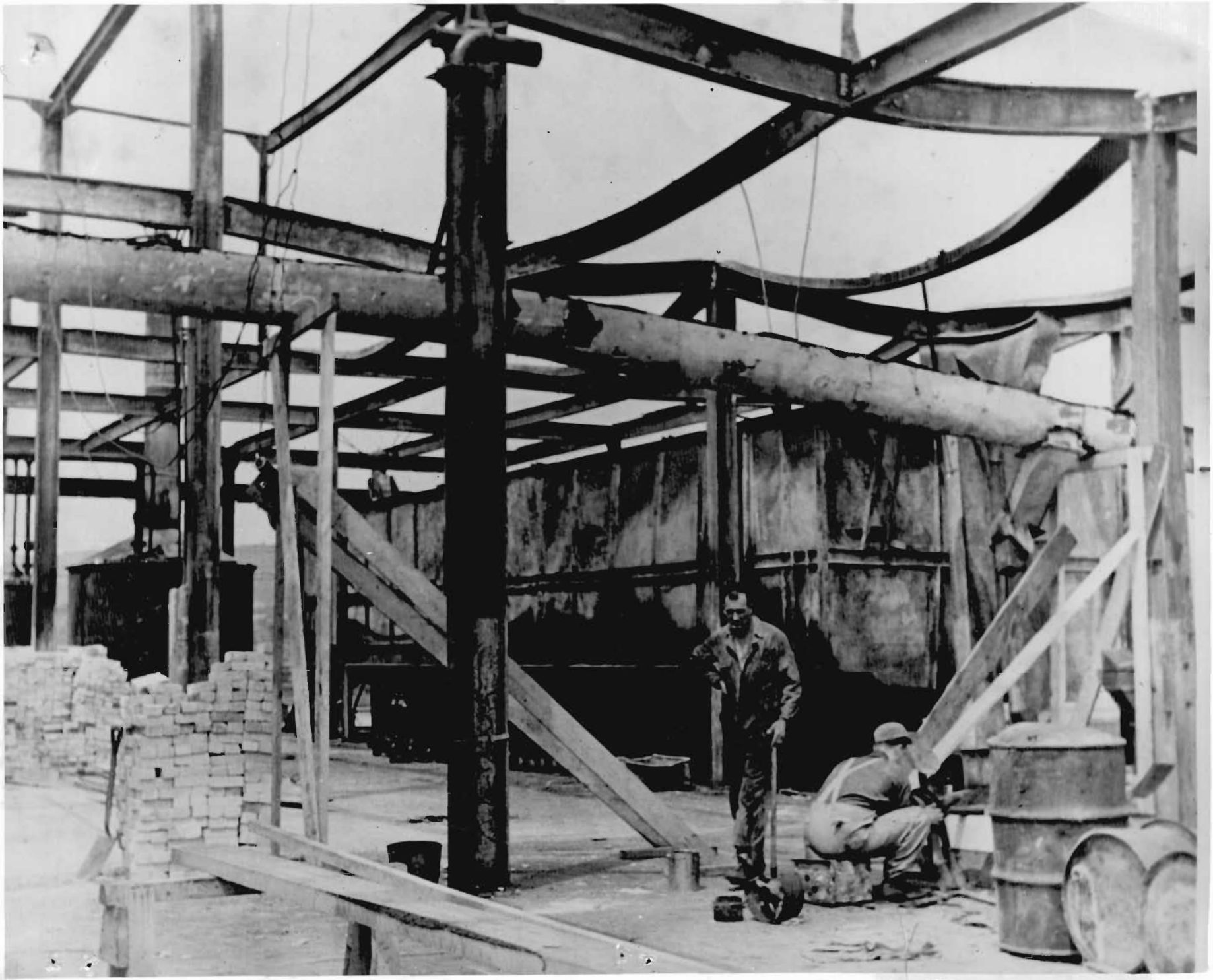
DEFENDANT'S EXHIBIT D-7-I AT ENQUETE

PHOTO



DEFENDANT'S EXHIBIT D-7-J AT ENQUETE

PHOTO



DEFENDANT'S EXHIBIT D-9 AT ENQUETE

Receipt, Transfer and Subrogation of Sherwin-Williams Company of Canada Ltd. to Aetna Insurance Company. Dated 3rd March 1944.

RECEIPT, TRANSFER AND SUBROGATION

SHERWIN-WILLIAMS COMPANY OF CANADA LIMITED, the undersigned, hereby acknowledges to have received at the execution hereof from AETNA INSURANCE COMPANY Seven thousand, five hundred ninety-eight 40/100 Dollars being the latter's pro-rata proportion of the sum of forty-six thousand nine hundred and thirty-one dollars and twenty-eight cents ($46,931.28) now claimed by the undersigned from Boiler Inspection and Insurance Company of Canada, by action instituted in the Superior Court for the District of Montreal, under the number 221869 of the records of said Court, as being the amount of loss or damage to the property of the undersigned, alleged to have been suffered on the second of August, nineteen hundred and forty-two, as a result of an accident consisting of a sudden and accidental tearing asunder of a steam jacketted bleacher tank, at the premises of the undersigned in the City of Montreal.

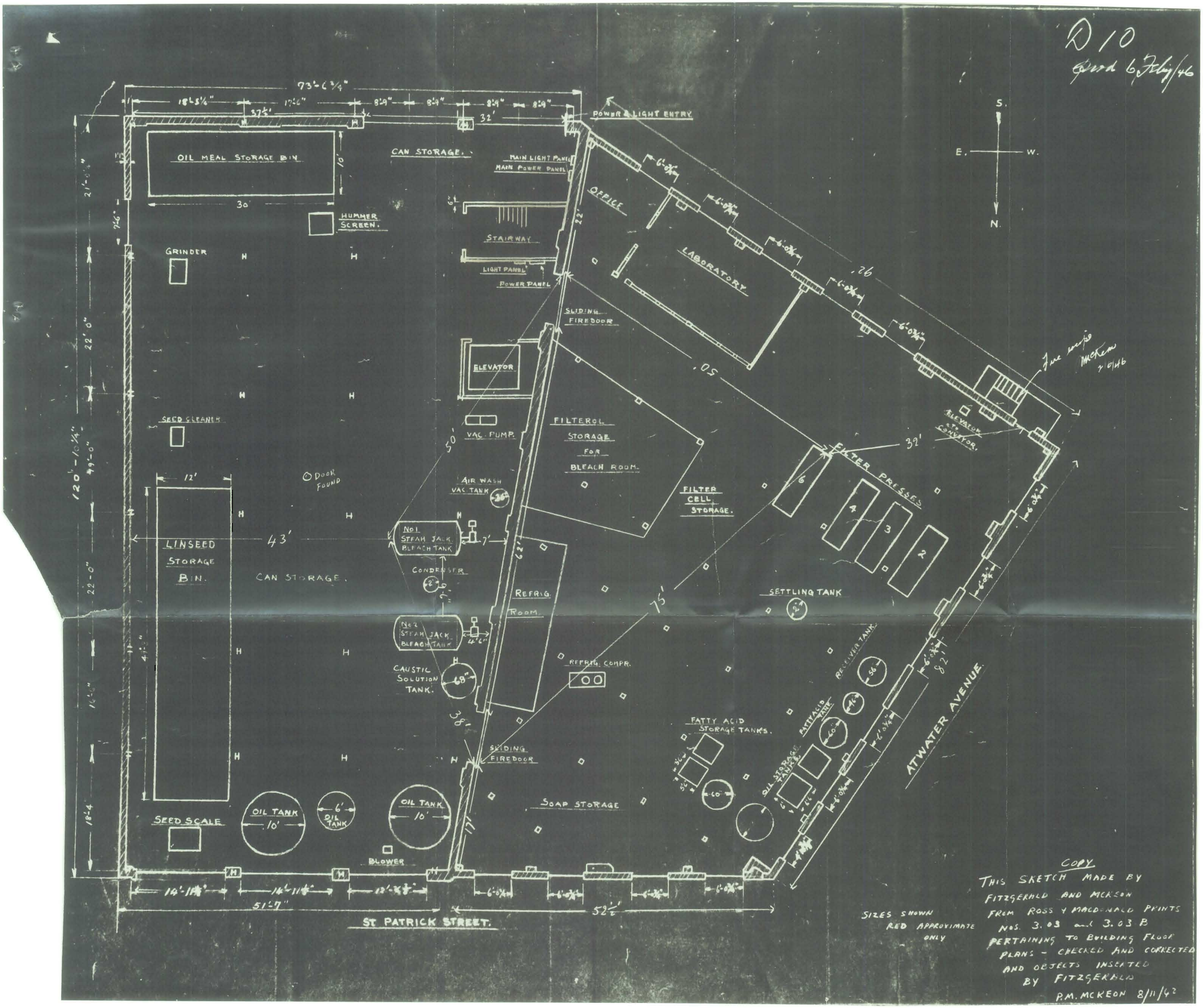
In consideration of the aforesaid payment of Seven thousand, five hundred ninety-eight 40/100 Dollars ($7,598.40) to the undersigned, by the above named Company, the undersigned hereby transfers, assigns and makes over unto the said Company in the proportion that the sum now paid, bears to the sum of forty-six thousand nine hundred and thirty-one dollars and twenty-eight cents ($46,931.28), all the undersigned's rights, title and interest in and to the claim of the undersigned against the said Boiler Inspection and Insurance Company, under the latter's policy No. 60350B dated March 9th, 1940, issued in favor of the undersigned; hereby subrogating and substituting the said AETNA INSURANCE COMPANY in all the undersigned's rights, title and interest in and to said claim as well as in and to the aforesaid action and all proceedings had thereunder, with the right on the part of the said AETNA INSURANCE COMPANY to continue the said action, but at its own expense, as of the date thereof, in the name of the undersigned and with the benefit unto said Company of all costs incurred and to be incurred by virtue of said action, in so far and to the extent that the undersigned is able to deal with such costs.

Montreal, Mar. 3, 1944.

The Sherwin-Williams Company of Canada, Limited
Per P. W. Hollingworth,
Sec.-Treas.

DEFENDANT'S EXHIBIT D-10 AT ENQUETE

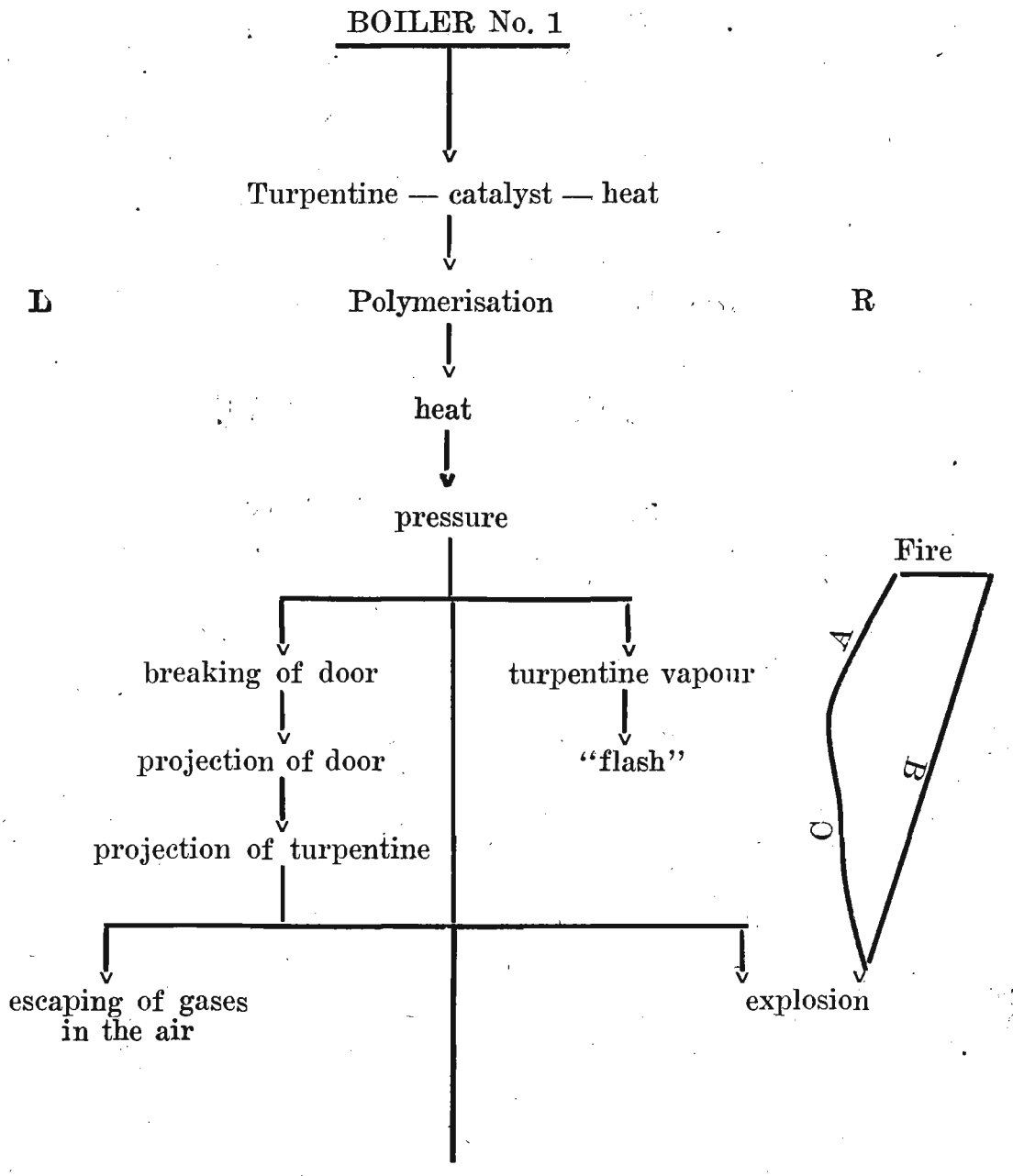
Sketch of top floor made by Fitzgerald and McKeon.



D 10
Rec'd 6 Feby/46
73'-6¾"
POWER & LIGHT ENTRY
OIL MEAL STORAGE BIN
CAN STORAGE.
MAIN LIGHT PANEL
MAIN POWER PANEL
OFFICE
HUMMER SCREEN.
STAIRWAY
LIGHT PANEL
POWER PANEL
GRINDER
LABORATORY
SLIDING FIREDOOR
ELEVATOR
FILTEROL STORAGE FOR BLEACH ROOM.
VAC. PUMP.
SEED CLEANER
AIR WASH VAC TANK
FILTER CELL STORAGE.
ELEVATOR TO CONVEYOR.
FILTER PRESSES
Fire escape
McKeon
ODOOR FOUND
No1 STEAM JACK. BLEACH TANK
LINSEED STORAGE BIN.
CAN STORAGE.
CONDENSER
REFRIG. ROOM.
SETTLING TANK
No2 STEAM JACK. BLEACH TANK
CAUSTIC SOLUTION TANK.
REFRIG. COMPR.
RECEIVER TANK.
FATTY ACID STORAGE TANKS.
FATTY ACID TANK
OIL STORAGE TANKS
ATWATER AVENUE
SLIDING FIREDOOR
SOAP STORAGE
SEED SCALE
OIL TANK
OIL TANK
OIL TANK
BLOWER
ST PATRICK STREET.
S.
E.
W.
N.
SIZES SHOWN RED APPROXIMATE ONLY
COPY
THIS SKETCH MADE BY FITZGERALD AND MCKEON FROM ROSS & MACDONALD PRINTS NOS. 3.03 and 3.03 B PERTAINING TO BUILDING FLOOR PLANS - CHECKED AND CORRECTED AND OBJECTS INSERTED BY FITZGERALD
P.M. MCKEON 8/11/42

DEFENDANT'S EXHIBIT D-12 AT ENQUETE

Schema of Boiler No. 1.



PLAINTIFF'S EXHIBIT P-10 AT ENQUETE

Memorandum of Measurements, Pins and Lugs, Door or Manhole. Dated October 22, 1945.

October 22, 1945.

MEASUREMENTS

From	Bleacher to North Door	Approx.	40 ft.
"	North Door to Fire Escape	"	106 "
"	" " to Press	"	75 "
"	Press to Fire Escape	"	31 "
"	" to South Door	"	54 "
"	South Door to Bleacher	"	56 "
"	Bleacher to where man was	"	21 "
"	Where man was to wall	"	28 "

PINS & LUGS

Pin is ¾ in. Steel Bolt 9 ins. long which runs through 2 Lugs on tank that are 1¼ ins. thick x 2 ins. wide, and 2 Lugs on door the same. There is one Pin to lock cover which is 6 ins. long x ¾ in. thick, made of steel, which runs through 2 Lugs which are 1 in. thick x 2 ins. wide on tank.

DOOR OR MANHOLE

This is Cast Iron 20 ins. dia. x 1 in. thick, 2½ ins. thick where tightening bolt grips. Tightening Bar is arch over door. This is 5/8 in. thick x 2¾ ins. wide. Tightening Bolt is 11 ins. long x 1½ ins. round steel with an 8 in. tightening wheel. There is a 6 in. peep hole on both ends provided with cleaners attached.

1¼ in. Release Valve.
2 Gauges, 1 on Bleacher, 1 on air tank.
1 Thermometer and 1 Glass Sight Gauge.
Steam is adjusted with Safety Valve and Gauge.
Safety Valve on main lines also.
There are 9 brass 2 in. valves on each tank.
A large vacuum control valve 3 in., also a 3 in. check valve.

DEFENDANT'S EXHIBIT D-3 AT ENQUETE

Copy of letter to The Sherwin-Williams Company of Canada Limited and Statement. ~~Dated Nov. 15/45.~~

The Sherwin-Williams Company of Canada, Limited,
2875 Centre Street,
Montreal.

Dear Sirs:

re: *Our Policy No.*

This will acknowledge that you have fyled with us the necessary Notices and Proofs of Loss required under our policy hereinbefore mentioned in connection with the loss suffered at your Linseed Oil Plant, Montreal, on August 2, 1942.

We enclose our cheque payable to your order in the amount of $ covering our proportion of the sum of $112,-793.34, which is the part of your loss for which we have admitted liability, as having been caused by fire.

In order that you may negotiate and/or settle with or proceed against Boiler Inspection and Insurance Company of Canada under its Policy No. 60350 B, in respect of the sum of $46,931.28 which we assert represents loss or damage caused by a peril other than that covered by our policy, we confirm our agreement that your rights are reserved to claim from us such additional amount or amounts to which you believe you are entitled, and we hereby waive any delays specified by law or by our policy within which must be commenced any action or proceeding against us for the recovery of any amount claimable thereunder or by virtue thereof.

It is also understood that any statements which may heretofore have been made or hereafter may be made, verbally or in writing, by or on your behalf or by or on behalf of any of your officers or employees, in attempting to collect the whole or any part of such loss or damage from any other such Insurer, shall in no way prejudice or be used or construed to prejudice any additional claim or claims which you may be entitled to assert against us with respect to such loss or damage.

Yours very truly,

26 May 1943	No. 1224191	The Westminster Fire Office	$2,282.73	
27 May 1943	No. 204204	The North West Fire Insurance Co.	2,739.27	
27 May 1943	No. 1153872	Eagle Star Insurance Co. Ltd.	2,739.27	
27 May 1943	No. 7106	British Northwestern Fire Insur. Co.	1,826.18	
27 May 1943	No. 360956	Mercantile Insurance Co.	3,652.36	
28 May 1943	No. 21909	Camden Fire Insurance Association	9,130.90	
28 May 1943	No. 87263	Aetna Insurance Co. (Johnson-Jennings, Inc. Agents)	18,261.77	
31 May 1943	No. 2096617	Pearl Assurance Co. Ltd. (Johnson-Jennings, Inc. Agents)	22,827.20	
3 June 1943	No. 202251	The Pacific Coast Fire Insur. Co.	3,652.36	
5 June 1943	No. MF 7977	St. Paul Fire & Marine Insur. Co.	2,739.27	
	No. 635846	North British & Mercantile Ins. Co. Ltd.	1,826.18	
	No. 116905	Great American Insur. Co., New York	1,826.18	
	No. 361398	Rochester Underwriters, Great American Insur. Co., New York	1,826.18	
	No. 43539	Hartford Fire Insurance Co.	913.10	
	No. 505151	The Canadian Fire Insurance Co.	2,739.27	
	No. 178003	Hudson Bay Insurance Co.	2,739.27	
	No. 330244	The Imperial Assurance Co.	3,652.36	
		The Home Insurance Co.	4,296.90	
				$89,670.75
LETTERS—				
28 May 1943	No. 10380754	Norwich Union Fire Insurance Society Ltd.	1,826.18	
8 June 1943	No. 527794	Insurance Co. of North America	1,826.18	
8 June 1943	No. 1379176	Fireman's Fund Insurance Co.	2,282.73	
9 June 1943	No. CC-3401	Individual Underwriters New York Reciprocal Underwriters American Exchange Underwriters (Ernest W. Brown Inc.)	17,187.50	
				23,122.59
		Grand Total		$112,793.34

DEFENDANT'S EXHIBIT D-6 AT ENQUETE

LIST OF POLICIES FILED AS D-6.

D-6-1	The Insurance Company of North America #527794		$ 83,945.00
2	Norwich Union Fire Ins. Soc. Ltd. of Norwich, England ,#10380754		83,945.00
3	North British & Mercantile Ins. Co. Ltd. #635846		83,945.00
4	Great American Insurance Company New York #116905		83,945.00
5	Great American Insurance Company New York #361398		83,945.00
6	The Home Insurance Company #80060		100,000.00
7	British Northwestern Fire Ins. Co. #7106		83,945.00
8	Hartford Fire Insurance Company #43539		41,972.00
9	Hudson Bay Insurance Company #178003		125,917.00
10	Pearl Assurance Company Limited #2096617		1,049,313.00
11	Camden Fire Insurance Association, Camden, N.J. #21909		419,725.00
12	The Mercantile Fire Ins. Co. of Toronto Ont. #360956		167,890.00
13	The Pacific Coast Fire Insurance Company #202251		167,890.00
14	Imperial Assurance Company, New York, #330244		167,890.00
15	The North West Fire Insurance Company, #204204		125,917.00
16	Eagle Star Insurance Company Limited #1153872		125,917.00
17	Aetna Insurance Company, #87263		839,450.00
18	Saint Paul Fire and Marine Ins. Co. #MF 7977		125,917.00
19	The Canadian Fire Insurance Co. #505151		125,918.00
20	Fireman's Fund Insurance Company #B1379176		104,932.00
21	The Westminster Fire Office of London, England, #1224191		104,932.00
22	Associated Reciprocal Exchanges #CC3041		
	Individual Underwriters	$ 60,000.00	
	New York Reciprocal Underwriters	60,000.00	
	Affiliated Underwriters	22,000.00	
	Fireproof-Sprinklered Underwriters	Nil	
	Metropolitan Inter-Insurers	35,000.00	
	American Exchange Underwriters	223,000.00	400,000.00
		Total	$4,697,250.00

Montreal, February 20th, 1946.

Hackett, Mulvena, Hackett & Mitchell,
Attorneys for Defendant.

PART IV — JUDGMENT, &c.

JUDGMENT OF THE SUPERIOR COURT

Montreal, the twenty-ninth day of March 1946.

Present: Hon. Mr. Justice O. S. TYNDALE

THE COURT has heard the witnesses; examined the proceedings and documentary proof; heard the Parties, by their Counsel ,upon the merits of the present case; and has, upon the whole, deliberated.

This action is based on Insurance Policy No. 60350-B issued by Defendant in favour of Plaintiff on the 9th March, 1940, and covering the period from the 15th March, 1940, to the 15th March, 1943. The policy and schedules are produced as Exhibit P-1. The insuring agreement is contained on the first page of the policy, the conditions thereof being printed on the reverse side. The insuring clause specially applicable to this case is Section 1, which reads as follows:—

> "SECTION 1. To PAY the Assured for *loss* on the property of the Assured directly damaged *by such accident* (or, if the Company so elects, to repair or replace such damaged property), *excluding* (a) *loss from fire* (or from the use of *water* or other means to extinguish fire), (b) loss from an *accident caused by fire,* (c) loss from delay or interruption of business or manufacturing or process, (d) loss from lack of power, light, heat, steam or refrigeration, and (e) loss from any indirect result of an accident".

The opening paragraph of the policy refers to "an accident "as herein defined". The *definition* applicable to the present instance is, admittedly, the definition set forth in the Schedule entitled "Unfired Vessels". It reads as follows:—

> "C. As respects any object described in this Schedule, 'Accident' shall mean a sudden and accidental tearing asunder of the object or any part thereof caused by pressure of steam, air, gas, water or other liquid, therein, or the sudden and accidental crushing inward of the object

or any part thereof caused by vacuum therein; and shall also mean a sudden and accidental cracking of any cast iron part of the object, if such cracking permits the leakage of said steam, air, gas, water or other liquid, but leakage at valves, fittings, joints or connections shall not constitute an accident".

The objects covered by the insurance are enumerated in the annexes to the policy. The objects with which this section is concerned are enumerated and described on page No. 1 "f" — i.e. three tanks designated as Nos. 1, 2 and 3. The disaster which gave rise to the action originated in the tank designated as No. 1, which is described as a "steam-jacketted bleacher tank" (hereinafter sometimes referred to as "tank No. 1" or "the tank"). A sketch depicting the tank with its various connections and valves was produced as Exhibit P-8 and a rough miniature model in tin was produced as Exhibit P-9. The tank consisted of a large metal cylinder, resting in a horizontal position on a kind of cradle which was bolted to the floor. The lower half of the tank was surrounded by a steam chamber or jacket. This chamber was fixed on to the tank in such a way that the outside wall of the cylinder constituted the inside wall of the chamber. The cylinder and chamber were entirely surrounded (except for certain openings) by an asbestos covering. The Exhibit P-11 is a photograph of the tank as reconstituted some time after the accident. (See Deposition of Hazen, p. 269).

The tank was situated on the third floor of the Plaintiff Company's Linseed Oil Mill, which is located on Centre Street in the City of Montreal. A *plan* of the third floor (which is the top storey of the building) was produced as Exhibit P-7. The third storey was divided into two large rooms by a wall in which there were two doors, eight feet square. These doors are referred to in the evidence as the north door and the south door and the rooms are designated as the east room and the west room. The height of the ceiling is given as about 17 feet. The tank and other equipment were in the east room; in the west room were four filter presses. As the plan indicates, the stairway from the lower opened into the east room, as did the elevator shaft. An ouside fire-escape, consisting of a metal stairway, ran down from a doorway near the south-west corner of the west room.

The tank was used normally for bleaching linseed oil. The operation of bleaching may be roughly described as follows:—

Approximately 850 gallons of crude oil are pumped into the cylindrical chamber of the tank. To the liquid is added 50

lbs. of a powdery material known by the trade name of "filter-"cel" and 200 lbs. of bleaching earth known as "filtrol." Both the liquid and the powders are put into the cylinder of the tank by means of a vacuum system. Inside the cylinder there is a kind of shaft, connected to a motor which is situated outside and close to the rear of the tank. This shaft revolves rapidly, thus keeping the contents of the cylinder in suspension. When the liquid and powders are in the cylinder, steam is turned on to fill the steam chamber. When the required temperature is obtained, the steam is turned off, after which the shaft is allowed to operate for about half an hour. The contents of the cylinder are then allowed to run down through a pipe into the basement, where a pump is situated. This pump serves to force the liquid (Mixed with the powders above mentioned) up to one of the filter presses in the west room on the third floor. It passes through the press, being strained in the process through cloths, and comes out bleached.

Until *Sunday the 2nd of August,* 1942, the tank and the other apparatus above mentioned had been used only for bleaching *linseed oil;* but on that date, following instructions previously issued, a quantity of *turpentine* was to be bleached by the same process. The operation for bleaching the turpentine was the same as that of bleaching linseed oil, except that the temperature was to be set lower. For bleaching linseed oil, the temperature in the tank was supposed to be about 190° Fahrenheit, whereas the instructions issued for the bleaching of the turpentine specified 165° Fahrenheit.

During the course of the operation in the morning of Sunday the 2nd of August, 1942, while the first batch (850 gallons) of turpentine was under treatment, the disaster from which the action arises occurred. The damage caused by the disaster amounted, according to Plaintiff's Declaration, to $159,724.62. Of this amount, however, still according to Plaintiff's Declaration, the greater part was attributable to fire or water and is thus excluded from the claim against the Defendant because of the wording of Section 1 of the policy (quoted above). The amount attributed by the Plaintiff to causes other than fire or water and covered by the policy is $46,931.28, which is the amount of the action. The details of this amount are set forth in a copy of the Proof of Loss, produced as Exhibit P-5.

Plaintiff admits that under a special arrangement made with various insurance companies which had issued fire policies in its favour, it has received payment of the sum which it attributes to loss by fire or water. The arrangement between the

Plaintiff and the various fire insurance companies is set forth in a series of letters, all in similar terms. varying only as to dates and amounts. There has been produced as Exhibit D-3 a sample letter, to which is appended a statement indicating the dates and the amounts mentioned in the actual letters.

In brief, therefore, *Plaintiff's Declaration claims* that, of the damages caused by the disaster of the 2nd August, 1942, amounting in all to $159,724.62, Defendant is liable under its policy (after deduction of the amount attributable to loss by fire and water) for $46,931.28. From this amount, however, two sums are to be deducted: (a) $182.12, mentioned on p. 3 of the Proof of Loss (Exhibit P-5) and withdrawn by a Retraxit before the enquête; and (b) $957.78, mentioned on p. 2 of the Proof of Loss and withdrawn by a Retraxit made during the course of the enquête. The amount now claimed is, therefore, $45,791.38.

Defendant does not seriously dispute Plaintiff's compliance with the requirements of the policy as to notice and other preliminary formalities. By paragraph 7 of the Plea, Defendant specifically admits the truth of the allegations of paragraph 11 of the Declaration, which reads as follows:—

> 11. That the Defendant was afforded a reasonable time and every opportunity to examine the property and the premises of the Plaintiff before repairs were undertaken or physical evidence of the accident was removed, except for protection or salvage, and the Defendant did in fact examine the property and the premises of the Plaintiff immediately following the accident.

Prescription is pleaded, but apparently without any ground. It is rather difficult to summarize the main *contentions of Defendant* as set forth in the Plea, but they appear to the undersigned to be as follows:—

(1) The damages claimed are attributable not to an accident within the meaning of the policy but to *fire,* which is specifically excluded.

(2) In virtue of conditions Nos. 3 and 4 of the policy, entitled respectively "Other Property Insurance" and "Limita-"tion of Property Loss', Plaintiff has no claim against Defendant, because Plaintiff has already received from other insurers the total amount to which it is entitled (Plea, pars. 10-16).

(3) If Defendant is liable for any amount, which is denied, its liability is restricted "to loss on the property of Plain-
"tiff directly damaged by a sudden and accidental tearing as-
"under of the object (i.e. the tank) or any part thereof. . . and
"what actually occurred subsequently is covered by 'other pol-
" 'icies'." (Plea par. 17).

(4) In any event: "It is a condition of the policy Exhi-
"bit P-1, under the caption of 'OTHER PROPERTY INSUR-
" 'ANCE' that in the event of a loss to which the insurance car-
"ried by Defendant under said Policy, Exhibit P-1, and other
"insurance hereinabove referred to, policies whereof are enum-
"erated and described, carried by Plaintiff, apply (any defi-
"ency of the guaranteed amount being borne by Plaintiff as co-
"insurer), Defendant in such circumstances can be held liable
"only for the proportion of the loss that the amount which would
"have been payable by Defendant on account of such loss had
"no other insurance existed, bears to the combined total of the
"said amount and the whole amount of such other valid and
"collectible insurance; or bears to the combined total of the
"said amount and the amount which would have been payable
"under all other insurance on account of said loss had there been
"no other insurance under this policy, depending upon whether
"or not the other insurance contains a similar clause, in which
"event only the latter proportion is applicable to and in limita-
"tion of Defendant's liability; otherwise the former proportion
"is applicable". (Plea par. 18).

(5) Particulars were ordered as to certain paragraphs of the Plea, and paragraph 3 of the Particulars, dated March 28th. 1944, reads as follows:—

"3. As to paragraph 16:

> All the Insurers on the risk other than Defendant, paid to Plaintiff, prior to the production of Defendant's Plea over one hundred thousand dollars ($100,000.00) of the loss sustained by Plaintiff and since have paid or agreed to pay the balance of the loss in the event of Plaintiff's action failing and Defendant is unable to say whether the undertaking to make a further payment is in writing or was verbal."

I

The foregoing specific allegation of payment has been quoted in full because *Defendant contends that,* in the light of

the evidence made thereunder, *Plaintiff's action must fail from lack of interest.* The point was raised during the interrogation for Defendant of the witness *F. A. Jennings.* It seems advisable to deal with the question at once; because, if Defendant's contention is sound, the Court need not concern itself with any other aspect of the case.

It has already been stated that before the institution of the action the fire insurance companies on the risk had paid to Plaintiff that part of the loss which Plaintiff attributes to damage by fire and water. The witness Jennings, President of the firm of "Johnson-Jennings Incorporated", acted as insurance broker and adviser to Plaintiff; and his firm acted, directly or indirectly, for the various fire insurance companies concerned. In answer to a question by Defence Counsel, Jennings stated that prior to the institution of the action there had been no agreement or undertaking between the fire insurance companies and Plaintiff except the agreement set forth in the letters of which Exhibit D-3 is a sample (see page 774 *supra*). He was then asked whether any other arrangement or agreement had been made *after* the institution of the action. This question was met with a strenuous objection by Counsel for Plaintiff, who contended that is was illegal because: (a) The point was not pleaded; (b) it relates to something which occurred after the institution of the action and was not raised by a supplementary defence under Article 199 C.P.; and (c) in any event, the point is irrelevant in view of the jurisprudence and of the recent amendment to Article 2468 C.C. *Séance tenante,* the Court expressed the view that reasons (a) and (b) were unfounded. The undersigned considered, as to (a) that the allegations of par. 16 of the Plea and par. 3 of the Particulars (quoted above) were sufficient. As to (b), although, normally, the Court can deal only with the situation as it existed at the time the action was instituted, subsequent facts can be taken into account under special circumstances. It is true that such subsequent facts *should* be raised by a supplementary defence; but this is a purely procedural matter and Plaintiff did not make a motion to reject or an exception to the form. As to the third point, the Court was not prepared to render a decision at the moment; and, as it appeared possible that the wording of any agreement made might affect the decision, *the evidence was allowed under reserve.* In substance, it is as follows:

In the beginning of March, 1944, *the fire insurance companies* concerned, as a result of the negotiations of Jennings acting as Plaintiff's insurance agent, *paid to Plaintiff the total*

amount claimed by the present action. These companies, of course, contributed in proportion to the amounts of their respective policies and each one obtained from Plaintiff a document called "Receipt, Transfer and Subrogation", each in identical terms, except as to the amount. The document given to the Aetna Insurance Company was produced as Exhibit D-9. It reads as follows:—

" RECEIPT, TRANSFER AND SUBROGATION

SHERWIN-WILLIAMS COMPANY OF CANADA LIMITED, the undersigned, hereby acknowledges to have received at the execution hereof from AETNA INSURANCE COMPANY Seven thousand, five hundred ninety-eight 40/100 Dollars being the latter's pro-rata proportion of the sum of forty-six thousand nine hundred and thirty-one dollars and twenty-eight cents ($46,931.28) now claimed by the undersigned from Boiler Inspection and Insurance Company of Canada, by action instituted in the Superior Court for the District of Montreal, under the number 221869 of the records of said Court, as being the amount of loss or damage to the property of the undersigned, alleged to have been suffered on the second of August, nineteen hundred and forty-two, as a result of an accident consisting of a sudden and accidental tearing asunder of a steam jacketted bleacher tank, at the premises of the undersigned in the City of Montreal.

In consideration of the aforesaid payment of Seven thousand, five hundred ninety-eight 40/100 Dollars ($7,598.40) to the undersigned, by the above named Company, the undersigned hereby transfers, assigns and makes over unto the said Company in the proportion that the sum now paid, bears to the sum of forty-six thousand nine hundred and thirty-one dollars and twenty-eight cents ($46,931.28), all the undersigned's rights, title and interest in and to the claim of the undersigned against the said Boiler Inspection and Insurance Company, under the latter's policy No. 60350 B dated March 9th, 1940, issued in favor of the undersigned; hereby subrogating and substituting the said AETNA INSURANCE COMPANY in all the undersigned's rights, title and interest in and to said claim as well as in and to the aforesaid action and all proceedings had thereunder, with the right on the part of the said AETNA INSURANCE COMPANY to continue the said action, but at its own expense, as of the date

thereof, in the name of the undersigned and with the benefit unto said Company of all costs incurred and to be incurred by virtue of said action, in so far and to the extent that the undersigned is able to deal with such costs."

None of the transfers was served upon Defendant nor was Defendant in any way advised of the matter, either by Plaintiff or by any of the fire insurance companies.

In these circumstances, *Defendant* contends that Plaintiff's action must be dismissed for lack of interest. Defendant relies, of course, on articles 77 and 81 C.P. It urges that the 1942 amendment to Article 2468 C.C. (6 Geo. VI cap. 68) does not apply, because *civil responsibility* as therein mentioned "prob-"ably means responsibility at law as distinct from responsibil-"ity arising from contract". Defendant adds that the debtor may waive his right to the *signification* provided for in article 1571 C.C. Finally, Defendant cites Articles 1154 and 1155 C.C.; Mignault, Vol. 5, page 558 and *McFee vs Montreal Transportation Co.*, 27 K.B. 421, especially at page 425 (Carrol J.).

Plaintiff urges that Defendant's contentions are without foundation in view of the wording of the document and of the fact that no service of the transfer was made — which means that the nominal Plaintiff can give a valid discharge. Plaintiff cites a number of decisions, including the *McFee* case mentioned by Defendant, referring specially to the remarks of Cross, J.

In addition to the authorities cited by the parties, the undersigned refers to *Coderre vs Douville,* 1943 K.B. 687, a unanimous decision rendered in December, 1940. At page 689 of the report Rivard J. (in whose notes the other learned judges specifically concurred), said:—

> " Les hésitations du demandeur dans sa déposition proviennent d'une sorte de *qui pro quo* auquel il n'a évidemment rien compris. Il était assuré contre les pertes par accidents d'automobiles. Ayant souffert, par suite de la collision avec le défendeur, des dommages au montant de $525, il devait, d'après son contrat, supporter la perte de $50; le reste $475, lui fut payé à titre d'indemnité, par l'assureur. En considération, Douville céda à l'assureur sa créance contre la personne responsable de l'accident, c'est-à-dire contre le défendeur, avec le droit d'en poursuivre le recouvrement en son nom à lui, demandeur. C'est ainsi que l'action fut intentée au nom de Douville, par un avocat que l'assureur avait choisi. Il n'y a là rien que de légitime.

L'appelant va plus loin; il soutient que le demandeur 81 C.P.: 'Personne ne peut plaider avec le nom d'autrui', Personne ne plaide, ici, avec un autre nom que le sien; c'est Douville, le créancier, qui plaide en son propre nom. Il n'importe aucunement au défendeur qu'une partie de la somme réclamée ait été transportée à une compagnie d'assurances et lui soit destinée par le demandeur. Cette somme est due au demandeur, et c'est lui qui en poursuit le recouvrement. L'assureur n'est pas en cause.

L'appelant va plus loin; il soutien que le demandeur n'a pas le droit aux dommages-intérêts parce qu'il a déjà été indemnisé par la compagnie d'assurances, qu'il y aurait eu subrogation et novation. Les termes de l'acte intervenu entre le demandeur et son assureur sont clairs; c'est bien une cession de ses droits que Douville a consenti. Dans ce cas, le recours au nom du créancier contre l'auteur du dommage reste ouvert. (*Hébert v. Rose* (1935) 58 B.R. 459. N.D.L.R.V. la loi de 1942, 6 Geo. 6, ch. 68 modifiant l'art. 2468 C.C.)"

The undersigned can see no reason why this decision should not apply to the present case.

The Court, accordingly, rejects Defendant's contention that the action should be dismissed for lack of interest.

II

The next general question to be dealt with is *Defendant's contention that no part of the damages claimed was directly caused by an accident, within the meaning of the Policy.*

The burden of proof obviously rests upon Plaintiff and the Court must now decide whether or not that burden has been discharged. The solution of this question requires, of course, a consideration of the evidence relating to what happened on the 2nd August, 1942. Some nine or more factual witnesses were heard on this aspect of the case. The main points are outlined in Exhibit P-19, with respect to which a word of explanation is required.

Defendant, on being advised of the occurrence, naturally desired to obtain, as soon as possible, all available evidence of what had happened. At its instance, several of Plaintiff's employees who were in the plant when the disaster occurred were

interrogated and signed typewritten statements. The interrogation in each instance took place in the presence of one or more of Defendant's representatives. On the 27th August, 1942. Defendant wrote Plaintiff the letter produced as Exhibit P-19. It reads as follows:—

"

August 27, 1942.

The Sherwin-Williams Company,
2875 Center Street,
Montreal, P.Q., Canada

Attention: Mr. P. M. Hollingsworth,
Secretary-Treasurer

Gentlemen:

Loss August 2, 1942.

As requested at the meeting held in your plant on August 19th, we are setting forth our conclusion as to the cause of the damage to your property, this being based on the testimony of the operatives, examination of the property, and investigation into the operation being performed on the day of the occurrence.

The testimony of those present is to the effect that at or about 10 A.M., August 2nd, while they were gathered around the filter press, they heard what has been variously described as a hissing or sizzling noise, and subsequently saw vapor, smoke, flame and fire within an adjoining room in which the No. 1 Bleacher Tank is situated. At this point, all observing this situation sensed the impending danger and made for the fire escape. Shortly thereafter a roar or minor explosion was heard and when these men were descending the fire escape, a second severe explosion was heard and felt. The fire on the premises was not entirely extinguished until several hours later.

We understand that a part of the system normally designed and always used previously for the purpose of bleaching linseed oil was utilized on August 2nd for the first time to clarify a quantity of turpentine. Turpentine with Fuller's Earth an dother ingredients were placed in #1 Bleacher Tank. The vessel was heated and the mixture agitated mechanically. The heat was turned off but agitation continued until the contents were considered in condition for withdrawal. Part of the contents were then

drawn off and were being filtered. Just prior to the occurrence the operators, being gathered about the filter press, were discussing the unsatisfactory condition of the sample of treated turpentine.

The damage to the building and contents was extensive but the damage to the No. 1 Bleacher Tank was confined to the manhole cover and securing bolt and sight glass in rear head.

It is our conclusion that the system which was designed for use in the processing of linseed oil had not been made adaptable for the process of clarifying turpentine. The method of treating the turpentine with the presence of linseed oil in the vessel, the absorption of oxygen in the process and consequent formation of peroxides caused a chemical reaction in the form of internal heating of the turpentine. With the combination of Fuller's Earth which acted as a catalyst, a pressure was built up within the vessel. Some of these vapors escaped to the atmosphere and caught on fire. Pressure continued to build up within the vessel to a point where the manhole cover which was designed to operate under vacuum, was forced off, this releasing a very large volume of turpentine and its vapors which were ignited by the fire, causing a severe combustion explosion in the room.

We understand you have not as yet made your own investigation but after you have had an opportunity to do so, and to analyze what we are submitting, you will discuss the matter with us further. Meanwhile, the question of liability is to be left for future determination as outlined in our letter to you of August 14th.

We will gladly render all possible assistance in the matter of getting your plant back into service.

We very much appreciate your co-operation in this matter.

Yours very truly,

(sgd) I. P. Fitzgerald,
Directing Inspector."

It is common ground that the summary of the facts contained in this letter is substantially exact. It is also admitted or established that the "hissing or sizzling noise" mentioned in Exhibit P-19 must have been caused by the vapours escaping from the tank through the periphery of its door or manhole cover, which was being forced open by the pressure created within the tank. When the door of the tank was blown off, a much larger quantity of vapour was, of course, released and it was presumably the explosion of this vapour which was heard by the employees as they were going down the fire escape.

The Policy in question is not specifically an "explosion policy": indeed, the word "explosion" is not mentioned therein. *What the Policy covers is, in effect, the loss caused directly by an accident (as defined) to an object (as described) — subject to to certain exclusions.*

The definition of an "accident" is cited at page 771-2 *supra,* and the "object" in this instance is, of course, the tank. It is admitted by Defendant that there was an accident to the tank, within the meaning of the Policy. The accident, says Defendant in its factum, was "the sudden and accidental tearing asunder "of the bolts or pins which held the door in place, the tearing "asunder being caused 'by pressure of steam, air, gas, water or "'other liquid'."

Defendant stresses the distinction between damage caused *directly* by the accident and damage caused *indirectly.* On this basis, Defendant submits that the only damage for which Plaintiff could validly claim compensation under the Policy in this instance is the damage caused by the door of the tank as it was blown off or by the contents of the tank as such; and there is no proof of any such damage. The damage that has been proved, says Defendant, is attributable to a *nova causa interveniens.* Its argument on this point may be stated as follows:—

I. The explosion required three elements: (a) the turpentine vapours which escaped from the tank; (b) the mingling of these vapours with the air *outside* the tank, which constituted an "explosive mixture"; and (c) the ignition of this explosive mixture by some spark or other source of "fire" which was also *outside* the tank.

(It may be stated that all the experts agree that these three elements were necessary to bring about an explosion of this kind).

II. Only one of these three elements, namely, the turpentine vapour, was inside the tank. This vapour was harmless until it had mixed with the outside air and the mixture thus formed had been ignited. (This is also admittedly true).

III. Therefore, the damage caused by the explosion cannot be *directly* attributed to the accident to the tank.

10

This conclusion is, of course, strenuously attacked by *Plaintiff,* which contends that there was *an unbroken chain of events following the escape of the turpentine vapour from the tank* and that the accident was the *causa causans* or the *proximate* and *direct* cause thereof. The word "direct", says Plaintiff, means no more than the word "proximate", and several authorities are cited in this connection.

It seems to the undersigned that the interpretation to be
20 given to the phrase "directly damaged" (Section I of the Policy) should be the same as that given to the phrase "an immediate "and direct consequence" as found in Article 1075 C.C. In other words, it means nothing more than what is implied in the generally accepted Latin maxim: *Causa proxima non remota spectatur.*

Notwithstanding the learned and skilful exposition contained in the testimony of Defendant's expert Professor Paul
30 Rioux, the Court has been unable to find any break in the chain of causation or any *nova causa interveniens* between the accidental release of the vapour from the tank and the explosion. There is no evidence of any "hostile fire" (see infra) before the explosion nor of any other abnormal phenomenon, apart from those already described.

To accept Defendant's contention would, in the opinion of this Court, be to give to the relevant provisions of the Policy an unreasonable and unjustifiably restrictive interpretation.

40

The Court accordingly rejects Defendant's contention on this point and concludes that the disaster and the resulting damages were caused directly by the accident to the tank.

III

The next question to be considered is closely related to the one just discussed, but is distinguishable therefrom. *It is Defendant's contention that the entire loss is attributable to fire and is, therefore, excluded by the specific terms of the policy.*

This contention rests upon the exclusion indicated by the letter (b) in Section I of the Policy, which exclusion reads: "loss from an accident caused by fire".

Defendant's argument on this point (as the Court understands it) may be expressed as follows:—

As already stated, all the experts agree that the explosion could not have occurred unless there had been *ignition* of the explosive mixture. Ignition means *fire* of some kind; therefore fire caused the explosion and all the resulting damages. Consequently, the entire loss, whether caused by shattering or by fire, must be attributed to the original "fire" which ignited the explosive mixture.

There is, of course, no doubt but that some flame or fire was present before the main explosion occurred. This is clear not only from the testimony of the experts but from that of the factual witnesses who saw a flame, a flash or fire in the vapour emanating from the east room. There is no specific evidence to identify the source of the ignition; but it was proved that there were motors and dynamos in the east room and there were doubtless several other possible sources of ignition there or elsewhere in the establishment. In this connection, one may note Dr. Lipsett's remark that when an explosive mixture is formed in a place such as Defendant's plant, it is almost bound to encounter some source of ignition. According to Dr. Lipsett (who is confirmed on the point by Dr. Lortie), an explosion of this nature passes through three stages. He describes these stages as follows (deposition page 775):—

> " When an inflammable or explosive mixture is ignited, the detonation does not take place immediately. The explosion occurs in three stages. In the first stage a flame moves through the explosive mixture at a slow, more or less uniform rate of speed. In the second stage the speed of the flame increases, and the flame may oscillate backwards and forwards in the explosive mixture, and there may be turbulence or a mixing up of the gases in the mixture, and finally there is the third stage in which the flame is accelerated in velocity to a great speed and there is usually a loud report and this is the stage termed detonation."

It may be assumed that the flash, flame or fire described by the factual witnesses was the flame which was being prop-

agated through the explosive mixture following the latter's ignition from an unidentified source.

Now, the unidentified source of ignition did, strictly speaking, constitute fire; but did it constitute fire within the meaning of the Policy?

Plaintiff contends that this question must be answered in the negative urging that the word "fire" is to be interpreted as meaning a "hostile" fire — i.e. one which broke out accidentally and would, of itself, have consumed property which it was not intended to consume; and there is no evidence of any such fire having preceded the explosion.

The distinction between a "hostile" and a "friendly" fire is frequently referred to in American authorities and Plaintiff cites several relevant passages from Couch: Cyclopedia of Insurance Law (Rochester, N.Y. 1929). Defendant, on the other hand, states that this distinction is not recognized in Canada. The terms "hostile" and "friendly" do not, indeed, occur in any of the local jurisprudence or in any English authorities cited to the Court; but mere terminology is not of great importance. One finds, for instance, in Welford & Otter-Barry: "The Law relating to "Fire Insurance", 3rd edition (London, 1932) at page 59, the following elements as necessary to constitute "fire" within the meaning of a fire insurance policy:

> " (1) There must be an actual fire or ignition; hence a mere heating or fermentation will not be sufficient to render the insurers liable for loss occasioned thereby.
>
> (2) There must be something on fire which ought not to have been on fire.
>
> (3) There must be something in the nature of a casualty or accident; but a fire occasioned by the wilful act of a third person, without the privity or consent of the assured, is to be regarded as accidental for the purposes of this rule."

The undersigned has no doubt but that these elements would be required in this province to constitute such a fire as would entitle an assured to recover under a fire insurance policy; and, again, there is no evidence of any such fire as the source of the ignition of the explosive mixture in this case.

One might further contend, as Defendant appears to do, that once the ignition took place, the fire in the explosive mixture itself was accidental or hostile; but such a contention appears to the undersigned to be over-subtle and inadmissible. It would mean that a fire insurance policy as such would cover loss by explosion even if there were no accidental fire other than the flame in the explosive mixture; and it might even imply that an "explosion" policy which specifically excluded fire would not cover an explosion of this nature at all.

Reference may be made in this connection to *Sin Mac Lines Limited v. Hartford Fire Insurance Company* (1936 S.C.R. 598; II Ins. Law Rep. 597; I Ins. Law Rep. 308), commonly referred to as the *"Rival"* case. In that case the policy contained various clauses which were discussed at some length in the judgments of the three courts but which it is unnecessary to refer to in detail here. The aspect of the case which is of interest to the present problem is the following:

> The main insuring agreement covered "direct loss and "damage by fire". Other provisions excluded loss by explosion "unless fire ensued"; in which event, the insurer would be liable for the loss caused by the ensuing fire only. The disaster occurred when a fireman on the tug "Rival", desiring to ascertain how much fuel oil was available, opened the cover of an oil tank and held a lighted match over the aperture. This foolhardy act, of course, resulted in an explosion. Plaintiff, relying on the scientific description of an explosion given by the expert Dr. Stacey (which is the same as that given here by Dr. Lipsett, who, it may be said, was familiar with the *Rival* case) claimed that the explosion itself as well as the ensuing fire, was caused by the lighted match, which itself constituted fire; and that, consequently, the entire loss was payable by the "fire" insurer. *This contention was rejected by all three courts.*

It is interesting to note that the *Hobbs* case (12 S.C.R. 631), which is cited by the present Defendant, was invoked by the Plaintiff in the *Rival* case, but was held not to apply. This Court is of the opinion that neither the *Hobbs* case nor the decision of the English Court of King's Bench in *Harris v. Poland* (All Eng. Law Rep. Ann., 1941 Vol. I p. 204), which is also invoked by Defendant, can apply to the present problem. The circumstances in both instances are entirely dissimilar to those under consideration.

On the whole, therefore, the Court, rejecting this third contention of Defendant, finds that the explosion cannot prop-

erly be attributed to "fire" within the meaning of the Policy but was the direct result of the accident to the tank.

IV

The Court having decided that the explosion was the direct result of an accident to the tank, within the meaning of the Policy, and that the explosion was not caused by "fire" within the meaning of exclusive provision (b) of Section I thereof, *the next point to be dealt with is what proportion of the loss is to be attributed to the explosion and what proportion is to be attributed to the fire which followed the explosion.* This question must be determined because Section I of the Policy specifically excludes "(a) loss from fire (or from the use of water or "other means to extinguish the fire)".

At the beginning of the trial, the undersigned was under the impression that this apportionment was going to present an extremely difficult problem. As it turns out, however, although Defence Counsel very skilfully and exhaustively cross-examined Plaintiff's witnesses, Defendant did not produce any evidence at all on the point; and, for the reasons indicated below, the Court accepts the figures finally given by Plaintiff's witnesses.

In this connection, it is convenient to cite Plaintiff's letter to Defendant of August 7th (Exhibit P-3) and Defendant's reply thereto of August 14th, 1942, (Exhibit P-4). They read as follows:—

"

August 7, 1942.

Boiler Inspection & Insurance Co. of Canada,
437 St. James Street W.,
Montreal.

Dear Sirs:—

On August 3rd, 1942, Messrs. Johnson-Jennings Inc., reported on our behalf a loss under policy No. 60350-B, which occurred on August 2nd, 1942, at approximately 10 o'clock A.M. This morning, in conversation with Mr. Greig, we pointed out to him the urgency of our getting the plant operating again as soon as possible. Messrs. Ross & Macdonald, Architects, and The Foundation Company of Canada Limited are about to proceed with the necessary repairs, and we presume that you have

already obtained or will obtain from them the information you will require in connection with this loss.

Yours very truly,

The Sherwin-Williams Company
of Canada, Limited. "

"WITHOUT PREJUDICE

August 14th, 1942.

Messrs. The Sherwin-Williams Co. of Canada, Limited,
2875 Centre Street,
Montreal, P.Q.

Att'n Mr. P. M. Hollingsworth,
Secretary-Treasurer.

Dear Sirs:

Re: *Policy* #60350-B.
Loss August 2nd, 1942.

This will acknowledge receipt of your letter of August 7th, 1942.

We confirm the statements of Messrs. Gregg, Fitzgerald, Parker and McKeon made at the time of the meeting with you, representatives of Ross and MacDonald, The Foundation Company and the Fire Insurers held on August 10th, 1942.

We are agreeable to the Sherwin-Williams Company proceeding with repairs to the damaged property without prejudice to all of our rights and obligations under the terms of the policy, while investigation as to the cause of the occurrence is continued.

Concerning the employment of Ross and MacDonald, Architects, and The Foundation Company, Contractors, which concerns you desire to make repairs, we shall, if in the final analysis our Company is liable, accept their costs which you will incur as the basis for adjustment of the loss in accordance with the provisions of the policy contract.

It was also stated we would proceed with representatives of your Company, the Fire Insurers and our Com-

pany in the preparation of lists of damage, one headed "Explosion" and the other headed "Fire", notwithstanding our recommendation for an alternative.

The purpose of making this agreement on these points was to permit you to proceed as quickly as possible with repairs, pending completion of our investigation, with the distinct understanding and agreement that all questions of liability under the insurance policy of The Boiler Inspection and Insurance Company of Canada are reserved for future determination.

Yours very truly,

The Boiler Inspection and Insurance Company of Canada. "

Referring to the penultimate paragraph of Defendant's letter, it should be stated that no representative of Defendant actually took part in the apportionment of the loss; but, as above mentioned, Defendant was given every opportunity to make a thorough investigation into all aspects of the siuation.

In the circumstances, it seems unnecessary to discuss Plaintiff's evidence in detail. The following explanation should suffice;

The proof with respect to the damage to the building was made by *J. K. Ross,* architect, of the firm of Ross and Macdonald Incorporated; *Alan Thomson,* of The Foundation Company of Canada; and *W. M. Irving,* contractor and builder. All three are well qualified experts in their respective spheres and Irving has had many years' experience in the matter of estimating such losses. Ross and Thomson were first concerned with taking the necessary protective measures and later with the actual reconstruction. The proof with respect to the merchandise, machinery and equipment was made by *W. B. Debbage,* adjuster; *G. E. Newill,* consulting engineer; and *J. S. Moffat,* of the Plaintiff Company. Debbage is an adjuster of exceptionally long and wide experience. He has acted as such in many of the most serious fire and explosion disasters in Montreal and district in the past thirty years or more. Newill came to Canada from England during the war of 1914-1918 to assume the post of chief engineer of the marine engine and turbine department of the Dominion Bridge Company, and has exercised his profession in Montreal and district since then. For the last fifteen or twenty years he has devoted a large part of his time to assessing fire losses. He

was asked to act in this case by Debbage. Moffat and his staff assisted the two experts by providing invoices and other information.

There is, of course, no hard and fast rule by which one can determine whether any particular damage was caused by fire or by explosion. In some instances, the decision is easy and in others it is more difficult. The value of the opinion of any expert naturally depends to some extent on his experience. In this case, as above intimated, all the witnesses were subjected to very able and searching cross-examination. The net result is that *it is established to the satisfaction of the Court that the amount of the loss to be attributed to explosion or shattering, as distinct from fire or water used to extinguish the fire, is* $45,791.38.

V

The only point which remains to be dealt with is *Defendant's contention relating to concurrent insurance,* which rests on paragraph 18 of the Plea (se page 775 *supra*).

Plaintiff had, at the time of the disaster, twenty-two policies of fire insurance. They were all produced, at Defendant's request, as Exhibit D-6, with separate identifying numbers from 1 to 22; but Defendant, now invokes, on this point, only one — i.e. Exhibit D-6-22, which is the policy of "Associated "Reciprocal Exchanges". To this policy are annexed two supplemental contracts, on which Defendant relies. Each of these two supplemental contracts covers direct loss or damage by explosion, subject to certain conditions and exclusions. The exclusion relevant to the present problem relates to "pressure con- "tainers"; and it is common ground between the parties that Defendant's contention depends upon whether or not the tank was a "pressure container".

Defence Counsel, in his factum, submits an interesting argument to establish that the tank was *not a* "pressure" container or vessel. But three experts (Hazen, Lipsett and Lortie) classify it as such; and they are not contradicted. In view of this testimony, the Court must conclude that the tank was a "pres- "sure container" within the meaning of the policy Exhibit D-6-22 and that, in consequence, *that policy does not constitute other insurance concurrent with the policy of Defendant.*

In the final result, therefore, the Court concludes that, notwithstanding what may with propriety be called the very

skilful and persistent contestation of Defendant, *Plaintiff has made its case to the extent of* $45,791.38.

WHEREFORE, THE COURT:

WHEREAS Plaintiff's action for $46,931.28 is based upon an Insurance Policy issued by Defendant, whereby Defendant undertook under certain conditions and subject to certain exclusions and limitations, to compensate Plaintiff for loss on its property directly damaged by an accident to any of several objects therein described, including specifically a certain steam-jacketted bleacher tank;

WHEREAS, on the 2nd August, 1942, while the said Policy was in force, an accident did, in fact, occur to the said tank; as a result of which vapours emanated therefrom and, by mingling with the air, formed an explosive mixture, which was ignited by an unidentified source; and a serious explosion took place, followed by a serious fire;

WHEREAS the aforesaid disaster caused very substantial damage to the property of Plaintiff, part of which damage is attributable to the said explosion and part to the subsequent fire;

WHEREAS Defendant, relying on Articles 77 and 81 C.P., contends that in no event could Plaintiff's action be maintained, because the total damage has been paid to Plaintiff by certain fire insurance companies, each of which obtained from Plaintiff a transfer and subrogation of the claim *pro tanto;*

WHEREAS Defendant also contends that no part of the said total damages is recoverable because: (a) the property was not directly damaged by the said accident but was damaged by a *nova causa interveniens,* to wit, the source of ignition which caused the said explosive mixture to explode; and (b) the said source of ignition was "fire" within the meaning of the provision of the policy which specifically excludes "loss from an accident caused by fire";

WHEREAS that part of the damage which is attributable to the subsequent fire is admittedly not recoverable under the said Policy;

WHEREAS Defendant contends further, and subsidiarily, that if any part of the loss be payable under its Policy, deduction must be made in view of other and concurrent insurance covering "explosion" damage;

CONSIDERING, as to the first contention of Defendant as hereinabove set forth, that although, in fact, Plaintiff's loss has been paid in full by several fire insurance companies, the aforesaid transfers and subrogations were not served upon or notified to Defendant; that by their terms the transfers and subrogations, signed by Plaintiff, specifically authorize the said companies to pursue Plantiff's action in Plaintiff's name; and that, in consequence, Articles 77 and 81 C.P. do not constitute a bar to the said action (*Coderre v. Douville,* 1943 K.B. 687);

CONSIDERING, as to Defendant's second contention as above set forth, that, in the opinion of this Court, the proof establishes that ~~Defendant~~'s property was "directly damaged" by the said accident within the meaning of Defendant's Policy; and that Defendant's contention rests upon an unreasonably restrictive and inadmissible interpretation of the terms of its Policy;

CONSIDERING, as to Defendant's third contention as above set forth, that the only other insurance policy in force which covers damage by explosion specifically excludes any explosion with respect to any "pressure container"; that, according to the uncontradicted testimony of several of Plaintiff's witnesses, the said tank was a "pressure container"; and that, consequently, there was no other insurance concurrent with Defendant's Policy;

CONSIDERING that, according to the uncontradicted testimony of Plaintiff's witnesses, which testimony the Court accepts, that part of the damage caused to Plaintiff's property by the explosion, as distinguished from the damage caused by the subsequent fire, amounts to $45,791.38;

CONSIDERING that Plaintiff has established the essential allegations of its Declaration to the extent of $45,791.38 and that Defendant has failed to establish any of the essential allegations of its Plea;

DOTH MAINTAIN Plaintiff's action to the extent aforesaid; and DOTH CONDEMN Defendant to pay to Plaintiff the said sum of $45,791.38, with interest from the date hereof and costs.

(Signed) O. S. TYNDALE,
J.S.C.

Enregistré
H. Blais.

DECLARATION OF SETTLEMENT OF CROSS APPEAL

The Defendant Appellant hereby declares:

1. THAT the Plaintiff Respondent filed a Cross Appeal against part of the judgment rendered in this cause in respect of the adjudication by the trial judge of the interest on the condemnation in Respondent's favour against the Appellant herein, the Respondent's said Cross Appeal being number 3106 of the records of this Court.

2. THAT the Appellant has not and does not contest Respondent's claim as made in the said Cross Appeal, that interest should have been allowed on the condemnation against Appellant as from the service of Respondent's action upon Appellant, to wit, the 17th of September, 1943, instead of as allowed from the date of the judgment against Appellant, to wit, the 29th of March, 1946.

3. THAT by agreement between Appellant and Respondent herein, the Respondent abandoned its said Cross Appeal (number 3106), and did on the 19th of November, 1946, present a Petition to this Honourable Court (St. Germain, Barclay, Bissonnette, Gagné and McKinnon J.J.), setting out the terms of the settlement of the said Cross Appeal and praying that the record in the Cross Appeal be brought before this Court on the hearing of this Appeal so that the settlement of the Cross Appeal as regards said interest could be dealt with conformably in this (the principal Appeal), of which Acte was granted of the conclusions of the said Petition by this Honourable Court.

4. THAT the Respondent herein did on the 3rd day of May, 1947, release and discharge the bond given by Appellant herein in the said Cross Appeal number 3106, as will appear from an original signed copy of the said Release and Discharge.

5. THAT Appellant agrees and consents in the event of this Appeal being dismissed or in respect of any amount to which Appellant (Defendant) may ultimately be condemned, that interest shall run as and from the date of the service of the action, to wit, the 17th of September, 1943, instead of from the date of

the judgment a quo, and that this Court on this the principal Appeal may deal with the said matter conformably.

Dated at Montreal this 3rd day of May, 1947.

HACKETT, MULVENA,
HACKETT & MITCHELL,
Attorneys for Defendant in
the Superior Court,
Appellant,

MANN, LAFLEUR & BROWN,
Attorneys for Plaintiff in
the Superior Court,
Respondent.

JUDGMENT IN THE COURT OF KING'S BENCH
(APPEAL SIDE)

Montreal, Wednesday, the twelfth day of January,
One thousand, nine hundred and forty-nine.

PRESENT:

Honourable Mr. Justice LETOURNEAU, C.J.
" " " BARCLAY
" " " MARCHAND
" " " BISSONNETTE
" " " CASEY

IN THE MATTER OF the appeal from a judgment of the Superior Court sitting for the District of Montreal, rendered on the 29th day of March, 1946, maintaining an action upon a certain policy of insurance to the extend of $45,791.38;

Having heard what was alleged by Counsel for the said appellant in support of its said appeal and by Counsel for the respondent to the contrary, having read the evidence and examined the exhibits and the record of proceedings in the Court below, and having considered the said appeal on its merits;

Whereas the action is based on an accident insurance policy issued by the defendant in the following terms: (Section I)

"To pay the Assured for loss on the property of the Assured directly damaged by such accident (or, if the Com-

pany so elects, to repair or replace such damaged property), excluding (a) loss from fire (or from the use of water or other means to extinguish fire, (b) loss from an accident caused by fire, (c) loss from delay or interruption of business or manufacturing or process, (d) loss from lack of power, light, heat, steam or refrigeration, and (e) loss from any indirect result of an accident."

Whereas there were attached to the policy, and forming part thereof, several schedules of which the following is of particular interest in this case, containing as it does the definitions of the words "object" and "accident", to wit:—

"B. As respects any such unfired vessel, 'Object' shall mean the cylinder, tank, chest, heater plate or other vessel so described; or, in the case of a described machine having chests, heater plates, cylinders or rolls mounted on or forming a part of said machine, shall mean the complete group of such vessels including their interconnecting pipes; and shall also include water columns, gauges and safety valves thereon together with their connecting pipes and fittings; but shall not include any inlet or outlet pipes, nor any valves or fittings on such pipes."

"C. As respects any object described in this Schedule, 'Accident' shall mean a sudden and accidental tearing asunder of the object or any part thereof caused by pressure of steam, air, gas, water or other liquid, therein, or the sudden and accidental crushing inward of the object or any part thereof caused by vacuum therein; and shall also mean a sudden and accidental cracking of any cast iron part of the object, if such cracking permits the leakage of said steam, air, gas, water or other liquid, but leakage at valves, fittings, joints or connections shall not constitute an accident."

Whereas on the 2nd day of August, 1942, the tank which was the object of the insurance was used for the purpose of bleaching turpentine and in the process, at a given moment, a sizzling sound was heard and immediately thereafter steam, or a sort of bluish cloud, was seen coming through both doors of the room in which the tank was situated. Then there was a flash and a dull thud. A little later there was a heavy explosion which lifted the roof, blew out some of the walls and was followed by a serious fire, the total damage being estimated at $159,724.62;

Whereas it is proved that a pressure within the tank caused fumes to mix with the air outside the tank and that these fumes coming from the turpentine, when mixed with air, create a mixture which is of a highly inflammable nature;

Whereas something which is not disclosed by the evidence but which was outside the tank caused this inflammable mixture to ignite;

Whereas it is shown that the sizzling noise was caused by the escape of these fumes from the tank; that the first thud heard was, in all probability, the bursting out of the door of the tank and that the great volume of fumes then released, coming into contact with the mixture already ignited, resulted in the final explosion.

Whereas the plaintiff claims that part of the total loss, namely the amount claimed by the present action, is due to the explosion and seeks to recover the sum under its policy;

Whereas the defendant pleaded *interalia* that the plaintiff had no interest and therefore no right of action because it had already been paid by other insurance companies the full amount claimed by the present action; that in any event the damages claimed are attributable to fire, which is specifically excluded from the policy, and were not due to an accident within the meaning of the policy, and that the damages if not due to fire were in any event indirect and therefore also excluded from the risk;

Whereas the Superior Court maintained the action finding that there was no break in the chain of causation or any *nova causa interveniens* between the accidental release of the vapour from the tank and the explosion and that while the unidentifiable source of ignition did, strictly speaking, constitute fire, it did not constitute fire within the meaning of the policy;

Considering that the appellant, notwithstanding its agreement with the fire insurance companies, had a sufficient interest to continue the proceedings;

Considering that the policy in question deals with two risks, an accident as defined, and fire which is specifically excluded;

Considering that fire of any description, whether a direct or indirect result of the tearing asunder of the tank, is excluded by the terms of the policy;

Considering that the policy in question is not an explosion policy but a policy restricted to the direct damages, other than fire, caused by the accidental tearing asunder of the object insured;

Considering that the damages claimed were not the direct result of the tearing asunder of the tank;

Considering therefore that there is error in the judgment *a quo,* to wit, the judgment of the 29th day of March, 1946;

Doth maintain the present appeal with costs, and set aside the judgment *a quo* and doth dismiss the plaintiff's action with costs.

(Signed) Gregor Barclay,
J.K.B.

NOTES DE L'HON. JUGE LETOURNEAU

Je me dispenserai de la narration des faits et d'une analyse des procédures, car cet exposé préliminaire me parait avoir été suffisamment fait aux notes de mon collègue Monsieur le Juge Barclay. Il est d'ailleurs à noter que le mémoire de l'Appelante est pour autant bien fidèle et complet.

Comme Monsieur le Juge Barclay, j'ai été impressionné par deux questions principales: a) Cette objection que la Demanderesse aurait été payée par d'autres compagnies d'assurance et qu'elle ne saurait par suite être admise à poursuivre et réclamer; b) Que la police d'assurance invoquée ne couvrirait pas le cas dont il s'agit.

Mais si quant à la première de ces deux plus importantes questions je m'accorde avec mon collègue, il me faut différer quant à la seconde.

Cette divergence partielle m'impose une plus grande responsabilité et partant plus d'attention quant aux questions secondaires déjà mentionnées par mon collègue: Prescription, *quantum* des dommages, concurrence des polices d'assurance. Mais comme lui et comme aussi d'ailleurs le juge *a quo,* je viens à la conclusion que ces objections subsidiaires de la défense n'affectent pas le droit d'action de la Demanderesse.

M'arrêtant donc d'abord et plus particulièrement aux deux questions principales susmentionnées, il me faut reconnaî-

tre que l'avance qui a été faite à la Demanderesse par certaines compagnies d'assurances-feu, de la somme réclamée en l'action et à laquelle avance se rapporte l'écrit Exhibit D-9, n'est rien d'autre et rien de plus qu'un *paiement conditionnel,* soit une opération destinée à ne valoir qu'entre les parties et dans la seule mesure des conditions posées, encore que ces conditions n'aient rien d'illégal.

Donc, ni *cession de créance,* ni paiement extinctif-*subrogatoire* puisque, pour l'instant du moins, sans effet ni portée pour le "débiteur", la présente défenderesse-Appelante. Contrat *sui generis* en somme, mais dont les grandes lignes, les bases, sont celles d'un paiement conditionnel.

Si l'indemnité recherchée par l'action n'était pas due par la présente défenderesse-Appelante, c'est qu'elle l'était par les tierces compagnies qui ont versé à la demanderesse la somme; en d'autres termes, la perte subie incombait, sinon à la défenderesse, à ces autres compagnies; car ou bien la perte particulière dont il s'agit venait de "l'accident" que couvre la police de la défenderesse, ou d'un incendie couvert par les polices de ces autres compagnies. . . , ceci restait à la décision finale des tribunaux; et, par suite, cette décision intéressait dans un même sens les tierces compagnies, savoir les compagnies *d'assurance-feu,* et la demanderesse qui avait déjà entrepris de faire valoir de son propre chef et pour elle-même, cet intérêt commun.

Si l'action que la demanderesse avait déjà prise devait échouer, c'est que ces autres compagnies étaient les véritables débitrices de la somme présentement réclamée, et pour ce cas la demanderesse devait tout naturellement se pourvoir en temps utile contre ces autres compagnies, ne pas attendre que la prescription pût jouer en leur faveur, leur fût acquise.

De sort qu'à cette époque des mois de janvier et février 1944 (*F. A. Jennings,* p. 620 d.c.) il y avait pour les assurances-feu et pour la demanderesse — sans que cela fut d'aucun intérêt pour le "débiteur" (la défenderesse) — un avantage commun, à savoir pour la demandresse de conserver sans risques de prescription ni frais inutiles, ses recours éventuels contre les "compagnies l'assurance-feu", et pour celles-ci, d'éviter, le cas échéant, les troubles, inconvénients et nombreux frais que devraient leur causer de telles poursuites.

Si donc le *paiement avec subrogation* ne s'imagine qu'au cas où il y a va de l'intérêt du débiteur — dans l'espèce la présente appelante — selon que l'établissent les auteurs (*Mignault*

cité au mémoire de l'Appelante et *Demolombe* cité aux notes de M. le Juge Barclay), reconnaissons que cet élément essentiel fait ici défaut, que le paiement dont il s'agit n'a toujours concerné que les compagnies d'assurance-feu d'une part et la Demanderesse d'autre part, si celle-ci allait réussir contre la Défenderesse, elle aurait à remettre aux autres compagnies le montant de ce dépôt, alors qu'au cas contraire ce même dépôt lui deviendrait son paiement.

Je ne vois en ceci rien d'illégal, si même il nous faut reconnaître qu'à toutes fins futures, la demanderesse devenait ainsi *Prête-nom* de ces autres assurances. Comment et en quoi la défenderesse pourrait-elle se plaindre du procédé; quel intérêt y aurait-elle? . . .

Ce qu'il importe de retenir quant à la question sous examen, c'est que la demanderesse n'est pas véritablement payée, mais que tout au plus elle a en dépôt le montant qui, à certaines conditions non encore réalisées, pourrait lui devenir ce paiement. Et l'une de ces conditions, c'est que la poursuite que déjà elle avait prise soit continuée en son nom, bien que par le ministère des avocats des compagnies qui lui ont fait le dépôt en question et fourni la garantie conditionnelle sus-mentionnée. Il n'y a sûrement en ceci rien du *Maintenance* ou *Champerty*. Rien, en somme, que de très régulier et du meilleur intérêt de la justice.

De sorte que cette première principale objection, celle d'une extinction par paiement de la créance présentement réclamée, me parait devoir être écartée. Il ne saurait non plus s'agir d'une *cession de créance,* car si même on en a eu l'idée — ce que je ne crois pas —, elle serait demeurée sans effet *faute d'une signification.*

La seconde, celle d'une application de la police invoquée au cas dont il s'agit, tient plutôt, en même temps qu'à l'interprétation même du contrat d'assurance, aux faits de la cause. De sorte que l'opinion du premier juge ne laisserait pas que d'avoir, en certains cas, une grande importance.

Cette seconde question principale est complexe, plutôt très complexe. . . , mais je crois pouvoir la résumer comme suit: a) Est-il survenu un "accident" tel que défini au contrat; b) cet "accident" est-il survenu à un "objet", également défini au contrat; c) cet "accident" qui dans l'espèce a pris le caractère d'une explosion, a-t-il été l'effet d'un "feu" ou en a-t-il été la cause; d) les dommages spéciaux de l'action sont-ils véritablement dûs à un tel "accident"?

Il convient de retenir, pour les fins de la cause, que "object" comprend toute bouilloire (boiler) "and shall also include that part of any apparatus under *pressure of steam* or water, which is within the furnace of the boiler, even though not directly in the boiler circulation, such as reheater, water back or water front. . .; que "accident" "shall mean a sudden and accidental tearing asunder of the object or any part thereof caused by pressure of steam or water therein, or the sudden and accidental crushing inward of a cylindrical furnace or flue of the object so caused."

Je n'entends pas revenir à une minutieuse narration de ce qui s'est passé car, en somme, tout pivote sur certains faits principaux: la térébenthine et ce qu'on était en train d'y mêler dans la bouilloire de la "east room" était déjà monté et continuait de monter à une température que l'on n'avait pas prévue, et ceci à une allure ou vitesse étonnante; il s'en dégageait des vapeurs qui eurent tôt fait de se frayer un passage par les joints des ouvertures de la bouilloire ("Vent Pipe", "Peep-hole" et "manhole"), occasionnant ainsi un premier bruit (sizzling noise), et ces vapeurs remplirent très vite toute la "East Room", au point qu'elles eurent tôt fait de pénétrer par les "porte-nord", et "porte-sud", dans la "West Room" où plusieurs des employés attendaient le résultat de l'expérience.

A ce moment, les vapeurs devenues de plus en plus denses, et combustibles et inflammables au contact de l'air, auraient sans aucun doute rencontré un point d'ignition, puisqu'en moins de temps qu'il n'en faut pour le dire, des éclairs (flashes) ont été aperçues par les employés qui attendaient dans la "West Room", et ceci aux deux portes nord et sud par où entraient les vapeurs venant de la "East Room".

Il semble que "l'ignition des vapeurs ait alors eu tendance à remonter vers leur point de départ, savoir vers le point de leur plus grande densité, car c'est alors que l'on aurait entendu un bruit correspondant à une "saute" des ouvertures de la bouilloire — qui effectivement ont sauté —; puis et à quelques secondes d'intervalle, un ou deux grands bruits d'explosion qui paralysèrent en quelque sorte de crainte ceux qui, dès le "sizzling noise", avaient compris le danger et entrepris d'échapper par l'escalier de sauvetage.

En sorte que de même qu'il ne peut y avoir doute que le "sizzling noise" est venu du passage de vapeurs vers l'extérieur et par les joints des ouvertures de la bouilloire, ainsi nous faut-il

reconnaitre que des vapeurs s'étaient accumulées à l'intérieur de cette bouilloire; de même également que ces ouvertures ont effectivement sauté sous la poussée de ces vapeurs, causant par là le second bruit, de même enfin nous faut-il admettre que les deux autres grands bruits survenus aussitôt après ont eux-mêmes été le résultat de ces poussées intérieures qui, parvenues dans la "East Room", ont bouleversé les "cans", démoli les murs, soulevé le toit et fait se ployer sur elles-mêmes des colonnes d'acier. L'employé *Marier,* trouvé sous les décombres intérieurs, avait apparemment été tué par le lancement de la porte de fonte de 22" de diamètre projetée dans sa direction, puisqu'il a ainsi été retrouvé sous ces décombres des explosions subséquentes; voyons plutôt, pour avoir une juste idée de ce qui s'est alors instantanément produit, les photos P-6a, P-6b, P-6c, P-6d, P-6e, P-6f, D-7c, D-7d, D-7f, D-7g, D-7j.

Au cours de tout ceci, on ne tarda pas à apercevoir l'incendie. Le "District Chief of the Montreal Fire Department" (*Hollett*), nous dit que l'alarme a été donnée à 10.04 h., qu'une minute après on était sur les lieux et qu'en moins de dix minutes l'incendie était sous contrôle. (Néanmoins le corps de l'employé *Marier* a été trouvé sous un monceau de débris, de "tin cans", à quelque distance des "filter presses" dans la "East Room" pp 214 et 215 d.c.); que déjà, quand il est arrivé sur les lieux, le mur extérieur était tombé (p. 218 d.c.) et que le feu circulait à travers l'amoncellement des "cans" bouleversées, alimenté nous dit-il par le liquide qui s'en était échappé (p. 220 d.c.); qu'il est monté au "East room" du troisième par l'escalier au sud, cependant que le feu était surtout au nord de cette même "East room" (p. 221 d.c.).

Le bouleversement qui s'était produit sur ce troisième plancher de l'édifice est encore établi par le témoin *Rymann* qui, à la page 28 du dossier, parle de "The blown-all over effect", et à la page 120 d.c., de "Upside down".

Pour mieux comprendre ce qui s'est produit, comment est arrivé en si peu de temps un si grand désastre, il convient de revoir et bien peser, d'abord ce qu'ont vu et entendu les témoins qui dans le "West room" attendaient auprès du "Jacketted Bleacher Tank No. I", ou du "No. 6 Filter Press" (*Moffatt, Frazier, Rymann, Asselin, Boucher, Gosselin* et *Duquette*); et, en second lieu, ce que nous disent les experts (les Docteurs *C. R. Hazen, S. G. Lipsett,* et *Léon Lortie,* l'Ingénieur *W. Parker* et le Chimiste *Schierhaltz*, et même le Docteur *Paul Rioux,* entendu pour la Défenderesse). Notons que tout autant pour ce qui a été vu et entendu, que pour les conclusions scientifiques qui en peu-

vent découler, la preuve est bien positive et nullement contredite, selon que l'a cru le premier juge. Ajoutons que mis en fuite par l'escalier de sauvetage, l'un des hommes, *Alphonse Boucher,* (p. 208) a été projeté contre la rampe et assez sérieusement blessé à la jambe, alors que celui qui suivait *Duquette,* a été tué par la chute du mur. (p. 232 d.c.)

Il s'agissait d'une opération nouvelle: "Bleaching", non plus de "Linseed Oil" et pour lequel la pression devait après le mélange monter à 190 ou 200, mais de restreindre ici et pour la térébenthine, cette pression à 165. C'est dans le "Jacketted Bleacher Tank No. 1" de la chambre Est du 3ième étage, qu'on avait mis les 850 gallons de térébenthine et peu après les 200 lbs de Filtrol et les 50 lbs de "Silica Powder called Cel" qu'il fallait y mêler, ce mélange étant après un certain temps destiné, au moyen de soupapes, à descendre au soubassement pour en remonter ensuite au "filter press No. 6" de la chambre Ouest où attendaient les intéressés; ou voulait connaitre le résultat du "blanchissage" qui malheureusement s'avéra peu satisfaisant; il n'était ainsi remonté que quelque gallons et l'on était à discuter du résultat, quand un premier signal du trouble qui se préparait survint; c'était un "sizzling noise" qui donna l'idée de vapeurs provenant de valves, et ceci fut presqu'aussitôt suivi de *nuages de vapeur* aux portes Nord et Sud qu'il y avait entre les chambres Est et Ouest. A ce moment on aperçut au-dessus de ces nuages de vapeur, un ou deux "flashes" que la défenderesse voudrait tenir pour "feu", alors qu'à ce sujet les témoins présents témoignent comme suit:—

Halsey Frazier dit qu'on vit vers la porte Nord "like a fume or gas or something coming through it, that looked like a fume, and in that fume I just saw a flash, and everything happened so fast from thereon we were just thinking of clearing the building. So I called for the men to run, and some were going for the stair. . . . I said: No; the fire escape. . ." Il a été le dernier ou l'avant-dernier à cet escalier de sauvetage et il ajoute que c'est là et alors. . . "that we heard. . . just before we left. . . (p. 72 d.c.) "we heard like a dull, a sound noise, like a "zump", et il dit encore qu'à peine descendu, la bâtisse "was in a terrible condition. The walls were down" (p. 73 d.c.). Et à la page suivante, il réitère qu'il a vu la fumée mais nulle flamme, cependant que le lendemain il aurait vu des traces de feu. (Notons qu'à ce moment du témoignage, *Me. Mann* admet que le feu a suivi et que c'est pour cela que sa cliente a touché $112,000.00, p. 85 d.c.). Le même témoin dit plus loin (p. 99) que ce qu'il a vu à la porte Nord a été des "fumes", "like haze coming around, same like a

bluish, same a *whitish color"*; il précise encore que c'était moins du feu que "a flash"; et puis, aux pages suivantes (100 et 103 d.c.): "We heard the flash and heard the dull "zoom", et il ajoute qu'on était à se rendre à l'escalier de sauvetage quand "we heard a blast. . . a big noise"; que ce que l'on voyait était "fumes of vapors". Que tout cela n'a duré que cinq à sept secondes (p. 104 d.c.).

Arnold Rymann, le foreman, raconte qu'après avoir à bonne heure mis dans la "tank" de la chambre Est et les 850 gallons de térébenthine et ce qui devait y être mêlé. et après avoir effectivement commencé le mélange, on aurait au moyen de la "pipe G" introduit la vapeur entre le "jacket" et la "tank"; il ajoute qu'il est ensuite pénétré dans la chambre Ouest (Filter Press Room) par la porte Sud et ceci pour se rendre compte "how the turpentine comes out of the filter"; qu'il a d'abord envoyé son assistant *Asselin* au soubassement pour y faire partir la "Filter Pump", qu'il s'est approché du "filter press" pour recueillir un échantillon du produit, que *Frazier* étant arrivé sur les entrefaites, on a dû se rendre compte que la térébenthine "was not very nice yet. . . not very clear. . .". On en était à parler de cela quand est venu le "quick sizzling noise just like pipe or something opening up fast". . . Interloqués, ils auraient soudain aperçu à la porte Nord un gros nuage de vapeur: affaire de deux à trois secondes, "then there was a big roar and a quick flash". Le sauve-qui-peut fut ordonné et comme il avait été le dernier à quitter l'endroit, il était encore au haut de l'escalier de sauvetage quand s'est produit l'explosion. Le lendemain il a vu que tout était sans dessus dessous: "Up side down", selon que le montre la photo P-6a qui est à la page 746 du dossier (p. 131 d.c.); il précise encore que le premier bruit "sizzling" semblait venir de la porte Nord, cependant que les vapeurs pénétraient véritablement par les portes Sud et Nord. Il ajoute que bien qu'on ait parlé à un certain écrit de "big flash", c'était plutôt "like lightning than like fire" (p. 146 d.c.).

Henri Asselin qui a depuis laissé l'emploi de la défenderesse-Intimée, raconte que le matin en question et après avoir fait dans la chambre Est ce qu'il y avait à faire, après avoir mis la vapeur et laissé monter la pression à 145 ou 150, le tout selon les instructions écrites qu'il avait eues du chimiste *Hobjins,* il aurait quitté cette chambre Est pour descendre au soubassement afin d'y faire partir la pompe, puis il serait de là remonté à la chambre Ouest au "Filter Room"; comme la térébenthine ne paraissait pas s'être clarifiée de façon satisfaisante, il redescendit fermer la pompe, puis étant revenu à la chambre Ouest du 3ième,

il vit que le "stuf" sortait quand même; il entreprit de fermer la valve de la pompe pour arrêter le liquide, et c'est alors qu'il entendit le "sifflement" et vit "fumée et tremblement ou tremblement d'abord et fumée ensuite". On serait sorti sur le champ et c'est pendant ce temps que se serait produit l'explosion (pp. 178 et 182 d.c.). Il reconnait que des gouttes de térébenthine ont pu tomber sur le plancher (p. 184 d.c.) et il ne croit pas que le "tank" ait été au préalable nettoyée (p. 196 d.c.).

Alphonse Boucher, un employé de 76 ans venu là par curiosité, pour voir "comment ça marchait" (p. 206 d.c.); Presqu'aussitôt il a entendu un bruit sourd et vu des nuages "bleuâtre" venant des deux portes. Il dit avoir été, en descendant l'escalier de sauvetage, projeté par un choc et il ajoute qu'une fois en bas, dans la cour, il a vu les débris de briques, de châssis, de murs etc. (pp. 204 et 206 d.c.). On aurait d'abord entendu un bruit sourd, il aurait vu des "vapeurs", un "nuage" et il aurait alors eu peur (p. 207 d.c.); la fumée qu'il voyait était d'un *blanc bleu* (p. 208 d.c.); le premier bruit semblait celui d'une soupape de sûreté, et le second entendu alors qu'il était au milieu de l'escalier de sauvetage; et c'est à ce moment qu'il aurait été projeté contre la rampe et blessé à la jambe.

Henri Gosselin, jusque-là employé dans la chambre Est. Il venait de pénétrer dans la chambre Ouest lorsqu'il entendit un bruit, puis vit une "flamme". Dans l'escalier de sauvetage il aurait entendu un nouveau bruit et, arrivé au bas, il aurait constaté que l'effrondrement du mur venait de se produire. Il raconte que dans la chambre Ouest le filtrage se faisait à peine depuis trois ou quatre minutes lorsqu'il entendit ce premier bruit, puis a vu la boucane: le bruit d'abord, un "boum".

F. Duquette travaillait, lui, au second plancher, quand il a entendu l'explosion (p. 228); il avait d'abord entendu un "bruit sourd" (p. 229 d.c.); cela venait de dessous la "tank" et il a cru devoir se sauver; il raconte que rendu en bas, il a été blessé à la figure par les éclats d'une colonne (beam) et que celui qui le suivait a été tué par la chute d'un mur.

J. S. Moffat, gérant du "Linseed Oil Mills", parle des effets du désastre, décrit la "tank" de la *chambre est,* donne son avis quant aux dommages, puis il en vient à dire ce que sont ce "Jacketted Bleacher Tank" et son fonctionnement; et, aux pages 51 et 52, soit dans sa première déposition:—

> "The Court:—I may not know much in the way of mechanics, but surely the proof indicates that there are

various parts to this tank; but I understand from the last answer of the witness that all the parts are encased in asbestos for the purpose of retaining the heat.

Witness:—Yes, definitely.

Q.—(By the Court):—Is that sketch made without the asbestos?

Mr. Mann:—No, it is made with the asbestos, and it shows all one thing, Mr. Hackett's question made it appear the steam section was separate from the vessel.

The Court:—I certainly got the impression the steam jacket was distinct from the tank as such. Was that an erroneous impression?

Mr. Mann:—The impression your lordship got was exactly the impression I got, from the question that was asked by Mr. Hackett.

Q.—(By Mr. Mann):—Is the steam jacket part of that vessel? A.—Definitely it is part of the vessel. The vessel would be of no use without the steam jacket.
Q.—But it is a part of the vessel? A.—Yes.

Re-Cross examined by Mr. John T. Hackett, K.C.:—

Q.—Mr. Moffat, the vessel into which the turpentine was put on the morning of the accident was a vessel separate from the area through which the steam circulated for the purpose of raising the temperature of the contents of the vessel? A.—No, it could not be. It has to form part. It has one wall which forms part of two walls. Does that answer clear it?
Q.—Let me see if we can get this clear:—At no time does the steam come into direct contact with the turpentime? A.—That is right.
Q.—The vessel which contains the turpentine is heated by the steam which circulates through the steam jacquet that is beneath the vessel? A.—The steam vessel and the other tank are together. You cannot separate them. You could not take the steam jacket off and have a tank. They are both together; there is only one wall.
Q.—I understand that. — but the steam jacket is completely walled off from, although fastened to, the vessel? A.—Well. . . .

By The Court:—

Q.—It is a different compartment? A.—Yes, it is a different compartment, but the outer shell of the vessel is the inner shell of your steam jacket; so they are both the same thing. You could not separate them.

Q.—But the steam does not get into the compartment into which the liquid goes? A.—No."

Puis aux pages 53 et 54:—

"Q.—Now, the next question I want to ask you is this: —I understood you to say that the manhole or door of No. 1 bleacher tank had, I think you said, blown off? A.—Yes, it blew off or flew off and hit a crossbar or a steel girder in the roof of the building.

Q.—About 20 feet distant, you said? A.—I would say approximately that.

Q.—May I ask you how you know that? I recall you said you were not present. A.—I think that will come out in the investigation by Mr. Hazen.

Q.—As far as you are concerned, personally, you don't know? A.—No, I saw what happened, — I mean, we surmised what had happened, — but he has the details of that.

Q.—And, as far as that matter goes, you will leave it to Mr. Hazen? A.—Yes, I would rather leave it to him.

Re-examined by Mr. J. A. Mann, K.C.:—

Q.—I would just like to clear one question, Mr. Moffat:—This manhole cover or door, was it seen by you at a distance on the ground or on the floor or among the piles? A.—Yes.

Q.—You saw it there? A.—Yes.

Q.—Below this beam and about 20 feet away from this vessel? A.—Yes."

Et à la page 162, ligne 4 de sa deuxième déposition:—

"Q.—You had never clarified turpentine before? A.—No."

Il dit encore aux pages 474 et 475 de sa troisième déposition ne pas croire que l'explosion de la "tank" ait eu pour cause la seule chaleur (moins "cracked" que "bang", p. 498).

C. T. Keene qui, à ce moment était à son pupitre au premier plancher, a d'abord éprouvé comme une *rareté d'air,* puis il a entendu un grand bruit, un "rumbling"; et, étant sorti sous l'effet de la peur (son pupitre était à 13′ de la sortie), il a reçu à la figure des éclats et au même moment l'édifice "looked a wreck" (p. 236 d.c.).

Il est vrai de dire que certains de ces témoignages sont, sinon contredits du moins contre-balancés, par certaines déclarations écrites signées dès le 10 août: Pour *Frazier,* c'est l'Exhibit D-1 à l'enquête; pour *Rymann,* l'Exhibit D-2 à l'enquête; pour *Asselin,* l'Exhibit D-4 à l'enquête. Et l'on veut que dans ces premières déclarations, certains de ces témoins aient employé le mot feu, "fire". Ainsi *Frazier* aurait dit (Exhibit D-1, p. 719) avoir vu à la porte nord: "fumes or vapors, then saw fire and called to the men to get out. . .", alors que *Rymann* (Exhibit D-2 p. 720): "The doorway was full of vapors. Saw a big flash like fire", et *Asselin* (Exhibit D-4, p. 721): "Not sure if I saw flames or fumes".

Faut-il conclure de là que les témoignages donnés en Cour aient pour cela perdu de leur valeur, de leur véritable portée quant aux précisions qu'on y trouve concernant les *signes lumineux* aperçus? . . . Le premier juge ne l'a pas cru et je suis d'avis qu'il a eu raison.

Un seul de ces trois écrits du 10 août mentionne le mot "fire", et de la façon que vient ce mot, on comprend qu'il réfère purement et simplement au "flash" dont tous ont parlé: "fumes or vapors" à un moment surmontées de "flashes", c'est manifestement ce qu'ont entendu dire les témoins qui ont parlé de *feu,* de "flames" ou "flammes".

On ne peut ignorer que bien des personnes donnent le nom de "feu" à ce qui simplement en a la couleur. C'est ainsi que certains des témoins dont nous venons de parler disent: "big flash like fire", soutiennent que nonobstant l'écrit, "the big flash like fire" était "I can't say like a fire, just like a lightning" (*Rymann* p. 146 etExhibit D-2, p. 720); qu'alors que *Gosselin* dit avoir vu une "flamme" (p. 224), *Boucher* assure que "aucune flamme" (p. 206); que *Frazier* lui-même nie avoir vu aucune flamme ce jour-là (p. 64) et explique que ce qu'il a vu était moins du feu que "a flash" (p. 99).

Mais de tout ceci, il y a quelque chose de plutôt décisif, c'est que plusieurs des témoins qualifient cette "flamme" ou

"flash", en se précisant la couleur: "same like a *bluish,* same as "whitish color" nous dit *Frazier* lui-même (p. 99); "d'un blanc bleu" nous dit *Boucher* (p. 208). Et à supposer que les juges ne puissent d'eux-mêmes conclure d'une telle particularité, ils sont sûrement admis à s'en remettre pour cela à des autorités que cite l'Intimée au bas de la page 22 de son mémoire et où il est dit: "It was a bluish color and I knew at once that it was gasoline vapor that had ignited".

Cet aperçu de la preuve quant à ce qu'ont pu voir et entendre les personnes présents m'autorise, je crois, à passer maintenant aux témoignages des hommes de science et à rechercher ce qu'ils en pensent:—

Le *Docteur C. H. Hazen,* bien connu et dont la compétence ne laisse aucun doute, décrit ce qu'était le "Jacketted Bleacher Tank" dont un minuscule modèle lui avait été fourni et dont les photos d'ensemble sont reproduites comme P-6a et P-6c; il explique le jeu de la pression (pressure) et des réactions qui devaient en résulter à l'intérieur de la "tank"; il explique également la formation des vapeurs, puis l'échappement qui devait s'en faire par les joints, et aussi le "sizzling noise" que ceci devait produire: "both from the vent and the door" et comment ces vapeurs ainsi échappées de la "tank" devaient de façon vertigineuse se répandre dans la salle, y devenir combustibles et inflammables au contact de l'air, puis fatalement rencontrer un point d'ignition et exploser (pp 440 à 473 d.c.). Il appuie ses conclusions sur des expériences *spéciales,* faites depuis et dont quelques-unes ont été avec le concours du Docteur *Lipsett.*

Les Docteurs *S. G. Lipsett* et *Léon Lortie* soutiennent et développent de façon claire et bien satisfaisante la théorie exposée par le *Docteur Hazen* quant à ce qui s'est passé dans le "East Room" en cette matinée du 2 août 1942. Tous deux établissent, en s'appuyant sur des auteurs, que l'installation du "Jacketted Bleacher Tank" était bien un "pressure vessel" dont la dénomination se retrouve en l'exception de la clause II de la Police No. 22 (Exh. D-6), faisant ainsi voir ce qui était véritablement réservé à la police particulière qui nous occupe, ce qui demeurait le lot exclusif de cette dernière police. Cet expert explique que "a pressure vessel is a vessel adapted to contain pressure" et que "pressure in the case would mean a force within a gaseous space greater than the atmospheric force" (p. 526 et 527); en d'autres termes signifie ce qui, sans la résistance des parois de la "tank", se répandrait dans l'atmosphère environnante (p. 527). Il précise qu'ici et à raison du "steam jacket", l'intérieur de la "tank" de-

vrait être parfois "under vacuum" et parfois "under pressure" (p. 527). Il cite comme autorité sur ce point: *Rules for construction of unfired pressure vessel* qui est le *"Boiler Construction Code"* de la *"American Society of Mechanical Engineers"*, publié en 1943 et où l'on voit la gravure d'une semblable "tank" ainsi entourée d'un "jacket" et que l'on y tient pour un "unfired pressure vessel" (pp 527, 528 et 529); le témoin explique de façon bien satisfaisante ce qui s'est produit en l'occurrence au "East Room"; ses propres expériences le confirmant dans ses conclusions et il produit à ce sujet une "bolt" pliée (Exh. 9-11, p. 532). Il explique le "hissing noise" qui a été entendu ainsi que le deuxième et le troisième bruits (pp 532, 533, 534). Il cite des autorités (pp. 535 et 536); identifie des cas (p. 538). Enfin, les explications du témoin sont des plus satisfaisantes et reposent bien plutôt sur ses propres expériences que sur l'auteur *Mason* qu'il a été amené à mentionner (p. 542).

Rappelé, le même expert continue et énonce que la térébenthine est un "hydrocarbon" (p. 559), il explique l'effet des vapeurs, précise que celles provenant de la térébenthine deviennent inflammables lorsqu'elles se mêlent à l'air (pp 564, 565 d.c.) et que le brouillard qui s'en dégage dans l'air leur donne une couleur particulière: "bluish-white" (p. 567). Il explique ses propres expériences à ce sujet; assure que ces vapeurs au dehors "became ignited" et que "the flame travelled back to the turpentine in the original container" (p. 569).

Et — ce qui prend de plus en plus d'importance —, il explique les trois étapes de l'explosion sous examen (p. 570); il précise que le feu n'est pas essentiel à une explosion puisque, dit-il: "You can ignite an inflammable mixture of turpentine and air by a hot piece of iron that is not even glowing" (p. 570); ainsi un fer rouge ou chauffé à 484 degrés, ne produirait pas de flamme, de feu, mais pourra s'il vient en contact avec des vapeurs de térébenthine, en produire l'ignition (p. 572). Il ajoute que la porte de la "tank" a pu ce matin-là atteindre cette température de 484 dégrés: que toute telle explosion vient généralement de "an inflammable mixture and of an ignition" (574 in fine and 575). Il dit qu'une explosion à l'intérieur d'une "tank", reste "a pressure rupture" (p. 574) et de nouveau il précise par la réponse que voici:—

> "Q.—Then, the force that blew down the walls and lifted the roof of the company's plant was something distinct from what happened within the tank? A.—It was caused by vapors which came out of the tank."

Il explique encore que nonobstant ce qui a été écrit à D-I, les hommes présents sur les lieux ont sûrement plutôt vu aux portes de la chambre Est, donnant sur la chambre Ouest, un simple "flash", et qu'il s'agissait encore et principalement d'un "mist", ou de vapeurs.

De nouveau il dit comment a dû se produire l'explosion (pp 581, 582 et 583). Les vapeurs auraient pu, dit-il, rencontrer leur ignition soit à l'ascenseur ou même à l'étage inférieur, soit au point d'une cigarette ou d'une allumette en feu, puis être revenues ainsi enflammées au 3ième étage et même à l'intérieur de la "tank" dont les portes ont sauté (pp 584, 585). Il réitère que "In the absence of air no ignition would occur" (p. 585 in fine). "You have to have air and a source of ignition. The explosive gas in the air can't possibly explode until it is ignited" (p. 586). Ces explications sont à lire pour apprendre la façon dont se propagent en dehors de la "tank" les vapeurs qui en ont été expulsées par la pression et comment "the ignition was not inside the tank" (pp 587 à 591).

Dr. Léon Lortie qui a assisté à certaines des expériences du Docteur *Lipsett,* le confirme dans ses conclusions de la façon la plus claire; il est lui-même très plausible et bien logique. Il explique l'effet qui se produit à l'intérieur de la bouilloire "until th contents came to a boiling point", et qui provient de la "pressure" qui est au "jacket" entourant cette "tank" (p. 593 in fine), que les vapeurs qui en résultent dans la "tank" s'en échappent parce que la température du liquide est plus élevée que celle de l'air de la chambre, que c'est ainsi que ces vapeurs "are thrown off", mais que toutefois ces vapeurs "will not burn without air" (p. 594); que c'est au contact de l'air que ces vapeurs deviennent combustibles, et que c'est alors et alors seulement que l'ignition devient un danger. Il énonce: "But you got to have a burning of the combustible mixture as a prelude to explosion" . . . Pour ceci il ne serait pas même besoin d'un point "enflammé" si seulement tout tel point est à une température suffisante (p. 595). Néanmoins il faudra pour qu'il y ait explosion une "flamme", mais elle aura été la conséquence ou la suite du contact déjà mentionné entre des vapeurs devenues combustibles et le point d'ignition.

Le Docteur *Lortie* explique que quoiqu'ils aient dit d'une flamme aux portes Nord et Sud de la "East Room", les témoins *Frazier* et *Rymann* n'ont pu voir qu'un éclair (flash) et que celui-ci a pu passer de la porte Nord à la porte Sud sans que la chambre Est fut en feu (p. 596). Référant aux expressions de

ces témoins: "a flash of fire" . . . "a big flash" ou "a big flash like fire" (p. 598), et ayant réaffirmé que les vapeurs ne deviennent combustibles qu'une fois échappées de la "tank", voici de façon plus précise comment cet expert conclut sur le point (pp 600 et 601):—

"Q.—How does that apply to the door of the tank, if the same question were asked you? A.—When the vapors were issuing from the door that was sprung open to some extent, then around that place there was also possibly an explosive mixture.

Q.—Now, there is just one more question. I think you said that the first of the three elements resulting in final detonation, or what is commonly called or colloquially called explosion, was the propagation of flame through the gases? A.—Yes.

Q.—You mentioned that as being the first element? A.—Yes.

Q.—The second element being a turbulent or further violent propagation of flame through the gases. A.—Yes.

Q.—And the third element being the detonation or concussion, or shattering, I think it was said by Dr. Lipsett? A.—That is, which produces a shattering effect.

Q.—Which produces a shattering effect? A.—Yes.

Q.—In view of the cross-examination relative to Rymann, on Exhibit D-2, as to his stating that he saw a flash like fire when he was walking towards the south door, — having in mind that he does not say he saw fire but that he saw a flash like fire, the evidence of Frazier, who said — and upon which you were cross-examined, — that he saw a flame or fire in the north door. — I don't care which, a flame or fire in the north door, — and having in view the migratory nature of flame in explosive gases, are you able to say what might have happened with respect to that flame within the east room as between the north door and the south door? A.—It surely originated somewhere, and it propagated itself within the explosive mixture to another place. That is the nature itself of the first two stages of the explosion, first uniform and then turbulent."

Ainsi le mélange de la "tank", "vessel", aurait été soumis à une telle température qu'il en serait résulté des *vapeurs* et, pour celles-ci, des *réactions* anormales qui les ont fait s'échapper au dehors, dans la salle; que là et au contact de l'air, ces vapeurs

sont devenues combustibles, et qu'ayant effectivement rencontré un point d'ignition comme ceci devait fatalement arriver, ces vapeurs se sont vite enflammées, semant partout l'explosion; à l'intérieur de la bouilloire d'abord — où était encore leur plus grande densité —, puis dans les salles avoisinantes ensuite: *chaîne ininterrompue* de causes, mais dont la première s'est produite au sein du "vessel" qu'était le "Jacketted Bleacher Tank".

Il convient de bien retenir que le "jacket" et le "Bleacher Tank" forment un tout qu'entourait une même couche d'amiante; que c'est la trop grande pression au "jacket" qui a donné lieu aux vapeurs de la bouilloire comme aussi à leurs réactions anormales; que si nous exceptons les soupapes, ce *tout* qu'enfermait une même couche d'amiante, n'avait d'autres issues ou sorties que celle de la bouilloire: le "vent pipe", le "peephole" et le "manhole". Or, c'est exactement ce qu'avait prévu la police: "A sudden and accidental tearing asunder of the *object* or any part thereof caused by pressure of steam" . . . La conséquence logique en devait être une propagation et un bouleversement dans les salles attenantes et voisines, avec soulèvement du toit, renversement des murs, ployage des colonnes et enfin et comme suite nécessaire, l'incendie des lieux.

L'Origine du désastre aurait donc été ce qu'en a pensé le premier juge et ce qu'à notre tour nous tenons pour bien établi, à savoir qu'il s'agirait véritablement de cette explosion particulière que couvre la police P-I de la défenderesse, puisqu'il y a eu "tearing asunder of an object" . . . et que des dommages directs en sont résultés: ceux des diverses "sautes" ou démolitions qui ont précédé l'incendie.

La demanderesse ayant satisfait à la preuve qui lui incombait jusque-là, c'était désormais à la défenderesse d'établir, s'il y avait lieu, l'une des exclusions ou exceptions de la SECTION I de la police; elle s'est seulement préoccupée de l'une de ces exceptions, celle pouvant se rattacher au "feu", mais elle n'a pu l'établir, du moins quant à cette partie des dommages que réclame l'action.

Si cette seconde des deux principales questions doit, comme il a été dit pour la première, être résolue contre l'appel et en faveur du jugement *a quo,* ne faut-il pas reconnaître que les questions secondaires auxquelles nous faisions allusion au début de ces notes, sont plutôt sans importance pratique.

Les dommages sont établis sans contradiction; également sans contradiction sérieuse le partage qui en doit être fait aux

fins de savoir ce que couvre de ces dommages la police P-I. D'où il suivrait que c'est bien à une somme de $45,791.38 que devait être fixée la condamnation à ces dommages.

La "concurrence" d'autres assurances pour ces mêmes dommages doit être écartés, puisqu'à défaut de la pouvoir retrouver dans le "Supplemental Contract" de "Associated Reciprocal Exchanges" (Exhibit D-6-22), il n'y faut guère songer; et, cependant la clause ONZE précitée de ce "Supplemental Contract" en exclut toute idée, à mon sens.

D'une courte "prescription", il n'en a pas été question à l'audience et je reste d'avis que le dossier n'en justifie aucune.

De sorte que sur le tout, et particulièrement sur les deux questions principales du litige et qui ont vraiment fait l'objet de l'Appel, j'en viens à la conclusion qu'il n'y a pas *mal jugé;* que l'action devait être accueillie comme elle l'a été, sauf que l'intérêt sur le montant de la condamnation ($45,791.38) devait courir de la date de l'action, soit du 17 septembre 1943, selon que les parties en ont convenu à l'occasion d'un contre-appel de la demanderesse.

Sujet donc à cette seule modification, je confirmerais le jugement *a quo* et je rejetterais en conséquence l'Appel avec dépens.

SEVERIN LETOURNEAU,
J.C.B.

NOTES OF HON. MR. JUSTICE BARCLAY

This is an appeal from a judgment rendered on the 29th of March, 1946, by the Superior Court sitting for the District of Montreal, maintaining an action upon a certain policy of insurance to the extent of $45,791.38.

The action is based on an accident insurance policy issued by the defendant company covering a period from March 15th, 1940, to March 15th, 1943. By the terms of its policy, the defendant made an agreement with the plaintiff respecting loss (with certain exceptions) from an *accident,* as defined, to an object described, subject to a limit per accident of $50,000. The terms of the policy are as follows: (Section I).

> "To pay the Assured for loss on the property of the Assured directly damaged by such accident (or, if the

Company so elects, to repair or replace such damaged property), excluding (a) loss from fire (or from the use of water or other means to extinguish fire, (b) loss from an accident caused by fire, (c) loss from delay or interruption of business or manufacturing or process, (d) loss from lack of power, light, heat, steam or refrigeration, and (e) loss from any indirect result of an accident."

Attached to the policy and forming part thereof are several schedules. The one of particular interest in this case is a schedule relating to "Unfired Vessels" and which contains the definitions of the words "object" and "accident" — paragraphs B and C:—

"B. As respects any such unfired vessel, 'Object' shall mean the cylinder, tank, chest, heater plate or other vessel so described; or, in the case of a described machine having chests, heater plates, cylinders or rolls mounted on or forming a part of said machine, shall mean the complete group of such vessels including their interconnecting pipes; and shall also include water columns, gauges and safety valves thereon together with their connecting pipes and fittings; but shall not include any inlet or outlet pipes, nor any valves or fittings on such pipes."

"C. As respects any object described in this Schedule, 'Accident' shall mean a sudden and accidental tearing asunder of the object or any part thereof caused by pressure of steam, air, gas, water or other liquid, therein, or the sudden and accidental crushing inward of the object or any part thereof caused by vacuum therein; and shall also mean a sudden and accidental cracking of any cast iron part of the object, if such cracking permits the leakage of said steam, air, gas, water or other liquid, but leakage at valves, fittings, joints or connections shall not constitute an accident."

The particular object concerned in this case is known as a "No. 1 Steam Jacketted Bleacher Tank", which will be referred to herein as "Tank No. 1". This tank consisted of a large metal cylinder resting horizontally on a kind of cradle bolted to the floor and was on the third storey of one of plaintiff's buildings. The lower part of the tank was surrounded by a steam jacket, attached to the cylinder in such a way that the outside wall of the cylinder constituted the inside wall of the jacket. Both jacket and cylinder were encased in asbestos, except for certain necessary openings, such as the door, valves, etc.

The third storey of the premises in question consisted of two large rooms, between which there was a fire wall with two large sliding fire doors, approximately 8 ft. wide and 7 ft. high. The ceiling in the two rooms was about 17 ft. high.

Tank No. 1 and other equipment and materials were in what was referred to as the "east" room, and four filter presses were in the "west" room. The tank was normally used for bleaching linseed oil. This process consisted in putting a number of gallons of crude oil (generally 850) into the tank by means of a vacuum system, and to this oil was added, also by vacuum process, 50 pounds of "filtercel" and 200 pounds of bleaching earth, or Fuller's earth, known in the trade as "filtrol". The contents of the tank are mixed by a revolving shaft in the cylinder, which is turned by a motor at the rear of the tank. Steam is turned into the jacket heater and kept at the required temperature, approximately 190°, and after a period of time varying in length — generally about half an hour — the liquid in the tank is allowed to run out through a pipe to the basement and from there it is pumped up to one or more of the filter presses in the west room, where the liquil passes through a series of cloths and comes out bleached.

On the 2nd of August, 1942, the tank was used for another purpose — one for which it had never ben used before, namely, the bleaching of turpentine. The chemist of the plaintiff company gave instructions to follow precisely the same formula for bleaching the turpentine as for bleaching the linseed oil, with the exception that the temperature, instead of being kept at 190°, was to be kept much lower. It would appear, although there is some discrepancy in the evidence, that the temperature was to be kept at 160°.

After the mixing process had been going on for some time, some of the liquid was run off and pumped up to the filter press. A sample quantity was taken and it was noticed that the bleaching was not satisfactory. Orders were given to stop the pump and, as the personnel present were considering what should be done, a sizzling sound was heard and immediately thereafter steam, or a sort of bluish cloud, was seen coming through both the doors between the east and west rooms. Then there was a flash, variously described, and later a dull thud or explosion. Those present took to the fire escape and, as the last man reached the doorway to the fire escape, there was a heavy explosion, which lifted the roof, blew out some of the walls, and was followed by a fire. The total damage was estimated at $159,724.62.

There were twenty-two Fire Insurance companies involved in the fire risk and the company defendant was involved for accident risk. Representatives of the Fire Insurance companies and of the plaintiff company endavoured to establish what part of the damage was, in their opinion, due to the explosion and what part was due to the fire. The defendant company took no part in these proceedings. It was estimated that $112,793.34 of the loss was due to fire and $46,931.28 was due to the explosion. By subsequent retraxits this latter amount was reduced to $45,-791.38—the amount of the judgment. This amount was demanded from the defendant and, when it disclaimed liability, the present action was taken.

There were a number of defences to the action, but some of them were not persisted in. Those which were persisted in are the following:

1. The damages claimed are attributable to fire, which is specifically excluded from the policy, and not to an "accident" within the meaning of that word contained in the policy.

2. The plaintiff has no claim against the defendant because it has already received from other insurers the total amount to which it is entitled.

3. If the defendant is liable for any amount, its liability is restricted to loss on the property of the plaintiff directly damaged by the accident, as defined.

3. There was concurrent insurance and a proportion of the loss should be borne by another company, thus relieving the defendant to that extent.

The defence of lack of interest must be considered first, as it was by the learned trial Judge, because, if the contention is sound, the action must of necessity fail.

In its plea the defendant company alleged — paragraph 16:—

> "That in the premises it appears that the alleged loss and damage sustained by plaintiff is a fire loss under the terms and provisions of the contracts of other insurance hereinabove enumerated and described and defendant is in no way liable therefor, and, as a matter of fact, said other Insurers have admitted liability and have paid

or agreed to pay the said loss, which fact seriously affects this Honourable Court in giving effect to the conditions of the Policy Exhibit P-1 and is relevant and pertinent to the issues herein."

The defendant was ordered to give particulars of this allegation and the following particulars were given, dated March 28th, 1944:—

"As to paragraph 16:—

All the Insurers on the risk other than defendant paid to plaintiff, prior to the production of defendant's plea over one hundred thousand dollars ($100,000.00) of the loss sustained by plaintiff and since have paid or agreed to pay the balance of the loss in the event of plaintiff's action failing and defendant is unable to say whether the undertaking to make a further payment is in writing or was verbal."

When Counsel for the defendant attempted to prove that payment had been made to the plaintiff since the institution of the action, a three-fold objction was raised by Counsel for the plaintiff:

(a) The point was not pleaded;

(b) It relates to something which occurred after the institution of the action and was not raised by a supplementary defence in accordance with article 199 C.P.;

(c) The point is irrelevant, in view of the jurisprudence and of recent amendments to article 2468 of the Civil Code.

The learned trial Judge dealt with the first two grounds of the objection as follows: That the allegations of paragraph 16 of the plea and the particulars thereof were sufficient and that the point had, therefore, been specifically pleaded. On the second point, he came to the conclusion that, although normally the Court can deal only with the situation as it existed at the time the action was taken, subsequent facts can be taken into account under special circumstances and that, while such subsequent facts should be raised by a supplementary defence, they were raised in this case by the particulars. As to how they should be raised is a purely procedural matter and, as the plaintiff made no motion to reject and took no exception to the form, this objection was also dismissed. I agree entirely with the decision on the first two points.

As to the third point, the Court was not prepared to make a definite decision and allowed the evidence under reserve. The evidence was then taken and one Jennings admitted that the company plaintiff had in fact, on March 4th, 1944, been paid the full amount claimed in the present action. This payment was made by the twenty-two Fire Insurance companies, each in proportion to the total amount of the actual fire coverage held by each company. This was done at his (Jenning's) suggestion:

> "I persuaded the fire companies to pay this. There was no negotiation. A definite amount had been arrived at. My clients were out 46-odd thousand dollars, and I persuaded the fire companies to assume and pay this amount.
>
> .....
>
> I, as an insurance broker, felt that my clients were out this money and it would be a feather in my cap if I could persuade the fire companies to pay this and satisfy my clients.
>
> By the Court:—
>
> Q.—It would be reasonable to put it this way, would it, Mr. Jennings: You knew that your clients should get paid by somebody or other and you thought that the sooner they got paid the better? A.—Yes.
>
> Q.—And leave it to the two groups of insurers to fight it out amongst themselves without your client having to wait for its money? A.—Yes.
>
> Q.—That was the situation? A.—Yes."

Each of the Fire Insurance companies, on making its proportional payment, obtained a document entitled "Receipt, Transfer and Subrogation". The wording of each document was identical, save as to the name of the insurance company and the amount paid. Leaving in blank the name of the company and the amount, the document reads as follows:—

> "Sherwin-Williams Company of Canada, Limited, the undersigned, hereby acknowledges to have received at the execution hereof from ..... Company ..... Dollars, being the latter's pro-rata proportion of the sum of forty-six thousand nine hundred and thirty-one dollars and twenty-eight cents ($46,931.28) now claimed by the

undersigned from Boiler Inspection and Insurance Company of Canada, by action instituted in the Superior Court for the District of Montreal, under the number 221869 of the records of said Court, as being the amount of loss or damage to the property of the undersigned, alleged to have been suffered on the second of August, nineteen hundred and forty-two, as a result of an accident consisting of a sudden and accidental tearing asunder of a steam jacketted bleacher tank, at the premises of the undersigned in the City of Montreal.

In consideration of the aforesaid payment of..... Dollars to the undersigned, by the above named Company, the undersigned hereby transfers, assigns and makes over unto the said Company in the proportion that the sum now paid bears to the sum of forty-six thousand nine hundred and thirty-one dollars and twenty-eight cents ($46,931.28), all the undersigned's rights, title and interest in and to the claim of the undersigned against the said Boiler Inspection and Insurance Company, under the latter's policy No. 60350B dated March 9th, 1940, issued in favor of the undersigned; hereby subrogating and substituting the said ..... Company in all the undersigned's rights, title and interest in and to said claim as well as in and to the aforesaid action and all proceedings had thereunder, with the right on the part of the said.....Company to continue the said action, but at its own expense, as of the date thereof, in the name of the undersigned and with the benefit unto said Company of all costs incurred and to be incurred by virtue of said action, in so far and to the extent that the undersigned is able to deal with such costs."

These documents were not served upon the defendant.

The defendant's contention is that there has been a conventional subrogation involving the payment and consequently the extinction of the debt, if any, of the defendant towards the plaintiff, and that consequently the plaintiff has no longer any interest and comes within articles 77 and 81 C.P., which are matters of public order.

The learned trial Judge, in view of the jurisprudence established in *McFee vs. Montreal Transportation Company,* 27 K.B. 421, and *Hébert vs. Rose,* 58 K.B. 459, and particularly in *Coderre vs. Douville,* 1943 K.B. 697, rejected the defendant's contention.

With respect, I am of the opinion that the cases cited and the amendment to article 2468 C.C. do not apply to the present instance. The three cases cited deal with the payment of insurance in cases where there was pending an action against the *tort feasor* — an action for a delict or a quasi-delict on the one hand and an action upon a contract on the other.. The amendment to article 2468 C.C. was passed to cover precisely such a situation, because the jurisprudence on the point had been conflicting. Here the action is not an action in damages against the author of the disaster, but an action against an insurer on a contract obliging it to pay in certain circumstances, and what the plaintiff claimed and has been paid is the amount which may or may not be due under the terms of that specific policy. There are not, in this case, two debts of different sources, but one and the same debt.

The first question to be decided is whether this is a case of conventional subrogation.

It is true that the document states specifically that the plaintiff subrogates and substitutes the Fire Insurance companies in all is rights, title and interest in and to the claim against the defendant as well as in the action taken against the defendant. However, as Demolombe says — Vol. 27, p. 329:—

> "Il faut d'abord examiner les termes, dont les parties se sont servies, et la qualification qu'elles ont elles mêmes donnée à l'opération, quelles ont faite.
>
> Ce moyen, toutefois, n'est pas toujours sûr; et nous devons, tout en le proposant, ajouter qu'il convient de n'en tenir compte qu'avec beaucoup de réserve et presque de défiance.
>
> .....
>
> Ce n'est donc pas *au sens littéral des termes,* que l'on doit s'attacher.
>
> C'est *à la commune intention des parties,* révélée par le caractère intrinsèque de l'opération (art. 1156).
>
> Ce qu'il faut rechercher surtout, c'est si l'opération a été faite dans l'intérêt du créancier, ou dans l'intérêt du débiteur.
>
> Dans le premier cas, on doit être porté à penser que l'acte a le caractère d'une cession;

Tandis que c'est le caractère d'un payement avec subrogation, qui doit être présumé dans le second cas."

If we are to apply that test here, it is perfectly evident that the payment was made in the interest of the creditor and not in the interest of the debtor. The intention was to obtain a condemnation against the debtor for the benefit of the parties paying the debt to the creditor. The situation was that the Fire Insurance companies were in some doubt as to whether the defendant was liable for the debt or they were themselves and, in the interest of the creditor, and not in their own interest, to preserve the good-will of a good client, they made the payment in full, with the evident intention of endeavouring to recoup themselves at the expense of the defendant.

Subrogation implies a payment (because the two are inseparable) by a third party of a debt which is not his own. That is not the case here. There is doubt as to who is the real debtor, and it was to resolve that very doubt that the action was continued notwithstanding full payment of the debt. The Fire Insurance companies had no intention of paying a debt which was not theirs, but of paying a debt which might ultimately be held to be theirs.

Since the document in question was made in the interests of the creditor, it has the characteristic of a *cession de créance.* If it be that, then the question to be solved presents no difficulty, since the transfer or cession was never served upon the debtor. Without such service, the plaintiff remained the creditor of the debtor. By the terms of article 1572 C.C., the debtor may pay the seller (or transferor) and obtain a valid discharge. "Il est certain que si le cédant peut recevoir, il peut aussi demander. La doctrine est unanime sur ce point." (Laurent, Vol. 24, par. 523, p. 516).

But the agreement dated March 3rd, 1944, is, perhaps, something more than a mere *cession de créance.* The intention of the parties is manifest. The Fire Insurance companies made a payment in advance of what might eventually turn out to be their own debt. If it was not their debt, they had no intention of paying it. Since the plaintiff had already instituted an action against the defendant which would settle the question as to who was the real debtor, the payment was made conditionally on the plaintiff continuing its action. If the action failed, the moneys advanced would belong to the plaintiff; if the action succeeded, the advance would be returned to the extent of the amount re-

covered. In this respect the case has some analogy to the case of *McFee vs. Montreal Transportation Company,* 27 K.B., although in this instance it was not a case of two different debts. At page 423, Cross, J. said:—

> "I consider that this payment by the insurer was made in pursuance of an understanding between the appellant and the insurer that they would help each other to claim from the respondent. The appellant was under obligation on being paid by the insurer to cede to the latter its right and recourse against the respondent, if called upon to do so. The matter has been arranged by letting the appellant have the benefit of the insurance money in the meantime while the suit is taken in the appellant's name as owner..... In these circumstances the appellant has an interest to sue."

There is no doubt that in the present instance the plaintiff had an interest when the action was originally taken and, in my opinion, it still has an interest in spite of its agreement or understanding with the Insurance companies.

This brings me to the question as to whether the damages claimed are attributable to fire, which is specifically excluded from the policy, or to an accident within the definition contained in the policy, and the further question whether the damages claimed were the direct or indirect consequence of an accident. These two grounds of defence are in this instance so closely allied that I shall deal with them together.

"Accident", says the policy, means "a sudden and accidental tearing asunder of the object or any part thereof caused by pressure of steam, air, gas, water or other liquid, therein". There is no doubt that in this case an accident, as so defined, did occur. A pressure of liquid within the tank caused the bursting out of the door. This pressure was due to the effects which filtrol has when mixed with turpentine and subjected to a heat of 160°. There is equally no doubt that the contents of the tank *per se* were not inflammable. The evidence is uncontradicted that turpentine mixed with filtered oil and filtrol is not in itself inflammable. It was only when this mixture was allowed to escape into the air and mix with the air that it became highly inflammable and liable to explode if ignited. Something outside the tank and in no way connected therewith caused this inflammable mixture to ignite. The fumes which escaped through the valve and possibly through the bulging of the door were, according to the evidence and its

interpretation by the experts, already ignited before the door of the tank burst open. It was the great volume of fumes which thus escaped through the open door into an atmosphere already ignited that caused the final and destructive explosion.

The defendant's argument is that the non-inflammable mixture in the tank only became inflammable when it ceased to be what it was within the tank. A new substance, with peculiar characteristics of its own, was formed outside the tank, and this new substance came into contact with fire. Thus there were two intervening causes between the turpentine gas within the boiler and the explosion, and therefore the damage was not the direct result of the accident but was the direct result of a fire, which is excluded as a risk.

The learned trial Judge dealt with this phase of the litigation by finding that there was no break in the chain of causation or any *nova causa interveniens* between the accidental release of the vapour from the tank and the explosion; that there was no evidence of any "hostile fire" before the explosion nor of any other abnormal phenomena, and that the damages were, therefore, direct. On the closely allied question as to whether the damages were caused by fire, he held that, while the unidentified source of ignition did, strictly speaking, constitute fire, it did not constitute fire within the meaning of the policy. He came to that conclusion on the ground that, while in this Province, no recognition is given to the American doctrine of the distinction between a "hostile" and a "friendly" fire, we do require in this Province that the fire should be such as to entitle an insured to recover on an insurance policy and that three elements are necessary in order to do that: (1) There must be an actual fire or ignition; hence a mere heating or fermentation would not be sufficient; (2) there must be something on fire which ought not to have been on fire; and (3) there must be something in the nature of a casualty or accident; — all of which would bring us very close to the definition of "hostile fire". He further held that the defendant's contention would mean that once the ignition took place, the fire in the explosive mixture itself was accidental or hostile, but such a contention was inadmissible, and it would also mean that a fire insurance policy as such would cover loss by explosion even if there were no accidental fire other than the flame in the explosive mixture; and it might even imply that an explosion policy which specifically excluded fire would not cover an explosion of this nature at all. His conclusion was that the explosion could not be properly attributed to fire, within the meaning of the policy, but was the direct result of the accident to the tank.

It must be remarked, however, that the policy which we are now dealing with is not an "explosion" policy, as it was in the *Abasand Oils, Ltd.* case, recently decided by the Supreme Court, in which this same company was the defendant—1948 S.C.R. 315. As this is not a fire insurance policy, the question is not, with due deference, whether there has been such a fire as would entitle the assured to claim on a fire insurance policy, but whether the exclusion of loss by fire is in any way qualified or limited.

In the *Abasand* case, it was said that "if the language had been 'caused by explosion' a resulting fire would be included as a cause; 'caused solely by explosion' excludes such a fire." (Rand, J., p. 319). Here the liability is limited to to "loss on the property directly damaged by such accident", excluding loss by fire and excluding loss from any indirect damage resulting from the accident. Not being an explosion policy, it should not be read as if the wording were "loss caused by explosion", with all that that wording entails. The word "fire" is not defined in the policy and it is used without qualification or limitation. There being no express qualification or limitation, is there any implied qualification or limitation which may be inferred?

We are here dealing with two risks — an accident, as defined, and fire, not defined. The risk insured against in the present policy is limited to loss or damage due to the accidental tearing asunder of the object insured, caused by pressure of steam, air, gas, water or other liquid, from within, and only the direct damage caused thereby, excluding indirect damage. The object is an "unfired vessel", so that it would appear that the "accidental tearing asunder" is not contemplated as being one due to fire. It seems to me that the policy contemplates not an explosion but a rupture. As a matter of fact, this particular tank did not explode. Only the door, and possibly the rear window, two weak spots, were dislodged. The body of the tank remained intact. There was in fact no explosion of the tank. The explosion which did take place was an explosion of a totally different character — an explosion of gases or fumes outside the tank. And what the plaintiff seeks to do is to make this limited policy apply to any kind of explosion which might be traced in part to any elements escaping from a ruptured tank which may have contributed to the explosion. This seems to me to carry the terms of the policy far beyond its natural meaning and beyond what was in the contemplation of the parties. But, the plaintiff argues, the fire or ignition which caused the explosion was the direct result of the tearing asunder of the tank, because there was no break in the chain of causation between the accidental re-

lease of the vapour from the tank and the explosion. Even if that were so, it is not conclusive and the question remains, as put by the trial judge: "Now, the unidentified source of ignition did, strictly speaking, constitute fire; but did it constitute fire within the meaning of the policy?"

If fire of any kind or from whatever source, or whenever occurring, is totally excluded from the policy, that question is solved. The policy, it is true, insures against the risk of direct damage due to an accident, but the subsequent exclusion of fire would seem to me to exclude fire even if a direct cause of loss. I find great force in the argument of the defendant that the words of Martin, B., in *Stanley vs. Western Insurance Company* (1868) 3 L.R. Ex. 71, are applicable to the case at bar, if we substitute for the word "explosion" the word "fire". In that case, Martin, B. said, at page 75:—

> "There is nothing to qualify the word 'explosion', and I apprehend, therefore, that the company bargain, and the insured agrees with them, that they are not to be responsible for any loss or damage by explosion. The clause is exceedingly simple, and we should not be justified in adding words to give it the most artificial meaning which Mr. Quain contended for".

As this policy, which it not, I repeat, an explosion policy, limits liability to direct damages due to an accident, and in the same sentence excludes loss from fire without any qualification whatsoever, I can see no justification for reading into that sentence some limitation or qualification.

Having come to this conclusion, I need not discuss the other questions raised.

There is some evidence in the record of loss or damage directly caused by the accident, but it is incomplete and, in view of the position taken by the parties and in the absence of any demand to apportion any particular items, this Court is not called upon to attempt that task.

For these reasons, I would maintain the appeal, set aside the judgment *a quo* and dismiss the plaintiff's action, with costs.

GREGOR BARCLAY,
J.K.B.

OPINION DE L'HON. JUGE MARCHAND

Je concours dans le jugement de notre collègue, monsieur le juge Barclay.

NOTES DE L'HON. JUGE BISSONNETTE

Pour se prémunir contre toute perte résultant de tout accident causé à l'un des nombreux appareils dont la demanderesse se sert pour l'exploitation de sa vaste fabrique de peintures et de vernis, elle a fait couvrir ce risque par The Boiler Inspection & Insurance Company of Canada, la défenderesse en cette cause. En outre de ce contrat particulier d'assurance, la demanderesse s'était protégée contre le risque d'incendie dans diverses autres sociétés d'assurance.

Un jour, un réservoir servant au filtrage de certaines matières premières fit explosion et celle-ci fut d'une telle violence qu'elle souleva la toiture de l'usine et éventra les murs, en même temps que l'incendie se déclarait. Ce tragique accident entraîna une perte de quelque $160,000.00 et la demanderesse, après avoir recouvré $112,793.34 de ses divers contrats d'assurance contre l'incendie, intenta action à la défenderesse pour se faire indemniser d'une perte de $46,931.28, montant, qui à la suite d'un retraxit, s'établira à la somme de $45,791.38.

La défenderesse offrira, à l'encontre de cette demande, plusieurs défenses dont les deux principales étaient les suivantes:

1 — Le contrat d'assurance ne couvrait pas la perte résultant de l'incendie ou d'un accident causé par un incendie et, enfin, d'un accident ayant une cause étrangère à celles prévues par la police d'assurance.

2 — Elle plaidait, en outre, que la demanderesse du fait qu'elle avait subrogé les compagnies d'assurance, qui avaient assumé le risque d'incendie, dans tous ses droits et recours contre la défenderesse, n'avait plus l'intérêt légal nécessaire pour continuer l'instance et pour obtenir jugement contre la défendresse.

Le juge de la Cour supérieure, dans un jugement élaboré où il cherche à indiquer le véritable sens de cette police d'assu-

rance et l'étendue de l'obligation qu'aurait assumée la défenderesse, a statué que la rupture du réservoir résultait de l'inflammation du liquide qui s'y trouvait et que c'est la pression développée par le feu dans ce réservoir qui a provoqué l'explosion et que les dommages causés par celle-ci constituaient une perte couverte par le contrat. La Cour supérieure, sur l'autre défense, a statué que la demanderesse, en dépit de la subrogation qu'elle avait consentie sur le paiment intégral de sa créance, ne s'était pas, par là, dépouillée de l'intérêt légal exigé par les art. 77 et 81 C.P. Elle a donc maintenu la demanderesse dans toutes ses conclusions.

Le pourvoi devant cette Cour remet donc en question les deux principales adjudications faites par la Cour supérieure. J'entends les discuter aussi sommairement que possible.

1 — Quel risque la défendresse a-t-elle assumé?

2 — Le paiement par subrogation a-t-il dessaisi la demanderesse de son droit d'action?

La clause fondamentale de la police d'assurance est, en substance, ainsi énoncé:—

> "In consideration of $1,589.50 premium does hereby agree with the Sherwin-Williams Company of Canada, Limited, respecting loss from an accident as herein defined to an object described herein, as follows:—
>
> SECTION I — To PAY the Assured for loss on the property of the Assured directly damaged by such accident excluding (a) loss from fire (or from the use of water or other means to extinguish fire), (b) loss from an accident caused by fire, and (e) loss from any indirect result of an accident".

Dans son sens littéral, cette stipulation paraît nettement indiquer que la défenderesse n'a jamais assumé le risque provenant d'un incendie et n'a jamais entendu couvrir toute perte causé par un incendie ou par un accident résultant d'un incendie. Ces deux contigences sont expressément exclues; excluding (a) loss from fire, (b) loss from an accident caused by fire, et (e) loss from any indirect result of an accident.

Ces trois restrictions à sa responsabilité n'ont, à mon avis, qu'un seul sens et elles viennent circonscrire l'obligation princi-

pale d'indemniser pour toute perte directement causée par "l'accident" prévu et défini dans le contrat même.

Exclure toute perte provenant du feu ou de l'incendie, c'est évidemment exclure le feu comme cause d'accident. En un mot, c'est dégager sa responsabilité si "l'objet assuré" est détruit par le feu.

Exclure toute perte résultant d'un accident causé par le feu, c'est dire que l'assureur ne considérera pas comme accident la perte qui en résultera quand ce sera le feu qui sera la cause de cet accident.

Exclure, enfin, toute perte qui serait l'effet indirect d'un accident, c'est restreindre le risque d'accident à la perte que celui-ci entraîne en rapport avec l'objet assuré.

Si j'avais à illustrer ces restrictions apportées à son obligation d'indemniser au cas d'accident, je comprendrais que l'assureur a voulu se libérer de certaines pertes; et cette intention deviendra plus manifeste lorsque j'indiquerai, plus tard, le sens des mots "accident' et "objet" que la police définit et qui constitue le seul barême sur lequel on doit s'appuyer pour rechercher la portée du risque que les parties ont voulu couvrir.

Quand on considère les dérogations (a), (b) et (e), il semble que l'assureur a tenu à l'assuré le langage suivant: quant à (a), je ne vous indemniserai pas si l'objet assuré est détruit par un incendie; quant à (b), vous ne serez pas non plus assuré si la perte provient d'un accident qui a eu pour cause le feu ou un incendie, et quant à (e), cette police ne couvre pas davantage le dommage causé par les conséquences indirectes d'un accident. Pour compléter ma pensée, tout se résume à ceci: si votre réservoir brûle dans un incendie du bâtiment, je ne vous le paierai pas; si le feu se communique au réservoir et en provoque l'explosion, je ne vous paierai pas davantage; enfin, si un accident survient à ce réservoir, par exemple, s'il y a rupture ou déchirure et que le liquide qu'il contient vienne à se répandre dans votre fabrique causant des dommages, je vous indemniserai, mais mon obligation n'ira pas toutefois jusqu'à payer les conséquences indirectes de cet accident comme les blessures causées à un employé.

Et ces déductions, qui me paraissent être les seules possibles au sens littéral de la clause précitée, deviennent plus certaines lorsqu'on les envisage à la lumière de la définition des mots "accident' et "objet.

Pour les parties contractantes et pour les fins de la responsabilité et de l'indemnité en vertu de la police, le mot "accident" a été circonscrit à la rupture de tout objet ou de toute partie d'objet, rupture qui aurait pour cause la pression de la vapeur, du gaz ou de tout autre liquide que cet objet pouvait contenir. Quant à l'objet, selon la définition, il peut se rapporter, non seulement au réservoir même, mais aussi à certains accessoires qui le complètent ou qui s'y attachent; d'ailleurs, en retenir toute la définition technique reste pour moi d'importance secondaire, si j'ai raison dans l'interprétation du mot "accident".

Je crois que la *Boiler Inspection & Insurance Company* s'est obligée, à l'endroit de la *Sherwin-Williams Company,* d'indemniser celle-ci pour toute perte subie par suite de la rupture d'un réservoir quelconque et que la mesure de cette indemnité sera restreinte à la perte ou au dommage directement causé par l'accident, c'est-à-dire par la rupture ou déchirure causée par la pression du liquide sur le réservoir ou sur ses accessoires.

Quand, en effet, la police d'assurance limite un accident à "a sudden and accidental tearing asunder of the object or any part thereof caused by pressure of steam, air, gas, water or other liquid", il faut nécessairement laisser à cette définition son sens littéral, restrictif et rigoureux et, lorsqu'on le fait, l'origine de la perte susceptible d'être recouverte, par l'assuré, réside uniquement dans la rupture du réservoir mis sous pression. Quand, en outre, à la face de cette définition explicite et limitative, on recherche le sens des mots "directly damaged", il faut encore là, si l'on veut se garder de donner au contrat une extension juridique qu'il n'a pas, ne reconnaître de dommage ou de perte que ce qui est l'effet direct et immédiat de la rupture, de l'effet qui procède de sa seule et unique cause, ce qui veut dire qu'il faut faire abstraction, en constatant la perte ou le dommage, de toute cause étrangère ou intermédiaire ou indirecte, pour, enfin, n'en retenir que la cause qui a produit et qui n'a pu produire que cet effet.

Si donc, ce réservoir s'est brisé en raison de la pression causée par l'accumulation de la vapeur ou du liquide qui s'y trouvait, la responsabilité de la compagnie d'assurance ne peut faire de doute. D'autre part, si cette rupture est la conséquence d'un explosion et que celle-ci ait été causée par l'intervention d'un agent externe, comme le feu, par exemple, le contrat d'assurance ne couvrait pas ce désastre et n'autoriserait pas l'assuré à recouvrer les dommages ainsi subis. Dans le premier cas, l'assuré pourrait réclamer, non seulement pour la perte de son réservoir

et de ses accessoires, mais aussi pour le préjudice qu'il aurait subi comme effet direct et immédiat de cette rupture. Dans le second cas, l'assuré n'aurait droit à aucune indemnité, d'abord du fait que la police ne couvrait pas un tel sinistre et, ensuite, parce que les dommages seraient indirects et éloignés.

Que s'est-il produit? La porte du réservoir a-t-elle cédé sous la pression *normale* inhérente à la nature de l'opération chimique à laquelle on procédait et comme conséquence des aléa et des possibilités d'accident qu'elle peut comporter, ou a-t-elle été détachée du réservoir sous la force d'une explosion qui prenait son origine dans une cause absolument extérieure? C'est le délicat problème qu'avait à résoudre le Juge de la Cour supérieure en tenant compte, d'une part, des termes restrictifs de la police et en appréciant, d'autre part, la preuve vulgaire et scientifique qui lui a été soumise.

Du jugement de la Cour supérieure, je retiens deux choses principales: la constatation formelle que l'explosion du réservoir ne pouvait se produire que si trois éléments se rencontraient et produisaient chacun son effet. Il devait y avoir d'abord des émanations de vapeur de térébenthine, ensuite le mélange de ces émanations avec l'oxygène de l'air dans l'édifice et enfin une source de feu en dehors du réservoir. A ce sujet, le juge fait les deux observations suivantes:—

1 — It may be stated that all the experts agree that these three elements were necessary to bring about an explosion of this kind;

2 — Only one of these three elements, namely, the turpentine vapour, was inside the tank. This vapour was harmless until it had mixed with the outside air and the mixture thus formed had been ignited. (This is also admittedly true).

Il est donc constant que le feu n'existait pas et ne pouvait pas exister, à moins qu'il n'y ait eu conjugaison et action de ces trois agents.

L'autre motif du jugement réside dans la proposition qu'il n'y aurait eu aucune solution de continuité dans les diverses phases qui ont constitué l'explosion, laquelle, comme dans une sorte de gestation progressive, aurait commencé par les émanations de térébenthine évaporée et qui se serait terminée par l'explosion causée par les vapeurs qui furent enflammées

en dehors du réservoir, mais qui se communiquèrent à celles qui s'y trouvaient accumulées à l'intérieur. C'est de cet enchaînement de faits et de circonstances que s'est autorisé le juge de première instance pour statuer qu'il n'y eut, au cours de ces diverses phases, aucune *nova causa interveniens* et qui l'aurait justifié de voir dans l'explosion un "accident" dans le sens de la police.

Je le dis avec grand respect, il me paraît qu'en retenant comme ininterrompue cette chaîne d'événements, la Cour supérieure a donné, à la police d'assurance, une extension juridique qu'elle ne me semble pas devoir recevoir.

Que l'échappement de vapeurs de térébenthine en se répandant dans l'immeuble ait été le premier agent d'une explosion, mais qui ne pouvait survenir que par la présence et l'action de certains autres éléments ou agents, je le concède, mais c'est donner là une interprétation qui va bien au-delà des stipulations de la police. En un mot, l'échappement de vapeurs de térébenthine peut avoir causé l'explosion, mais ce n'est pas la *présence* de térébenthine dans le réservoir qui a causé l'explosion. Or, la police d'assurance couvrait cette dernière éventualité pourvu que celle-ci ne dépassât pas une simple rupture ou déchirure du réservoir.

Sous un autre aspect également, mais qui est le complément de la proposition que je viens de soutenir, il me paraît que le jugement de la Cour supérieure a outrepassé les obligations assumées par l'appelante dans son contrat d'assurance. Celle-ci, je l'ai déjà souligné, n'a pas assuré les dommages résultant d'un incendie. Or, dès que la Cour supérieure en venait à la conclusion que l'explosion ne se serait jamais produite sans l'intervention d'un élément, qui est le feu, elle devait affranchir l'appelante de toute responsabilité et de tout dommage qui prenaient leur cause dans cet agent externe, "le feu", risque que l'appelante non seulement n'a pas voulu couvrir, mais dont elle s'est expressément déchargée par l'une des exceptions contenues dans la police.

Donner un autre sens à la police d'assurance conduirait à des conséquences qui rendraient fort onéreux et à un degré disproportionné les risques découlant de la police d'assurance. Car, il faut bien l'affirmer, si l'on prend pour cause initiale de ce tragique accident les vapeurs qui se sont dégagées du réservoir et que l'on retienne cette cause pour conclure à la responsabilité de l'appelante dans le cas d'une explosion, qui s'est nécessairement produite *en raison du feu,* il faut en toute logique mettre également à sa charge toutes les conséquences directes de cette explo-

sion. Or, rien ne me paraîtrait, sous un tel raisonnement, être un dommage plus immédiat et plus direct que celui résultant de l'incendie de l'édifice même; ce que reviendrait à dire que l'appelante devrait être tenue responsable, non seulement des dommags causés au réservoir, mais aussi de tous ceux qui en ont été la suite immédiate, ce qui comprendrait la destruction de l'immeuble et, en définitive, l'exonération des compagnies d'assurance qui couvraint le risque d'incendie.

On voit par là que si l'on va au-delà de la stipulation limitative contenue dans la police, on transgresserait la règle que là où les parties se sont clairement exprimée, leur volonté forme la loi.

Je suis donc d'opinion que l'appelante ne pouvait être tenue responsable que de la rupture du réservoir si celle-ci avait pour cause la pression qu'il était appelé à subir, suivant sa nature et sa destination. Il y a eu *causa interveniens,* ce qui devait entraîner le rejet de l'action.

Le second grief de l'appelante à l'encontre du jugement s'appuie sur la proposition que la demanderesse a subrogé les compagnies d'assurance contre l'incendie dans tous ses droits contre l'appelante et que, dès lors, elle n'avait plus l'intérêt requis pour ester en justice.

Pour mieux saisir la portée de cet argument, il y aurait lieu de relater tous les faits qui ont entouré cette subrogation dont fait état l'appelante. Dans les notes de mes collègues, le texte de cette subrogation est reproduit, de sorte que je me borne à rechercher le véritable caractère de cet écrit.

S'agit-il d'une subrogation, d'une cession de créance ou, selon que l'on a voulu l'appeler, d'un simple paiement conditionnel? La raison qui nous contraint à déterminer la nature de ce contrat, c'est que les règles qu'il faudrait y appliquer varieront selon le caractère de cette convention.

Je dirai tout de suite, et avec baucoup de respect, qu'à mon avis on ne saurait voir, dans cet écrit, un paiement conditionnel. Que s'est-il passé en réalité? L'intimée a recouvert des compagnies d'assurance contre l'incendie sa réclamation intégrale pour le préjudice souffert à raison de l'incendie même, mais elle a aussi été entièrement payée de sa perte résultant des conséquences de l'explosion. Et c'est par ce paiement de quelque $45,000.00 qu'elle a transporté ses droits contre l'appelante aux diverses

compagnies d'assurance. Ce dont, par l'écrit, les parties furent convenues, c'est que les compagnies d'assurance prendraient, contre l'appelante, lieu et place de l'intimée, sauf que celle-ci s'obligeait à continuer l'action qu'elle avait intentée à l'appelante pour le recouvrement de cette même somme.

Mais jamais l'intimée n'a entretenu le doute que le paiement, qui lui était fait, était conditionnel. Bien au contraire, ceci est constant aux débats que le montant versé à l'intimée était final en ce sens qu'il lui était donné et définitivement compté, sous la réserve toutefois de l'obligation, pour l'intimée, de remettre aux compagnies subrogées tout montant qu'elle aurait recouvré de l'appelante. Autrement dit, le paiement fait par l'*Aetna Insurance Company* et autres à *Sherwin-Williams* était définitif et ne comportait *per se,* aucune condition. L'obligation de rendre compte des montants à percevoir de la *Boiler Insurance Company* était indépendante et distincte du fait juridique que constituait le paiement intégral. Sous une autre forme, disons encore que la *Sherwin-Williams* se constituait la mandataire de l'*Aetna Insurance Co.* pour le recouvrement de cette créance que celle-ci venait d'acquérir et que c'était dans l'exécution de son mandat qu'une somme éventuelle pouvait être recouvrée par la subrogée. Le paiement, je le répète, était un fait juridique bien indépendant de l'obligation résultant du mandat.

S'agit-il d'une subrogation ou d'une cession de créance? Les parties elles-mêmes ont donné à leur écrit la signification d'une subrogation. Mais en réalité on ne peut vraiment pas reconnaître à cet écrit un caractère de subrogation, quoique certains éléments constitutifs d'un tel contrat s'y retrouvent. Monsieur le Juge Barclay développait ce point et je fais mienne ses intéressantes observations.

Il s'agit, à mon avis, d'une cession-transport. Jamais l'*Aetna Insurance Co.* et les autres assureurs n'ont voulu payer pour le compte et au profit de la *Boiler Insurance Co.* Il est bien évident que ces compagnies ont acheté le droit de créance de la *Sherwin-Williams* pour se retourner ensuite contre la *Boiler* et faire tomber sur elle la responsabilité du surplus de la perte qu'elles-mêmes ne croyaient pas avoir assumée. Et comme au moment du paiement, l'action de *Sherwin-Williams* était déjà intentée contre la *Boiler* depuis quelques mois, on obligeait la demanderesse à continuer, en son nom, son action. Et c'est là que l'appelante élève son objection.

Vous ne pouviez, dit-elle à la *Sherwin-Williams*, continuer votre action parce que ceci transgresse la règle de l'art. 77 C.P.

Du fait du transport, vous aviez cessé d'être créancière, de sorte que vous n'aviez plus l'intérêt légal requis pour rester demanderesse.

L'intérêt pratique de déterminer s'il faut retenir du contrat une subrogation ou une cession de créance réside précisément dans la rigueur que cet article du code pourrait comporter. Cet article édicte qu'on peut ester en justice, même pour un intérêt qui ne peut être qu'éventuel. Or, à la différence de la subrogation, la cession de créance impose au cédant l'obligation de garantie, c'est-à-dire qu'il est garant de l'*existence de la créance*. A cette institution juridique, on doit appliquer les principes et les obligations de la vente. Aussi, imposer au cédant l'obligation de garantie de l'existence de la dette fait supposer qu'il a le droit corrélatif d'agir au nom du cessionnaire contre le cédé. Son intérêt même paraît plus qu'éventuel, quand il prend l'initiative de faire valoir, contre le cédé, les droits du cessionnaire, droits pour lesquels il est garant. J'ai donc la conviction qu'en raison des termes mêmes de l'écrit où la *Sherwin-Williams* s'est expressément obligée à continuer l'action, celle-ci, comme cédante, avait le droit de poursuivre le débiteur cédé.

La seule objection qu'il me paraîtrait possible de soulever, ce serait que le débiteur aurait en quelque sorte deux créanciers: le cédant qui l'attaque et le cessionnaire qui détiendrait le titre ou la créance. Il peut arriver, en certains cas, qu'un tel obstacle puisse exister et rendre ainsi illusoire ou impossible le recours exercé par le cédant. Mais dès lors que le débiteur est en état de recevoir bonne et valable quittance du cédant, je n'hésite pas à lui reconnaître le droit d'action. Or, dans la présente espèce, l'appelante, si elle entend payer ou si elle était condamnée à le faire, obtiendrait quittance valable et finale de l'intimée, quittance qui lierait en même temps les diverses cessionnaires. En effet, l'écrit contient une délégation ou un mandat pour l'intimée de recevoir, pour les cessionnaires, paiement et, évidemment, donner quittance. Il y a plus. L'intimée elle-même, en faisant la preuve de l'existence de cette cession, en s'en donnant signification par la production qu'elle en a faite au cours de son enquête, a anéanti tout danger possible d'une demande de paiement par les cessionnaires, puisque l'écrit dit expressément que la *Sherwin-Williams* agit comme leur mandataire.

Enfin, la jurisprudence, en dépit de ses hésitations ou de ses oscillations, paraît avoir reconnu la règle que le cédant a un intérêt suffisant pour recouvrer du débiteur, et que cet intérêt est moins discutable lorsque la cession a été faite après l'entrée de l'action.

Mignault, t. 7, p. 188, après avoir cité certains jugements qui ont soutenu plutôt la négative, en reproduit plusieurs autres qui appuient la proposition que j'ai exposée: *Crémazie v. Cauchon,* 16 L.C.R., p. 482, *Béland v. Bédard,* 8 C.S., p. 155, *Young v. Consumers Cordage Co.,* 9 C.S., p. 471, et *Larivière v. Corporation de Richmond,* 21 C.S., p. 37 confirmé par l'arrêt de la Cour d'appel, janvier 1902. Toutefois, M. le juge Cimon dans l'affaire *Montreal Loan & Investment Company et Plourde,* 23 C.S., p. 399, a vigoureusement combattu la tendance de cette jurisprudence.

Résumant ma pensée, je suis d'avis qu'en raison de la lettre et de l'esprit de l'écrit formant subrogation ou cession, comme aussi de la position prise par l'appelante au cours de l'enquête au sujet de ce contrat, que la *Sherwin Williams* avait garanti, elle possédait un intérêt légal suffisant pour ne pas transgresser la règle posée par l'art. 77 C.P.

PAR CES MOTIFS et également par CEUX exprimés sur le premier point par M. le juge Barclay, je ferais droit à l'appel et j'infirmerais le jugement de la Cour supérieure, avec dépens et, STATUANT selon que de droit, je rejetterais l'action de la demanderesse, avec les entiers dépens.

NOTES OF HON. Mr. JUSTICE CASEY

I am of the opinion that while respondent had an interest in instituting and in continuing its action, the damages which it claims are not covered by the contract on which it relies.

It is for this reason that I concur in the opinion of Mr. Justice Barclay that this appeal should be maintained.

Montreal, January 12, 1949.

BAIL BOND

UNITED STATES FIDELITY & GUARANTY COMPANY
Baltimore - Maryland

No. 16-37-49 Unlimited

Dominion of Canada
Province of Quebec
District of Montreal

COURT OF KING'S BENCH (Appeal Side)
Number 3100

WHEREAS, on the 12th day of January, one thousand nine hundred and forty-nine, Judgment was rendered by Court of King's Bench (Appeal Side) for the Province of Quebec, sitting at Montreal, in the District of Montreal, in a certain cause between:—

THE SHERWIN-WILLIAMS COMPANY OF CANADA LIMITED,

(Plaintiff in Superior Court
Respondent in the Court of
King's Bench),

Appellant in the Supreme
Court of Canada,

— and —

BOILER INSPECTION AND INSURANCE COMPANY OF CANADA,

(Defendant in Superior Court,
Appellant in the Court of
King's Bench),

Respondent in the Supreme
Court of Canada,

WHEREAS, the said Judgment has been appealed from to th Supreme Court of Canada by the said THE SHERWIN-WILLIAMS COMPANY OF CANADA LIMITED, thus rendering necessary the security required by Section 70 of Chapter 35 of the Revised Statutes of Canada;

THEREFORE, THESE PRESENTS TESTIFY, that on the 24th day of February, one thousand nine hundred and forty-nine, came and appared before me, a Judge of the Court of King's Bench, in and for the District of Montreal, the UNITED STATES FIDELITY AND GUARANTY COMPANY, a body politic and corporate, duly incorporated under the laws of the State of Maryland, one of the United States of America, and having its head office in the City of Baltimore, in the said State, and having a branch office in the City of Montreal, and duly authorized to become Surety before the Courts of the Province of Quebec, by virtue of Order-in-Council, dated at Qubec, the 2nd day of October, one thousand nine hundred and three, and under the provisions of the Guarantee Companies Act, chapter 249, Revised Statutes of Quebec 1925.

The said UNITED STATES FIDELITY AND GUARANTY COMPANY, herein represented and acted for by R. C. Hey, of the City of Montreal, duly authorized by Resolution of the Board of Directors of the said Company, passed on the 23rd day of April, A.D. 1947, at Baltimore, duly certified copy of which being hereto annexed and which said Company hereby acknowledges itself to be the legal surety of the said Appellant in regard to the said Appeal; hereby promises, binds and obliges itself that in case the said Appellant does not effectually prosecute the said Appeal and does not pay all the costs adjudged in case the Judgment appealed from is confirmed by the said Supreme Court of Canada, then the said Surety will pay all costs which may have been adjudged against the Appellant in the Superior Court, the Court of King's Bench (Appeal Side) and the Supreme Court of Canada in case the Judgment appealed from is confirmed.

And the said UNITED STATES FIDELITY AND GUARANTY COMPANY has signed these presents by its Representative.

United States Fidelity and Guaranty Company,
R. C. HEY,
(R. C. Hey), Res. Asst. Agent & Attorney.

Taken and acknowledged before me at
Montreal, Que., this 24th day of
February, 1949.

E. McDougall.
J.C.K.B.

EXTRACT FROM MINUTE BOOK

of the

United States Fidelity and Guaranty Company

At a meeting of the Board of Directors of the UNITED STATES FIDELITY AND GUARANTY COMPANY, held at the head office of the Company, in the City of Baltimore, on the 23rd day of April, A.D. 1947, it was

Resolved, That K. G. Christie be and he is hereby elected Resident Agent and Attorney of the Company residing in the City of Montreal, Province of Quebec, and W. R. Craig, R. C. Hey and D. L. Ford be and they are hereby elected Resident Assistant Agents and Attorneys of said Company residing in the City and Province aforesaid, and that the said Resident Agent and Attorney and Resident Assistant Agents and Attorneys be and each of them is hereby authorized and empowered to execute and deliver and to attach the seal of the Company to any and all abligations of suretyship for or on behalf of the company.

State of Maryland,
City of Baltimore,

I, HARRY PREVOST, Assistant Secretary of the UNITED STATES FIDELITY AND GUARANTY COMPANY, do hereby certify that I have compared the foreging extracts and transcripts of resolution from the Minute Book of the Board of Directors of the UNITED STATES FIDELITY AND GUARANTY COMPANY with the original as recorded in the Minute Book of said Company, and that the same are true and correct extracts and transcripts therefrom, and that the same resolution has not been revoked or rescinded and is in accordance with the constitution and by-laws of the Company.

GIVEN under my hand and seal of the Company at the City of Baltimore, in the State of Maryland, one of the United States of America, this 24th day of February, A.D. 1949.

HARRY PREVOST,
Assistant Secretary.

NOTICE OF APPEAL TO THE SUPREME COURT OF CANADA

To:

Mtres. Hackett, Mulvena & Hackett
and to Hackett, Mulvena, Hackett & Mitchell,
Attorneys for the above named Respondent,
Montreal.

Sirs:

TAKE NOTICE that the Appellant hereby inscribes this Case in appeal to the Supreme Court of Canada from a final judgment rendered by the Court of King's Bench (Appeal Side) sitting at Montreal on the 12th day of January 1949, maintaining the appeal and reversing the judgment of the Superior Court for the District of Montreal rendered by the Honourable O. S. Tyndale A.C.J. on the 29th day of March 1946.

AND FURTHER TAKE NOTICE that on Thursday, the 24th day of February 1949, at 11 of the clock in the forenoon at the office of the Clerk of the Court of King's Bench (Appeal Side) at the Court House in the City of Montreal, the Appellant will furnish good and sufficient security to the satisfaction of one of the Honourable Judges of the said Court of King's Bench (Appeal Side) that it will effectively prosecute its appeal to the said Supreme Court of Canada and will pay the costs which may be adjudged against it by the said Court.

AND FURTHER TAKE NOTICE that the security which will be offered by the Appellant will be a surety bond of United States Fidelity and Guaranty Company, a body politic and corporate, having its Head Office for the Province of Quebec in the said City of Montreal which surety is duly and properly authorized to become such before and in the Courts of the Province of Quebec and will then and there justify as to its sufficiency on oath if so required; and govern yourselves accordingly.

Montreal, February 17th, 1949.

(Signed) Mann, Lafleur & Brown,
Attorneys for Appellant.

CONSENT TO CONTENTS OF JOINT CASE IN THE SUPREME COURT OF CANADA

The parties to the present appeal agree that the following documents shall constitute the Case in

THE SUPREME COURT OF CANADA

1.—Inscription in appeal. Document A ..... 26th Apr. 1946

2.—Plaintiff's Declaration. Document 8 ..... 17th Sept. 1943

3.—Defendant's Plea. Document 12 ..... 23rd Oct. 1943

4.—Particulars furnished by Defendant of paras. 9, 11, 16 of its Plea. Document 19..... 28th Mar. 1944

5.—Plaintiff's Answer to Plea. Document 20.... 21st Apr. 1944

6.—Retraxit by Plaintiff. Document 27 ..... 16th Jan. 1945

7.—Retraxit by Plaintiff. Document 31 ..... 21st Jan. 1946

8.—Plaintiff's List of Exhibits with return of action. Document 2 ..... 17th Sept. 1943

9.—Procès-Verbal d'Audience (eleven pages).... 23rd Oct. 1945
Documents 29 & 30 ..... to 9th Jan. 1946

10.—Procès-Verbal d'Audience. (Five pages) .... 4th Feb. 1946
Document 37 ..... to 7th Mar. 1946

11.—Procès-Verbal d'Audience (one page. Docu-
mnt 32A ..... 7th Mar. 1946

12.—Judgment in the Superior Court. Docu. 36. 29th Mar. 1946

13.—Judgment of the Court of King's Bench (Appeal Side), appealed from

14.—Reasons for Judgment Létourneau, C.J.P.Q., Barclay J. and Marchand, Casey and Bissonnette JJ.

15.—Notice of appeal to the Supreme Court of Canada and of the furnishing of security.

16.—Security bond.

17.—Certificate as to sufficiency of security.

18.—Certificate as to the contents of the Case.

19.—Agreement of parties in appeal No. 3100 dated May 3rd, 1947, that interest on the amount of any final Judgment shall run from September 17th, 1943, the date of service.

EXHIBITS

20.—Plaintiff's Exhibits P-1, P-2, P-3, P-4, P-5, P-10, P-12, P-13, P-14, P-15, P-16, P-17, P-18 and P-19.

21.—(Exhibits P-9, model tank, and P-11 being a photograph available for reference only.)

22.—Photostatic copies of Plaintiff's Exhibit P-6 (a to f inclusive) P-7 and P-8.

23. Defendant's Exhibits D-1, D-2, D-3, D-4, D-5, D-6 (list) D-6-1, D-6-22, D-8, D-9 and D-12.

24.—(Exhibits D-6-2 to D-6-21 inclusive being policies and D-11 (sketch) available for reference only).

25.—Photostatic copies of Defendant's Exhibits D-7 (a to j inclusive) and D-10.

26.—Defendant's Exhibits D-6-1 excluding Quebec Fire Insurance Conditions, with original insuring schedule.

EVIDENCE

27.—All the depositions of witnesses.

Montreal, February 17th, 1949.

(Sgd.) Mann, Lafleur & Brown,
Attorneys for Appellant.

(Sgd.) Hackett, Mulvena & Hackett.

CERTIFICATE AS TO CASE

I, J. A. MANN, hereby certify that I have personally compared the annexed print of the Case in Appeal to the Supreme Court with the originals and that the same is a true and correct reproduction of such originals.

Montreal, 16th March, 1949.

J. A. MANN, K.C.,
Solicitor for the Appellant.

CERTIFICATE OF CLERK OF APPEALS AS TO SETTLEMENT OF CASE AND AS TO SECURITY

We, the undersigned, Clerk of the Court or King's Bench, (Appeal Side), do hereby certify that the foregoing printed documents from page one to page 843, is the Case stated by the parties, pursuant to Section 68, of the Supreme Court Act and the Rules of the Supreme Court of Canada, in a certain cause lately pending, in the said Court of King's Bench, between Boiler Inspection and Insurance Company of Canada, Appellant and The Sherwin-Williams Company of Canada Limited, Respondent.

And we further certify that the said Appellant has given proper security as required by the 70th Section of the Supreme Court Act, being an Act of Deposit, a copy of which is to be found on page 836 of the annexed Case.

In testimony whereof, we have hereunto subscribed our hand and affixed the seal of the said Court of King's Bench, at Montreal, this of 1949.

LAPORTE & FALARDEAU,
(L.S.) Clerks of Appeals.